

Integrity in Public Life Bill, 2019 attached

**PARLIAMENT
Bridgetown**



REPORT

OF THE

**JOINT SELECT
COMMITTEE**

ON THE

**INTEGRITY IN PUBLIC
LIFE BILL, 2018**

**REPORT OF
JOINT SELECT COMMITTEE
ON THE
INTEGRITY IN PUBLIC LIFE BILL, 2018**

1. Pursuant to a Resolution of the Honourable the House of Assembly on Tuesday, 17th July, 2018 and the concurrence of the Honourable the Senate on Wednesday, 30th August 2018, a Joint Select Committee (**hereafter referred to as “the Committee”**) was constituted to consider and report on:-

A Bill to establish a regime, including an Integrity Commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption.

2. The following members were appointed to the Committee:-

Hon. Dale D. Marshall, Q.C., M.P.

Hon. Wilfred A. Abrahams, M.P.

Hon. Miss Cynthia Y. Forde, M.P.

Hon. Charles McD. Griffith, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Bishop Joseph J. S. Atherley, M.P.

Senator the Hon. Mr. Jerome X. Walcott

Senator Miss Lisa R. Cummins

Senator Ms. Monique C. Taitt, Q.C.

Senator Caswell A. Franklyn

3. The Terms of Reference of the Committee were as follows:-

To inquire into and determine whether the Bill as drafted effectively fulfils the expressed objects of promoting and maintaining the integrity of persons in public life and the prevention detection and prevention of acts corruption.

To examine whether the Bill as drafted will upon effective implementation contribute to an ethos of compliance with financial rules in government affairs; thereby combating corruption in public life;

To examine and analyse whether the provisions of the Bill which relate to financial disclosure will so deter citizens from offering themselves for public duty and service as to have a negative impact on the functioning of government;

To consider whether the Bill as drafted will be an effective and strong deterrent to corruption in public life in Barbados;

To make and recommend changes, if necessary, to the Bill as drafted for further consideration by the Chief Parliamentary Counsel.

4. The Committee has the honour to report as follows:-

The Committee scheduled and held meetings on the following dates:- Tuesday, 21st August, 2018, Monday, 27th August, 2018, Friday, 7th September, 2018, Wednesday, 10th October, 2018, Monday, 5th November, 2018, Friday, 9th November, 2018, Tuesday 13th November, 2018, Friday, 16th November, 2018, Monday 26th November, 2018, Monday 3rd December, 2018 and Friday , 6th December 2019.

The Minutes of the meetings are appended hereto and marked "A I" to "A II" and form part of this Report.

The Hon. Dale D. Marshall was elected Chairman of the Committee and chaired the meetings of the Committee.

The Committee at its first meeting settled the procedure which governed its deliberations. The proceedings of the Committee were conducted in public, streamed live *via* the Barbados Parliament's website, on social media and broadcast on CBC TV 8 when possible.

It should be noted that in order to canvas the widest constituency and that the Bill, a copy of which is appended hereto and marked "B" be given the widest circulation. Copies of the Bill were available online on Parliament's Website, at post offices across the Island, the Government Printing Department and public libraries.

The Committee by public advertisement and through the available electronic media requested submissions on the Bill. Special invitations were sent to all political parties and special interest organisations. In particular, Sir David Simmons, KA, former Chairman of the Integrity Commission, Turks & Caicos Islands; and Dr. Philmore Alleyne, Head of Management Studies and a Lecturer in Governance and Ethics at the University of the West accepted invitations and made presentations to the Committee.

Written submissions were received from the following persons/organisations:

1. Solutions Barbados
2. Mr. Philip Obsourne
3. Integrity Group Barbados
4. Institute of Chartered Accountants of Barbados
5. UN Office on Drugs and Crime in Barbados
6. Men's Educational Support Association (MESA)
7. Mr. Sam Lewis
8. Office of the Ombudsman
9. Democratic Labour Party
10. New Barbados Kingdom Alliance
11. United Progressive Party
12. Mr. Neville Greaves

13. The Financial Intelligence Unit
14. Mr. R. Orlando Marville
15. Congress of Trade Unions and Staff Associations of Barbados (CTUSAB)
16. Mr. Peter Hunte
17. Barbados Private Sector Association
18. The Barbados Bar Association

These submissions are appended hereto and marked “C 1” to “C 18” and form part of this Report.

In addition to the written submissions, the following persons/organisations also made oral presentations before the Committee:

1. Solutions Barbados
2. Kingdom Government of Barbados
3. Integrity Group Barbados
4. Institute of Chartered Accountants
5. Democratic Labour Party
6. New Barbados Kingdom Alliance
7. United Progressive Party
8. Mr R. Orlando Marville
9. Barbados Bar Association

The presentations were for the most part comprehensive and useful; and in two cases very methodical and clearly detailed. The presenters were questioned and responded to queries made by Committee members.

Having given due consideration to the various submissions and with the benefit of analytical notes provided by the Office of the Chief Parliamentary Counsel appended here and marked “D”, the Committee agreed to the amendments to the Bill as shown in the redrafted Bill, appended hereto and marked “E” and the Table of Concordance also appended hereto and marked “F”. Also appended hereto and marked “G” and “H” are

Decisions given by the High Court of Justice, Trinidad and Tobago, H.C.A. 1735 of 2005 and the Court of Appeal of Trinidad and Tobago Civil Appeal No. 30 of 2008. In the Matter of the Integrity of Public Act 2000 (as amended) of Trinidad and Tobago, which form part of this Report.

The Matter at first instance dealt with the questions of:

- 1) Whether having regard to the provisions of the Constitution of the Republic of Trinidad and Tobago and the Integrity in Public Life Act, 2000 (as amended) Judges and Magistrates are persons in public life subject to the provisions of the Integrity in Public Life Act (as amended); and
- 2) What is the meaning of the expression, “Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest.”

The Ruling of the Presiding Judge was that having regards to the provisions of the Constitution of the Republic of Trinidad and Tobago and the Integrity in Public Life Act, Judges and Magistrates are not subject to the provisions of the Integrity in Public Life Act (as amended). As regards to Question 2 above, he ruled that the expression must be taken to mean “the members of the management or decision-making body of:

- (i) All organisations or bodies established by Statute; and
- (ii) All businesses or companies controlled by or on behalf of the State.”

The Judges of the Court of Appeal agreed and ruled that the Telecommunications Services of Trinidad and Tobago Limited, the Appellant in the matter, was not a State Enterprise and that the members of its Board were not subject to the Integrity Provisions. Further, that only members of the Boards of those Statutory Boards which exercise public functions are subject to the jurisdiction of the Commission.

In light of the above decision of the High Court, the Committee agreed that in accordance with the Barbados Constitution and Laws, Judges would not be listed in the Schedule of

Specified Persons in public life. Most of the submissions before the Committee had recommended that Judges be listed. The decision of the Court of Appeal was noted.

The Transcripts of the meetings are appended hereto and marked "**I I**" to "**I II**".

MINUTES

A.

PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the First Meeting of the Joint Select Committee of both Houses of Parliament to review and examine the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Tuesday 21st August, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P.
Hon. Charles McD. Griffith, M.P.
Hon. Cynthia Y. Forde, M.P.
Hon. Wilfred A. Abrahams, M.P.
Mr. Ralph A. Thorne, Q.C., M.P.
Bishop Joseph J. S. Atherley, M.P.
Senator Miss Lisa R. Cummins
Senator Ms. Monique C. Taitt, Q.C.
Senator Caswell A. Franklyn

EXCUSES:

An excuse for absence was received from:
Hon. Colin E. Jordan, M.P.

IN ATTENDANCE WERE:

Mr. Pedro E. Eastmond, *Clerk of Parliament*
Mr. Nigel R. Jones, *Deputy Clerk of Parliament*
Ms. Nicole Thompson, *Special Advisor to Hon. Dale D. Marshall*
Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee*
(Ag.)

The Clerk of Parliament presided over the Appointment of Chairman

Item 1: **APPOINTMENT OF CHAIRMAN**

On the motion of Senator Miss Lisa R. Cummins seconded by Senator Caswell A. Franklyn, the Hon. Dale D. Marshall was appointed Chairman of the Committee.

The Hon. Dale D. Marshall took the Chair and thanked the members for his appointment as Chairman of the Committee.

Item 2: **APPOINTMENT OF DEPUTY CHAIRMAN**

A motion was moved by Senator Miss Lisa R. Cummins seconded by Mr. Ralph A. Thorne, that the Hon. Wilfred A. Abrahams be appointed Deputy Chairman of the Committee. After some discussion the motion was withdrawn.

Item 3: **WELCOME**

The Hon. Dale D. Marshall welcomed all present. He introduced Ms. Nicole Thompson his Special Advisor in his capacity as Attorney-General.

Item 4: **QUORUM**

The meeting agreed that a quorum for the meetings would be 6 members.

Item 5: **TECHNICAL SUPPORT**

The Clerk of Parliament advised that the Chief Parliamentary Counsel or some other Parliamentary Counsel would be present at all future meetings of the Committee for the purpose of advising the Committee or taking drafting instructions.

Item 6: **PROCEDURE**

The Chairman emphasised the work of the Committee in like of its terms of reference.

The Clerk informed that a Press Release was advertised in the Daily Newspapers and by the Government Information Service inviting the Public to assist the Committee in

its work by submission of memoranda setting out their views and comments on the issues and also in addition to appear in person before the Committee to make oral presentations, if so desired. Copies of the Bill are available to the public. The deadline for submission is 24th August 2018.

The Clerk also informed that special invitations were sent to all the political parties and other special interest organisations. To date submissions were received from the political party Solutions Barbados.

It was agreed that invitations should also be sent to Faith Based Organisations.

The Clerk advised that subsequent meetings of the Committee would be held in public and the public would be invited to attend. He informed that the Caribbean Broadcasting Corporation and the Nation Newspaper had sought permission to carry the meetings live and the Government Information Service had sought permission to stream the meetings to its Facebook page.

The Committee was informed that Sir David Simmons, KA had accepted an invitation to make a presentation to the Committee on Monday 27th August, 2018. It was agreed that an invitation would also be sent to Mr. Philmore Alleyne to make a presentation to the meeting.

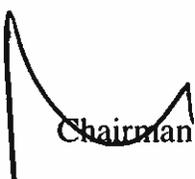
The Clerk of Parliament agreed to produce a set of rules to be observed by the Public when making presentations in person, the same to be provided to the public. It was agreed that presentations in general should be for no more than 10 minutes and that there should be opportunity for discourse with the presenters.

ADJOURNMENT

There being no further business the meeting was adjourned at 2:53 p.m. to Monday 27th August, 2018 at 1:30 p.m.


Clerk of Parliament

Confirmed this 27th day of August 2018.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Second Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Monday 27th August, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon. Cynthia Y. Forde, M.P.

Hon. Wilfred A. Abrahams, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Bishop Joseph J. S. Atherley, M.P.

Senator Miss Lisa R. Cummins

Senator Ms. Monique C. Taitt, Q.C.

Senator Caswell A. Franklyn

IN ATTENDANCE WERE:

Mr. Pedro E. Eastmond, *Clerk of Parliament*

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Mrs. Rolanda Williams, *Chief Parliamentary Counsel (Ag.)*

Ms. Nicole Thompson, *Special Advisor to Hon. Dale D. Marshall*

Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee (Ag.)*

The Meeting was called to order by the Chairman at 1:34 p.m.

SA

Item 1: **MINUTES**

The Minutes of the meeting of 21st August 2018 were taken as read and were confirmed.

Item 2: **MATTERS ARISING**

There were none.

Item 3: **PRESENTATION OF SIR DAVID SIMMONS, KA, Q.C.**

The Chairman welcomed and introduced Sir David Simmons.

From his background as Chairman of the Integrity Commission of the Turks and Caicos Island, Sir David Simmons gave an enlightening and informative presentation to the Committee.

He gave an overview of the Bill under consideration and recommended that in addition thereto, there should be a Code of Conduct which provide for sanctions for breach of the code. In addition there should be a suite of legislation namely a Freedom of Information Act, legislation regulating campaign financing of political parties and whistle blower legislation inter alia which would ensure that there is good governance and standards for the conduct of persons in public life.

He made suggestions regarding the appointment of members of the Integrity Commission and recommended that the investigative arm should be under the Commission and not the Commissioner of Police. He offered his further assistance to the Committee where required.

Sir David Simmons responded to and elucidated on a number of queries raised by members of the Committee.

The Chairman thanked Sir David Simmons for his presentation and accepted his offer of assistance.

Item 4: **PRESENTATION OF DR. PHILMORE ALLEYNE, PH.D**

The Chairman welcomed Dr. Philmore Alleyne and introduced him to the Committee.

Dr. Alleyne supported much of what was said by Sir David Simmons. From his perspective as Head of Management Studies and a Lecturer in Governance and Ethics at the University of the West Indies and from studies and surveys conducted by him in Barbados, he welcomed the move to introduce the legislation at this time. Dr. Alleyne's presentation encapsulated much of what was contained in his research papers, copies of which were made available to the Committee. He opined that in addition to the work being done by the Committee, that there should be outreach to and involvement by the public by way of Town Hall meetings to hear their views and to assuage them of their negative perceptions. He expressed his concerns with the proposed composition of the Integrity Commission. Dr. Alleyne responded to questions and comments from members of the Committee and also offered his assistance to the Committee.

The Chairman thanked Dr. Alleyne for his presentation and also accepted his offer.

Item 5: CONSIDERATION OF MEMORANDA SUBMITTED.

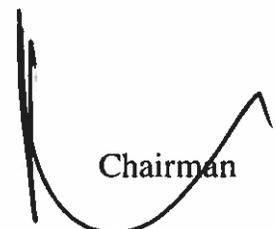
The Chairman informed that 14 organizations including persons had submitted memoranda and that 7 persons thereof requested to appear before the Committee. It was agreed that the Committee would begin those hearings from the next meeting.

Item 6: ANY OTHER BUSINESS

There being no other business the meeting was adjourned to Friday 7th September, 2018 at 1:30 p.m.


Clerk of Parliament

Confirmed this 7th day of September 2018.


Chairman

PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Third Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Friday 7th September, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon. Wilfred A. Abrahams, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Bishop Joseph J. S. Atherley, M.P.

Senator Miss Lisa R. Cummins

Senator Ms. Monique C. Taitt, Q.C.

Senator Caswell A. Franklyn

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Mrs. Rolanda Williams, *Chief Parliamentary Counsel (Ag.)*

Ms. Nicole Thompson, *Special Advisor to Hon. Dale D. Marshall*

Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee (Ag.)*

The Meeting was called to order by the Chairman at 1:45 p.m.

Item 1: MINUTES

The Minutes of the meeting of 27th August 2018 were taken as read and were confirmed.

Item 2: MATTERS ARISING

There were none.

Item 3: PRESENTATIONS:

Presentations were made on behalf of the following groups/organizations.

- (1) Solutions Barbados – Represented by M/s. Granville Phillips II and Kenneth Lewis.
- (2) Kingdom Government of Barbados – Represented by Mr. Steve Hunte.
- (3) Institute of Chartered Accountants of Barbados – Represented by M/s Andrew Brathwaite and Reginald Farley.
- (4) Integrity Group Barbados – Represented by Ms. Alicia Archer, Beverley Lady Walrond and Mr. Devon Bruce.
- (5) Democratic Labour Party – Represented by Mr. Guyson Mayers and Miss Verla DePeiza.
- (6) New Barbados Kingdom Alliance – Represented by Apostle Lynroy C. Scantlebury and Mrs. Scantlebury
- (7) United Progressive Party – Represented by Ms. Lynette Eastmond and Mr. Ambrose Grosvenor

The presentations were for the most part comprehensive and useful; and in one case very methodical and clearly detailed. The Representatives responded to queries made by members of the Committee regarding the enlargement of the category of persons specified as person in public life; sanctions and fines and other controversial issues.

The Institute of Chartered Accountants of Barbados and the Democratic Labour Party undertook to merge their respective initial submissions with and in tune with their oral submissions.

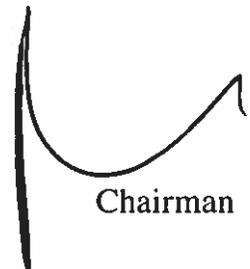
The Committee agreed that the submissions should be placed online on Parliament's website.

Item 4: **ANY OTHER BUSINESS**

There being no other business the meeting was adjourned sine die at 6:10 p.m.


Clerk of Parliament

Confirmed this 6th day of December 2018.


Chairman

PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Fifth Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Wednesday 10th October, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon Miss Cynthia Y. Forde, J.P., M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Bishop Joseph J. S. Atherley, M.P.

Senator Miss Lisa R. Cummins

Senator Ms. Monique C. Taitt, Q.C.

Senator Caswell A. Franklyn

IN ATTENDANCE WERE:

Mr Pedro E. Eastmond, *Clerk of Parliament*

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Mrs. Mrs Michelle Elie, *Senior Parliamentary Counsel*

Ms. Nicole Thompson, *Special Advisor to Hon. Dale D. Marshall*

Miss Suzanne Hamblin, (*Library Assistant*) *Procedural Officer to the Committee*
(Ag.)

The Meeting was called to order by the Chairman at 2:03 p.m. who welcomed all present,



Items 1 and 2 of the agenda were deferred

Permission was granted for photographs to be taken on behalf of the Barbados Bar Association.

ITEM 3: PRESENTATIONS

Mr R. Orlando Marville

Mr R. Orlando Marville, former teacher, diplomatic and lecturer at the University of the West Indies introduced himself. He informed that at the request of a previous administration he worked on a suite of integrity legislation and which work was left hanging or blocked in some circumstances by senior Public Officers for over a period of 10 years.

In his presentation Mr Marville advocated for the appointment of a Contractor General and an Ombudsman, which he defined. He also advocated for the passing of Freedom of Information Legislation, Whistle Blower legislation and the updating of Defamation legislation inter alia, a Code of Conduct.

He opined that Customs Officers and Police Officers should be included in the list of Persons in Public Life for the purposes of the legislation, and that the ceiling of prohibited gifts should be \$200.00 instead of \$1000.00. Mr Marville stated he was in favour of the appointment of the Head of the Tribunal being made by the Governor-General rather than a combination of the Prime Minister and the Leader of the Opposition.

Mr Marville was thanked for his presentation and his responses to queries made to him.

Mr Mark Williams

Mr Mark Williams, former Member of Parliament made a presentation which reflected his views and the perception of the public, as he saw it, on corruption as it affected/contaminated both the private and public sectors; and how it should be dealt with.

Mr Williams was thanked for his contribution.

Barbados Bar Association – Mrs Kay Williams, member of the Council of the Barbados Bar Association and convenor of the Law Reform and Legislation Committee.

The Barbados Bar Association welcomed the introduction of legislation aimed on governing integrity in public life. The presentation treated chronologically with each section of the Bill and reflected the feedback and consideration of the membership of the Barbados Bar Association, distilled into five key recommendations namely:

1. That the Bill's coercive powers given to the Integrity Commission should be exercised with necessary restraints to forestall legal challenges which would encumber the Commission's work

2. That the power of arrest conferred on the investigative officer should be subject to the officer obtaining a warrant from a Magistrate or alternately, the power should remain the preserve of the Royal Barbados Police Force.

3. Noting the penalties in the Bill were inadequate as a deterrent, that the Bill should go further and should also provide a system for dealing with lesser breaches of offences.

4. In supporting the inclusion of the Office of the Governor-General in the Bill and the responsibilities placed on that Office, that the Office should be adequately resourced to carry out the mandate and those resources should be provided from the highest level, clothed in impartiality and insulated from the possibility of interference or bias; and

5. The legislating of a suite of comprehensive, supporting legislation to the Integrity Commission.

The clause by clause analysis of the Bill was supported with specific recommendation where relevant.

The Bar Association was thanked for its presentation.

The Committee briefly discussed a written presentation submitted by her Excellency the Governor-General. One of the items of the presentation was the hosting of Town-Hall meetings to facilitate wider discussion and public education on the Bill. Apart from the

restraint in the Standing Orders of the House it was thought that the nature and construct of the Committee would not provide for Town-Hall meetings however it was noted that the work of the Committee was being held in public.

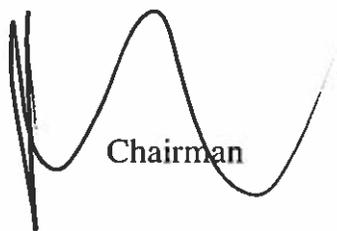
The Committee agreed that having heard all the submissions that it should proceed to deliberate on the submissions and to review the Bill Clause by Clause.

ADJOURNMENT

The meeting was adjourned at 5:00pm to meet again on the 5th November, 2018 at 1:30 p.m.


Deputy Clerk of Parliament

Confirmed this 6th day of December 2019.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Seventh Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Monday, 5th November, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C. (Chairman)

Hon. Cynthia Y. Forde, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Bishop Joseph J. S. Atherley

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Miss Beverley Gibbons, *Deputy Clerk of Parliament*

Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee (Ag.)*

The Meeting was called to Order by the Chairman at 2:15pm, however noting that a quorum was not present.

It was noted that the Committee was not in a position to report timeously and that an extension of time would be sought.

2A

Item 1:

The Members present consented to review the Clauses of the Bill with the aid of the analytical notes made by Miss Rolanda Williams, *Acting Chief Parliamentary Counsel* and the submission from the Barbados Bar Association.

Item 2: Clause 2: **DEFINITIONS**

There was much discussion on the word “conduct” used throughout the Bill. It was agreed that the Chief Parliamentary Counsel’s office would review the word in context relying on the Interpretation Act and report back.

It was agreed that the Bill’s definition of “document” be deleted and the word “document” be defined as per the Interpretation Act.

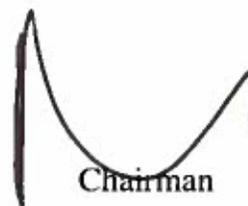
The Committee also agreed to the amendments to the definition of the words “state-owned”; “spouse”; “child” and to the deletion of the word “Public Body”.

ADJOURNMENT

The Meeting was adjourned to Friday 9th November, 2018 at 10:00 a.m.


Clerk of Parliament

Confirmed this 6th day of December 2019.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Eighth Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Friday, 9th November, 2018 at 10:00 a.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C. (Chairman)

Hon. Miss Cynthia Y. Forde, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Bishop Joseph J. S. Atherley

Senator the Hon. Jerome X. Walcott

Senator Miss Lisa R. Cummins

Senator Ms. Monique C. Taitt, Q.C.

Senator Caswell A. Franklyn

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Miss Beverley Gibbons, *Deputy Clerk of Parliament*

Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee (Ag.)*

The Meeting was called to Order by the Chairman at 10:25 a.m.

CONSIDERATION OF THE CLAUSES OF THE BILL

The Committee continued its deliberation of the Bill with the aid of the Analytical Unit and suggestions for amendments by the Parliamentary Counsel and the submission of the Barbados Bar Association.

Clause 2 (*resumed*):

“Statutory Body” replace with words “Statutory Board”.

Clauses 3 to 13:

The Committee agreed to accept the recommendations, editorial changes and amendments in the Williams Note.

Clause 14:

Delete the Words “Commissioner of Police” in line 1 and substitute “**Chief Marshal**”.

Clause 15 (2):

Delete the words “as soon as practicable” and insert “**immediately**”.

Clauses 16 to 24:

Were approved.

Clause 25:

Agreed and amended at 25 (1)(a) as suggested by the Williams Note.

Clauses 26 to 28:

Were approved.

Clause 29 (a) & (b):

Amended as suggested.

Clause 32 (5):

Delete the number “2” and substitute the number “5”.

Clause 33:

The recommended amendments were accepted; and

Clause 34:

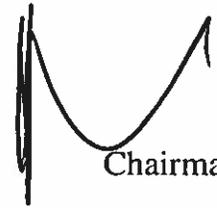
The recommendations were rejected.

ADJOURNMENT

At 12:40 p.m. the Meeting was adjourned to Tuesday 13th November, 2018 at 1:30 p.m.


Clerk of Parliament

Confirmed this *6th* day of *December* 2019.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Ninth Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Tuesday 13th November, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon. Miss Cynthia Y. Forde, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Bishop Joseph J. S. Atherley, M.P.

Senator Miss Lisa R. Cummins

Senator Ms. Monique C. Taitt, Q.C.

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Miss Beverley Gibbons, *Deputy Clerk of Parliament*

Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee (Ag.)*

The Meeting was called to Order by the Chairman at 2:15 p.m.

At the request of the Chairman and with the consent of the Members present, Mr. R. A. Thorne assumed the Chair in lieu of the Chairman who excused himself from the Senate Chambers.

The Temporary Chairman welcomed back the Members of the Committee, particularly those absent from the last Meeting.

ITEM 1: CHAIRMAN'S REPORT

This item was deferred.

ITEM 2: CONSIDERATION OF THE BILL

The Committee resumed consideration of the Bill at Part 5 – Register of Interests – taking the recommendations (Note) from the Chief Parliamentary Counsel conjointly with the submissions of the Barbados Bar Association and other submissions.

Clause 37 (4):

Delete the word “administrator” and substitute “**personal representative**”.

Clause 38 (1) (g):

Senator Ms. M. C. Taitt expressed reservations regarding the contents of the sub clause as it applies to her as an Independent Senator. There was much discussion on the matter but there was no consensus thereon.

Clause 39 (2):

The Committee expressed concerns regarding the inspection of the Register by the Public and suggested that inspection by the public be deleted.

Clause 42:

The suggestions by the Chief Parliamentary Counsel's Office were accepted and the Clause amended accordingly.

Clause 45 (7) (b):

Add the words “**or its value**” after the word “gift” in line 3.

Clause 45 (8):

The Committee agreed that the Chief Parliamentary Counsel should extend the Clause to include other representatives. E.g. friend, etc.

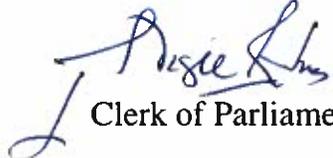
Clause 47:

The Chief Parliamentary Counsel to reconsider the fine and sentence giving discretion to the Magistrate.

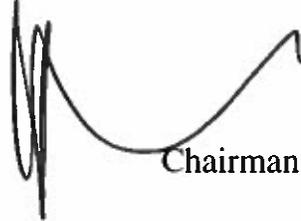
The Committee agreed that the deliberation on the clauses should not be streamed or made public, however the presenters should be written giving a status report on their presentations.

ADJOURNMENT

At 5:40 p.m. the Meeting was adjourned to Friday 16th November, 2018 at 1:30 p.m.


Clerk of Parliament

Confirmed this 6th day of December 2019.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Tenth Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Friday 16th November, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon. Miss Cynthia Y. Forde, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Bishop Joseph J. S. Atherleyj.P., M.P.

Senator Miss Lisa R. Cummins

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Miss Beverley Gibbons, *Deputy Clerk of Parliament*

Miss Suzanne Hamblin, *(Library Assistant) Procedural Officer to the Committee (Ag.)*

The Meeting was called to Order at 1:55 p.m. by the Chairman who welcomed the Members present.

ITEM 1: **CONSIDERATION OF THE BILL (continued)**

Part 7 – Acts of corruption and other contraventions of this Act.

Clause 50

With reference to the words “the appropriate disciplinary authority” in the Clause, the Chairman opined that the Judicial and Legal Service Commission would be included, however the decision had to be made whether Judges should be subject to the Legislation under consideration. He mentioned that there would be the likelihood of the appointment of additional Judges in the new year and to include Judges under the legislation there would be Judges with different terms and conditions from those already in the system.

It was agreed to invite Sir David Simmons to the next meeting to solicit his views on whether Judges should be included in the list of person in Public Life.

Clause 51:

In the Chapeau include the words “**in Public Life**” after the word “person”.

Subclause (a) – add the words “**or a public official**” at the end of the sentence.

Subclause (b) – in line two add the words “public officer” before the words “public official”.

Subclause (c) – substitute the word “public” for the word “pubic” in line 1.

Subclauses (c), (e), (f), (h), (i) and (k) – include the words “**or public officer**” where appropriate.

Delete subclause (j) as not relevant to obtaining an undue benefit.

It was agreed that the Interpretation section the meaning of the word “person” should include “**an entity**”. The same to be referred to the Chief Parliamentary Counsel.

Clause 52 (1):

Suggested redraft by the Chief Parliamentary Counsel agreed to.

Substitute the words “a person in public life” for the words “**a public official**”.

Clause 52 (2) (a) & (b):

Insert the words “**promises or gives**” after the word “offers”.

Clause 53 (1) and 54:

Suggestions for amendment by the Chief Parliamentary Counsel accepted.

Clause 57:

The Bar Association's submission and the Note from the Chief Parliamentary Counsel were fully discussed. The Committee was not satisfied with the structure of the clause as it appeared to be uncertain and to be reversing fundamental Principles of Law as to who must provide the proof of liability or on whom the burden lies.

The Committee agreed to also question Sir David Simmons on this issue.

Clause 60:

It was agreed that the words "in writing" in subsection 60 (1) should be deleted.

The Committee also agreed to delete subsection 60 (2).

ADJOURNMENT

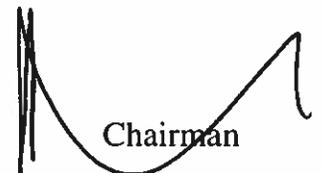
On the motion of the Hon. W. A. Abrahams seconded by Senator Miss L. R. Cummins the meeting was adjourned to Monday 26th November, 2018 at 1:30 p.m.

The Chairman reported that he would be late for the meeting and suggested that the Hon. W. A. Abrahams should temporarily Chair the Meeting.

The meeting was adjourned at 4:00 p.m.


Clerk of Parliament

Confirmed this 6th day of December 2019.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Eleventh Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Monday 26th November, 2018 at 1:30 p.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon. Wilfred A. Abrahams, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Bishop Joseph J. S. Atherley, J.P., M.P.

Senator Miss Lisa R. Cummins

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Miss Beverley Gibbons, *Deputy Clerk of Parliament*

Mrs. Michelle Elie, *Senior Draft Person (Chief Parliamentary Council's Office)*

Ms. Nicole Thompson, *Special Advisor to Hon. Dale D. Marshall*

Miss Suzanne Hamblin, *Library Assistant, (Procedural Officer to the Committee (Ag.))*

By Invitation:

Sir David Simmons, K.A.

The Meeting was called to Order at 2:05 p.m. by the Chairman

ITEM 1: CONSIDERATION OF THE BILL (continued)

Mr. Chairman gave a short review of the work of the Committee at the last meeting. He welcomed Sir David Simmons, K.A. whom the Committee had agreed at the meeting to invite to the meeting.

The Committee queried Sir David on his thoughts on whether Judges should be included in the list of specific persons in Public Life in the Second Schedule to the Bill.

Sir David cited the situation in Jamaica, Trinidad and Tobago, and Antigua where Judges are so included. He saw no reason why they should be exempted in the Barbados legislation. As regards Judges who would have been appointed previous to the contemplated legislation, he said that the existing Judges when he was Chief Justice had bought into the provision for making financial disclosures when the "Guide to Judicial Conduct" was promulgated. He was unsure whether subsequent appointees were made aware on their appointment. He suggested that the Chief Justice and all existing Judges should be approached and encouraged by moral suasion to agree as their terms and conditions of appointment would not be altered to their disadvantage.

The committee agreed that Judges would be included in the Schedule of the list of specified persons in Public Life whenever appointed; and that in terms of the supervisory authority under the Act if there is a report to be made or any action to be taken or declarations to be filed, they should all go to the Governor- General.

Clause 57

The opinion of Sir David Simmons on this clause was also queried. The question was whether the offence was having the unexplained wealth or the failure to provide proof of legitimate acquisition and further why there was a shift in the burden of proof.

Sir David with the support of Mrs. Michelle Elie explained that possession of the unexplained wealth was the crime and not the failure to provide proof of satisfactory acquisition.

As regards to the shift of burden of proof Sir David gave the analogy in the Proceeds of Crime Act and also the failure of one to produce a driving licence when called on.

The views of Sir David were also canvassed with regard to the inclusion of the word “extortion” in clause 51 as suggested in the presentation of the Financial Intelligence Unit. Sir David gave his support citing incidence of extortion.

Sir David was thanked for his contribution to the discussion on the Bill and invited to remain with the Committee for the remainder of the meeting.

Clause 60 (1)

It was agreed that the words “in writing” be deleted.

Clause 62 (2)

It was agreed that the clause be deleted.

Clause 61 (3)

The ambiguity of the clause was discussed. It was agreed to delete the clause and to amend clause 61 (2) by the insertion of the words “**without reasonable excuse**” after the word “who” in line 1.

Clause 62 & 63

Sir David Simmons raised the question of regards of matters to the Director of Public Prosecutions and queried whether the sections of Clause 62 were discussed with the Director of Public Prosecutions. The Chairman directed Ms Nicole Thompson to draw this matter to the attention of the Director of Public Prosecutions to ascertain how the office of the D.P.P would consider themselves working in the context whether by bill of indictment, the Integrity Commission having already done its investigation; and also obtain the comments of the D.P.P. on the operationalising of clause 63.

Clause 64

It was agreed that the clause be deleted.

Clause 65 (4)

Delete the word “2” in line 1 and substitute the word “5”.

Clause 67 (3) (b) (iv)

On the question of reporting Miss Beverley Gibbons was requested to research the Trinidad situation to see how they treat to reporting in their statutes the various persons reported on.

Clause 68 (3) (b)

It was agreed that this subsection be deleted. It was agreed that the Committee would look to substantive Whistle-Blower legislation to be enacted rather than expand on clause 68.

Clause 82

It was agreed that the clause be deleted.

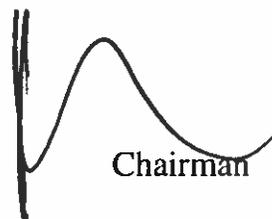
Decisions taken at meetings at which there was no quorum

The Committee agreed to and rectified all decisions taken at the meetings held on 5th November, 2018 and 9th November, 2018 on the notes of Bishop J. J. S. Atherley seconded by Hon. W. A. Abrahams.

The meeting was adjourned at 4:30 p.m.


Clerk of Parliament

Confirmed this 6th day of December 2019.


Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018 – 2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Twelfth Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018 held in the Senate Chambers, Parliament Buildings, Bridgetown on Monday, December 3rd, 2018 at 1:30 p.m.

PRESENT WERE:

- Hon. Wilfred A. Abrahams, M.P. (Temporary Chairman)
- Hon. Colin E. Jordan, M.P.
- Mr. Ralph A. Thorne, Q.C., M.P.
- Hon. Charles McD. Griffith, M.P.
- Bishop Joseph J. S. Atherley, J.P., M.P.
- Senator Miss Lisa R. Cummins
- Senator Caswell A. Franklyn

EXCUSE FOR ABSENCE WAS RECEIVED FROM:

- Mr. Pedro Eastmond, Clerk of Parliament

ABSENT WERE:

- Hon. Dale D. Marshall, Q.C., M.P.
- Hon. Cynthia Y. Forde, J.P., M.P.
- Senator Dr. the Hon. Jerome X. Walcott
- Senator Monique C. Taitt, Q.C.
- Mr. Nigel Jones, Deputy Clerk of Parliament
- Ms. Michelle Elie, Senior Draftsperson of the Chief Parliamentary Counsel's

Office

IN ATTENDANCE WERE:

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*

Miss Suzanne Hamblin, (*Library Assistant*) *Procedural Officer to the Committee*
(Ag.)

Ms. Nicole Thompson, *Special Advisor to the Hon. Dale D. Marshall, Q.C., M.P.*

Item 1: **WELCOME**

The Meeting was called to order by the Deputy Clerk at 2:12 p.m. In the absence of the substantive Chairman, Hon. Dale D. Marshall, Q.C., M.P. a Temporary Chairman had to be selected.

On the motion of Hon. Charles McD. Griffith, M.P. seconded by Hon. Colin E. Jordan, M.P., Hon. Wilfred A. Abrahams, M.P. was appointed the temporary Chairman for the meeting.

Item 2: **CONSIDERATION OF BILL**

The purpose of the meeting was to set the fines under the legislation and to decide on the form for the declaration of assets. The meeting commenced with the fines.

FINES

PART II

Proceedings of the Commission

Duty of witnesses summoned

- i) Clause 11.(4): “A person who
(e) at any sitting of the Commission, wilfully insults a member of the Commission or the Secretary of the Commission,
is guilty of an offence and is liable, on summary conviction, to a fine of \$10,000 or to imprisonment for 6 months or to both.”

The Committee agreed that the fine should remain at \$10 000.

It was recommended by Senator C. A. Franklyn that the Chief Parliamentary Counsel formulate an exclusion clause as it relates similarly to the magisterial jurisdiction to fine within the prescribed limit of \$10 000.

PART III

Powers of Investigative Officers

Obstruction of investigative officer

- ii) Clause 18.: “A person who resists or obstructs an investigative officer in the execution of his duty is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 6 months or to both.”

The Committee agreed that the fine be harmonised at \$10 000.

PART IV

Duty of secrecy regarding declarations

- iii) Clause 35.(2): “A person who contravenes subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of \$20 000 or to imprisonment for 3 years or to both.”

The Committee agreed to increase the fine to \$50 000 and that the term of imprisonment be reduced to 2 years.

Offences and penalties in respect of declarations

- iv) Clause 36.(1): “Any person who
(e): fails, without reasonable cause, to comply with a direction of the Commission given pursuant to section 28(2) within the time specified by the Commission, or knowingly gives any false or incomplete information in the trust deed filed with the Commission,
is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for one year or to both.”

The Committee agreed to increase the fine to \$25 000 and the term of imprisonment to 18 months.

- v) Clause 36.(3): “Where a declarant fails to comply with an order made pursuant to subsection (2) within the specified period, the offence shall be deemed to be a continuing offence and the declarant shall be liable to a further fine of \$3 000 for each day on which the offence continues.”

The Committee agreed that this fine should remain.

PART V

Offences and penalties in respect of statements of registrable interests

- vi) Clause 43.(1): “A member of the House of Assembly or the Senate who ... is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for one year or to both.”

The Committee agreed to increase the fine to \$50 000 and the term of imprisonment to 2 years.

- vii) Clause 43.(3): “Where a member of the House of Assembly or the Senate fails to comply with an order made pursuant to subsection (2) within the specified period, the offence referred to in subsection (1) shall be deemed to be a continuing offence and the member shall be liable to a further fine of \$3 000 for each day on which the offence continues.”

The Committee agreed that this fine should remain.

PART VII

Offences and penalties in respect of acts of corruption

- viii) Clause 54.(1): “A person who commits an act of corruption under section 51, 52 or 53 is guilty of an offence and is liable
 - (a) on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both;”

The Committee agreed that the Chief Parliamentary Counsel should draft a clause for inclusion relative to forfeiture of the benefit. The Committee also agreed to increase the fine to \$500 000.

- ix) Clause 54.(1)(b): “on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and”

The Committee agreed to increase the fine to \$250 000 and the term of imprisonment to 5 years.

- x) Clause 54.(1)(c): “to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.”

The Committee agreed that 5 years is adequate.

- xi) Clause 54.(2): “A person who possesses or is in control of any property knowing that the property or part of the property or proceeds from the property were obtained or derived, directly, or indirectly, from the commission of an act of corruption, is guilty of an offence and is liable (a): “on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both.”

The Committee agreed that the Chief Parliamentary Counsel should draft a clause for inclusion relative to forfeiture of the benefit. The Committee also agreed to increase the fine to \$500 000.

- xii) Clause 54.(2)(b): “on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and”

The Committee agreed to increase the fine to \$250 000 and the term of imprisonment to 5 years.

- xiii) Clause 54.(3): “A person who (a): aids, assists, is an accessory after the fact to, participates in any manner in the commission of or conspires to commit, an act of corruption; or”

The Committee agreed that the words “after the fact” should be deleted and should now read: “aids, assists, is an accessory to, participates in any manner in the commission of or conspires to commit, an act of corruption; or”

- xiv) Clause 54.(3): “A person who
(b): procures the commission of an act of corruption or attempts or counsels another to commit, an act of corruption,
is guilty of an offence and is liable
(i): on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both;”

The Committee agreed to increase the fine to \$500 000.

- xv) Clause 54.(3): “A person who
(b)(ii): on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and”

The Committee agreed to increase the fine to \$250 000.

Making of false allegation

- xvi) Clause 59.: “A person who [knowingly] makes a false allegation or maliciously provides false information related to a contravention of this Act is guilty of an offence and is liable
(a): “on conviction on indictment to a fine of \$20 000 or to imprisonment for 2 years or to both;”

The Committee agreed to increase the fine to \$100 000 and reduce the term of imprisonment to 1 year.

- xvii) Clause 59.(b): “on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

The Committee agreed to increase the fine to \$50 000 and the term of imprisonment to 5 years.

Duty of public officials to report contravention of Act

- xviii) Clause 61.(2): “A public official who [without reasonable excuse] fails to report his knowledge or suspicion as required by subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 6 months or to both.”

The Committee agreed to increase the fine to \$100 000 and the term of imprisonment to 1 year.

PART VIII

Commission may request further information and conduct formal inquiry

- xix)* Clause 66.(2): “A public official who fails, without reasonable cause, to attend an inquiry being conducted pursuant to this section or to furnish any information that the Commission requests him to furnish, or knowingly gives any false or incomplete information at such an inquiry is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for one year or to both.”

The Committee agreed to increase the fine to \$50 000 and the term of imprisonment to 2 years.

PART IX

Protection vis-a-vis employer or person in authority

- xx)* Clause 76.(1): “An employer or any person in authority over a public official who subjects the official to a detriment by reason only of his having made a protected disclosure pursuant to section 68 is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for 2 years to both.”

The Committee agreed to increase the fine to \$150 000.

PART X

Confidentiality of information

- xxi)* Clause 79.(2): “Any member or officer or other employee of the Commission who contravenes subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 2 months.”

The Committee agreed to increase the fine to \$100 000 and the term of imprisonment to 2 years.

- xxii) Clause 79.(3): “Any person who receives any information or anything contained in such documents as aforesaid, knowing or having reasonable ground to believe at the time when he receives it, that it is communicated to him in contravention of this section, unless he proves that the communication to him of the information or anything contained in any document was contrary to his desire, is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 2 months.”

The Committee agreed to increase the fine to \$100 000 and the term of imprisonment to 2 years.

FORMS

The Committee accepted the Turks and Caicos’ Declaration of Assets form and agreed that the Chief Parliamentary Counsel should tailor same to suit Barbados.

Item 3: ANY OTHER BUSINESS

The Committee agreed that a further extension of a month should be sought to conclude its work. It was also agreed that having concluded discussions responses should be given to those persons who made submissions advising them on where we are presently. A copy of the redrafted Bill should be submitted to the Attorney General and to the Committee from the Chief Parliamentary Counsel.

The Meeting was adjourned at 3:22 pm.


Deputy Clerk of Parliament

Confirmed this 6th day of December 2018.


Temporary Chairman

**PARLIAMENT OF BARBADOS
(FIRST SESSION OF 2018-2023)**

JOINT SELECT COMMITTEE

INTEGRITY IN PUBLIC LIFE BILL, 2018

Minutes of the Thirteenth Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, held in the Senate Chambers, Parliament Buildings, Bridgetown on Friday 6th December, 2018 at 11:00a.m.

PRESENT WERE:

Hon. Dale D. Marshall, Q.C., M.P. (Chairman)

Hon Miss Cynthia Y. Forde, J.P., M.P.

Hon. Wilfred A. Abrahams, M.P.

Hon. Colin E. Jordan, M.P.

Mr. Ralph A. Thorne, Q.C., M.P.

Hon. Charles McD. Griffith, M.P.

Senator Miss Lisa R. Cummins

IN ATTENDANCE WERE:

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Ms. Nicole Thompson, *Special Advisor to Hon. Dale D. Marshall*

Miss Suzanne Hamblin, *Library Assistant, (Procedural Officer to the Committee (Ag.))*

Excuses for absence were received on behalf of :

Bishop Joseph J. S. Atherley, J.P., M.P.

Senator Ms. Monique. C. Taitt

1. **WELCOME**

The Chairman called the meeting to order and welcomed those Members of the Committee present.

2. **CONFIRMATION OF MINUTES**

- Minutes of the meeting of Friday 7th September, 2018 were confirmed on the motion of Senator Miss L. R. Cummins seconded by the Hon C. E. Jordan.
- Minutes of the meeting of Wednesday 10th October, 2018 were confirmed on the motion of the Hon C. E. Jordan seconded by the Hon Miss C. Y. Forde.
- Minutes of the meeting of Monday 5th November, 2018 were confirmed on the motion of Senator Miss L. R. Cummins seconded by the Mr R. A. Thorne.
- Minutes of the meeting of Friday 9th November, 2018 were confirmed on the motion of Senator Miss L. R. Cummins seconded by the Mr R. A. Thorne.
- Minutes of the meeting of Friday 13th November, 2018 were confirmed on the motion of the Hon. Miss C. Y. Forde seconded by Miss L. R. Cummins.
- Minutes of the meeting of Tuesday 16th November, 2018 were confirmed on the motion of Senator Miss L. R. Cummins seconded by the Hon C. E. Jordan.
- Minutes of the meeting of Monday 26th November, 2018 were confirmed on the motion of Senator Miss L. R. Cummins seconded by the Hon C. E. Jordan.
- Minutes of the meeting of Monday 3rd December, 2018 were confirmed on the motion of the Hon C. E. Jordan seconded by Senator Miss L. R. Cummins.

3. **MATTERS ARISING**

There were none.

4. **CONSIDERATION OF THE BILL AS AMENDED**

The Chairman suggested that the amended Bill be considered with the Table of Concordance prepared by the Chief Parliamentary Counsel's Office and the Explanatory Memorandum as points of reference.

He informed the Committee that the original Bill was substantially redrafted after much discussion with the Chief Parliamentary Counsel's Office and on their recommendation. He informed that the provisions relating to corruption were removed and were being incorporated into new proposed Prevention of Corruption legislation which would repeal the old Act of 1939 Chapter 144 of the Laws of Barbados. The legislation under consideration captured a small cadre of persons. Further the provisions relating to Whistle blower protection were removed and are to be incorporated into separate Whistle blower legislation. It is the intention to lay and debate the new Prevention of Corruption legislation simultaneous with the laying of the Report on the Integrity in Public Life Bill. The whistle blower legislation would follow shortly.

In response to a query and suggestion from Senator Miss L. R. Cummins, the Committee was advised that the persons and organisations who made submissions were apprised of the progress of the work of the Committee with a commitment to share the redrafted legislation subject to further presentations if necessary.

The Committee consequently gave consideration to the redrafted legislation as proposed and approved the same.

The Chairman expressed the hope that the legislation could have been passed into law prior to 9th December, 2019, the day designated by the United Nations as World Anti-Corruption Day; and the ratification by Barbados of the United Nations Convention Against Corruption.

5. CONSIDERATION OF DRAFT REPORT

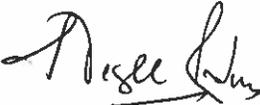
The Committee approved subject to amendment the Draft Report of the Committee on the Bill on the motion of the Hon Miss C. Y. Forde seconded by the Hon W. A. Abrahams.

6. ANY OTHER BUSINESS

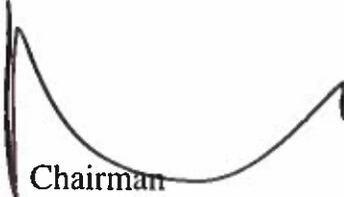
The Chairman thanked the Committee for its deliberations. The Hon C. E. Jordan and Senator Miss L. R. Cummins expressed their thanks to the staff of the Chief

Parliamentary Counsel's Office for their work. The Hon W. A. Abrahams commended the Chairman as Attorney General for the sterling work he has done so far updating our legislation. The Hon Miss C. Y. Forde added the Committee's thanks to the support staff at Parliament.

There being no further business the work of the Committee on the Bill was concluded and the meeting was adjourned at 1:00 p.m.


Clerk of Parliament

Confirmed this day of 2019.


Chairman

ORIGINAL BILL

2018-06-06**OBJECTS AND REASONS**

This Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption.

B

Arrangement of Sections

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

INTEGRITY COMMISSION

3. Establishment of Integrity Commission
4. Functions of Commission
5. Consultation
6. Agreements and exchange of information with law enforcement agencies
7. Funds of Commission
8. Officers and other employees of Commission
9. Investigative officers

Proceedings of the Commission

10. Commission's powers to summon and examine witnesses
11. Duty of witnesses summoned

12. Witness may be examined on oath
13. False evidence, how punishable
14. Constables detailed to attend Commission

PART III

INVESTIGATIONS

Powers of Investigative Officers

15. Power of arrest
16. Production orders
17. Power of search and seizure
18. Obstruction of investigative officer

Complaints regarding Investigative Officers

19. Complaints about conduct of an investigative officer
20. Appointment of complaints panel
21. Disposal of complaint without investigation
22. Formal investigation of complaint
23. Review of complaints by panel
24. Implementation of panel's recommendations

PART IV
DECLARATIONS

25. Declaration of financial affairs
26. Trust property
27. Full disclosure
28. Blind trusts
29. Receipt and examination of declarations
30. Commission or Governor-General may require further information from declarant
31. Commission may conduct inquiry regarding declarations
32. Commission to report where not satisfied with declaration
33. Further information from members and staff of Commission in respect of their declarations
34. Publication of failure to file declaration or furnish information
35. Duty of secrecy regarding declarations
36. Offences and penalties in respect of declarations

PART V
REGISTER OF INTERESTS

37. Duty of members to file statement of registrable interests

38. Content of statement of registrable interests
39. Register of Interests
40. Commission may require further information and conduct inquiry regarding statements of registrable interests
41. Procedure at inquiry regarding registrable interests
42. Determination regarding prohibited interests
43. Offences and penalties in respect of statements of registrable interests
44. Disqualification of member from holding public office

PART VI

GIFTS

45. Report to Commission on gifts
46. Report to Governor-General on gifts
47. Offences and penalties in respect of sections 45 and 46
48. Limitation on prosecution for section 47 offences

PART VII

ACTS OF CORRUPTION AND OTHER CONTRAVENTIONS OF THIS ACT

49. Part VII to apply in addition to other laws
50. Powers of appropriate disciplinary authority preserved

- 51. Acts of corruption generally
- 52. Bribery in procurement
- 53. Transnational bribery
- 54. Offences and penalties in respect of acts of corruption
- 55. Presumption of corruption
- 56. Defences available to person charged with act of corruption
- 57. Possession of unaccounted property or pecuniary resource
- 58. Certain defences not available to any person charged under this Part
- 59. Making of false allegation
- 60. Complaint to Commission regarding contravention of Act
- 61. Duty of public officials to report contravention of Act
- 62. Inquiry by Commission into complaint
- 63. Action by Director of Public Prosecutions
- 64. Cases of public allegation

PART VIII

CONDUCT IN PUBLIC LIFE

Code of Conduct

- 65. Formulation of Code of Conduct and investigation into contravention

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FIRST SCHEDULE
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SECOND SCHEDULE
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THIRD SCHEDULE
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BARBADOS

A Bill entitled

An Act to establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Integrity in Public Life Act, 2018*.

Interpretation

2. In this Act,

“appointed day” means a day to be fixed by Proclamation;

“assets”, in relation to a person, means all property, including any right or interest in property, and money held by the person in Barbados or elsewhere;

“benefit” includes any property, service or advantage, whether direct or indirect;

“Chairman” means the chairman of the Commission appointed in accordance with the *First Schedule*;

“child”, in relation to a person, means the person’s child who has not attained the age of 18 years and is not married and includes a step-child or an adopted child and, in respect of a man, includes a child in respect of whom the man has

(a) been adjudged the father by a court of competent jurisdiction; or

(b) acknowledged to be his child;

“Code of Conduct” means the Code of Conduct for Persons in Public Life published by the Commission pursuant to section 65;

“Commission” means the Integrity Commission established by section 3;

“document” includes

(a) anything on which there is writing;

(b) a map, plan, graph or drawing;

- (c) any photograph;
- (d) any disc, tape, sound track or other device in which sounds or other data not being visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;
- (e) any film, including microfilm, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;

“government official of another State” means a public official of a state other than Barbados;

“income” includes

- (a) money or money’s worth derived from whatever source or acquired in or outside Barbados, whether directly or indirectly;
- (b) all receipts by way of salary, fees, wages, requisitions, profits, grants, emoluments, rents, interest, commissions, bonus, pensions, annuity or benefit;

“investigative officer” means a person designated as such under section 9(1);

“liabilities”, in relation to a person, means all the obligations of the person to pay money or to provide goods or services in Barbados or elsewhere;

“member of the House of Assembly or the Senate”, as the case may be, shall be construed to include, in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House of Assembly is held, a person who was a member of the House of Assembly or the Senate, as the case may be, before the dissolution of Parliament;

“privileged material” means

- (a) communications between a professional legal adviser and his client, or any person representing his client, made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client, or any person representing his client, or between such an adviser or his client (or any such representative) and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; or
- (c) material enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

when the communications or material are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

“prohibited interest” means an interest in a contract with the Government, the acquisition of which by a member of the House of Assembly or the Senate is prohibited under rules made pursuant to section 84(2);

“property” includes money and all property, real or personal and things in action;

“public body” includes

- (a) Parliament and the Cabinet;
- (b) Ministries and departments of Government;
- (c) statutory bodies and subsidiary companies of such bodies; and
- (d) any other bodies which receive any payment of monies under an Appropriation Act within the meaning of the *Financial Management and Audit Act*, Cap. 5;

“public officer” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“public official” means a public officer or another person who is a member, officer or other employee of a public body, as the case may be;

“Register of Interests” means the Register established pursuant to section 39;

“spouse”, in relation to a specified person in public life, means a person

(a) to whom the specified person in public life is married; or

(b) who is living with the specified person in public life in the circumstances of husband and wife for a continuous period of one year during the period covered by the person’s declaration;

“specified person in public life” means a person who holds an office listed in the *Second Schedule*;

“staff member” means an officer or other employee of the Commission who is at or above the rank of Secretary to the Commission;

“statement of registrable interests” means a statement filed under section 37 of the interests described in section 38 held by or concerning a member of the House of Assembly or the Senate;

“state-owned company” means a company registered under the *Companies Act*, Cap. 308 being a company whose policies the Government or an agency of Government is in a position to influence, whether by holding shares or by financial input;

“statutory body” has the meaning assigned to it by section 2 of the *Financial Management and Audit Act*, Cap. 5.

PART II

INTEGRITY COMMISSION

Establishment of Integrity Commission

- 3.(1) There is hereby established a body to be called the Integrity Commission.
- (2) The *First Schedule* has effect with respect to the constitution of the Commission and otherwise in relation thereto.
- (3) Subject to the provisions of this Act, the Commission may regulate its own procedure.

Functions of Commission

- 4.(1) The functions of the Commission are
- (a) to receive and keep on record all declarations, statements of registrable interests and reports of gifts forwarded by persons in public life;
 - (b) to examine declarations, statements of registrable interests and reports of gifts and to request from a specified person in public life any information or further information relevant to a declaration, statement of registrable interests or report of a gift made by him, which may assist the Commission in its examination;
 - (c) to make inquiries and carry out investigations as it considers necessary in order to verify or determine the accuracy of a declaration, statement of registrable interests or report of a gift filed under this Act;
 - (d) to receive, inquire into and investigate any complaint or report of
 - (i) an alleged contravention of this Act;
 - (ii) an alleged contravention of the Code of Conduct;

- (iii) the acquisition by a member of the House of Assembly or the Senate of a prohibited interest; or
 - (iv) an alleged offence under any Act that assigns responsibility for the investigation of offences to the Commission;
 - (e) to investigate any matter referred to in paragraph (d) on its own initiative, where the Commission is satisfied that there are reasonable grounds for an investigation or inquiry;
 - (f) to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices, except where there is a statutory duty on any other person to perform that function;
 - (g) to instruct, advise and assist the management of public bodies of any change in practices or procedures which may be necessary to reduce the occurrence of corrupt acts, except where there is a statutory duty on any other person to perform that function; and
 - (h) to perform functions and exercise powers as it is required by this Act or any other enactment.
- (2) In the exercise of its functions under this Act, the Commission may not be subject to the direction or control of any person or authority.
- (3) The Governor-General may, in writing, request the Commission to investigate any matter falling within the functions of the Commission.

Consultation

5. The Commission may consult with any person, institution or organisation in the exercise of its powers of investigation or in the conduct of an inquiry, under this Act.

Agreements and exchange of information with law enforcement agencies

6.(1) The Commission may enter into such written agreements, arrangements or memoranda of understanding with a law enforcement agency, including a foreign law enforcement agency, as the Commission considers necessary or desirable for the discharge or performance of its functions.

(2) The Commission shall be treated as a law enforcement agency for the purposes of receiving disclosures of information which are relevant to its functions from any law enforcement agency, including a foreign law enforcement agency.

(3) Subject to sections 35 and 79, the Commission may disclose to a law enforcement agency, including a foreign law enforcement agency, any information disclosed to the Commission.

(4) The Financial Intelligence Unit referred to in section 9(1) of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) and foreign financial intelligence units, by whatever name called, shall be treated as law enforcement agencies for the purpose of this section, regardless of whether they operate as enforcement or administrative entities.

Funds of Commission

7.(1) The Commission shall have such funds as may be appropriated to it by Parliament.

(2) The Commission shall keep proper accounts of receipts, payments, assets, and liabilities and those accounts shall be audited annually by the Auditor-General.

(3) The Commission shall, before the commencement of each financial year, prepare and forward to the Prime Minister a report of its activities during the previous financial year, including a statement of its accounts audited in accordance with subsection (2).

(4) A copy of the report together with the Auditor-General's Report shall be laid before Parliament.

Officers and other employees of Commission

8.(1) The Commission may, acting within the funds and resources available to it

- (a) employ such officers and other employees as are required for the proper performance of the functions of the Commission; and
- (b) retain the services of professional persons.

(2) The remuneration and other terms and conditions of employment of the officers and other employees of the Commission employed under subsection (1) and the professional persons retained under that subsection shall be such as may be determined or varied by the Commission from time to time.

(3) The Commission may, with the consent of the appropriate authority, utilise, for the performance of its functions, the services of any public officer or other employee of Government.

(4) The Commission may, with the approval of the Minister responsible for Finance, make such provision as it deems appropriate for the payment of pension, gratuity or other allowances in respect of the service of its officers and other employees on their retirement from employment with the Commission.

(5) In subsection (3) "appropriate authority", in relation to any public officer or other employee of the Government, means the person or authority vested by law with power to appoint such public officer or other employee of the Government to the position he holds at the time when his service is sought to be utilised by the Commission.

Investigative officers

9.(1) The Commission may designate a person employed under section 8(1) as an investigative officer and may issue to such officer a warrant card, which shall be *prima facie* evidence of the officer's designation.

(2) An investigative officer has the function of carrying out investigations in relation to any matter, whether or not involving an alleged offence, in respect of which the Commission exercises functions under this Act or any other enactment.

(3) An investigative officer has the powers described in Part III but, for the avoidance of doubt, is not a member of the Police Force.

Proceedings of the Commission

Commission's powers to summon and examine witnesses

10.(1) The Commission shall have the powers of a judge of the Supreme Court to summon witnesses and to call for the production of documents and to examine witnesses and parties concerned on oath.

(2) A summons to attend to give evidence or to produce documents before the Commission

(a) shall be

(i) in such form as may be prescribed;

(ii) issued under the hand of the Chairman or another member of the Commission; and

(iii) served on the person required to attend or to produce the document either by delivery to the person of the summons or delivery in such other manner as may be ordered by the Commission to ensure that the summons is brought to the attention of the person; and

(b) may be served by a person authorised by the Commission for the purpose.

(3) The Commission may, if it thinks fit, receive oral or written evidence, but it is not bound by the rules of evidence in the *Evidence Act*, Cap. 121, and it may take into account opinion evidence and such facts as it considers relevant and material.

Duty of witnesses summoned

11.(1) A person summoned to attend and give evidence or to produce documents at any sitting of the Commission shall be

- (a)* bound to obey the summons served upon him as fully in all respects as witnesses are bound to obey subpoenas issued from the Supreme Court; and
- (b)* entitled to the like expenses as if he had been summoned to attend the Supreme Court on a criminal trial, if the same is allowed by the Commission.

(2) The procedure for the payment of the expenses of a person referred to in subsection (1) shall be the same as nearly as may be for the payment of witnesses in the Supreme Court and such person shall be paid at such time and in such manner as the Minister responsible for Finance may direct.

(3) The Commission may disallow the whole or any part of the expenses of a person referred to in subsection (1) in any case where the Commission thinks fit.

(4) A person who

- (a)* refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons served on him;
- (b)* attends, but leaves the Commission without the permission of the Commission;
- (c)* refuses, without sufficient cause, to answer or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Commission;
- (d)* refuses or omits, without sufficient cause, to produce any document in his possession or under his control and mentioned or referred to in the summons served on him; or

- (e) at any sitting of the Commission, wilfully insults a member of the Commission or the Secretary of the Commission,

is guilty of an offence and is liable, on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both.

- (5) A person who gives evidence before the Commission shall
 - (a) not be compellable to incriminate himself; and
 - (b) in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by the witness before the court.

Witness may be examined on oath

- 12. The Commission may
 - (a) require that any facts, matters or things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses; and
 - (b) cause witnesses to be examined on oath which the Chairman or the Secretary shall be authorised to administer.

False evidence, how punishable

- 13. A witness who wilfully gives false evidence in any inquiry concerning the subject matter of such inquiry, commits perjury and is liable to be prosecuted and be punished accordingly.

Constables detailed to attend Commission

- 14. The Commissioner of Police may, where so required by the Commission, detail constables to
 - (a) attend to preserve order during the proceedings of the Commission;

- (b) perform such other duties as usually pertain to their office when in attendance upon the Supreme Court;
- (c) serve summonses on witnesses; and
- (d) perform such other duties as the Commission shall direct.

PART III

INVESTIGATIONS

Powers of Investigative Officers

Power of arrest

15.(1) An investigative officer has, in carrying out his functions, the powers of a constable to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment under this Act or under any other enactment that assigns responsibility for investigations to the Commission.

(2) An investigative officer shall, after making an arrest, deliver the person arrested to the custody of a member of the Police Force who shall, as soon as practicable, bring the person before a magistrate.

Production orders

16.(1) An investigative officer may apply to a judge in Chambers for an order, to be called a production order, requiring a specified person to

- (a) give the officer access to material specified in the application; or
- (b) produce the material specified in the application for the officer to take away,

within 7 days from the date on which the order is made or such other period as the judge determines would be appropriate in the circumstances.

- (2) The application shall be made without notice and shall
- (a) specify the person subject to investigation; and
 - (b) specify or describe the material in respect of which the order is sought.
- (3) A judge may make a production order where he is satisfied that there are reasonable grounds for
- (a) suspecting that an offence has been committed under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission; and
 - (b) believing that
 - (i) the specified person is in possession or control of the material specified in the application;
 - (ii) the material is likely to be of substantial value to the investigation for the purposes of which the order is sought, whether by itself or together with other material; and
 - (iii) it is in the public interest for the specified material to be produced or for access to be given to the material, having regard to
 - (A) the benefit likely to accrue to the investigation if the material is obtained; and
 - (B) the circumstances under which the specified person holds the material.
- (4) A production order
- (a) may state the place where the material is to be produced or where access to the material is to be given; and
 - (b) does not require a person to produce, or give access to, privileged material.

(5) Sections 43 to 46 of the *Proceeds of Crime Act*, Cap. 143 apply in respect of

- (a) a production order made under this section as if references to an order made under section 42 of that Act were references to a production order made under this section;
- (b) an investigative officer as if the references to a police officer in that Act were references to an investigative officer; and
- (c) an offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission as if references to a scheduled offence in that Act were references to an offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission.

(6) In this section “specified person” means that the person specified in an application under subsection (1) as appearing to be in possession or control of material subject to the investigation.

Power of search and seizure

17.(1) Where, on an application made by an investigative officer, a judge in Chambers is satisfied that there are reasonable grounds for suspecting that

- (a) an offence has been committed under this Act or any other enactment that assigns responsibility for investigations to the Commission;
- (b) there is material on premises specified in the application that is likely to be of substantial value to the investigation of the offence, whether by itself or together with other material;
- (c) the material
 - (i) is likely to be admissible in evidence at a trial for an offence referred to in paragraph (a); and
 - (ii) does not consist of or include privileged material; and

(d) any of the conditions specified in subsection (2) applies, the judge may issue a warrant authorising an investigative officer to enter and search the premises for the material and to seize and retain any material, that, in the opinion of the investigative officer, is of the kind described in paragraphs *(b)* and *(c)*.

(2) The conditions mentioned in subsection (1)*(d)* are that

- (a)* a production order has been made in respect of the material and has not been complied with;
- (b)* a production order in respect of the material would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with;
- (c)* the material involved cannot be identified or described with sufficient particularity to enable a production order to be made;
- (d)* it is not practicable to communicate with any person entitled to grant entry to the premises;
- (e)* it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (f)* entry to the premises will not be granted unless a warrant is produced;
or
- (g)* the investigation for the purposes of which the application is made might be seriously prejudiced unless the investigative officer is granted immediate access to the material without notice of any person.

(3) An investigative officer may seize and retain anything for which a search has been authorised under subsection (1).

Obstruction of investigative officer

18. A person who resists or obstructs an investigative officer in the execution of his duty is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 6 months or to both.

Complaints regarding Investigative Officers

Complaints about conduct of an investigative officer

19.(1) A person may address a complaint in writing to the Commission in respect of the conduct of an investigative officer in the performance of his functions where the person

- (a) has been personally affected by the conduct;
- (b) has witnessed the conduct;
- (c) has a substantial and direct interest in the complaint; or
- (d) has been authorised by a person referred to in paragraph (a), (b) or (c) to make a complaint in that person's name.

(2) The Commission shall refer a complaint made under subsection (1) to a panel appointed under section 20.

Appointment of complaints panel

20. The Governor-General may appoint an *ad hoc* panel consisting of

- (a) a judge or magistrate or a retired judge or magistrate, who shall be the chairman;
- (b) the Commissioner of Police, who shall hold office *ex officio*; and
- (c) a person, other than a member or former member of the Police Force, to represent the public,

to hear and adjudicate a complaint made under section 19.

Disposal of complaint without investigation

21.(1) The panel may direct that no investigation of a complaint be carried out where in its opinion

- (a) the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (b) having regard to all the circumstances, an investigation or further investigation is not necessary or reasonably practicable.

(2) Where no direction is made under subsection (1), the panel and the Commission shall

- (a) consider whether the complaint can be disposed of informally; and
- (b) with the consent of the complainant and the investigative officer whose conduct is the subject-matter of the complaint, attempt to dispose of the complaint informally before a formal investigation is undertaken.

(3) Where a complaint is disposed of informally, the panel shall prepare and send the following documents to the complainant, the investigative officer and the Commission:

- (a) an overview of the facts that gave rise to the complaint;
- (b) the name of the person who conducted the informal disposition;
- (c) a statement of the manner in which the complaint was disposed of; and
- (d) evidence of agreement to the disposition of the complaint by the complainant and the investigative officer.

Formal investigation of complaint

22.(1) Where a complaint is not disposed of informally, the Commission shall investigate the matter and send a complaint resolution report to the panel, the complainant and the investigative officer whose conduct is the subject-matter of the complaint.

- (2) The complaint resolution report referred to in subsection (1) shall contain
- (a) a summary of the complaint;
 - (b) the results of the investigation;
 - (c) a summary of any action that has been or will be taken with respect to resolution of the complaint; and
 - (d) a statement that the complainant may refer the complaint to the panel for review, within 60 days of the receipt of the complaint resolution report, where he is not satisfied with the disposition of the complaint by the Commission.
- (3) A complainant who is not satisfied with a direction under section 21(1) or with the disposition of the complaint by the Commission under subsection (1), may refer the complaint to the panel in writing within 15 days after the date on which he receives notice of the direction or the complaint resolution report.
- (4) The panel shall review every complaint referred to it under subsection (3).

Review of complaints by panel

- 23.(1) Where, after reviewing a complaint, the panel is satisfied with the disposition of the complaint by the Commission, the panel shall send
- (a) a complaint review report to that effect to the Commission, setting out such findings and recommendations with respect to the complaint as the panel sees fit; and
 - (b) a report of the conclusion of the review to the complainant and the investigative officer whose conduct is the subject-matter of the complaint together with any finding or recommendation referred to in paragraph (a).

(2) Where, after reviewing a complaint, the panel is not satisfied with the disposition of the complaint by the Commission or considers that further inquiry is warranted, the panel may take any or all of the following measures:

- (a) send a report to the Commission indicating the reasons for its dissatisfaction;
- (b) request the Commission to conduct a further investigation into the complaint;
- (c) make such inquiries as it deems necessary in the circumstances;
- (d) investigate the complaint further;
- (e) institute a hearing to inquire into the complaint.

(3) The panel shall, on completion of any further investigation, inquiry or hearing that it has ordered under subsection (2) send

- (a) to the Commission, a complaint review report setting out
 - (i) such findings with respect to the complaint as the panel sees fit; and
 - (ii) such recommendations, including disciplinary measures to be taken in regard to the investigative officer, as the panel sees fit; and
- (b) to the complainant and the investigative officer, a report of the conclusion of the review, together with any finding or recommendations referred to in paragraph (a).

Implementation of panel's recommendations

24. The Commission shall give effect to any recommendations in a complaint review report sent to it pursuant to section 23.

PART IV

DECLARATIONS

Declaration of financial affairs

- 25.(1)** A person who is a specified person in public life shall
- (a)* on or before the appointed day and every 2 years thereafter, on or before the biennial anniversary of that date; and
 - (b)* where such person ceases to be a specified person in public life, within 90 days from the date on which he ceases to be a specified person in public life,

file, where he is not a member or staff member of the Commission, with the Commission or, where he is a member or staff member of the Commission, with the Governor-General, a declaration containing the particulars referred to in subsection (5).

(2) Without prejudice to subsection (1), every person shall, within 90 days from the date on which he becomes a specified person in public life, file, where he is not a member or staff member of the Commission, with the Commission or, where he is a member or staff member of the Commission, with the Governor-General, a declaration containing the particulars referred to in subsection (5) with reference to the date on which he becomes a specified person in public life; and any person required to file a declaration under this subsection in any year is not required to file another declaration under subsection (1) in the same year.

(3) The Commission may, in exceptional circumstances, grant to any person required to file a declaration under subsection (1) or (2), other than a member or staff member of the Commission, an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.

(4) The Governor-General may, in exceptional circumstances, grant to a member or staff member of the Commission required to file a declaration under subsection (1) or (2), an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.

(5) A declaration shall be in such form as may be prescribed and shall give full, true and complete particulars of

- (a) the person's income, assets and liabilities;
- (b) the assets of the person's spouse and dependent children; and
- (c) any gift received in the course of the performance of the person's public functions.

(6) A declaration may be accompanied, where the specified person in public life so wishes, by a statement giving details of his income, assets and liabilities which shall be certified by an accountant.

(7) Where a specified person in public life dies, there shall be no obligation on the administrators of his estate to file the declaration which the specified person in public life would have been required to file, had he lived.

Trust property

26. Where a specified person in public life holds any money or other property in trust for another person, not being his spouse or child or another person in public life, he shall so state in his declaration but shall not be required to disclose the terms of the trust.

Full disclosure

27.(1) A specified person in public life is required to disclose in his declaration under section 25, such details in respect of the income, assets and liabilities of himself and those of his spouse and his children, as by the exercise of reasonable care, should be known to him.

(2) For the purposes of a declaration under section 25, the income, assets and liabilities of a specified person in public life, his spouse and his children shall include the income, assets and liabilities acquired, held or incurred by any other person as agent or on behalf of all or any of them.

(3) Any direct or indirect benefit accruing to the income or assets of a declarant or his spouse or children must be disclosed in a declaration under section 25.

Blind trusts

28.(1) A specified person in public life may place his assets or part thereof in a blind trust for the purpose of this Act and file a copy of the trust deed with the Commission.

(2) Where the Commission has reasonable grounds to believe that a specified person in public life is likely to contravene or has contravened this Act, the Commission may direct that person to place all or part of his assets in a blind trust on such terms and conditions as the Commission considers appropriate and to file a copy of the trust deed with the Commission.

(3) Where the assets of a specified person in public life are placed in a blind trust, he need not in his declaration under section 25, give more particulars of those assets than the amount and description of the assets placed in the trust and the date of so doing.

(4) Notwithstanding any other law relating to the duties of trustees, a trust company managing the assets of a specified person in public life by way of a blind trust, shall reply fully to any inquiries of the Commission relating to the nature and management of the assets in the trust.

(5) A blind trust is created when a specified person in public life enters into an agreement with a qualified trust company whereby

- (a) all or any part of his assets or those of his spouse or children are conveyed to the trust company for the management, administration and control thereof, in its absolute discretion without recourse or report to the person or persons beneficially entitled to those assets;

- (b)* income derived from the management of the assets is to be distributed, in accordance with the agreement, to him, his spouse or his children until he ceases to be a specified person in public life; and
 - (c)* after he ceases to be a specified person in public life, proper and full accounting is to be made to him, his spouse or children as the circumstances of the management of the trust require.
- (6) A trust company is a qualified trust company where
 - (a)* it is incorporated in or outside Barbados and is carrying on business in Barbados;
 - (b)* no more than 5 per cent of the stated capital in the trust company or its affiliate is held or controlled by the specified person in public life entering into an agreement with it, or by any other person associated with him; and
 - (c)* the specified person in public life or his spouse or any of his children does not hold any directorship or office in the trust company or its affiliate.
- (7) For the purposes of this section, a company is an affiliate of another company where it holds more than 5 per cent of the stated capital in that other company or where that other company holds more than 5 per cent of the stated capital in the first mentioned company.
- (8) For the purposes of this section, a person is associated with another, where that other person is
 - (a)* the spouse or child of the person;
 - (b)* the partner of the person in a profession, trade or commercial undertaking; or
 - (c)* a corporation and the first mentioned person or any person mentioned in paragraph *(a)* controls the corporation, its holding corporation or a corporation affiliated with either.

Receipt and examination of declarations

29. The Commission or the Governor-General, as the case may be, shall
- (a) receive, examine and retain all declarations and documents filed with it or him under this Act; and
 - (b) make such inquiries as it or he considers necessary in order to verify or determine the accuracy of the financial affairs, as stated in the declarations, of persons who are required to file declarations under this Act.

Commission or Governor-General may require further information from declarant

30. The Commission or the Governor-General, as the case may be, may in writing request a declarant to furnish such further particulars or other information relating to his financial affairs as may be considered necessary for the purposes of section 4(1)(b) or 29, as the case may be, and the declarant shall comply with the request within the time specified therefor by the Commission or Governor-General, as the case may be.

Commission may conduct inquiry regarding declarations

- 31.(1) The Commission may in writing request a declarant to furnish such further information or documents as it may require and may conduct an inquiry to verify any declaration or other statement filed with it.
- (2) The Commission, upon examination of a declaration furnished pursuant to section 25 may require the specified person in public life to attend an inquiry of the Commission at a specified time to be heard on any matter relating to the declaration.

- (3) A specified person in public life who is required to attend the Commission may
- (a) be accompanied and represented by an attorney-at-law or such other person as the specified person in public life chooses; and
 - (b) require the Commission to summon witnesses.
- (4) The Commission shall not take any adverse decision without giving the specified person in public life an opportunity to be heard.
- (5) Where upon examination the Commission is satisfied that a declaration has been fully made and all questions satisfactorily answered, or that a declaration is incomplete but the declarant cannot reasonably obtain the information required to complete it, the Commission shall forward to the specified person in public life a certificate of compliance in such form as may be prescribed.

Commission to report where not satisfied with declaration

- 32.(1) Where the Commission examines a declaration and any related information or documents, or conducts an inquiry into any declaration, and is not satisfied with any aspect thereof, the Commission may report the matter to the appropriate Service Commission, board or other authority and the Director of Public Prosecutions, setting out such details as it thinks fit.
- (2) The Commission shall report any contravention of this Act it discovers to the appropriate Service Commission, board or other authority and to the Director of Public Prosecutions.
- (3) The appropriate Service Commission, board or other authority may take such disciplinary action in relation to a report made pursuant to subsection (1) as it thinks appropriate in any particular case.
- (4) Pursuant to subsection (3), where criminal proceedings have been commenced against a specified person in public life, no disciplinary procedures shall be instituted pending the determination of criminal proceedings.

- (5) An inquiry shall not be commenced after 2 years from the date on which the person ceased to be in public life.
- (6) The Director of Public Prosecutions may
 - (a) take action in relation to a report made pursuant to subsection (1) as he thinks appropriate in any particular case;
 - (b) authorise any person having an official duty under this Act to furnish information to any officer of the court, a member of the Police Force or any other person specified by the Director of Public Prosecutions.

Further information from members and staff of Commission in respect of their declarations

33.(1) Where in the opinion of the Governor-General, further information or documents are required from a member or staff member of the Commission in respect of his declaration, the Governor-General shall, after consultation with the Prime Minister and the Leader of the Opposition, appoint a fit and proper person as a tribunal to require the declarant to furnish such further information or documents and to conduct any inquiry, where found necessary, to verify the declaration, document or other statement filed with the tribunal.

- (2) For the purpose of any inquiry under this section, a tribunal may request in writing, that the declarant or any other person who the tribunal reasonably believes has knowledge of the matters to be inquired into
 - (a) attend before the tribunal at such place, on such date and at such time as may be specified by the tribunal, to give it such information as it may require to satisfy itself that it is in possession of all the material facts; or
 - (b) furnish such information or documents as may be specified by the tribunal, within the time specified therefore by the tribunal, so as to assist it in verifying the declaration.
- (3) An inquiry under this section shall not be commenced after 5 years from the date on which the member or staff member of the Commission in respect of

whose declaration the inquiry is being conducted ceased to be a specified person in public life.

(4) In conducting an inquiry under this section, a tribunal shall have and exercise all the powers in this section save that the proceedings shall be held in private.

(5) Where after an inquiry under this section, a tribunal finds that

- (a) a declarant had in fact made full disclosure in his declaration, the tribunal shall forthwith publish a statement to that effect in the *Official Gazette* and in a daily newspaper with nationwide circulation in Barbados; and
- (b) the declaration which gave rise to the inquiry was in fact full and proper, the tribunal shall cause the declarant to be reimbursed from the Consolidated Fund for all expenses reasonably incurred by him in connection with the inquiry within 3 months of the tribunal's finding.

Publication of failure to file declaration or furnish information

34. Where a person who is required to do so fails to file a declaration in accordance with this Act or to furnish particulars or other information pursuant to section 4(1)(b) or 30, the Commission or Governor-General, as the case may be, shall

- (a) publish that fact in the *Official Gazette* and a daily newspaper with nationwide circulation in Barbados; and
- (b) send a report on the matter to the appropriate Service Commission, board or authority and to the Director of Public Prosecutions.

Duty of secrecy regarding declarations

35.(1) Every member of the Commission and every person performing any function in the service or as an employee of the Commission shall treat all records, and information relating to declarations, as secret and confidential and shall not disclose or communicate the text of any record, information or declaration to any

unauthorised person or allow any unauthorised person to have access to any records, information or declarations.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of \$20 000 or to imprisonment for 3 years or to both.

Offences and penalties in respect of declarations

36.(1) Any person who

- (a) fails, without reasonable cause, to file with the Commission or the Governor-General, as the case may be, a declaration which he is required to file in accordance with this Act;
- (b) knowingly files with the Commission or the Governor-General, as the case may be, a declaration that is not complete or is false in any material particular;
- (c) fails, without reasonable cause, to comply with a request for information made pursuant to section 4(1)(b), 28(4), 30 or 33(2) by the Commission, the Governor-General or a tribunal within the time specified therefor by the Commission, the Governor-General or the tribunal, as the case may be, or knowingly gives any false or incomplete information pursuant to the request;
- (d) fails, without reasonable cause, to attend an inquiry being conducted pursuant to section 31 or 33; or
- (e) fails, without reasonable cause, to comply with a direction of the Commission given pursuant to section 28(2) within the time specified by the Commission, or knowingly gives any false or incomplete information in the trust deed filed with the Commission,

is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for one year or to both.

(2) Where an offence referred to in subsection (1) involves the non-disclosure, by a declarant, of property, which should have been disclosed in the declaration, the magistrate shall order the declarant to make full disclosure of the property within a specified period.

(3) Where a declarant fails to comply with an order made pursuant to subsection (2) within the specified period, the offence shall be deemed to be a continuing offence and the declarant shall be liable to a further fine of \$3000 for each day on which the offence continues.

PART V

REGISTER OF INTERESTS

Duty of members to file statement of registrable interests

37.(1) Every member of the House of Assembly and the Senate shall file with the Commission, in addition to his declaration under section 25, a statement of registrable interests.

(2) A member of the House of Assembly or the Senate shall file his statement of registrable interests in such form as may be prescribed within 90 days after

(a) the day on which he becomes a member, in respect of his interests on the day on which he became a member; and

(b) the 31st day of December in each year during any part of which he was a member, in respect of his interests on the 31st day of December in that year.

(3) Notwithstanding subsection (2)(b), a member need not file a statement of registrable interests for a particular year where the member filed a statement in the 6 months preceding the 31st day of December in that year.

(4) Where a member dies, the administrator of his estate is not required to file the statement of registrable interests which the member would have been required to file, had he lived.

Content of statement of registrable interests

38.(1) A statement of registrable interests shall contain the following information relating to the member of the House of Assembly or the Senate, his spouse and children:

- (a) particulars of any directorships held in any company or other corporate body;
- (b) particulars of any contract made with the Government;
- (c) the name or description of any company, partnership or association in which the person is an investor;
- (d) a concise description of any trust to which the person is a beneficiary or trustee;
- (e) any beneficial interest held in land;
- (f) any fund to which the person contributes;
- (g) particulars of any political, trade or professional association to which the person belongs;
- (h) particulars relating to sources of income; and
- (i) any other substantial interest, whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty.

(2) Nothing in this section shall be taken to require disclosure of the actual amount or extent of any financial benefit, contribution or interests.

Register of Interests

39.(1) The Commission shall maintain a register, to be called the Register of Interests, in such form as may be prescribed.

(2) The Commission shall compile and cause to be entered in the Register of Interests all information furnished by members of the House of Assembly and the Senate under this Part and shall, at the request of any member of the public, permit inspection of the register.

(3) A member of the House of Assembly or the Senate shall notify the Commission of any changes which occur in his interests, or those of his spouse or children, within 6 months of the change occurring.

Commission may require further information and conduct inquiry regarding statements of registrable interests

40.(1) Where upon examination of a statement of registrable interests, the Commission is of the opinion that it should inquire further into the statement so as to ascertain whether there has been a full disclosure, the Commission may

(a) require the member of the House of Assembly or the Senate who made the statement to attend before it to answer such questions, and to furnish such documents or information, as it may require; and

(b) make such independent inquiries and investigations relating to the statement as the Commission thinks fit.

(2) Without prejudice to the generality of subsection (1), where the Commission is of the opinion that there are reasonable grounds to believe that a member of the House of Assembly or the Senate has failed to comply with the requirements for the registration of interests under this Part or that such member has acquired a prohibited interest, the Commission may

(a) request the member in writing to furnish any further information or documents that it may require;

- (b) require the member to attend an inquiry of the Commission at a specified time to be heard on any matter relating to the alleged contravention.

Procedure at inquiry regarding registrable interests

41.(1) The Commission shall not, in the conduct of an inquiry under this Part, issue a determination against a member of the House of Assembly or the Senate without giving the member an opportunity to be heard.

(2) The Commission shall prepare a written report of its findings and determinations pursuant to an inquiry held under section 40 and send a copy of the report to

- (a) the Speaker of the House of Assembly or the President of the Senate, as the case may be; and
- (b) the member whose conduct was the subject of the inquiry.

Determination regarding prohibited interests

42. The Commission shall not issue a determination that a member of the House of Assembly or the Senate has acquired a prohibited interest where

- (a) the member has notified the Commission of the interest as required by this Act; and
- (b) the Commission is of the opinion that the interest
 - (i) is unlikely to affect the member's obligations under the Code of Conduct; or
 - (ii) is likely to affect the member's obligations under the Code of Conduct but that the member, his spouse or child, as the case may be, has divested himself of the interest or has placed it in a blind trust on such terms and conditions as the Commission considers appropriate.

Offences and penalties in respect of statements of registrable interests

- 43.(1)** A member of the House of Assembly or the Senate who
- (a)* fails, without reasonable cause, to file with the Commission a statement of registrable interests required to be filed under this Part;
 - (b)* knowingly files with the Commission a statement of registrable interests that is incomplete or is false in any material particular;
 - (c)* fails, without reasonable cause, to comply with a request made pursuant to section 4(1)(b) by the Commission respecting the member's statement of registrable interests within the time specified therefor by the Commission or knowingly gives any false or incomplete information pursuant to the request; or
 - (d)* fails, without reasonable cause, to attend an inquiry being conducted pursuant to section 40 or to furnish any information that the Commission requests him to furnish, or knowingly gives any false or incomplete information at such inquiry,

is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for one year or to both.

(2) Where an offence referred to in subsection (1)(a) or (b) involves the non-disclosure, by a member of the House of Assembly or the Senate, of property which should have been disclosed in a statement of registrable interests, the magistrate shall order the member to make full disclosure of the property within a specified period.

(3) Where a member of the House of Assembly or the Senate fails to comply with an order made pursuant to subsection (2) within the specified period, the offence referred to in subsection (1) shall be deemed to be a continuing offence and the member shall be liable to a further fine of \$3 000 for each day on which the offence continues.

Disqualification of member from holding public office

44. A member of the House of Assembly or the Senate who is convicted of an offence under section 36 or 43 is liable, in addition to any other penalty prescribed by law, to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

PART VI

GIFTS

Report to Commission on gifts

45.(1) Every specified person in public life, other than a member or staff member of the Commission, who receives a gift worth more than \$1 000 shall make a report of that fact to the Commission in such form as may be prescribed stating the name and address of the donor, the description and approximate value of the gift and whether, in the opinion of the donee, the gift is a personal or an official gift.

(2) The Commission shall determine whether the gift is a personal gift or an official gift.

(3) The decision of the Commission pursuant to subsection (2) shall be final.

(4) This section shall not apply to any personal gift received by a specified person in public life from a relative or friend.

(5) A specified person in public life who is unsure whether a gift received from a relative or friend is a personal gift or an official gift may apply to the Commission seeking its opinion as to the proper classification of the gift.

(6) A report or an application under subsection (1) or (5) shall be made to the Commission by the specified person in public life within 30 days of the receipt of the gift.

- (7) Where the Commission finds after inquiry that
- (a) a gift was given to a specified person in public life personally and
 - (i) was trivial; or
 - (ii) was not trivial, but was not intended to be a motive or reward for doing or forbearing to do anything in the course of the performance of his official functions or for causing any other person to do or forbear from doing anything,
 the Commission shall allow the specified person in public life to retain the gift; or
 - (b) a gift was not of the kind described in paragraph (a), the Commission shall direct the specified person in public life in writing to deliver the gift to the Minister responsible for Finance within such period, not exceeding 30 days, as may be specified by the Commission; and the specified person in public life shall comply with the direction within the time so specified.
- (8) The specified person in public life shall be entitled to notice of an inquiry under subsection (7) and to be represented in the inquiry in person or by an attorney-at-law.

Report to Governor-General on gifts

46.(1) Every specified person in public life who is a member or staff member of the Commission and receives a gift worth more than \$1 000, or whose spouse or child receives such a gift, shall make a report of that fact to the Governor-General in such form as may be prescribed, stating the name and address of the donor, the description and approximate value of the gift and whether, in the opinion of the donee, the gift is a personal or an official gift.

(2) Section 45(2) to (8) apply in respect of the gift, the report and the member or staff member referred to in subsection (1) as if the word "Commission" were substituted for the word "Governor-General".

Offences and penalties in respect of sections 45 and 46

47. A specified person in public life who
- (a) knowingly makes a report to the Commission pursuant to section 45(1) or to the Governor-General pursuant to section 46, which is incomplete or false in any material particular;
 - (b) without reasonable excuse fails to comply with section 45(1) or section 46(1); or
 - (c) without reasonable excuse fails to comply with a direction given by the Commission pursuant to section 45(7) or by the Governor-General pursuant to section 46(2),

is guilty of an offence and is liable, on summary conviction, to a fine, which shall not be less than the value of the gift involved in the commission of the offence, or to imprisonment for 3 months or to both.

Limitation on prosecution for section 47 offences

48. No prosecution for an offence pursuant to section 47 shall be instituted after 5 years from the date when the person alleged to have committed the offence ceased to be a specified person in public life.

PART VII

ACTS OF CORRUPTION AND OTHER CONTRAVENTIONS OF THIS ACT

Part VII to apply in addition to other laws

49. This Part shall apply in addition to, and not in derogation of, the provisions of the *Criminal Law (Arrestable Offences) Act*, Cap. 125A, the *Theft Act*, Cap. 155, the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) and any other enactment and the Common Law.

Powers of appropriate disciplinary authority preserved

50. This Part shall apply without prejudice to the powers conferred upon the appropriate disciplinary authority by the *Constitution* or any other enactment.

Acts of corruption generally

51. A person commits an act of corruption where he

- (a) solicits or accepts, whether directly or indirectly, any article, money or other benefit for himself or another person for doing an act, or for omitting to do an act, in the exercise of his functions as a public official;
- (b) performs or omits to perform, in the exercise of his functions as a public official, any of his duties in a public body for the purpose of obtaining any benefit for himself or another person;
- (c) offers, promises or gives, directly or indirectly, to a public official any article, money or other benefit, for doing an act, or omitting to do an act, in the exercise of his functions as a public official;
- (d) knowingly or recklessly allows his private interest to conflict with his public duties or to improperly influence his conduct in the exercise of his functions as a public official;
- (e) improperly uses for his benefit or that of a third party, any classified or confidential information obtained in the exercise of his functions as a public official;
- (f) communicates to any person not authorised to receive it, any classified or confidential information obtained in the exercise of his functions as a public official with a view to assisting the person to obtain a benefit;
- (g) improperly uses for his benefit or that of a third party, any property belonging to the Government or a statutory body or state-owned company to which he has access as a result of, or in the course of, the exercise of his functions;

- (h)* improperly influences the appointment of, or the dismissal or suspension of, or other disciplinary action against, a public official;
- (i)* hinders, delays or interferes with the exercise of a function of a public official with a view to obtaining any benefit for himself or another person;
- (j)* pursues, in the exercise of his functions as a public official, a course of conduct with respect to another public official which amounts to offensive sexual comments, gestures or physical contact or other conduct of a similar nature;
- (k)* pursues, in the exercise of his functions as a public official, a course of conduct by which he exploits his position or authority for his sexual gratification.

Bribery in procurement

52.(1) A public official who, in relation to a contract for the procurement of any goods, works or services

- (a)* accepts, agrees or offers to accept, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person;
- (b)* gives, agrees or offers to give, whether directly or indirectly, any benefit to another person for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person; or
- (c)* gives to a person confidential information in order to enable that person to tender or not to tender in a particular manner in order to obtain an unfair advantage in tendering,

commits an act of corruption.

(2) A person who, in relation to a contract for the procurement of any goods, works or services

(a) offers to a public official, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person; or

(b) offers to a public official, whether directly or indirectly, any benefit for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person,

commits an act of corruption.

Transnational bribery

53.(1) A person who

(a) is a citizen or permanent resident of Barbados; or

(b) resides in Barbados,

and intentionally offers, promises or grants, directly or indirectly, to a government official of another State, any gift or money or other advantage in connection with any economic or commercial transaction, in order that such official act, or refrain from acting, in relation to the performance of his official duties, in order to obtain or retain business or another improper advantage in the conduct of international business, commits an act of corruption.

(2) A public official who solicits, demands, accepts or receives, directly or indirectly, from any private or public corporation, including a transnational corporation or any individual from another State, any payment, gift or other advantage, as undue consideration for performing, or refraining from the performance of his official duties in relation to the conduct of international business, commits an act of corruption.

(3) For the purposes of subsection (1) "citizen" and "permanent resident" have the meanings respectively assigned to them by section 2 of the *Immigration Act*, Cap. 190.

Offences and penalties in respect of acts of corruption

54.(1) A person who commits an act of corruption under section 51, 52 or 53 is guilty of an offence and is liable

- (a) on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both;
- (b) on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and
- (c) to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

(2) A person who possesses or is in control of any property knowing that the property or part of the property or proceeds from the property were obtained or derived, directly or indirectly, from the commission of an act of corruption, is guilty of an offence and is liable

- (a) on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both;
- (b) on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and
- (c) to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

(3) A person who

- (a) aids, assists, is an accessory after the fact to, participates in any manner in the commission of or conspires to commit, an act of corruption; or
- (b) procures the commission of an act of corruption or attempts or counsels another to commit, an act of corruption,

is guilty of an offence and is liable

- (i) on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both;

- (ii) on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and
- (iii) to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

Presumption of corruption

55. Where in any proceedings for an offence it is proved that in seeking to obtain a contract from the Government or a public body, a person received or gave money, a gift or other benefit, the money, gift or other benefit shall be presumed to have been given or received an inducement or reward unless, on a balance of probabilities, the contrary is proved.

Defences available to person charged with act of corruption

56. In any proceedings for an offence concerning an alleged act of corruption, it shall be a defence for the accused to prove, on a balance of probabilities, that

- (a) he had no knowledge of the circumstances giving rise to the act of corruption; or
- (b) any property, gift or pecuniary resource related to the alleged act of corruption was acquired by lawful means.

Possession of unaccounted property or pecuniary resource

57.(1) Where a person who is or was a public official is suspected to be in possession of property or a pecuniary resource disproportionate to such person's known sources of income, the Commission, upon a complaint or of its own motion, may summon the person to produce evidence that the property or resource was lawfully obtained.

(2) A person referred to in subsection (1) who fails to produce satisfactory evidence to prove that the possession of the property or pecuniary resource was acquired by lawful means is guilty of an offence and is liable, on summary

conviction, to a fine and to imprisonment for not less than 6 months or more than 3 years.

(3) In imposing a fine pursuant to subsection (2) on a person found guilty of an offence under that subsection, the court shall have regard to the value of the property or pecuniary resource in the possession of the person, which cannot be accounted for by his known sources of income or other lawful means of acquisition of property or pecuniary resources and the fine shall be equivalent to one and one half times the value of the property or pecuniary resource found to be in the possession of the person and for which no such account can be made.

Certain defences not available to any person charged under this Part

58. Where in any proceedings for an offence under this Part it is proved that a public official accepted a gift or benefit believing or having grounds to believe or to suspect that the gift or benefit was given as an inducement or reward for doing or forbearing to do an act in the exercise of his functions it shall be no defence that the public official

- (a) did not actually have the power or right to do or to forbear from doing, the act; or
- (b) accepted the benefit with no intention of doing or forbearing to do, the act.

Making of false allegation

59. A person who maliciously makes a false allegation or maliciously provides false information related to a contravention of this Act is guilty of an offence and is liable

- (a) on conviction on indictment to a fine of \$20 000 or to imprisonment for 2 years or to both;
- (b) on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

Complaint to Commission regarding contravention of Act

60.(1) A person who has reasonable grounds to believe that another person has contravened this Act may complain in writing to the Commission stating

- (a) the particulars of the contravention;
- (b) the nature of the evidence that the complainant proposes to produce in support of the complaint;
- (c) such other particulars as may be prescribed.

(2) A complaint to the Commission pursuant to this section may be presented in person or may be sent by registered post to the Chairman.

Duty of public officials to report contravention of Act

61.(1) A public official who knows or suspects that another person has been, is or is likely to be engaged in a contravention of this Act shall report his knowledge or suspicion to the Commission.

(2) A public official who fails to report his knowledge or suspicion as required by subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 6 months or to both.

(3) No public official who reports his knowledge or suspicion that another person has been, is or is likely to be engaged in a contravention of this Act to a person or entity other than the Commission, in accordance with the requirements of another enactment, shall be convicted of an offence under this section.

Inquiry by Commission into complaint

62.(1) Where the Commission receives a complaint, the Commission may, on examination of the complaint

- (a) reject the complaint where it considers that the complaint is frivolous or does not relate to a matter the Commission is empowered to address;

- (b) hold an inquiry into the complaint, giving the person alleged to have contravened this Act an opportunity to be heard;
 - (c) on conclusion of the inquiry, forward the complaint, and any documents and report containing the recommendations of the Commission to the Director of Public Prosecutions where it considers that an offence may have been committed.
- (2) Where a person is exonerated following an inquiry into an allegation of a contravention of this Act, the Commission shall
- (a) in writing inform the person who made the complaint and the person alleged to have contravened this Act of the finding of the inquiry; and
 - (b) publish the finding of the inquiry in the *Official Gazette*.

Action by Director of Public Prosecutions

63. The Director of Public Prosecutions shall, as soon as practicable after receiving any complaint, documents and report pursuant to this Act, in any case in which he considers that a person ought to be prosecuted for an offence, institute and undertake criminal proceedings against the person and inform

- (a) the Commission of any action taken following the receipt of the complaint, documents and report;
- (b) the appropriate Service Commission, where a complaint relates to a public officer; and
- (c) the appropriate board, authority or body with which the person alleged to have contravened this Act is employed or in respect of which he is a member.

Cases of public allegation

64. Where an allegation is made in public that a specified person in public life has committed a contravention of this Act, a person desiring to make a complaint to the Commission relative to the alleged contravention shall lodge a

complaint with the Commission not later than 3 months from the date on which the public allegation was first made.

PART VIII

CONDUCT IN PUBLIC LIFE

Code of Conduct

Formulation of Code of Conduct and investigation into contravention

65.(1) The Commission shall by Order, after public consultation, establish a code, to be called the Code of Conduct for Persons in Public Life, to govern the conduct of public officials.

(2) The Commission shall keep the Code of Conduct under review and may, after public consultation, amend or replace the code as it considers necessary or desirable.

(3) The Commission shall inquire into or investigate every contravention of the Code of Conduct by a public official where it

(a) receives a complaint or report of the contravention; or

(b) is satisfied that there are reasonable grounds for it to carry out an investigation on its own initiative.

(4) An inquiry or investigation shall not be commenced after 2 years from the date on which the person involved ceased to be a public official.

Commission may request further information and conduct formal inquiry

66.(1) Where the Commission is of the opinion that there are reasonable grounds to believe that a public official contravened the Code of Conduct, the Commission may

- (a) request the official in writing to furnish any further information or documents that it may require;
- (b) require the official to attend an inquiry of the Commission at a specified time to be heard on any matter relating to the alleged contravention.

(2) A public official who fails, without reasonable cause, to attend an inquiry being conducted pursuant to this section or to furnish any information that the Commission requests him to furnish, or knowingly gives any false or incomplete information at such an inquiry is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for one year or to both.

(3) The Commission shall not take any adverse decision without giving the public official an opportunity to be heard.

Commission to report its findings regarding contravention of Code of Conduct

67.(1) The Commission shall prepare a written report of the findings of an inquiry or investigation held under this Part and indicate its conclusion in the report that it

- (a) is not satisfied that the public official subject to the inquiry or investigation contravened the Code of Conduct; or
- (b) has determined that the public official contravened the Code of Conduct.

(2) Where the Commission determines that a public official contravened the Code of Conduct, it may include in the report any recommendations as to the

punishment or disciplinary measures that it believes would be appropriate to be taken against the public official.

(3) The Commission shall send a copy of the report, including copies of evidence and material documents submitted during the inquiry or investigation to

(a) the public official who was subject to the inquiry or investigation; and

(b) the following persons in the following cases:

(i) the head of the Public Service and the Governor-General, in the case of an alleged contravention of the Code of Conduct by a public officer;

(ii) the Speaker of the House of Assembly or President of the Senate, as the case may be, and the Governor-General, in the case of an alleged contravention of the Code of Conduct by a member of the House of Assembly or the Senate;

(iii) the Governor-General, in the case of an alleged contravention of the Code of Conduct by the head of the Public Service or by the Speaker of the House of Assembly or the President of the Senate; and

(iv) the public body in relation to which the public official is a public official, in the case of an alleged contravention of the Code of Conduct by a public official other than a public official referred to in sub-paragraphs (i) to (iii).

(4) A person who receives a report from the Commission pursuant to subsection (3)(b) in which the Commission has determined that the public official subject to the inquiry or investigation contravened the Code of Conduct shall

(a) decide without delay what measures shall be taken, if any, in response to the report, and shall implement such measures without delay; and

- (b) inform the Commission, as soon as practicable, but not later than 30 days after receiving the report
 - (i) of the follow-up actions or disciplinary measures that will be or have been taken against the public official in response to the report;
 - (ii) that no further action is required to be taken against the public official in response to the report; or
 - (iii) that no decision has been made as to the measures to be taken in response to the report, of the reasons for the delay, and of the date by which a decision will be made and sent to the Commission.

PART IX

WHISTLE BLOWER PROTECTION

Protected disclosures

- 68.(1)** A public official shall benefit from the protections in sections 76 and 77 where he makes a protected disclosure, in good faith
- (a) to a person referred to in section 69, 70, 71 or 72, of a kind described in that section;
 - (b) of an exceptionally serious matter, in the circumstances described in section 73; or
 - (c) in the circumstances described in section 74.
- (2) A protected disclosure is a disclosure that
- (a) an offence has been committed, is being committed or is likely to be committed;
 - (b) a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject;

- (c)* a miscarriage of justice has occurred, is occurring or is likely to occur;
 - (d)* the health or safety of an individual has been, is being or is likely to be endangered;
 - (e)* the environment has been, is being or is likely to be damaged; or
 - (f)* information tending to show a matter within any of paragraphs *(a)* to *(e)* has been, is being or is likely to be deliberately concealed.
- (3) A disclosure is not a protected disclosure where the public official
- (a)* commits an offence by making the disclosure; or
 - (b)* discloses privileged material or information disclosed to him in the course of obtaining legal advice.
- (4) For the purposes of this section, it is immaterial whether
- (a)* the matter disclosed occurred, occurs or would occur in Barbados or elsewhere; or
 - (b)* the law applying to the matter disclosed is that of Barbados or of any other country or territory.

Disclosure to employer or other responsible person

69. A public official may make a disclosure in connection with his employment to

- (a)* his employer; or
- (b)* another person, where the public official reasonably believes that the matter disclosed relates mainly to that person's conduct or to another matter for which that person has legal responsibility.

Disclosure to legal adviser

70. A public official may make a disclosure to a legal adviser in the course of obtaining legal advice.

Disclosure to Governor-General

71. A public official may make a disclosure to the Governor-General where the official's employer is

- (a) an individual appointed under an enactment by the Governor-General;
or
- (b) a body any of whose members is appointed by the Governor-General.

Disclosure to Commission

72. A public official may make a disclosure to the Commission where the official reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.

Disclosure of an exceptionally serious matter

73. A public official may disclose a matter of an exceptionally serious nature where

- (a) he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;
- (b) he does not make the disclosure for the purposes of personal gain; and
- (c) it is reasonable for him to make the disclosure, having regard in particular to the identity of the person to whom the disclosure is made.

Disclosure in particular circumstances

74.(1) Subject to subsection (2), a public official may make a disclosure in any of the following circumstances where

- (a) he reasonably believes that if he were to make the disclosure to his employer, his employer would subject him to a detriment;

- (b)* he reasonably believes that
 - (i)* he cannot make the disclosure to the Commission because the matter to be disclosed is not one that the Commission is willing or able to deal with; and
 - (ii)* if he were to make the disclosure to his employer, it is likely that evidence relating to the matter would be concealed or destroyed;
 - (c)* he has previously made a disclosure of substantially the same information to his employer or to the Commission.
- (2) The official may only make a disclosure under this section where
- (a)* he reasonably believes that the information to be disclosed, and any allegation contained in it, are substantially true;
 - (b)* he does not make the disclosure for personal gain; and
 - (c)* it is reasonable for him to make it.
- (3) In determining whether it is reasonable for a public official to make a disclosure under this section, regard must be had in particular to
- (a)* the identity of the person to whom the disclosure is made;
 - (b)* the seriousness of the matter disclosed;
 - (c)* whether the matter disclosed is continuing or is likely to occur in the future; and
 - (d)* whether the disclosure is in breach of a duty of confidentiality owed by the person's employer to any other person.

Previous disclosures of substantially the same information

75.(1) In determining whether it is reasonable for a public official to make a disclosure in the circumstances described in section 74(1)(c), regard must also be had to

- (a) any action that his employer or the Commission took or might reasonably be expected to have taken in consequence of the previous disclosure; and
- (b) in the case of a previous disclosure to his employer, whether in making the disclosure, the official complied with any procedure whose use was authorised by the employer.

(2) For the purposes of section 74(1)(c), a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure even though the subsequent disclosure extends to information about action taken or not taken in consequence of the previous disclosure.

Protection *vis-a-vis* employer or person in authority

76.(1) An employer or any person in authority over a public official who subjects the official to a detriment by reason only of his having made a protected disclosure pursuant to section 68 is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for 2 years or to both.

(2) A public official who makes a protected disclosure pursuant to section 68 does not break a duty of confidentiality to any person by reason only of having made the disclosure.

Contractual limitations

77.(1) A provision in an agreement to which this section applies is void in so far as it purports to preclude a person from making a protected disclosure pursuant to section 68.

(2) This section applies to an agreement between a person and his employer, whether or not part of the contract of employment, including an agreement to refrain from instituting or continuing proceedings for breach of contract.

PART X

MISCELLANEOUS PROVISIONS

Assistance by Commissioner of Police

78.(1) Where the Commission requests the Commissioner of Police for any assistance in connection with the exercise of its functions, it shall be the duty of the Commissioner of Police to provide or to ensure the provision of such assistance to the Commission.

(2) Where the Commission is investigating an offence alleged to have been committed by a member of the Police Force contrary to this Act or another enactment in respect of which the Commission has responsibility to investigate offences

- (a) the Commission shall have conduct of the proceedings for the offence; and
- (b) the investigative officer shall have, for the purposes of the proceedings referred to in paragraph (a), the same powers as that of an Inspector under the *Police Act*, Cap. 167.

Confidentiality of information

79.(1) Any information received by any member or officer or other employee of the Commission, in the exercise of the functions of such person under this Act, including information contained in any document received by that person by virtue of this Act, shall not be divulged by any such member, officer or other employee, except where the information is required to be produced for the

purpose of complying with any other enactment or the order of any court or for the purpose of prosecution for an offence.

(2) Any member or officer or other employee of the Commission who contravenes subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 2 months.

(3) Any person who receives any information or anything contained in such documents as aforesaid, knowing or having reasonable ground to believe at the time when he receives it, that it is communicated to him in contravention of this section, unless he proves that the communication to him of the information or anything contained in any document was contrary to his desire, is guilty of an offence and is liable, on summary conviction, to a fine of \$5 000 or to imprisonment for 2 months.

Appearance of counsel etc

80.(1) A person whose conduct is the subject of an inquiry under this Act or who is in any way implicated or concerned in a matter under inquiry, is entitled to be represented at the inquiry by an attorney-at-law or such other person as he chooses, and any other person who desires to be so represented may, by leave of the Commission, be represented in the manner aforesaid.

(2) A person whose conduct is the subject of an inquiry under this Act may require the Commission to summon witnesses in relation to the inquiry.

Protection from suit

81. No member or officer or other employee of the Commission shall be liable to any action or suit for any matter or thing done by him in good faith as a member or officer or other employee of the Commission or in the exercise of his functions or the course of his employment, as the case may be.

Amendment of Schedules

82. The Attorney-General may, after consultation with the Commission, by Order subject to affirmative Resolution, amend the *First* and *Second Schedules*.

Regulations

83. The Attorney-General may make Regulations generally for giving effect to this Act and, in particular, for

- (a) any matter required to be prescribed by this Act;
- (b) any matter in relation to any report, investigation or inquiry under this Act; and
- (c) any matter concerning the procedure of the Commission.

Commission may make rules

84.(1) Subject to the provisions of this Act and any regulations made hereunder, the Commission may make rules for its procedure.

(2) The Commission shall make rules outlining the circumstances in which the acquisition by a member of the House of Assembly or the Senate of an interest in a contract with the Government is prohibited.

Repeals and consequential amendments

85.(1) The *Prevention of Corruption Act, 2012* (Act 2012-31) and the *Prevention of Corruption Act, Cap. 144* are repealed.

(2) The enactments set out in column 1 of the *Third Schedule* are amended to the extent set out opposite thereto in column 2.

Commencement

86. This Act shall come into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE*(Sections 2 and 3)***INTEGRITY COMMISSION****Members of Commission**

1. The Commission shall consist of
 - (a) a chartered or certified accountant of at least 7 years' standing appointed by the Governor-General after consultation with any body which in his opinion represents chartered or certified accountants in Barbados;
 - (b) a person who holds or has held the office of judge in a superior court of record in any part of the Commonwealth, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition.
 - (c) an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the *Legal Profession Act*, Cap. 370A, appointed by the Governor-General, after consultation with the Council of the Barbados Bar Association;
 - (d) a member of the clergy, appointed by the Governor-General, after consultation with the Prime Minister and Leader of the Opposition;
 - (e) a person appointed by the Governor-General on the advice of the Prime Minister; and
 - (f) a person appointed by the Governor-General on the advice of the Leader of the Opposition.

Disqualification from membership

2. A person shall not be qualified to be appointed as a member of the Commission where the person

- (a) is a member of the House of Assembly or the Senate;
- (b) has, at any time during the period of 3 years preceding the appointment, been a public officer;
- (c) has, at any time during the period of 5 years preceding the appointment, held office in a political party; or
- (d) would otherwise be disqualified in accordance with section 38 or 44 of the *Constitution*, as the case may be, to be a member of the House of Assembly or the Senate.

Tenure of office

3. All members of the Commission shall be appointed by instrument in writing and, subject to paragraphs 2, 5 and 6, shall hold office for a period of 3 years and be eligible for re-appointment.

Appointment of Chairman

4.(1) The Governor-General shall, acting in his discretion, appoint a member to be Chairman of the Commission.

(2) The Chairman shall preside at all meetings of the Commission at which he is present, and in the case of the absence of the Chairman from any meeting, the members present and forming a quorum shall elect one among them to preside at the meeting.

Vacancy in membership of Commission

- 5.(1) The office of a member of the Commission shall become vacant
- (a) at the expiration of the term specified in the member's instrument of appointment;
 - (b) where he notifies the Governor-General by writing under his hand of his intention to resign his office and the resignation shall take effect when the letter of resignation is received by the Governor-General;
 - (c) on the death, retirement or removal of a member; or
 - (d) on the absence of a member from 3 consecutive meetings of the Commission, unless that absence is approved by the Governor-General.
- (2) Where any vacancy occurs in the membership of the Commission, the vacancy shall be filled by the appointment of another person from the categories of persons in paragraph 1.

Removal of member

- 6.(1) A member of the Commission may be removed from office by the Governor-General for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour and shall not be removed except in accordance with this paragraph.
- (2) A member shall be removed from office by the Governor-General where the question of his removal is referred to a tribunal appointed under sub-paragraph (3) and the tribunal recommends to the Governor-General that the member ought to be removed for inability to discharge the functions of his office or for misbehaviour.
- (3) Where the Governor-General, after consultation with the Prime Minister and Leader of the Opposition, considers that the question of removing a member

ought to be investigated, the Governor-General shall appoint a tribunal which shall consist of

- (a) a judge of the Supreme Court;
- (b) an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the *Legal Profession Act*, Cap. 370A; and
- (c) one other person of high integrity and appropriate qualifications,

to inquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed.

(4) The tribunal shall give the member an opportunity to show cause why he should not be removed.

(5) Where the question of removing a member is referred to a tribunal, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the member from the exercise of the functions of his office.

(6) A suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect where the tribunal recommends to the Governor-General that the member should not be removed.

Proceedings and meetings

7.(1) The Commission shall meet at such times as may be expedient for the Commission to carry out its functions.

(2) A quorum of the Commission shall be four.

(3) The proceedings of the Commission shall not be affected by a vacancy among its members or by a defect in the appointment of a member.

(4) The Governor-General may in writing request the Commission to meet at such times as he thinks fit.

Oath

8. A member of the Commission shall, before assuming the functions of his office, make and subscribe an oath of office and an oath of secrecy such form as may be prescribed.

Interest in matter or party to proceedings before Commission

9.(1) Where a member of the Commission is interested in a matter before the Commission or in a person who is a party to proceedings before the Commission, the member so interested shall disclose the nature of his interest to the Commission and shall not participate in its sittings in relation to the matter or person.

(2) Where, in the opinion of the Governor-General or of the Commission, the member is interested in a matter before the Commission or in a person who is party to proceedings before the Commission, the Governor-General or the Commission, as the case may be, shall direct the member not to participate in the sittings of the Commission in relation to the matter or person.

Secretary to the Commission

10.(1) There shall be a Secretary to the Commission.

(2) The Secretary shall

- (a) attend the meetings of the Commission;
- (b) record the proceedings of the Commission and keep the minutes of each meeting in proper form; and
- (c) generally perform such duties connected with the work of the Commission as the Commission may require.

Publication in the *Official Gazette*

11. The appointment, resignation and revocation of appointment or death of a member of the Commission shall be published in the *Official Gazette*.

SECOND SCHEDULE

(Section 2)

SPECIFIED PERSONS IN PUBLIC LIFE

1. Members of the House of Assembly and the Senate
2. Members of Cabinet
3. Permanent Secretaries and Officers of Related Grades
4. Heads of Departments within the Public Service
5. Chairpersons of Boards, Commissions, Corporations or other Entities established by statute
6. Chief Executive Officers, Managers or Executive Heads of Boards, Commissions, Corporations or other Entities established by statute
7. Magistrates
8. Members and staff members of the Commission

THIRD SCHEDULE

(Section 85)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Criminal Law (Arrestable Offences) Act, Cap. 125A</i>	In section 2, in the definition of “arrestable offence”, delete paragraph (a)(v) and substitute the following: “(v) an offence under the <i>Integrity in Public Life Act, 2018</i> (Act No. of 2018);”.
2. <i>Proceeds of Crime Act, Cap. 143</i>	In the Schedule, delete paragraph (y) and substitute the following: “(y) sections 11, 18, 35, 36, 43, 47, 54, 57, 59, 61, 66, 76 and 79 of the <i>Integrity in Public Life Act, 2018</i> (Act No. of 2018);”.
3. <i>Financial Management and Audit (Financial) Rules, 2011 (S.I. No. 54 of 2011)</i>	In rule 225(1)(f)(i), delete the words “Prevention of Corruption Act” and substitute the words “ <i>Integrity in Public Life Act, 2018</i> (Act No. of 2018)”.

Read three times and passed the House of Assembly this
day of _____, 2018.

Speaker

Read three times and passed the Senate this _____ day of
, 2018.

President

SUBMISSIONS

C.



Solving Problems that are Hindering Barbados' Development.

Tel: (246) 232-9783 • E-mail: NextParty246@gmail.com • Web: SolutionsBarbados.com

14th August 2018

Clerk of Parliament
Parliament Buildings
Heroes Square
BRIDGETOWN

Attention: Clerk of Parliament

Re: Integrity in Public Life Bill

Dear Sir:

My perspective of the Integrity in Public Life bill is informed from my unique experiences since entering this political arena approximately three years ago. My situation is different from other politicians because I am outside of the BLP/DLP protective umbrella, and am the 'tip-of-the-spear' protecting all Solutions Barbados candidates from harm to their reputations. From this perspective, the weaknesses of this Bill are glaring.

In my opinion, the Integrity in Public Life bill appears to facilitate Barbados being turned into an unaccountable police state. I know that this seems ludicrous. However, it seems to be the most likely explanation for the inclusion of loopholes for the guilty and the removal of established protections for the innocent. I will list a few of them below.

Section 6.2: The Commission shall be treated as a law enforcement agency. However, it appears to have more powers than the police and judiciary, which is concerning if it is used in a politically partisan manner. Whoever controls the Commission can clear their guilty friends and punish their innocent perceived enemies with impunity.

Section 9.1: The Commission employs an Investigative Officer, who must not be a member of the Police force. According to Section 15.1, he can arrest persons, deliver them to the custody of the Police, and seize and retain any documents or materials that he alone thinks is relevant.

A person can make a complaint about the Investigative Officer's behaviour, and the complaint is directed to a 3-member panel appointed by the Governor General (Section 20).

Two members of this panel are persons who were previously politically appointed to their positions.

The panel can dismiss the complaint, regardless of the evidence, if they think that it was made in bad faith (Section 21 a). They can also dismiss it if they think that an investigation or further investigation is not necessary or reasonably practicable (Section 21 b). These can easily be used as loopholes to facilitate the politically partisan behaviour of a rogue Investigative Officer.

Section 10.1: The Commission has the powers of a judge of the Supreme Court to summon and examine witnesses and demand documents. In Section 10.3, the Commission is not restrained by the rules of the Evidence Act which were designed to protect all of us. The Commission can take into account opinion evidence, which the Evidence Act restricts.

While it is reasonable that opinion evidence may be relied upon during the investigation phase of the process, the Bill should clearly state that the Commission must not rely on any “opinion evidence” to determine someone's guilt.

Section 11.1 b): This section appears to entitle a summoned person to be compensated for expenses, as if he had been summoned to attend the Supreme Court on a criminal trial. However, the person can only be paid whenever and however the Minister of Finance decides. The Commission can also decide to simply not allow the summoned person to claim any expenses.

The common trend when persecuting political competitors is to attempt to bankrupt them, which can automatically disqualify them from being candidates. To have a person continually attend hearings for weeks can accomplish this aim, which is why the Evidence Act entitles innocent summoned persons to be reimbursed for both their time and expenses. This is natural justice since a person cannot refuse to appear when summoned, without consequences.

The Evidence Act appears to be carefully designed to protect innocent persons from political abuse. Why is the Commission being directed to deviate from this established practise of natural justice?

Section 11.4 d): If a person insults a member of the Commission, then he is liable to be fined \$10,000 and imprisoned for 6 months. A person who is subjected to obvious unfair treatment for as long as a politically compromised Commission decides, knowing that he will not be reimbursed for his time, is vulnerable to objecting improperly.

Section 11.5 a): A person shall not be compelled to incriminate himself. However, according to Section 11.4, he is liable to be fined \$10,000 and imprisoned for 6 months, if he does not turn over documents. It should be clarified whether he can be compelled to turn over documents that can incriminate others, who in-turn will likely incriminate him.

Section 14 d): The Commissioner of Police must provide constables to do whatever the Commission directs. This can provide a politically compromised Commission and Inspector with an appearance of legitimacy.

Section 32.5: Once a person has retired from public life for 2 years, then he cannot be investigated. This is a glaring loophole for persons who have already retired. Also, persons can easily walk over this low hurdle by directing that bribes be paid to them 2 years after their retirement.

Section 33.1: If a member of the Commission is to be investigated, then the Governor General, after consulting with the Prime Minister and Leader of the Opposition, shall appoint a single person tribunal to investigate. If the person is declared to be innocent, then their expenses must be paid from the consolidated fund within 3 months (Section 33.5 b). Why must the tribunal only comprise one politically appointed person, and why the double standard regarding compensation?

Section 40.2: Where a Member of Parliament or the Senate violates the Act by acquiring a prohibited interest, then the Commission shall not issue a determination if the Politician or Senator confesses, and the Commission believes that if they kept the prohibited interest, it will not affect the person meeting his obligations. This is another glaring loophole for a politically controlled Commission.

Section 45.7 a) ii: If a person receives a substantial (over \$1,000) gift, then they can keep it if the Commission decides that the gift was not intended to provide favourable treatment. What likely reason would someone give a substantial gift if not for in exchange for favourable treatment?

Section 48: No prosecutions of persons in relation to restricted gifts shall be pursued after 5 years of a person's retirement from public life. This allows the guilty to go free with no consequences whatsoever; they simply need to be patient.

Section 56 a): A person charged with corruption can be found innocent if he can claim that he had no knowledge of the circumstances giving rise to the act of corruption. This loophole is a weak but allowable defence in this bill.

Part IX: The section for whistle-blowers is extremely weak to the point of being almost ineffective. There is no confidential reporting and no financial incentive for whistle-blowers - the proven main ingredients of an effective whistle blower program.

In the US, their highly successful Securities Exchange Commission's program allows whistle-blowers to report anonymously, and rewards them with up to 30% of the amounts recovered. Why are we designing an almost ineffective system when there are highly effective systems available for us to use?

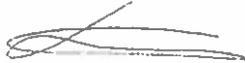
First Schedule: The Commission shall comprise 4 political appointees, plus one lawyer and one clergyman. This has the appearance of a political commission. The main reasons for

political commissions are to protect the politically favoured from scrutiny and persecute those not politically favoured.

A less partisan Commission and disciplinary panel should have a majority of persons who were never politically appointed, and who treasure their professional reputations too much to be corruptible or intimidated. Fellows of Chartered professional institutions would have spent an adequate amount of time complying with their institution's code of ethics, so they should be less likely to be corruptible.

In conclusion, the Integrity in Public Life bill is written in a manner that it can easily be misused. That is not how our laws should be written. There are no meaningful protections for the innocent to avoid political persecution, and glaring loopholes to protect those with provable evidence of corruption and bribery.

Yours respectfully,
SOLUTIONS BARBADOS



Grenville Phillips II
President



Solving Problems that are Hindering Barbados' Development.

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5th September 2018

Clerk of Parliament
Parliament Buildings
Heroes Square
BRIDGETOWN

Attention: Clerk of Parliament

Re: Integrity in Public Life Bill

Dear Sir:

Thank you for the opportunity to appear before the joint committee on Friday 7th September 2018. It is a mark of political maturity to allow the public to comment on bills that may affect them, before they are passed into law.

It is important that legislation does what is intended, and prevents what is not intended, but which may be inadvertently allowed. To this end, the Integrity in Public Life bill was scrutinised to determine how vulnerable it was to having:

- a) the Commission, the Investigative Officer and/or Tribunals being politicised;
- b) guilty persons being protected and going unpunished;
- c) innocent persons being persecuted;
- d) whistle-blowers being discouraged from reporting evidence of corruption; and
- e) persons being discouraged from serving in public life.

The following recommendations are made with a view to eliminating or reducing these vulnerabilities. For your convenience, both the Section references and page numbers are provided.

Section 4.1a (Page 14): The Commission should record gifts not only forward as stated, but forwarded and received by persons in public life. Therefore, it should read "*gifts forwarded and received by persons in public life*".

Section 4.2 (Page 15): The Commission should, at all times, be independent and not be under the direction and control of any person or political party. Therefore, "*the Commission may*

not be subject to the direction and control" should read "*the Commission shall not be subject to the direction and control*".

Section 8.2 (Page 17): Since the consultants hired by the Commission are unlikely to be selected through public tender, a specified remuneration cap should be specified to prevent overcharging, which has happened in the past. Where there is no public tendering, the rates paid to consultants should be the same as those paid to public workers in the schedule of Personal Emoluments.

Section 9.1 (Page 17): Since the scope of the Investigative Officer's authority is very broad and deep, and he/she must rely on his/her discretion, it is important that the qualifications of such a person be specified. To reduce the risk of abuse by another administration, it is recommended that he/she be a chartered professional at the grade of Fellow (expert level).

Fellows of professional bodies are normally invested in their professions and have complied with their Code of ethics for over a decade. Therefore, they are more likely to act in a fair, independent and unbiased manner. There is precedent for this. The government already specifies posts that require qualifications to the grade of Fellow of internationally recognised professional bodies (for example, the post of Actuary in the Exempt Insurance Act - CAP 308A).

Section 10.3 (Page 18): The Commission is not restrained by the rules of the Evidence Act which were designed to protect all of us. While it is reasonable that opinion evidence may be relied upon during the investigation phase of the process, the Bill should state that the Commission must not rely on any "*opinion evidence*" to determine someone's guilt.

Section 11.1 b (Page 19): This section appears to entitle a summoned person to be compensated for expenses, as if he had been summoned to attend the Supreme Court on a criminal trial. However, the person can only be paid whenever and however the Minister of Finance decides (Section 11.2). The Commission can also decide to simply not allow the summoned person to claim any expenses whatsoever (Section 11.3).

The common trend when persecuting political competitors is to attempt to bankrupt them, which can automatically disqualify them from being candidates. To have a person continually attend hearings for weeks can accomplish this aim, which is why the Evidence Act entitles innocent summoned persons to be reimbursed for both their **time and expenses**. This is natural justice since a person cannot refuse to appear when summoned, without consequences.

The Evidence Act appears to be carefully designed to protect innocent persons from political abuse. Section 11.1 b should entitle a person to time and expenses, to be paid within 3 months from the Consolidated Fund, as granted to the Commission's staff in Section 33.5 b. Therefore Sections 11.2 and 11.3 should be omitted from the bill.

Section 11.4 e (Page 20): If a person insults a member of the Commission, then he is liable to be fined \$10,000 and imprisoned for 6 months. A person who is subjected to obvious unfair

treatment for as long as a politically compromised Commission decides, knowing that he will not be reimbursed for his time, is vulnerable to objecting improperly.

Further, a politicised commission can entrap and frustrate an innocent person. The penalty for insulting a member should be reduced to \$500, which should be enough to bring the offender to his/her senses, which should be the Commission's aim.

Section 11.5 a (Page 20): A person shall not be compelled to incriminate himself. However, according to Section 11.4, he is liable to be fined \$10,000 and imprisoned for 6 months, if he does not turn over documents. It should be clarified whether he can be compelled to turn over documents that can incriminate others, who in-turn will likely incriminate him.

Also, what prevents a person from answering every question with the sentence: "I cannot answer that question because it may incriminate me"?

Section 12 a (Page 20): While the Commission **may** require matters to be verified and witnesses to be examined under oath for preliminary inquiries, the Commission **must** do these things when determining someone's guilt. The Bill should specify this,

Section 14 d (Page 21): The Commissioner of Police must provide constables to do whatever the Commission directs. To give guidance to inexperienced constables who may be ordered to do something unlawful, and think that they can simply give the excuse that they were just following orders, it should read: "*perform such lawful duties as the Commission shall direct*".

Section 12.2 (Page 21): "*An investigative officer shall, after making an arrest, deliver the person to the custody of a member of the Police Force*". However, to reduce the risk of rendition, it should read "*An investigative officer shall, immediately after making an arrest, deliver the person to the custody of a member of the Police Force*".

Section 17.3 (Page 24): To address the seizure of computers and other information critical to the functioning of an accused person's legitimate business, the accused person should be allowed to retain copies, made under the supervision of the Investigative Officer. Therefore, a new item should be added (Section 17.4) to suggest the following.

"Where the material to be seized is, in the opinion of the owner, critical to the operation of his business, he shall be allowed to retain copies, made under the supervision of the Investigative Officer, before it is seized."

Section 19.2 (Page 25): To reduce the risk of unnecessary delays, a time limit should be specified for which the Commission must refer a complaint to a panel. We suggest within one month.

Section 21.1 a (Page 26): Trivial, frivolous, vexatious and bad-faith are subjective assessments that should not be provided to the panel as an excuse to avoid pursuing an investigation. A person complaining about seized documents may seem trivial to a lay panel,

but not to a Contractor whose critical documents were seized, and is liable for liquidated damages of \$50,000 per week on a construction project.

Section 21.1 b (Page 26): A lay panel may determine that an investigation may be deemed not necessary, since the seized documents may have been returned. But what about the quantifiable losses due to the Contractor whose documents were seized, and whose contract was terminated as a consequence. If members of the panel are not knowledgeable in the field being disputed, then the bar should be set low for an investigation to proceed.

Section 32.5 (Page 35): Once a person has retired from public life for 2 years, then he cannot be investigated. This is a glaring loophole for persons who have already retired. Also, persons can easily walk over this low hurdle by directing that bribes be paid to them 2 years after their retirement.

It can take over a decade for evidence of corruption to be uncovered by responsible junior staff. If a limit is to be specified, then the minimum should be the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 33.1 (Page 35): The Governor General should appoint a minimum of 2 persons to the tribunal, rather than the stated one person, and they should be Fellows of professional institutions for the reasons previously stated in Section 9.1.

Section 33.3 (Page 35): If a limit is to be specified on when an inquiry cannot commence, then the minimum should be the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 33.5 b (Page 36): The innocent person should be reimbursed for both time and expenses, not just expenses.

Section 35.2 (Page 37): The \$20,000 fine is too easily affordable for those who intend to pay someone to reveal declaration records. It should be at least \$200,000.

Section 36.3 (Page 38): What happens if a person simply refuses to pay the fine? Perhaps there should be an imprisonment provision for such blatant refusals.

Section 43.1 (Page 42): The \$15,000 fine and one year imprisonment is too lenient to be an effective deterrent. With such affordable consequences, a person can take the chance of not disclosing information, knowing that he can afford the fine. A minimum fine of \$150,000 and/or a 3-year prison sentence is an effective deterrent.

Section 45.4 (Page 43): Since relatives and friends can also offer bribes, this clause (Section 54.4) should be omitted. Every substantial gift should be reported like in Section 46.1.

Section 48 (Page 45): This loophole for persons who have already retired should be closed by specifying a period of the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 54 (Page 49): There is normally some sort of collusion with corruption. Therefore, every participant should benefit from the same deterrent, by facing the same penalty as accessories as shown below.

Section 54.1 a (Page 49): The fine should be a minimum of \$500,000.

Section 54.1 b (Page 49): The fine should be a minimum of \$500,000.

Section 54.2 a (Page 49): The fine should be a minimum of \$500,000.

Section 54.2 b (Page 49): The fine should be a minimum of \$500,000.

Section 54.3 a (Page 49): The fine should be a minimum of \$500,000.

Section 54.3 b (Page 50): The fine should be a minimum of \$500,000.

Section 56 a (Page 50): This loophole allows a person charged with corruption to be found innocent if he can claim that he had no knowledge of the circumstances giving rise to the act of corruption. Therefore, a person can simply reverse-engineer the corrupt activity to be able to claim that he had no knowledge, not of the corrupt act, but the circumstances giving rise to the act.

This clause places too much uncertainty and doubt before the adjudicator. Therefore, it should not be a specified defence to bind the adjudicator.

Section 59 (Page 51): “*Maliciously*” is too subjective an offence since anything can be misinterpreted as malicious. A better description of an offence that can be better measured is “**knowingly**”. It was used in similar circumstances in Section 36.1 e.

Section 60.1 (Page 52): To reduce the risk of whistle-blower victimization, especially when there is no monetary reward, anonymous reporting should be allowed.

It should be noted that anonymous reporting and financial incentives are proven main ingredients of an effective whistle blower program, which the Bill does not contain. In the US, their highly successful Securities Exchange Commission’s program allows whistle-blowers to report anonymously, and rewards them with up to 30% of the amounts recovered. Anonymous reporting and financial incentives should be a part of the whistle-blower program.

Section 63 (Page 53): To prevent unnecessary delays, a 3-month time limit for the prosecutor to act should be specified.

Section 65.4 (Page 54): This loophole for persons who have already retired should be closed by specifying a period of the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 76.1 (Page 61): The affordable \$15,000 is not an effective deterrent for this offense. A minimum \$150,000 fine is an effective deterrent.

Section 77.2 (Page 62): This section contains a grammatical error. It should read "*contract of employment includes an agreement*".

Section 79.2 (Page 63): The penalty should be the same as recommended for Section 35.2, namely a \$200,000 fine and/or 3 years imprisonment.

Section 79.3 (Page 63): Both givers and receivers of confidential information should face the same deterrent sentence of a \$200,000 fine and/or 3 years imprisonment.

Section 81 (Page 63): The person should be liable for the consequences of actions done in bad-faith, and the bill should specify that. For example, if the Investigative Officer would not allow an accused person to retain copies of his commercial documents, resulting in quantifiable damage to his business, then the Investigative Officer should be liable.

First Schedule (Page 65)

Section 1 a (Page 65): The chartered accountant commission member should be at the grade of Fellow, for the reasons explained in Section 9.1.

Section 1 b (Page 65): To reduce the vulnerability of selecting someone who is not sufficiently invested in their profession to act in a fair and independent manner, the clergyman commission member should have a minimum of 10 years of pastoral responsibility. Therefore; he/she would most likely have ministered to persons who support both established parties.

To further reduce the vulnerability of a partisan appointment, the person should be recommended by the Barbados Evangelical Association or a similar representative body, that would not want their reputation tarnished by recommending a known partisan priest.

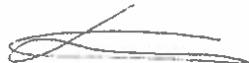
Section 1 e & f (Page 65): To reduce the risk of unfair and biased decisions, the Governor General should appoint a Chartered professional at the grade of Fellow for the reasons explained in Section 9.1.

Section 2b (Page 66): Any person appointed by a Minister should be disqualified from membership of the Commission, since they are likely to remain loyal to the one who appointed them.

Section 2c (Page 66): Any person who was a Minister should be disqualified from membership of the Commission, since there is the obvious appearance of bias and politicization of the Commission.

We trust that meaningful consideration will be given to our recommendations, and where there is disagreement, discussion will be allowed to facilitate possible convergence of views.

Yours respectfully,
SOLUTIONS BARBADOS



Grenville Phillips II
President

C2

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Email: posborne@caribsurf.com

21 August 2018

The Clerk of Parliament
Parliament Buildings
BRIDGETOWN

Dear Sir,

Submission to the Joint Select Committee on the Integrity in Public Life Bill, 2018

My submission to the Joint Select Committee on the Integrity in Public Life Bill is set out in the following 7 pages. I have made recommendations on selected paragraphs in the bill which are referenced in the table.

In general, my recommendations are made to enhance the efficacy of the proposed legislation and to incorporate good governance practices.

I confirm that I would be willing to answer any queries before the Committee, but I have no desire to make any separate oral presentation to the Committee.

Yours faithfully,
Philip Osborne

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
10 & 11	2.	The definition of "document" should include a tweet, a facebook post, a WhatsApp message and the like, any data in "The Cloud" and anything which is capable of reproduction.	Include all modern means of data for the avoidance of doubt
12	2.	The definition of "public body" should include all corporate entities which are controlled by Government, or by a Minister of Government acting in that capacity. Control means having ownership rights or voting rights to control at least "50% plus one" shares of the shareholder rights of the corporate entity.	All entities controlled by government must be captured in this definition.
16	7(2)	The legislation should specify (i) a calendar date as of which the annual accounts are to be prepared and (ii) a period (I suggest four months) after the annual accounting date which the audit report shall be issued. The Commission should also be obligated to advise the Prime Minister if there is any delay in the issue of the audit report and also advise what steps are being taken to address the breach.	There is no reason why these dates should not be specified in the legislation. Not to do so only invites delay until the Commission is constituted.
16	7(4)	The legislation should specify the calendar date when these reports are to be laid in parliament. I suggest within two months of the due date for the audit report.	Timeliness of reporting to the Prime Minister and to Parliament should be the standard.
16	7	The Commission should be obligated to prepare an annual budget of expenditure and equipment requirements for the government's coming financial year, the budget to be submitted by 31 st January.	

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
17	8(1)(a)	<p>The legislation should specify minimum staff requirements for the Commission to function effectively. I suggest two officers be named in the legislation:</p> <p>(i) An Executive Officer, who is responsible for the general administration of the commission, including general administration, security and maintenance of all documents in the Commission's domain, control over all equipment, mobile devices and storage mechanisms, the administration of summons issued by the Commission.</p> <p>(ii) A Financial Controller who is responsible for budgeting, accounting, custody of funds and the receipt and disbursement of funds.</p>	<p>The confusion which accompanied the operational establishment of the Employment Rights Tribunal must be avoided at all costs. A proper management structure will ensure that the Commission can carry out its functions efficiently. As the Commission's activities may not be a full-time activity, I would expect the Executive Officer and Financial Controller may hold related responsibilities in a Department or Ministry assigned with the responsibility for the Commission.</p>
17	8(1)(b)	<p>For the avoidance of doubt, this should be expanded to include persons who have any technical skill or know-how.</p>	<p>I am contemplating the inclusion of persons who are proficient in the use technology even if they are not recognised professionals.</p>
17	8(2) & 8(4)	<p>I think the employment terms, pension, gratuity and allowances should be consistent with the public service. Departures from these norms should not be permitted.</p>	
17	9(2)	<p>I suggest inclusion of the provision to allow the investigative officer to retain professional and technical service providers to assist the investigative officer in carrying out investigations.</p>	<p>The Commission will have full flexibility to access persons with specialist skills if such skills can be of assistance in the conduct of investigations.</p>

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
19	11(1)	The Commission should be empowered to allow witnesses to attend via video conference facilities.	It is vital that the Commission can access witnesses who do not reside in Barbados, in a cost effective and timely manner.
19	11(2)	The Commission should be empowered to reimburse witness expenses.	It seems very inefficient to require another section to the public service to handle this very straight forward activity.
23	17(1)	Re-word: 'There is material on premises <u>or accessible</u> specified in the application...'. <u>accessible</u>	This should include the retrieval of information from computer servers and the like, which may not have a physical presence.
25	18	Replace \$5,000 with '\$50,000 to \$100,000'.	
25	19(2) & 20	Remove the inconsistency. The Commission <u>shall</u> refer the complaint to a panel, and the Governor-General <u>may</u> appoint a panel.	Natural justice requires an effective mechanism. You either have an appointed complaints panel or another means is provided for the complaint to be addressed.
29	25(1) & 46(1)	The Governor-General should be given the power to delegate her functions with respect to members and staff of the Commission under Part IV - Declarations and Part VI – Gifts, to a retired public official who was previously appointed to the position of judge, magistrate, Commissioner of Police, Director of Public Prosecutions, Solicitor-General or Cabinet Secretary. The delegated person is to be remunerated by the Commission.	It is preferable that the Head of State should not be involved in these matters directly.
35	32(5)	Change 2 years to 5 years.	This period should be extended as the discovery of pertinent facts may take some time to emerge. 5 years is also consistent with 33(3).

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
37	35(2)	Replace '\$20,000' with '\$100,000 to \$250,000' and replace three years with 'one to three years'.	Generally, I think the sentencing judge or magistrate should be given some flexibility to address the circumstances of each offence.
37	36(1)	Replace '\$15,000' with '\$100,000 to \$250,000' and replace one year with 'one to three years'.	
39	38(1)(i)	Re-word 'any other substantial interest, <u>including all interests exceeding \$20,000 in value</u> , whether of a pecuniary nature or not,'. Also, delete ' <u>material</u> '.	Terms such as 'substantial' and 'material' may be interpreted differently and should be avoided. \$20,000 is suggested as a guideline for what may be substantial or material.
42	43(1)	Replace '\$15,000' with '\$100,000 to \$250,000' and replace one year with 'one to to three years'.	
43	45(4)	Delete this section.	I think receipt of such gifts should be reported. However, the Commission should deem these gifts as personal unless the circumstances appear unusual or suspicious.
44	45(7)(b)	If the gift was a monetary gift or financial asset, the gift should be delivered to the Accountant General / Treasury Department. If the gift is a tangible or intangible asset, the custody of the gift should be delivered to the Cabinet Office. In all instances, the Cabinet should decide on the disposal of the gift within six months of the Accountant General / Treasury Department or Cabinet Office taking custody of the asset, and Cabinet's decision published in the Official Gazette.	

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
46	51 (a), (b) (e), (g), (i)	If the other person or third party receiving or attempting to receive the benefit is aware or is wilfully ignorant of the fact that he is benefitting from an act of corruption, then that other person or third party should also be guilty of an act of corruption.	
46	51(c)	Change 'pubic' to 'public'.	
47	51 (j), (k)	Non-sexual improper conduct should also be included in these definitions.	
47, 48	52	If the person defined as 'another person' is aware or is wilfully ignorant of the fact that he is benefitting from an act of corruption, then that other person should also be guilty of an act of corruption.	
48	53(1)	I see no reason to limit this section to citizens and residents of Barbados. It should include persons who are in Barbados at the time of the solicitation or act.	As a jurisdiction for international business, Barbados should maintain a reputation for probity and have a deterrent to any person on the island who commits an act of corruption.
48	53(1) & (2)	I see no reason to limit the scope of this section to international business. It should be broadened to include all business activity.	
49, 50	54 (1), (2) & (3)	The penalties should be: Conviction – Fine of up \$250,000 to \$750,000 and/or 3 to 5 years in prison Summary conviction – Fine of \$100,000 to \$250,000 and/or 1 to 2 years in prison	
51	59	The penalties should be: Conviction – Fine of \$100,000 to \$250,000 and/or 1 to 3 years in prison Summary conviction – Fine of up \$50,000 to \$100,000 and/or 1 to 2 years in prison	

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
52	61(2)	Replace \$5,000 with '\$50,000 to \$100,000'.	
53	62(1)	<p>The Section should be re-worded as follows:</p> <p>"The Commission, on receipt of a complaint and after examination of the complaint, <u>shall either</u></p> <p>(a) , <u>or</u> (b), and (c)..... .</p>	<p>The legislation should be clear that the Commission must deal with the complaint. The present wording of the first sentence that the Commission <u>may</u> do (a), (b), (c) leaves it open for the Commission to do nothing.</p>
54	65(1) & (2)	<p>The legislation should include:</p> <p>(1) direction as to how the code is to be distributed and made available not only to Persons in Public Life but to all staff of public bodies generally, and (b) requirement for individual annual attestation of compliance with the code to the Commission by Persons in Public Life, including a monetary penalty for non-attestation within the required timeline. Attestation should include provision for disclosure of any non-compliance with the code and in such an instance, the Commission will conduct a section 62 examination of the non-compliance.</p>	
54	65(4)	Change 2 years to 5 years.	<p>This period should be extended as the discovery of pertinent facts may take some time to emerge. 5 years is also consistent with 33(3).</p>
55	66(2)	Replace \$15,000 with '\$100,000 to \$250,000' and replace one year with 'one to three years'.	

Page #	Section Reference	Recommendations on the Bill's Provisions	Comment
61	76(1)	Replace \$15,000 with '\$100,000 to \$250,000' and replace two years with 'one to three years'.	
65	1.	I recommend an additional appointee so that the commission has a total of 7 persons.	To avoid a voting deadlock, an odd number of commission members is desirable.
66	3	I recommend 4-year terms for each member with the proviso that 3 of the first set of members of the commission be appointed for a 2-year period.	To preserve the benefits of continuity of members serving on the commission, the terms of all members should not expire at the same time. By staggering the terms so that 3 or 4 members retire every two years, some continuity of membership is always preserved.



The Integrity Group Barbados welcomes the opportunity to comment on the Integrity in Public Life Bill, 2018 and is supportive of the government’s efforts to address issues of corruption and to bring Barbados in line with its treaty obligations. We ask that these submissions be regarded as preliminary submissions. We would welcome the opportunity to make further substantive contributions during the life of the Joint Select Committee.

Matters concerning the interpretation of the Bill Section 2

“child”- The Bill defines a child as one under the age of 18 years. At other points, it uses the word dependent child. However, the definition of child should not be limited to minor children. There is nothing to prevent the transfer of monies or assets to an adult child on behalf of any person in public life. Take for instance even an adult child at University abroad or a dependent disabled child.

“Prohibited interest” the word “Government” ought to be changed to “Public bodies” to ensure that it covers all statutory corporations established by government as “Public bodies” captures these circumstances.

Matters concerning the Functions of the Commission.

Section 4 (1) 1. The functions of the committee should also include the requirement to oversee the execution of training for members of all public bodies in the following areas: Code of Conduct, Code of Ethics, Good Governance, Anti-corruption Practices, Understanding Bribery. In addition, the collection of signed acknowledgement forms that the above training has been completed and understood. The Code of Ethics should follow best practice, emphasize key principles and that persons should avoid even the appearance of corruption.

Section 4(1) (f) and (g). The Commission ought to liaise with the Auditor General and Accountant General. This would provide administrative efficiency and prevent duplicated efforts in relations to examinations or attempts to change existing practices.

Matters concerning the Funding of the Commission

Section 7(1). The Commission is to be funded by Parliament. Consideration ought to be given to another funding model so as to avoid the functions of the Commission being stymied by lack of proper funding.

Section 7(2). The Auditor General already has an extremely wide remit and given the resources allotted to him, may not be able to effectively carry out this duty. The Commission ought to be able to choose its own Auditor to improve efficiency. That audit could be submitted to the Auditor General thereafter.

Matters concerning duty of the witness summoned.

Section 11(4). The fine is derisory and ought to be increased to reinforce the need for legal compliance and to prevent deliberate delays and obstruction.

Matters concerning Investigations

Section 15(2). Clarity must be given as to who has the responsibility of formulating the charges and prosecuting same before the Magistrate. Consideration should be given to whether the Commission itself should not be the complainant instead of the Commissioner of Police.

Matters concerning Production Orders.

Section 16(4)(b) In instances where the claim is made that material is privileged to prevent producing such material, clarity is needed as to whether that person making the claim is required to produce the material to a judge and who is responsible for making such a determination.

Matters concerning obstruction of the investigative officer

Section 18. The fine of \$5000 Bds. and punishment by incarceration of 6 months are negligible and need to be increased.

Matters concerning complaints about the conduct of an investigative officer and formal investigations of complaint

Section 19. This section appears unnecessarily complicated and burdensome as it stipulates that every complaint should go to a panel of 3 persons. If there is to be an intermediate

determination other than by the Commission, it is suggested that one person be appointed to determine if there is a matter worthy of further investigation.

Thereafter, it is suggested that the report of that person be sent on to the Commission to investigate the complaint as set out at Section 22(1).

If the Complainant does not agree with the ruling, then perhaps there is where one should consider appointing a three man review panel.

Matters concerning asset and liability declarations.

Section 21.1. The declaration of financial affairs should be an annual process to ascribe to best practice and to minimize the length of time that a corrupt transaction goes undetected. Evidence may also be difficult to accumulate after a lengthy reporting time. The necessary resources therefore ought to be provided to the Commission.

Section 25.5. The prescribed form should be designed with great care. It should include a balance sheet, income statement and cash flow statement including off balance sheet items and contingent liabilities. This should also apply to spouse and children. The Group would welcome the opportunity to have sight of any prescribed form prior to enactment of the Bill.

Section 25(5)(b). There is a need for an amendment to include declaration of income and liabilities of the spouse and children. See also Section 27(2) which speaks to spouses and children having to declare their income, assets and liabilities. Please also refer to the comment on the definition of "child" and "children" above.

Section 25.6. The certification should be completed by a qualified accountant with the authority to sign financial statements.

Section 25(7). We do not agree with this provision. The Administrators of an Estate are supposed to take charge of the estate, call in all assets, ascertain the debts of the Estate and generally be in the same position as the deceased to know the assets, income and liabilities of the estate. Also, Wills are public documents, however in Barbados there are questionable restrictions by the Registry. The consequences of any discrepancies if any are found should be provided for in the legislation.

"Specified person" is defined in the Second Schedule. It only includes Chairmen of Commissions or Corporations at this time. Further, are Customs Officers, Immigration Officers, Commissioner of Police and senior Police Officers, DPP are exempted from the list of "Specified Persons in Public Life" in the Second Schedule. Given the sensitivity of the sectors in which these officers work, they ought to be included. Chairmen of private

companies incorporated by the government or in which the government has a significant interest should also be included in the list.

Matters concerning Trust Property.

Section 26. The terms of the trusts ought to be disclosed as otherwise this provision offers an unnecessary loophole.

Matters concerning Commission's reports on declarations.

Section 32.5. The commencement of the inquiry should not be limited to 2 years given the length of time it may take to gather sufficient credible information to press charges. Corruption legislation of this magnitude is a new endeavour for Barbados and following procedure may result in time extending past the 2 years, resulting in public figures who have demitted office within the previous two years escaping accountability. Therefore, it is recommended that there should be either no limitation period or one of not less than 10 years.

Section 33.3. Recommend that 5 years be changed to 10.

Matters concerning offences and penalties in respect to declarations

Section 36- All fines in this Bill need to be upgraded and strengthened so as to be commensurate with the gravity of the offence.

Matters concerning Register of Interests.

Section 37.4. This should be removed as presents the possibility that the estate can be a beneficiary of illegal actions. Prior to transfer to estate, an inquiry should be performed if there are sufficient grounds for suspicion of corrupt activity.

There needs to be freezing orders and other such provisions before distribution if there is any reason for disquiet. There should be a Certificate from the Commission prior to any distribution of the Estate.

Matters concerning offences and penalties in respect of statements of registrable interests

Section 43 (1). The fine is much too small and should equate to 6 months emoluments of the person in question.

Matters concerning gifts.

Section 45 (1). This should also include a clause to prevent gifts of an annual cumulative value of \$1,000 BBD from any one benefactor. This will frustrate attempts by a potential briber to present multiple gifts that accumulate in value above the \$1,000 BBD threshold. This should be included in the declaration to the Commission and included in their review. Additionally, gifts should not be accepted if the public official is conducting business negotiations with the benefactor.

Section 45(4) If one gets a gift worth more than \$1,000.00 BBD from a relative of friend, why should it not be reported with the statement that it is a personal gift. Section 45(4) is an unnecessary loophole which it is submitted defeats the whole purpose of the section.

Matters concerning Offences and penalties in respect of acts of corruption

Section 54. Given the potential financial benefits of corruption, the proposed maximum of \$500,000 BBD is insufficient. It is highly recommended for corrupt practices that exceed the maximum penalty that there should be mandatory jail time of not less than 3 years. It is also recommended that a fine multiplier approach to the benefit obtained through corrupt practices be considered. The provision in Section 57 ought to be replicated here as it relates to how the fine should be calculated.

Matters concerning the presumption of corruption

Section 55. This section has replaced Section 7 of the Prevention of Corruption Act, 1929 but the old formulation is stronger and we strongly suggest that apart from the removal of the words “Crown”, Government Department”. The word “benefit” ought to be included after “gift”. When one refers to criminal offences clarity is required as to reasons why the criminal offence should be should be disproved based on “on a balance of probabilities”. The words “Crown or any Government Department” ought to be substituted with the words “public body” the definition of which covers all of the relevant bodies. Further, the formulation in Section 7 of the Prevention of Corruption Act is preferable. The difference is substantial in the old Section 7. It must be noted that Section 7 covers receipt of monies etc. from “persons holding a contract” in addition to “someone seeking to obtain a contract”, whereas Section 55 requires the need to substantiate that the person who paid the money was “seeking to obtain a contract”.

Matters concerning Possession of unaccounted property or pecuniary resource

Section 57. This section should also apply to estates of specified persons who are deceased in instances where the estate holds unaccounted property or pecuniary resources.

Matters concerning Complaint to Commission regarding contravention of Act

Section 60 (2). Electronic communication ought to be considered as an option for submitting complaints to encourage reporting.

Duty of public officials to report contravention of Act

Section 61 (2). The punishments specified are derisory and therefore likely to be ineffective.

Cases of public allegation

Section 64- There should be no requirement for a complaint from a member of the public. The Commission itself should launch an investigation, but even if a member of the public is to be required to file a complaint with the Commission, why is it necessary for this to be done within such a short time period?

Matters concerning a code of conduct

Section 65. Considerations should be given to establishing a legal code of conduct within the bill. The Prevention of Corruption Act 2012 included a Code of Conduct within its provisions. The Public Service also has a Code of Conduct.

Matters concerning whistle-blowing protections.

The legislation only speaks to public officials who are whistle-blowers. The Legislation needs to offer whistle blower protection to persons other than public officials, if the public is to join in the crusade to root out corruption.

This section speaks about "Employers". Should this not be defined? To whom should a public employee make disclosures under this provision?

Section 68 (2) Some concerns arise relating to whether protections exist for persons who disclose suspected cases of corruption and instances where persons are unsure as to whether the action they wish to report is corrupt. Such protections are not explicitly stated.

Section 68.3(b) needs to be excised from the Bill. Clarification is needed as to why it was included as the intent is not evident and frankly appears to defeat the purpose of the main thrust of the section.

Section 69-72. Considerations ought to be given to protected disclosure to the media. Further, additional compliance officers and agents ought to be considered. Inclusions such as anonymous hotlines, website portals and other avenues should also be considered.

Section 76. The fines for such actions have been reduced from \$150, 000.00 BBD to \$15,000.00 BBD and ought to be increased. This section does not address matters such as where the burden of proof should lie in instances where an employee faced detriment due to disclosure. It should be legislated that the legal presumption ought to be that the cause for repercussions were a result of whistle-blowing and therefore the burden of proof should be on the employer. It should also be stated what procedural recourse is available to the employee such as the Law courts, Employment Rights Tribunal or other options. In such cases, re-instatement of the employee should be the prescribed remedy.

This section also fails to address instances where 3rd parties may seek to victimize a whistle-blower on the behalf of the employer.

The whistle-blowing provisions do not explicitly speak to matters of confidentiality/anonymity for whistle-blowers. Whistle-blower's identities and details that can expose them ought to be protected in reports, investigations and otherwise. Fines and compensation to victims should also be included in case of breaches. Further, matters of compensation and rewards for the risk of disclosure and an incentive for disclosure are also absent.

Immunity provisions are also excluded for those who may have been involved in corrupt activities but are willing to come forward. Such provisions are necessary to increase the effectiveness of the legislation. The legislation does not explicitly speak to the obligation to follow up on employee's disclosure and penalties for the failure to do so. This is vital as holding persons accountable would contribute to confidence on the part of persons making disclosure.

Matters of witness personal protection for whistle-blowers and their family in high profile cases should also be considered.

The First Schedule

1. Since an objective of the commission is to investigate potential acts of corruption in the public sector, impartiality and independence from this sector is necessary to effectively undertake this mandate.
2. We suggest that the member of the clergy be appointed by the Governor General after consultation with the Barbados Christian Council since both the Prime Minister and the opposition leader are considered to be partisan agents.
3. Wider consultation on the persons to be appointed should be considered. For instance, should Members be appointed by the governor general based on nominations from bodies representative of academia, civil society, the private sector, the church, trade unions and other segments of society, to lessen the appearance and possibilities of partisan appointees.

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2. Section 2(a) should be amended to say "is or was a member of the House of Assembly or a was a Senator appointed on the advice of the Government or the Leader of the Opposition".

3. Clarity is required on the matter of eligibility for re-appointment. It is recommended that two terms be the maximum tenure. We also suggest that the term of office should be extended to 5 years to boost independence.

Ancillary Concerns

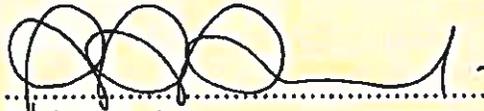
Serious consideration should be given to making political financing transparent. By way of example, the United Kingdom Political Parties Elections and Referendums Act, 2000 which arose out of the Neill Committee established to consider how to make politics more transparent, provides not only for monies spent during an election but for the entire arena of political financing. Under the UK legislation, donations (defined as gifts of money or property, sponsorship, payment of expenses and loans otherwise than on commercial terms) made to a political party over the sum of £200 carry a reporting requirement. Expenses paid during an election period are subject to different reporting requirements. Donation reports are to be made on a quarterly basis.

In the absence of such provisions, donations could be made directly to the political party to secure government contracts etcetera, thereby defeating the purpose of the legislation under discussion.

In closing, the Integrity Group of Barbados would be happy to appear before you to make further clarify any queries or concerns you may have in respect of the submissions outlined above.

Thank you in advance for your consideration.

Respectfully submitted,



Alicia A. Archer
Chairman of the Law & Governance Committee



Beverley J Walrond QC
Deputy Chairman, Law & Governance Committee

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Institute of Chartered Accountants of Barbados

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September 24, 2018

The Clerk of Parliament
Parliament Buildings
Heroes Square
BRIDGETOWN

INTEGRITY IN PUBLIC LIFE BILL, 2018

Following our presentation to the Joint Select Committee on September 7, we now enclose our additional comments as requested by the Committee

Yours truly,
Institute of Chartered Accountants of Barbados

Andrew F. Brathwaite
President

On behalf of the Council and Members of the Institute of Chartered Accountants of Barbados (ICAB), let me start by expressing our gratitude to the Joint Select Committee for accepting our written submission and inviting us to make this oral presentation.

ICAB is a proud member of IFAC, the International Federation of Accountants which is the global umbrella organization for professional accountancy organizations. IFAC has drawn attention to an increasing public expectation that the profession should play a bigger role in enhancing governance and addressing fraud, corruption, money laundering and other unethical practices and has incorporated a response to this in its strategic plan. The fight against fraud and corruption has therefore been identified as one of the organization's core "speaking out themes" and ICAB has followed suit.

ICAB supports the view that the time is long overdue for Integrity Legislation to be introduced in Barbados and we commend Government for its speed in laying the Integrity in Public Life Bill in Parliament, and for convening this Select Committee to examine the Bill and accept public comments.

It should in fact be a matter of some national embarrassment that of 140 countries that are signatory to the 2003 United Nations Convention Against Corruption, only Barbados and Syria have not yet ratified the convention by enacting the required legislation.

It is worth pointing out as well that while Barbados already has a comprehensive Prevention of Corruption Act, based on the UN Convention, and which was passed by

both Houses of Parliament in 2012, unfortunately this legislation was never proclaimed. ICAB in 2012 was privileged to submit comments on that legislation and to appear as we do now before a Joint Select Committee of Parliament to articulate a case for a number of amendments. While on that occasion the Bill was passed without amendment, we are pleased that some of our recommendations have fortuitously been captured in the Bill that is now under consideration.

The current Bill improves on the 2012 Act in some respects, but a number of critical areas have been omitted and we believe that it is vital that these be addressed in due course.

Let me start with the subject of declarations of financial affairs, which must be filed every two years with the Integrity Commission to be established under the legislation. These declarations are to be filed by specified persons in public life and are a necessary feature.

However we would caution the Committee and the Commission that these declarations have been problematic in other Caribbean jurisdictions.

In Jamaica, for example, of 224,000 declarations due for filing for the years 2003 to 2015, 85,000 or 35% remained outstanding in 2016. During 2015 however only 93 delinquent public servants were reported to the Director of Public Prosecution for court action, and only 47 were brought before the Court.

Similarly, in Trinidad, at the end of 2016 the Commission had a backlog of 2,700 declarations to be examined and certified. Since the Commission only examined and certified 1,700 declarations during 2016 it will clearly be challenging to clear the backlog while still examining and certifying current filings. During 2016 the Trinidad Commission published the names of 663 persons in public life who failed to file declarations during the period 2003 to 2014, accounting for 1,361 declarations. By the end of 2016, 130 of that number had filed 322 declarations after their names were published (so about one quarter of the outstanding declarations).

The number of required filings in Barbados is likely to be significantly lower than in Trinidad and Jamaica, and ICAB is comfortable that the requirement to file the declarations every two years (instead of annually) will alleviate some of the challenges experienced in Trinidad and Jamaica without materially reducing the effectiveness of the measure.

We are pleased as well that the legislation provides for publication (in the Official Gazette and in a daily newspaper) of the names of specified persons in public life who have failed to file declarations or furnish such particulars as requested.

We propose however a few additional matters for the Committee's consideration:

1. The form of the declaration of financial affairs should be published for public comment before the Joint Committee concludes its work. (Reference may be

made for example to the form of the declaration included at the Third Schedule of the Prevention Of Corruption Act 2012, and Schedule 2 of the Integrity

Commission Ordinance of Turks and Caicos Islands.)

2. A detailed list of the specified persons in public life captured by the Second Schedule to the Bill should be published well in advance of its enactment, to remove any uncertainty about who is required to file. Following a period of such uncertainty, the Integrity Commission and Attorney General of Trinidad were forced to seek the guidance of the Court (see H.C.A. 1735 of 2005) on the construction of specific paragraphs in the Schedule describing the specified persons in public life required to file declarations with the Commission. This decision also included the determination that judges and magistrates could not be included on the list of specified persons in public life.

In the case of Barbados it is not clear to us, for example, whether:

- the term “Managers” in item 6 is intended to cover all managers at the entity or only the most senior manager;
 - it is intended that ICAB itself as a body established by statute will be covered by the Second Schedule.
3. The requirement in clause 29 for the accuracy of the declarations to be verified or determined should be carefully considered and refined to give a more precise indication of the extent of the verification which is to be performed. Clause 31(5) which requires the Commission to provide a certificate of compliance upon being satisfied that a declaration has been “fully made” may also be problematic, given

the challenge in verifying possible omissions. (In the audit profession it is well accepted that auditing what has been reported is much simpler than auditing what might have been omitted).

4. The Commission should be given the discretion to determine, using a risk-based approach, which declarations to examine in detail and when to do so.
5. Following the 6 month extension which the Commission may grant under clause 25(3) it should be empowered to make an ex parte application to the High Court for an order directing any Specified Person in Public Life who is still delinquent in filing, to comply with the legislation (as in Trinidad – see Integrity in Public Life Act, 11(7) and 11(8)) on automatic penalty of a specific fine or jail sentence.

To be clear, we are not persuaded that the detailed examination and verification of declarations of financial affairs will be a productive use of the resources of the Integrity Commission. We are however open to any empirical evidence to the contrary and would strongly advise the Commission, once it has been set up, to consult with other Integrity Commissions in the region and beyond, and seek out best practice in this area at the earliest opportunity.

There are a number of other key areas where we think the legislation could be strengthened.

We believe that the Auditor-General should be included as an ex-officio member of the Integrity Commission to facilitate the Commission's function under clauses 4(1)(f) and (g), to examine and advise on practices and procedures of public bodies. This is

actually the practice in Jamaica and would enable sharing of information between the two offices and more timely follow up of irregularities and concerns discovered by the Auditor-General during the course of his work. In this event a private sector firm would be appointed under clause 7(2) to audit the Commission, and the Auditor-General would file declarations with the Governor-General under clause 25(1) along with the other members of the Commission.

While the Auditor-General is indeed a public officer who would presumably be included in the Specified Persons in Public Life in the Second Schedule to Bill, and disqualified as a member of the Commission by clause 2 of First Schedule to the Bill, it is important to note that the Auditor-General is one of few public officers given specific recognition by the Constitution of Barbados.

As a point of reference, the Auditor-General of Jamaica is a member of the Integrity Commission under Section 8(1) of the Integrity Commission Act, 2017. This Act replaced the Corruption (Prevention) Act, 2001 which also named the Auditor-General as a member of the Integrity Commission (First Schedule).

Fortunately the Bill already makes provision for agreements and exchange of information with law enforcement agencies including the local and foreign Financial Intelligence Units. Our view is that this will allow for more targeted investigation of potential corruption as compared to the broader approach of examining declarations.

The Commission should also be given the express power to establish a hotline to receive anonymous tips from the public, including from public sector employees. This specific provision may be required as clauses 60 and 61 (among other provisions) may be interpreted in practice as requiring individuals reporting matters to do so in writing and identify themselves to the Commission. According to the Association of Certified Fraud Examiners, of the corruption cases reported by their members for 2017, 50% were discovered by tips. And the ACFE has consistently reported over the years that tips are the most common method by which fraud and corruption are detected. While we are happy that the Bill includes provisions for the protection of whistleblowers we believe that individuals with information about possible corruption will likely be reluctant to identify themselves and appear before the commission or in a court of law to offer evidence.

We recommend furthermore that the provisions of the Integrity in Public Life Bill be compared to the requirements and recommendations of the 2003 UN Convention Against Corruption, as there are a number of gaps that need to be addressed.

For instance based on the Convention and best practice in other jurisdictions, consideration should be given to (references to the Convention in brackets):

- Contractor-General or similar legislation dealing with public procurement and divestment of public property, as these have proven to be fertile areas of corruption (Article 9 – Public procurement and management of public finances)
- Campaign finance legislation (Article 7 – Public Sector)

- Freedom of information legislation (for which a Bill was circulated in 2008) (Article 10 – Public reporting and Article 13 – Participation of society), and
- Measures to discourage and penalize corruption involving the private sector (Article 12 – Private sector)
- Measures to enable the confiscation of proceeds of crime (Article 31 – Freezing, seizure and confiscation) and the return of assets (Chapter V – Asset recovery)

These are all critical elements of an effective anti-corruption regime, some of which in fact are included in the 2012 Prevention of Corruption Act.

We would also at this time remind the Committee that International Anti-Corruption Day, sponsored by the United Nations Office on Drugs and Crime, is marked each year on December 9. We intend to write very shortly to you chair in your capacity as Attorney-General to urge that this day be officially recognized in Barbados.

Finally, we would like to express our gratitude to the drafters of the legislation for making provision in the First Schedule for one member of the Integrity Commission to be appointed by the Governor-General on the recommendation of “any body which in his opinion represents chartered or certified accountants in Barbados”. We hope though that it would not be considered improper of us to suggest that that language be amended to make specific reference to the Institute of Chartered Accountants of Barbados, as the body designated by statute to regulate and represent the interests of chartered accountants in this country.

I thank you for your attention and I would be happy to discuss our submission and respond to any questions.

Integrity in Public Life Bill, 2018
ICAB Recommendations

Section	Title	Comments
	Proclamation	<p>The bill should be proclaimed at the earliest possibility, subject to any significant amendments identified through the public consultation process or otherwise.</p> <p>Based on publicly available information only Barbados and Syria (of 140 signatories) have not yet ratified the 2003 UN Convention Against Corruption or otherwise brought its provisions into law (https://www.unodc.org/unodc/en/corruption/ratification-status.html)</p> <p>In January 2018 Barbados became the second to last of 34 OAS member states to be listed as having ratified the Inter-American Convention against Corruption, having signed the Convention in 2001. The only outstanding member now is Cuba. (http://www.oas.org/en/sla/di/inter_american_treaties_B-58_against_Corruption_signatories.asp)</p>
25, Second Schedule	Declaration of financial affairs	<p>The requirement for the filing of declarations by “Persons in Public Life” as defined in the legislation may present a number of practical challenges. Some examples from other countries are listed below. We support the requirement to file every two years as this may mitigate some of these challenges.</p> <ul style="list-style-type: none"> • The Commissions in Antigua and Jamaica have reported significant numbers of public officials who have been delinquent in filing declarations, and challenges in having these individuals prosecuted. • The Commission in Trinidad has reported significant delays in verifying the accuracy of the filed declarations as this is a manual and time-consuming process. • Difficulty in using the filed declarations to detect evidence of corruption. <p>We recommend the following:</p> <ul style="list-style-type: none"> • With respect to the declaration of assets, liabilities and income at section 25(5), the reporting format should be made available for comment as part of this consultative process with the Joint Select Committee. We recommend that the format be clear and simple to reduce the reporting burden and encourage compliance. Persons required to file declarations must keep detailed information in support of the

Integrity Commission Bill, 2018
ICAB Recommendations

		<p>declaration made. This supporting information must be made available to the commission on request as either part of routine audits or special enquiry as provided in the draft bill.</p> <ul style="list-style-type: none"> Following the 6 month extension which the Commission can grant under section 25(3) it should be empowered to make an ex parte application to the High Court for an order directing any Person in Public Life who is still delinquent in filing, to comply with the legislation (as in Trinidad) on automatic penalty of a specific fine or jail sentence.
29	Receipt and examination of declarations	<p>Consideration should be given to amending this Section to give the Commission discretion to determine which declarations to examine and when to do so using a risk based approach.</p>
3, First Schedule	Members of Integrity Commission	<ul style="list-style-type: none"> Consideration should be given to including the Auditor General as an ex officio member of the Commission, as is the case in Jamaica. This will enable sharing of information between the two offices and more timely follow up of irregularities and concerns discovered by the Auditor-General during the course of his work. The reference to “any body which is his opinion represents chartered or certified accountants in Barbados” should be replaced by a specific reference to the Institute of Chartered Accountants of Barbados
4(1)	Functions of Commission	<p>(f) Examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices, except where there is a statutory duty on any other person to perform that function.</p> <p>Consideration should be given to removing the exception in the above clause, and giving the Commission the power to examine the practices and procedures either of all public bodies, or of specific public bodies where the relevant statutory duty now falls on some other person.</p>
6	Agreements and exchange of information with law enforcement	<p>We commend the specific reference to the Financial Intelligence Unit, as it should be productive for the Commission to work closely with that Unit, as well as the financial crimes section of the Royal Barbados Police Force. For example, the suspicious transaction</p>

Integrity Commission Bill, 2018
ICAB Recommendations

		reports that must be filed by financial institutions and others will generate useful intelligence that may be utilized by the Commission. Parliament should ensure that the Commission is properly funded to facilitate its work.
7	Funds of Commission	The Commission should be required to forward the report described in Section 7(3) to the Governor-General, instead of the Prime Minister. The deadline for submission of the Commission's report (included the audited financial statements) should be amended to four months after the end of the financial year. The Section currently states that it should be submitted prior to the commencement of the subsequent financial year. Furthermore the timeline for laying the report in Parliament should be stipulated – for example, within three months of receipt by the Governor General. "An enquiry shall not be commenced after 2 years from the date on which the person ceased to be a person in public life".
32(5)	Commission to report where not satisfied with declaration	This time period appears to be too short – in contrast, the time period relevant for members and staff of the Commission (S. 33(s)) is 5 years. Article 29 of the UN Convention requires each of the signatories to "establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a <u>longer</u> statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice."
38(1)(b)	Content of statement of registrable interests	Need clarification whether this requirement to disclose particulars of any contract made with the government relates only to those directly involving the individual, his spouse and his children, or whether it extends to government contracts made with entities in which the individual is a director or investor.
Various	Fines and penalties	The proposed fines and penalties are significantly lower than in the first draft of the Bill circulated immediately prior to the general elections, and significantly lower than the Prevention of Corruption Act 2012 which was passed but not proclaimed.

**Integrity Commission Bill, 2018
ICAB Recommendations**

		<p>It is recommended that the level of fines in the 2012 Act be used in this draft Integrity in Public Life Bill 2018.</p>
60	<p>Complaint to Commission regarding contravention of Act</p>	<p>The Commission should be given the express power to establish a hotline to receive anonymous tips from the public, including from public sector employees (with consequential amendments to other pieces of legislation as required).</p>
	<p>Comparison with provisions of 2003 UN Convention Against Corruption</p>	<p>The provisions of the legislation should be compared to the requirements of the 2003 UN Convention to identify gaps that may need to be addressed.</p> <p>For instance the Convention recommends consideration of:</p> <ul style="list-style-type: none"> - Steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making that are effective, inter alia, in preventing corruption - Measures to enhance transparency in the funding of candidates for elected public office and the funding of political parties - Measures to prevent corruption involving the private sector and provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures - Procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public
	<p>Additional measures to educate public officers and the general public</p>	<p>We recommend:</p> <ul style="list-style-type: none"> - periodic training in ethics and fraud awareness (including, corruption) for public officers - national recognition of United Nations <i>International Anti-Corruption Day</i> on December 9 each year



UNODC

United Nations Office on Drugs and Crime

*Regional Office for Central America and
the Caribbean in Panama (ROPAN)*

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ROPAN/ENG-2018-08-0121

24 August 2018

To the Clerk of Parliament,

On behalf of the United Nations Office on Drugs and Crime (UNODC), please allow me to present my compliments and to address you in the context of the *Integrity in Public Life Bill 2018*, which has been introduced in the Parliament of Barbados.

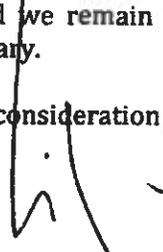
UNODC would like to commend the Government of Barbados for the invitation to the public to actively participate in the development of this new legislation. In this regard, we are pleased take this opportunity to submit our observations and recommendations on the legislation to the Joint Select Committee on the Integrity in Public Life Bill 2018. We hope that this submission will contribute to the country's overall objective of deterring corruption in public life in Barbados, while allowing for effective prosecution of this scourge when it does occur.

These comments, which have been attached to this letter, have been prepared by UNODC Anti-Corruption Advisors for Central America and the Caribbean, based at the UNODC Regional Office for Central America and the Caribbean in Panama (UNODC ROPAN), as well as the UNODC Corruption and Economic Crime Branch at UNODC Headquarters in Vienna.

The Government of Barbados signed the United Nations Convention against Corruption (UNCAC) in 2003 and, as UNODC continues to support Barbados on its journey toward the ratification of this instrument, the comments and observations presented herein, have largely been prepared in line with the UNCAC and its Implementation Review Mechanism (IRM).

We hereby reaffirm our commitment to supporting the Government of Barbados in your efforts to strengthen anti-corruption legislation and we remain at your full disposal to provide technical assistance, whereby it is so deemed necessary.

Please accept the assurance of our highest consideration and esteem.


José Vila del Castillo
Regional Representative

The Clerk of Parliament
Parliament Buildings
Heroes Square
Bridgetown, Barbados

JVdC/bsh

UNODC Observations, Comments and Recommendations on the Integrity in Public Life Bill 2018.

24 August 2018

INTEGRITY IN PUBLIC LIFE ACT 2018	CORRESPONDING UNCAC ARTICLE	UNODC OBSERVATION/RECOMMENDATION
<p>"assets", in relation to a person, means all property, including any right or interest in property, and money held by the person in Barbados or elsewhere;</p>		<p>May consider: "assets", in relation to a person, is anything of monetary value owned by the person; including money, property, rights and interests, in Barbados or elsewhere.</p>
<p>"property" includes money and all property, real or personal and things in action</p>	<p>"property" includes assets of every kind, whether corporeal or in corporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets</p>	<p>May consider the use of the definition provided in the United Nations Convention Against Corruption (UNCAC).</p>
<p>"public body" includes: (a) Parliament and the Cabinet; (b) Ministries and departments of Government; (c) statutory bodies and subsidiary companies of such bodies; and (d) any other bodies which receive any payment of monies under an Appropriation Act within the meaning of the <i>Financial Management and Audit Act, Cap. 5</i>;</p>		<p>In the spirit of the broad definition of "public official" provided by the UNCAC, Barbados should endeavor to ensure that the most ample definition of "public body" is adopted so as to include all legislative, executive, administrative or judicial offices of the State.</p>
<p>"public officer" has the meaning assigned to it by section 2 of the <i>Public Service Act, Cap. 29</i> <i>"public officer" or "officer" means the holder of any public office and includes any person appointed to act in that office; Public Service Act, Cap. 29</i></p>	<p>"Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic</p>	<p>State Parties of the UNCAC are obliged as a minimum to incorporate the definitions that contain all elements as they stand in the Convention. National legislation may include broader definitions, but should, as a minimum, cover what is required. The definition of "public official" requires therefore thorough consideration to ensure that the entire range of persons defined by article 2 of the UNCAC as "public officials" is adequately covered under national legislation.</p>
<p>"public official" means a public officer or another person who is a member, officer or other employee of a public body, as the case may be;</p>		

law of the State Party and as applied in the pertinent area of law of that State Party:
(iii) any other person defined as a "public official" in the domestic law of a State Party.
However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

For example, the provisions of the Convention regarding "public officials" cover anyone so defined by the domestic law of a State party. In the event that these are not included in domestic definitions, for the purposes of the Convention a "public official" is also anyone "holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority" (art. 2, sub-paragraph. (a) (i)) as well as "any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party" (art. 2, sub-paragraph. (a) (ii)).⁵

However, for the purpose of some measures included in chapter II of the Convention,⁶ "public official" "may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party" (art. 2, sub-paragraph. (a)).

An interpretative note indicates that, for the purpose of defining "public official", each State party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

A number of additional interpretative notes indicate the following:

(a) The word "executive" is understood to encompass the military branch, where appropriate (A/58/422/Add.1, para. 2). Another interpretative note indicates that the term "office" is understood to encompass offices at all levels and subdivisions of governmental units national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form a part of the State, "office" may be understood by the States

<p>concerned to encompass those levels also (A/58/422/Add.1, para. 3);</p>		
<p>May consider including some of the functions associated with the prevention of corruption (Articles 5 and 6 of the UNCAC), such as:</p> <ul style="list-style-type: none"> (a) develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability; (b) establish and promote effective practices aimed at the prevention of corruption; (c) to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption; (d) to collaborate with other States and with relevant international and regional organizations in promoting and developing anti-corruption measures; (e) to increase and disseminate knowledge about the prevention of corruption. 	<p>UNCAC Chapter II: Preventive measures</p> <p>Article 5. Preventive anti-corruption policies and practices</p> <p>Article 6. Preventive anti-corruption body or bodies</p>	<p>4.1 The functions of the Commission are:</p>
<p>Consider including the word "specified" in section 4.1. (a), in keeping with definitions provided in Part 1.2. of the Integrity in Public Life Bill.</p> <p>Furthermore, the obligation to disclose assets does not have to be linked formally to the rank of an official, but rather to the extent of decision-making authority and managerial powers of officials, and the related risks of conflict of interest and abuses of office. (Asset Declarations for Public Officials: a Tool to Prevent Corruption, OECD 2011)</p> <p>In this sense, the leadership of the State and/or the three branches of the government is usually at the top of the list.</p> <p>Public officials in areas of particular corruption risks could also be included in this list.</p>		<p>4.1. (a) to receive and keep on record all declarations, statements of registrable interests and reports of gifts forwarded by persons in public life;</p>

<p>4.3. The Governor-General may, in writing, request the Commission to investigate any matter falling within the functions of the Commission</p>	
<p>7.1 The Commission shall have such funds as may be appropriated to it by Parliament.</p>	<p>May wish to add at the end "...in particular in those instances when he or she is the recipient of the declaration of assets or there are public allegations of corruption by a person in public life.</p> <p>The UNCAC requires the guarantee of an annual budget as a conventional obligation. Therefore, the Government of Barbados may consider establishing such a guaranteed annual budget.</p> <p>This measure could help protect the Commission from budget downsizing and ensure adequate funding.</p> <p>Moreover, it could contribute to safeguarding the Commission's independence.</p> <p>Independence is a key issue in the design of Anti-Corruption Commissions. This must not be regarded as absence of reporting or external control, but as the capacity to carry out its mission without political interference. Independence is also linked to other guiding principles such as impartiality, objectivity, fairness, accountability, a clear, legally defined remit and, above all, structural and operational autonomy. (Anti-Corruption Agencies as Central Pieces in a National Integrity System, Luis De Sosa)</p>
<p>7.4. A copy of the report together with the Auditor-General's Report shall be laid before Parliament.</p>	<p>In keeping with the efforts of the Government of Barbados to ensure public participation in all aspects of political life, consider the publication of a report online, including statistics about the Commission's activities and results.</p> <p>The trust of society is a fundamental factor for an Anti-Corruption Commission to function properly; it is key for the reception of information and complaints.</p> <p>Public reporting will strengthen the institution's credibility, accountability and independence.</p>
<p>8.5 In subsection (3) "appropriate authority", in relation to any public officer or other employee of the Government, means the person or authority vested by law with power to appoint such public officer or</p>	<p>May consider including a provision on the competitive recruitment of employees, vetting of agents, specialized training.</p>

<p>other employee of the Government to the position he holds at the time when his service is sought to be utilised by the Commission.</p>	<p>10.3 The Commission may, if it thinks fit, receive oral or written evidence, but it is not bound by the rules of evidence in the <i>Evidence Act</i>, Cap. 121, and it may take into account opinion evidence and such facts as it considers relevant and material.</p>	<p>May consider defining "opinion evidence" to limit discretionary powers.</p>
<p>PART III: INVESTIGATIONS <i>Powers of Investigative Officers</i></p> <p>Power of arrest 15.1 An investigative officer has, in carrying out his functions, the powers of a constable to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment under this Act or under any other enactment that assigns responsibility for investigations to the Commission.</p> <p>15.2 An investigative officer shall, after making an arrest, deliver the person arrested to the custody of a member of the Police Force who shall, as soon as practicable, bring the person before a magistrate.</p> <p>Power of search and seizure</p>	<p>17.1 Where, on an application made by an investigative officer, a judge in Chambers is satisfied that</p> <ol style="list-style-type: none"> a. there are reasonable grounds for suspecting that an offence has been committed under this Act or any other enactment that assigns responsibility for investigations to the Commission; b. there is material on premises specified in the application that is likely to be of substantial value to the investigation of the offence, whether by itself or together with other material; c. the material <ol style="list-style-type: none"> i. is likely to be admissible in evidence at a trial for an offence referred to in paragraph (a); and ii. does not consist of or include privileged material; and d. any of the conditions specified in subsection (2) applies, 	<p>In general, Barbados should make sure the Commission's special powers don't enter into conflict with the Constitution.</p>

<p>the judge may issue a warrant authorising an investigative officer to enter and search the premises for the material and to seize and retain any material, that, in the opinion of the investigative officer, is of the kind described in paragraphs (b) and (c).</p> <p>17.2 The conditions mentioned in subsection (1)(d) are that</p> <ol style="list-style-type: none"> a. a production order has been made in respect of the material and has not been complied with; b. a production order in respect of the material would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with; c. the material involved cannot be identified or described with sufficient particularity to enable a production order to be made; d. it is not practicable to communicate with any person entitled to grant entry to the premises; e. it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence; f. entry to the premises will not be granted unless a warrant is produced; or g. the investigation for the purposes of which the application is made might be seriously prejudiced unless the investigative officer is granted immediate access to the material without notice of any person. <p>17.3 An investigative officer may seize and retain anything for which a search has been authorised under subsection (1).</p>		
<p>Should consider allowing anonymous complaints and establishing a hot-line (telephone, on-line, e-mail...):-</p>		<p>19.1 A person may address a complaint in writing to the Commission in respect of the conduct of an investigative officer in the performance of his functions where the person:</p> <ol style="list-style-type: none"> a. has been personally affected by the conduct; b. has witnessed the conduct; c. has a substantial and direct interest in the complaint; or

<p>d. has been authorised by a person referred to in paragraph (a), (b) or (c) to make a complaint in that person's name.</p>		
<p>20. The Governor-General may appoint an <i>ad hoc</i> panel consisting of:</p> <ol style="list-style-type: none"> a judge or magistrate or a retired judge or magistrate, who shall be the chairman; the Commissioner of Police, who shall hold office <i>ex officio</i>; and a person, other than a member or former member of the Police Force, to represent the public, <p>to hear and adjudicate a complaint made under section 19.</p>		<p>May consider that (c) be a person who is a leader in civil society, publicly renowned for upholding a high level of integrity.</p>
<p>22.2. The complaint resolution report referred to in subsection (1) shall contain</p> <ol style="list-style-type: none"> a summary of the complaint; the results of the investigation; a summary of any action that has been or will be taken with respect to resolution of the complaint; and a statement that the complainant may refer the complaint to the panel for review, within 60 days of the receipt of the complaint resolution report, where he is not satisfied with the disposition of the complaint by the Commission. <p>22.3 A complainant who is not satisfied with a direction under section 21(1) or with the disposition of the complaint by the Commission under subsection (1), may refer the complaint to the panel in writing within 15 days after the date on which he receives notice of the direction or the complaint resolution report.</p>		<p>It is not clear whether the complainant has 60 or 15 days to refer the complaint to the panel for review, when he or she is not satisfied with the resolution report.</p>
<p>22.4 The panel shall review every complaint referred to it under subsection (3).</p>		<p>Should consider establishing a limited period of time for the review.</p>
<p>23.2 Where, after reviewing a complaint, the panel is not satisfied with the disposition of the complaint by the Commission or considers that further inquiry is warranted, the panel may take any or all of the following measures:</p> <ol style="list-style-type: none"> send a report to the Commission indicating the reasons for its dissatisfaction; request the Commission to conduct a further investigation into the complaint; make such inquiries as it deems necessary in the circumstances; 		<p>May consider re-writing 23.2 (a) as follows:</p> <p>(...) or considers that further inquiry is warranted, the panel shall send a report to the Commission indicating the reasons for its dissatisfaction and take any or several of the following measures:</p> <p>(...)</p> <p>May wish to establish a clearer differentiation between 23.2.c and d.</p>

<p>d. investigate the complaint further; e. institute a hearing to inquire into the complaint.</p>		<p>In addition, there seems to be no provision that puts an end to the procedure and thus the Commission and the Panel may send the file back and forth to each other in circles. Thus, it is advisable to integrate in the procedure a limit to this situation.</p> <p>Should consider establishing a limited period of time for this investigation. However, the time limits must be ample enough to allow for a complex investigation to be completed.</p> <p>Should consider establishing a limited period of time for this investigation. However, the time limits must be ample enough to allow for a complex investigation to be completed.</p>
<p>23.3 The panel shall, on completion of any further investigation, inquiry or hearing that it has ordered under subsection (2) send:</p> <p>a. to the Commission, a complaint review report setting out:</p> <ul style="list-style-type: none"> i. such findings with respect to the complaint as the panel sees fit; ii. and such recommendations, including disciplinary measures to be taken in regard to the investigative officer, as the panel sees fit; <p>b. and to the complainant and the investigative officer, a report of the conclusion of the review, together with any finding or recommendations referred to in paragraph (a).</p>		
<p>25.1 A person who is a specified person in public life shall:</p> <ul style="list-style-type: none"> a. on or before the appointed day and every 2 years thereafter, on or before the biennial anniversary of that date; and b. where such person ceases to be a specified person in public life, within 90 days from the date on which he ceases to be a specified person in public life, <p>file, where he is not a member or staff member of the Commission, with the Commission or, where he is a member or staff member of the Commission, with the Governor-General, a declaration containing the particulars referred to in subsection (5).</p>		<p>25.1 The obligation to disclose assets does not have to be linked formally to the rank of an official, but rather to the extent of decision-making authority and managerial powers of officials, and the related risks of conflict of interest and abuses of office. (Asset Declarations for Public Officials: a Tool to Prevent Corruption, OECD 2011)</p> <p>In this sense, the leadership of the State or / and of the three branches of the government is usually at the top of the list. Public officials in areas where the risk of corruption is high could also be included in this list.</p> <p>Furthermore, in certain systems, declarations are also requested at a certain time after leaving the official duty. Barbados may also consider adding: (c) upon request of the Commission</p>

<p>In order to prevent corruption post-office, in particular trafficking in influence, it is advisable to require the public officer/official to present a declaration 5 years after the day he or she ceases to be a person in public life.</p>		
<p>This paragraph seems to enter into conflict with subsection (1). It is not clear whether the declaration should be filed on or before the appointed day, or within 90 days of the appointment.</p> <p>Consider including indications for specified persons in public life that were appointed before the adoption of this Act.</p>		<p>25.2 Without prejudice to subsection (1), every person shall, within 90 days from the date on which he becomes a specified person in public life, file, where he is not a member or staff member of the Commission, with the Commission or, where he is a member or staff member of the Commission, with the Governor-General, a declaration containing the particulars referred to in subsection (5) with reference to the date on which he becomes a specified person in public life; and any person required to file a declaration under this subsection in any year is not required to file another declaration under subsection (1) in the same year.</p>
<p>Should consider defining the "exceptional circumstances" to avoid abuse of discretionality.</p>		<p>25.3 The Commission may, in exceptional circumstances, grant to any person required to file a declaration under subsection (1) or (2), other than a member or staff member of the Commission, an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.</p>
<p>Should consider defining the "exceptional circumstances" to avoid abuse of discretionality.</p>		<p>25.4 The Governor-General may, in exceptional circumstances, grant to a member or staff member of the Commission required to file a declaration under subsection (1) or (2), an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.</p>
<p>Ensure that Constitutional rights are respected.</p>		<p>28.2 Where the Commission has reasonable grounds to believe that a specified person in public life is likely to contravene or has contravened this Act, the Commission may direct that person to place all or part of his assets in a blind trust on such terms and conditions as the Commission considers appropriate and to file a copy of the trust deed with the Commission.</p>
<p>Consider gender neutral language throughout: ... filed with it or him/her under As it or he/she considers...</p>		<p>29. The Commission or the Governor-General, as the case may be, shall</p> <ol style="list-style-type: none"> receive, examine and retain all declarations and documents filed with it or him under this Act; and make such inquiries as it or he considers necessary in order to verify or determine the accuracy of the financial affairs, as

<p>stated in the declarations, of persons who are required to file declarations under this Act.</p>		
<p>32.1 Where the Commission examines a declaration and any related information or documents, or conducts an inquiry into any declaration, and is not satisfied with any aspect thereof, the Commission may report the matter to the appropriate Service Commission, board or other authority and the Director of Public Prosecutions, setting out such details as it thinks fit.</p>		<p>It is advised that should the matter relate to the alleged commission of a criminal offence, the file should be referred to the DPP as a matter of principle, without leaving room to discretionary powers.</p>
<p>32.5. An inquiry shall not be commenced after 2 years from the date on which the person ceased to be in public life.</p>		<p>In order to avoid abuse of subsection (5), it may be considered to add: An inquiry "under this section" and / or "by the Commission" (...)</p> <p>The two-year deadline to initiate an inquiry after the person has ceased to be in public life directly contravenes article 29 of the UNCAC which requires the adoption of long statutes of limitations for corruption offences.</p>
<p>32.6. The Director of Public Prosecutions may</p> <ol style="list-style-type: none"> a. take action in relation to a report made pursuant to subsection (1) as he thinks appropriate in any particular case; b. authorise any person having an official duty under this Act to furnish information to any officer of the court, a member of the Police Force or any other person specified by the Director of Public Prosecutions. 		<p>Based on obligations under the UNCAC, consider adding:</p> <p>(c) take action as he or she thinks appropriate in any particular case, even if a declaration has not yet been examined, has been cleared or a report pursuant to subsection (1) has not been issued by the Commission.</p> <p>The importance of this suggested provision relates to the fact the prosecution services should have full freedom of investigation of any offence. It also serves as a way to avoid any abuse of discretionary powers in the Commission (checks and balances).</p>
<p>38.1 A statement of registrable interests shall contain the following information relating to the member of the House of Assembly or the Senate, his spouse and children:</p> <ol style="list-style-type: none"> a. particulars of any directorships held in any company or other corporate body; b. particulars of any contract made with the Government; 		<p>It may be considered to include grants, foundations, memberships, employment, consultancies, patent licensing.</p> <p>In addition, reference to declaring passive patrimony (debts, mortgages, credits, etc)</p>

<p>c. the name or description of any company, partnership or association in which the person is an investor;</p> <p>d. a concise description of any trust to which the person is a beneficiary or trustee;</p> <p>e. any beneficial interest held in land;</p> <p>f. any fund to which the person contributes;</p> <p>g. particulars of any political, trade or professional association to which the person belongs;</p> <p>h. particulars relating to sources of income;</p> <p>i. and any other substantial interest, whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty.</p>		
<p>42. The Commission shall not issue a determination that a member of the House of Assembly or the Senate has acquired a prohibited interest where,</p> <p>a. the member has notified the Commission of the interest as required by this Act; and</p> <p>b. the Commission is of the opinion that the interest</p> <ol style="list-style-type: none"> i. is unlikely to affect the member's obligations under the Code of Conduct; or ii. is likely to affect the member's obligations under the Code of Conduct but that the member, his spouse or child, as the case may be, has divested himself of the interest or has placed it in a blind trust on such terms and conditions as the Commission considers appropriate. 		<p>Consider defining "prohibited interest".</p>
<p>45.1 Every specified person in public life, other than a member or staff member of the Commission, who receives a gift worth more than \$1 000 shall make a report of that fact to the Commission in such form as may be prescribed stating the name and address of the donor, the description and approximate value of the gift and whether, in the opinion of the donee, the gift is a personal or an official gift.</p>		<p>It should be considered to prohibit receiving personal gifts, especially above a certain high value such as \$1,000.</p> <p>The \$1,000 value should be significantly lowered.</p>
<p>45.4 This section shall not apply to any personal gift received by a specified person in public life from a relative or friend.</p>		<p>The intention behind this section is understood but the wording could leave it open to manipulation.</p>

		<p>In practice, public officials who receive a “corruption” gift, will simply not report it. So only official legal gifts will end up being reported under this section.</p> <p>Examples of appropriate “official legal gifts” are per diems and flight tickets to participate in international trainings, protocol recognitions, international renowned awards...etc. For instance, one concrete example pertains to when Guatemala’s Attorney General won the Life Achievement Anti-Corruption Award from the UN (worth thousands of dollars).</p> <p>Consider wording that would “prohibit public officials from receiving gifts from the public”, and list a series of exceptions, such as protocol recognitions or awards from governments, international organizations or NGOs; DSAs and flight tickets to participate or to facilitate trainings, from governments, the academia, international organizations, NGOs.</p>
<p>51. A person commits an act of corruption where he</p> <ul style="list-style-type: none"> a. solicits or accepts, whether directly or indirectly, any article, money or other benefit for himself or another person for doing an act, or for omitting to do an act, in the exercise of his functions as a public official; b. performs or omits to perform, in the exercise of his functions as a public official, any of his duties in a public body for the purpose of obtaining any benefit for himself or another person; d. offers, promises or gives, directly or indirectly, to a public official any article, money or other benefit, for doing an act, or omitting to do an act, in the exercise of his functions as a public official; d. knowingly or recklessly allows his private interest to conflict with his public duties or to improperly influence his conduct in the exercise of his functions as a public official; 		<p>Please add:</p> <p>51. a. (...) other undue benefit for himself “or herself” or another person “or entity” (...)</p> <p>51.b Add the word ‘undue’ before benefit and after a another person ‘or entity</p> <p>51.c: Typographical error on the Word “public”.</p> <p>51.c Consider adding: (...) money or other benefit, “for the official himself or herself or another person or entity”, (...). This element is held as mandatory under the UNCAC.</p> <p>51.d. Add ‘or her’ after word ‘his’</p>

<p>e. improperly uses for his benefit or that of a third party, any classified or confidential information obtained in the exercise of his functions as a public official;</p> <p>f. communicates to any person not authorised to receive it, any classified or confidential information obtained in the exercise of his functions as a public official with a view to assisting the person to obtain a benefit;</p> <p>g. improperly uses for his benefit or that of a third party, any property belonging to the Government or a statutory body or state-owned company to which he has access as a result of, or in the course of, the exercise of his functions;</p> <p>h. improperly influences the appointment of, or the dismissal or suspension of, or other disciplinary action against, a public official;</p> <p>i. hinders, delays or interferes with the exercise of a function of a public official with a view to obtaining any benefit for himself or another person;</p> <p>j. pursues, in the exercise of his functions as a public official, a course of conduct with respect to another public official which amounts to offensive sexual comments, gestures or physical contact or other conduct of a similar nature;</p> <p>k. pursues, in the exercise of his functions as a public official, a course of conduct by which he exploits his position or authority for his sexual gratification.</p>	<p>Article 18. Trading in influence</p> <p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;</p> <p>(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.</p> <p>Article 21. Bribery in the private sector</p> <p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:</p> <p>(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order</p>	<p>51.e. Consider adding: (...) a third party "or entity"; (...) (unless the wording 'third party' is interpreted via jurisprudence as inclusive of legal persons and others). Add 'or her' after word 'his'.</p> <p>51.f. Consider adding: (...) the person, "a third party or an entity" to obtain a benefit; (unless the wording 'third party' is interpreted via jurisprudence as inclusive of legal persons and others).</p> <p>51.g. Consider the following modification in this paragraph or another:</p> <p>commits embezzlement, misappropriation or other diversion for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value belonging to the State, the Government or a statutory body or state-owned company, to which he has access as a result of, or in course of the exercise of his or her functions;</p> <p>51.j. This is not an act of corruption as such, although it is highly inappropriate conduct that must be reflected in any code of ethics and conduct. Nevertheless, Barbados may wish to criminalize 'sextortion'</p> <p>51.k. Add 'or she' after word 'he' and 'or her' after word 'his'</p> <p>General Comment:</p> <p>Barbados should consider including other UNCAC offenses such as trading in influence (Art. 18), as well as bribery in the private sector (Art. 21) and embezzlement in the private sector (Art. 22), Obstruction of Justice (Art 25), Liability of Legal Persons (Art 26)</p> <p>Note that the wording 'entity' intends to fulfill UNCAC requirements. The concept refers to legal persons and others.</p>
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	<p>that he or she, in breach of his or her duties, act or refrain from acting;</p> <p>(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;</p>
	<p style="text-align: center;">Article 22.</p> <p style="text-align: center;">Embezzlement of property in the private sector</p> <p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.</p>
	<p style="text-align: center;">Article 25.</p> <p style="text-align: center;"><i>Obstruction of justice</i></p> <p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;</p>

	<p>(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.</p> <p style="text-align: center;">Article 26. Liability of legal persons</p> <ol style="list-style-type: none"> 1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.
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<p>52.1. A public official who, in relation to a contract for the procurement of any goods, works or services:</p> <ol style="list-style-type: none"> a. accepts, agrees or offers to accept, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person; b. gives, agrees or offers to give, whether directly or indirectly, any benefit to another person for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person; or c. gives to a person confidential information in order to enable that person to tender or not to tender in a particular manner in order to obtain an unfair advantage in tendering, commits an act of corruption. 		<p>52.1.a Consider adding: (...) benefit for himself or herself or another person "or entity" (...). Substitute: 'accepts, agrees or offers to accept,...' for 'solicits or accepts'</p> <p>52.1.b: Add: (...) benefit for himself or herself or another person "or entity". Substitute: 'accepts, agrees or offers to accept,...' for 'solicits or accepts'</p> <p>52.1.c: Consider adding (...) in a particular manner "and/or" in order to obtain and unfair (...)</p>
<p>52.2. A person who, in relation to a contract for the procurement of any goods, works or services:</p> <ol style="list-style-type: none"> a. offers to a public official, whether directly or indirectly, any benefit for himself or for another person for awarding a tender to a particular person; or b. offers to a public official, whether directly or indirectly, any benefit for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person, <p>commits an act of corruption.</p>	<p>Article 34.</p> <p>Consequences of acts of corruption</p> <p>With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.</p>	<p>52.2.a and 52.2.b Consider adding:</p> <p>"(...) any benefit for himself or herself or for another person or entity (...)</p> <p>Consider:</p> <ul style="list-style-type: none"> - 52.2 a After 'offers' add 'promises or gives,...' - 52.2 b The word 'benefit' the word 'undue' <p>Consider including a provision to annul or rescind a contract, withdraw a concession or take other remedial action to address consequences of corruption, in line with Art. 34 of the UNCAC.</p>

<p>54.2 A person who possesses or is in control of any property knowing that the property or part of the property or proceeds from the property were obtained or derived, directly or indirectly, from the commission of an act of corruption, is guilty of an offence and is liable</p> <ol style="list-style-type: none"> on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both; on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence. 	<p>Article 24. Concealment</p> <p>Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.</p>	<p>Article 57.3 of this Bill states:</p> <p>In imposing a fine pursuant to subsection (2) on a person found guilty of an offence under that subsection, the court shall have regard to the value of the property or pecuniary resource in the possession of the person, which cannot be accounted for by his known sources of income or other lawful means of acquisition of property or pecuniary resources and the fine shall be equivalent to one and one half times the value of the property or pecuniary resource found to be in the possession of the person and for which no such account can be made.</p> <p>Consider the same fine relevant to Article 54.</p> <p>54 2 c. It is worthwhile to note that some jurisdictions are debating permanent disqualification.</p>
<p>54.3 A person who:</p> <ol style="list-style-type: none"> aids, assists, is an accessory after the fact to, participates in any manner in the commission of or conspires to commit, an act of corruption; or procures the commission of an act of corruption or attempts or counsels another to commit, an act of corruption, <p>is guilty of an offence and is liable</p> <ol style="list-style-type: none"> on conviction on indictment to a fine of \$20 000 or to imprisonment for 5 years or to both; on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both; and to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence. 		<p>Consider allowing for Anonymous complaints and the establishment of a hotline.</p>
<p>60.1 A person who has reasonable grounds to believe that another person has contravened this Act may complain in writing to the Commission stating</p> <ol style="list-style-type: none"> the particulars of the contravention; the nature of the evidence that the complainant proposes to produce in support of the complaint; such other particulars as may be prescribed. 		

<p>60.2 A complaint to the Commission pursuant to this section may be presented in person or may be sent by registered post to the Chairman.</p>		
<p>62.1 Where the Commission receives a complaint, the Commission may, on examination of the complaint</p> <ol style="list-style-type: none"> a. reject the complaint where it considers that the complaint is frivolous or does not relate to a matter the Commission is empowered to address; b. hold an inquiry into the complaint, giving the person alleged to have contravened this Act an opportunity to be heard; a. on conclusion of the inquiry, forward the complaint, and any documents and report containing the recommendations of the Commission to the Director of Public Prosecutions where it considers that an offence may have been committed. 		<p>Consider defining a limited period of time for the investigation and conclusion which should be long enough to allow for complex investigations to take place.</p>
<p>64. Where an allegation is made in public that a specified person in public life has committed a contravention of this Act, a person desiring to make a complaint to the Commission relative to the alleged contravention shall lodge a complaint with the Commission not later than 3 months from the date on which the public allegation was first made.</p>		<p>Should use the term "public official" (inclusive of specified person in public life) instead of "specified person in public life".</p> <p>This provision breaches article 29 of the UNCAC on statutes of limitations. Any person should be able to present a complaint and the prosecution services should also have full freedom of investigation within long statutes of limitations. The proposed article 64 as it is, establishes a statute of limitation of 3 months since the date of a public allegation being made.</p>
<p>65.2 The Commission shall keep the Code of Conduct under review and may, after public consultation, amend or replace the code as it considers necessary or desirable.</p>		<p>May consider assigning additional functions to the Commission such as the publication and dissemination of the Code of Conduct, as well as the design of training programmes.</p>
<p>65.3 The Commission shall inquire into or investigate every contravention of the Code of Conduct by a public official where it receives a complaint or report of the contravention; or is satisfied that there are reasonable grounds for it to carry out an investigation on its own initiative.</p>		<p>Consider adding at the end of Article 65.2. '...in line with international standards'.</p> <p>Should allow for anonymous complaints.</p>

<p>67. 3 The Commission shall send a copy of the report, including copies of evidence and material documents submitted during the inquiry or investigation to</p> <ol style="list-style-type: none"> a. the public official who was subject to the inquiry or investigation; b. and the following persons in the following cases: <ol style="list-style-type: none"> i. the head of the Public Service and the Governor-General, in the case of an alleged contravention of the Code of Conduct by a public officer; ii. the Speaker of the House of Assembly or President of the Senate, as the case may be, and the Governor-General, in the case of an alleged contravention of the Code of Conduct by a member of the House of Assembly or the Senate; iii. the Governor-General, in the case of an alleged contravention of the Code of Conduct by the head of the Public Service or by the Speaker of the House of Assembly or the President of the Senate; and iv. the public body in relation to which the public official is a public official, in the case of an alleged contravention of the Code of Conduct by a public official other than a public official referred to in subparagraphs (i) to (iii). 	<p>May consider to also send a copy of the report to the reporting person.</p>
<p>67. 4 A person who receives a report from the Commission pursuant to subsection (3)(b) in which the Commission has determined that the public official subject to the inquiry or investigation contravened the Code of Conduct shall</p> <ol style="list-style-type: none"> a. decide without delay what measures shall be taken, if any, in response to the report, and shall implement such measures without delay; b. and inform the Commission, as soon as practicable, but not later than 30 days after receiving the report <ol style="list-style-type: none"> i. of the follow-up actions or disciplinary measures that will be or have been taken against the public official in response to the report; 	<p>Should consider to inform the reporting person about the measures taken.</p>

<p>ii. that no further action is required to be taken against the public official in response to the report; or</p> <p>iii. that no decision has been made as to the measures to be taken in response to the report, of the reasons for the delay, and of the date by which a decision will be made and sent to the Commission.</p>		
<p>68.1 A public official shall benefit from the protections in sections 76 and 77 where he makes a protected disclosure, in good faith</p> <ol style="list-style-type: none"> 1. to a person referred to in section 69, 70, 71 or 72, of a kind described in that section; 2. of an exceptionally serious matter, in the circumstances described in section 73; or 3. in the circumstances described in section 74. 	<p>Article 33.</p> <p>Protection of reporting persons</p> <p>Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.</p>	<p>68.1 May consider not limiting the protection to public officials only.</p> <p>68.1 Should consider including discloser to DPP.</p> <p>68.1 If “good faith” is used, it might make sense to clarify what is meant by this (e.g. reasonable belief that the information that was disclosed was substantially true and related to a potential reportable wrongdoing). Intentional false reporting would not warrant protection, but if the person did an “honest mistake” or the full investigation did not render sufficient evidence this should not be punished.</p> <p>68.2.a he has reasonable ground to believe a violation to this Act or the Code of Conduct has been, is being or is likely to be committed.</p>
<p>68.2 A protected disclosure is a disclosure that</p> <ol style="list-style-type: none"> a. an offence has been committed, is being committed or is likely to be committed; b. a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject; c. a miscarriage of justice has occurred, is occurring or is likely to occur; d. the health or safety of an individual has been, is being or is likely to be endangered; e. the environment has been, is being or is likely to be damaged; f. or information tending to show a matter within any of paragraphs (a) to (e) has been, is being or is likely to be deliberately concealed. 		<p>Reporting channels:</p> <p>It is positive to cover not only corruption offences but also other matters including risks to health and safety or to the environment. However, this would mean that also other regulators (Health and Safety Regulators) should be recipients for the “external disclosure to a regulator or law enforcement” and not only the Commission as foreseen in Article 72. The Commission would presumably not have the power or capacities to investigate environmental risks or similar.</p>
<p>69 A public official may make a disclosure in connection with his employment to</p> <ol style="list-style-type: none"> a. his employer; or 		<p>It is not clear if Article 69 (b) refers to external disclosure of if it is an alternative internal disclosure channel.</p>

<p>b. another person, where the public official reasonably believes that the matter disclosed relates mainly to that person's conduct or to another matter for which that person has legal responsibility.</p>		<p>With regard to internal disclosures for organisations of a certain number of staff, it would be useful to provide staff with alternative options. E.g. direct supervisor or reporting to a compliance officer or other designated person within the organisation.</p>
<p>73. A public official may disclose a matter of an exceptionally serious nature where:</p> <ol style="list-style-type: none"> he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; he does not make the disclosure for the purposes of personal gain; and it is reasonable for him to make the disclosure, having regard in particular to the identity of the person to whom the disclosure is made. 		<p>73. May consider defining "exceptionally serious matter".</p> <p>Articles 73 and 74: To me it is not clear when article 73 applies. Is this for external disclosures e.g. to the media or public? If not, it would be useful to clarify which requirements need to be fulfilled for which type of disclosure (a) <i>internal</i>, b) <i>external to a regulator or law enforcement</i>, c) <i>external to the media or public</i>.</p>
<p>74. 1. Subject to subsection (2), a public official may make a disclosure in any of the following circumstances where</p> <ol style="list-style-type: none"> he reasonably believes that if he were to make the disclosure to his employer, his employer would subject him to a detriment; he reasonably believes that <ol style="list-style-type: none"> he cannot make the disclosure to the Commission because the matter to be disclosed is not one that the Commission is willing or able to deal with; and if he were to make the disclosure to his employer, it is likely that evidence relating to the matter would be concealed or destroyed; he has previously made a disclosure of substantially the same information to his employer or to the Commission. 		
<p>76.1 An employer or any person in authority over a public official who subjects the official to a detriment by reason only of the official having made a protected disclosure pursuant to section 68 is guilty of an offence and is liable, on summary conviction, to a fine of \$15 000 or to imprisonment for 2 years or to both.</p>		

<p>76.2 A public official who makes a protected disclosure pursuant to section 68 does not break a duty of confidentiality to any person by reason only of having made the disclosure.</p>		<p>Furthermore, consider including the prohibition to dismiss an employee for making a protected disclosure, and his or her restitution and compensation if he or she was dismissed.</p> <p>Protection: The protection in this law is limited to criminalization of retaliatory measures. Whilst it can be considered an advanced approach to criminalise such behaviour, it should still be feasible for the whistle-blower to seek damages or be reinstated if he/she was fired, demoted or similar. In the case that the Labour Law of Barbados does not comprise relevant provisions which could be used by the whistle-blower for this purpose, this protection could be included herein...potentially even the possibility to get "interim" protection (such as an interim reinstatement whilst the case was in trial).</p> <p>It would also be useful to integrate provisions that deal with confidentiality into the law or regulations for the implementation of the law. Meaning that the receiving persons/entities should protect the identity of the reporting person.</p>
<p>1. The Commission shall consist of</p> <ol style="list-style-type: none"> a. a chartered or certified accountant of at least 7 years' standing appointed by the Governor-General after consultation with any body which in his opinion represents chartered or certified accountants in Barbados; b. a person who holds or has held the office of judge in a superior court of record in any part of the Commonwealth, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition. c. an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the <i>Legal Profession Act</i>, Cap. 370A, appointed by the Governor-General, after consultation with the Council of the Barbados Bar Association; 		<p>May consider involving civil society in the selection of the Members of the Commission.</p> <p>May include additional eligibility conditions, such as being recognized for their integrity by all segments of society.</p> <p>Perhaps it can be considered to remove "which in his opinion".</p>

<p>d. a member of the clergy, appointed by the Governor-General, after consultation with the Prime Minister and Leader of the Opposition;</p> <p>e. a person appointed by the Governor-General on the advice of the Prime Minister;</p> <p>f. and a person appointed by the Governor-General on the advice of the Leader of the Opposition.</p>		
<p>2. A person shall not be qualified to be appointed as a member of the Commission where</p> <p>a. the person is a member of the House of Assembly or the Senate;</p> <p>b. has, at any time during the period of 3 years preceding the appointment, been a public officer;</p> <p>c. has, at any time during the period of 5 years preceding the appointment, held office in a political party; or</p> <p>d. would otherwise be disqualified in accordance with section 38 or 44 of the <i>Constitution</i>, as the case may be, to be a member of the House of Assembly or the Senate.</p>		<p>In line with the UNCAC, a judge is considered a public official.</p> <p>Consider including any person who has been convicted of corruption.</p>
<p>3. All members of the Commission shall be appointed by instrument in writing and, subject to paragraphs 2, 5 and 6, shall hold office for a period of 3 years and be eligible for re-appointment.</p>		<p>May consider a longer period of tenure, beyond the term of a government.</p>
<p>83. Regulations The Attorney-General may make Regulations generally for giving effect to this Act and, in particular, for any matter required to be prescribed by this Act; any matter in relation to any report, investigation or inquiry under this Act; and any matter concerning the procedure of the Commission.</p>		<p>Consider review to ensure that the independence of the Commission is not compromised.</p>



MEN'S EDUCATIONAL SUPPORT ASSOCIATION (MESA)

STRONGER MEN, STRONGER FAMILIES, A STRONGER NATION

Registered Charity No: 692

P.O. BOX 793, #10 GARRISON

ST. MICHAEL BB 11000

CHAIRMAN: Grantley Osbourne
SECRETARY: Irvine Carrington

TELEPHONE: 622-2043
E-Mail: mesabarbados@gmail.com

August 24, 2018

The Clerk of Parliament
Parliament
Parliament Building
Bridgetown
BARBADOS.

Integrity in Public Life Bill, 2018

Dear Sir,

On behalf of The Men's Educational Support Association (MESA) I am to submit the following:

QUERIES

1. What is the definition for a person in 'public life'?
2. How would one know what has been declared by the individual, if the submitted-envelope has been sealed?
3. How would one be able to determine whether there is an *honest* declaration by the 'Public Official', if the envelope is sealed?
4. For how long would the submitted-information be kept *in custody*?
5. Would there be any possibility of the confidential information being disclosed after the individual is no longer a 'public official'?
6. Will the Bill address *insider-training*?
7. Will there be a penalty for *collusion* by a public official?
8. Will *protection* be given to a person who turns State witness?
9. Will the Commission function with quasi-judicial powers or full powers?



RECOMMENDATIONS

1. A 'post' should be created for someone to oversee the submitted-information. This person, under oath should be sworn to secrecy. Should that person be *in breach* of that confidential information, then he/she should be heavily fined and imprisoned.
(Without having a knowledge of what the Public Official has declared, then the exercise would only be cosmetic, or would just be a formality).
2. Having examined the submitted-information, there should be a *secret* and uninformed investigation to determine whether the declaration made has been an *honest* one.
3. There should be a specified time element for which this submitted-information is kept.
4. There should be no disclosure of the Public Official's submitted-information after the individual is no longer a public official or in 'public life'.
5. Should it be discovered that the Public Official had submitted false information or is found guilty of corruption, then the punishment should be compatible with the *findings*. There should be no discrimination.
6. Protection should be given, in every way possible, to a person who turns State witness.

Respectfully yours,



Grantley L. Osbourne
Chairman
MESA

Zimbra

parliamentbarbados@caribsurf.com

Integrity in public Life Bill 2018

From : Sam Lewis <johndo@caribsurf.com>

Fri, Aug 24, 2018 02:57 PM

Subject : Integrity in public Life Bill 2018**To :** parliamentbarbados@caribsurf.com

Good afternoon

We are not sure if all of the following suggestions/recommendations fall into the category of integrity in public life, but we believe they all apply to good governance of the country's affairs. Where they are not appropriate for the subject above, please steer them to where they can be duly considered.

1) This applies to the back end of the subject, but we wish to suggest that unless there is accountability and the appropriate penalties attached to any breaches of the provisions of the legislation, it will not have the desired effect and it will eventually fall into disuse, like so many of our other disregarded laws. Some people will not obey the law unless they know for sure that they will pay one way or another for not doing so. These people influence others, and eventually the law is useless for all practical purposes. The penalties not only have to be there, but they have to be enforced—we are very poor and somewhat selective at law enforcement.

2) Government's legal matters should be handled—and be able to be handled—by in-house Government lawyers. Politicians should not be allowed to outsource this work based on their own personal preferences. Where they ignore or circumvent this rule, they should be severely censured without fear or favor—no partisan approach on this.

3) ALL contracts should be awarded based on a transparent and open evaluation process with the applicable criteria available for scrutiny by the general public.

4) Elected MP's should not interfere or be allowed to interfere in the day to day running of Government departments outside of the avenues provided by the appropriate processes set up for their input. This applies to areas such as promotions, transfers etc. and any other internal activities.

The general public is already saying among themselves that eventually it will be back to business as usual with special treatment for The Boys (and The Girls). I hope that we can be proven wrong this time, and that a real change in our culture is about to happen.

Sam & Waple Lewis

C8



**OFFICE OF THE OMBUDSMAN
2ND FLOOR, TRIDENT HOUSE, BROAD STREET
BRIDGETOWN, ST. MICHAEL, BB11129**

E.mail ombudsman@caribsurf.com

Ref. No: _____

Tel. No. (246) 436-8179
Fax No. (246) 426-4444

When replying to this
correspondence please quote the
Reference number shown above

24th August, 2018

Clerk of Parliament
Parliamentary Building
Bridgetown

Dear Sir

I hereby forward my comments on the Integrity in Public Life Bill for your
consideration. Please accept my best wishes.

Yours faithfully

Valton Bend
VALTON BEND
Ombudsman

VB/da

COMMENTS ON THE INTEGRITY IN PUBLIC LIFE BILL 2018

Clause 2

There is no definition of the term "Integrity". An indication of uprightness, trustworthiness and sincerity could be included. An absence of the definition would not effect the operation of the Bill or Act.

Clause 4(1)3

This provision ought to be strengthened. It speaks to the reduction of corrupt acts. This provision should speak to not only the reduction but the elimination of corrupt acts.

Clause 4(2)

This relates to the independence of the Commission. It states that the Commission "may not be subject to the direction or control of any person or authority".

Is this in conflict with clause 4(3): Where the Governor General may in writing request the Commission to investigate any matter?

Could the Governor General refer a matter for investigation?

Clause 11(5)(a)

A person who gives evidence before the Commission should not be compelled to incriminate himself. This should be substituted for "compeltable".

Clause 4(2)

This stipulates that the Commission may not be subject to the direction or control of any person or authority. However Clause 23(2) and Clause 23(2)e prescribe that a panel can take a measure: (1) to investigate a complaint further and (2) to institute a hearing to inquire into a complaint; while there is no objection to a review process it ought to be made certain that the Commission is not subject to any authority, body or person.

Clause 60(2)

This stipulates that a complaint may be sent to the Chairman of the Commission. The usual standard is to send complaints to the secretary.

Clause 79(3)

There would be difficulty in enforcing this provision. Firstly, it runs counter to the provision against self incrimination. Secondly, the receipt of information is subjective. The divulgence of information would be the basis of a breach of confidentiality. Enforcement and penalties would relate to the divulgence and breach rather than the receipt of information.

Clause 83 and Clause 84(1)

Does Clause 83 clash with Clause 84 (1)?

The Attorney General is empowered to make regulations. Yet the Commission can make rules for its own procedure. A resolution can be found: Notwithstanding the power of the Attorney to make regulations, the Commission may make rules for its own procedure.

General Observations

Public Officials are defined in Clause 2. References are made to public officials in Clauses 51, 52, 53, 68, 69, 70, 71, 72, 73, 74 and 75.

Public officers are defined in Clause 2. References are made to public officer in Clause 63(b) and Clause 67 (3).

The penalties relating to public officials should also apply to public officers. I do not suspect that public officers are exempt from the majority of these provisions. Perhaps the provisions should include public officials, public officers and other employees of the government. It would seem that public officers might escape the rigours of this legislation.

The independent contractor is not included in the legislation. In this age of information technology, installation of high-end technology and servicing of equipment are contracted out by government. Outside contractors may be exposed to the state secrets and confidential matters. Tightening up of state security should be enhanced by removing this loophole and possibility of breach.

September 7, 2018

Clerk of Parliament
Parliament
Parliament Buildings
Bridgetown
Barbados, W.I.

Dear Sir,

Integrity in Public Life Bill, 2018 presentation

Thank you for this opportunity to make a brief presentation on behalf of the Democratic Labour Party on this proposed Bill.

1. This Bill seeks to enter into virgin territory where our body of law is concerned. The issue of corruption is not new. Laws are passed where there is a mischief that begs to be addressed. Barbados passed the Prevention of Corruption Act in 1929 which is still the law of this country on that subject. This Bill, however, seeks to establish an administrative infrastructure to manage the behaviour and the assets of specified persons in public life. This is new.

Legislation of this nature cannot be effective unless it either contains or is accompanied by "how to" rules and regulations. An important part of any discussion on this Bill must include how the Integrity Commission proposed in the Bill will carry out its work so that there may be public comment on its likelihood of effectiveness.

Further, if this Bill is passed into law without Regulations, it will sit on the books without being actionable while it awaits Regulations. Section 83 of the Bill provides for the Attorney General to make Regulations. In light of this, it is recommended that Regulations be prepared and form part of further discussion on the Bill.

2. Section 2, the definition section of the Bill, defines "prohibited interest" as an interest in a contract with the Government, the acquisition of which by a member of the House of Assembly or the Senate is prohibited under rules made pursuant to section 84(2).

The mentioned section 84(2) provides that the Commission shall make rules outlining the circumstances in which the acquisition by a member of the House of Assembly or the Senate of an interest in a contract with the Government is prohibited. I submit that there can be no meaningful discussion on this issue of a prohibited interest in the absence of the rules which the Commission is mandated to make.

And further, I doubt that over the years there have been many members of Parliament who had an interest in Government contracts. One suspects that this is more an issue for public officers who may use their positions, their peculiar knowledge of the inner workings of the process, to acquire such contracts, even if posing under a business name. And this may only be relevant where there is a conflict of interests.

3. Section 3 establishes the Integrity Commission. Is the Commission intended to be a body corporate to which section 21 of the Interpretation Act applies? If the Commission is intended to be a truly independent entity, it should be established as a body corporate, able to sue and be sued in its own name; the power to make contracts in its corporate name; and truly be able to regulate its own procedure and business as of right. Section 3(3) states that it may regulate its own procedure, but subject to the provisions of this Act.

If the Commission is made a body corporate, there would be no need for a Minister to determine who should have their expenses paid (section 11) and if the Commission unreasonably denies a person every right to which that person is entitled, the affected person could sue the Commission as if it were an individual.

4. The Commission is an administrative body; it is an investigative body; it is a law enforcement agency with police powers; it is a court with judicial authority. Here is an entity that resembles a police force, a prosecutor and a judge and jury, determining matters in its own cause. It will be a creature like the multi-headed beast of the book of Revelation. This is not good for legal certainty. Does this offend the separation of powers doctrine?

5. Section 8(2) provides that the remuneration and terms and conditions of employment of the officers and other employees of the Commission may be determined or varied by the Commission from time to time. Is it anticipated that contrary to the protection offered to public officers in the provisions of the Constitution the remuneration of persons employed by the Commission may be reduced at the will of the Commission?
6. Section 10(3) excludes the application of the rules of evidence. The Evidence Act, Cap. 121, sets out rules that seek to guarantee fairness and ensure just results. These rules are relaxed where there is a Commission of Inquiry, for instance, which is geared at gathering facts. It is unusual for this to apply where a person may be facing a criminal prosecution.
7. Section 11 is troubling. Subsection (1) accepts that a person summoned to a sitting of the Commission is entitled to have his expenses paid. But subsection (2) states that payment is dependent on whether the Minister of Finance decides that person's expenses should be paid. And subsection (3) states that the Commission may disallow the expenses all together. This creates the potential for persons to be punished if their testimony is not pleasing to the Commission or the Minister of Finance.
8. Section 28 provides for a specified person in public life to place assets in a blind trust. As far as I know, the concept of a blind trust is not defined anywhere in the laws of Barbados. Subsection (5) provides the first glimpse of this creature and it seems clear that it is an option open only to a specified person in public life. According to this provision, a blind trust is created when the specified person in public life enters into an agreement with a qualified trust company for the storage or management of his assets. Interestingly, he may be a part owner of the trust company which manages his assets. Will this be a new vehicle that is available only to politicians?
9. Assets are placed in a trust after they were obtained. A blind trust in no way prevents corruption for the trust does not address how the assets were obtained. After one has gathered the assets, then he may place them in a blind trust, which he part owns, for safe

keeping. This does not advance the cause of preventing corruption. It has the appearance of protecting the corruptly obtained assets.

10. Sections 29 and 30 seem to give an active executive role to the Governor General. The Governor General usually sits above the arena, remaining independent of Executive actions until called upon to give effect to decisions, usually acting on the advice of the Executive. The function of an inquiring officer is inconsistent with the role of the Governor General.
11. Section 64 provides that a person may lodge a complaint with the Commission on hearing an allegation in public of a possible contravention of the Act. There is no locus standi requirement and no threshold of knowledge or information. This seems to suggest that it is sufficient for a busy body to listen to the offerings of a call-in programme for instance, and be able to lodge a complaint with the Commission.
12. The penalties contained in this Bill are not dissuasive. The maximum penalty anywhere in the Bill is \$20,000. Compare this with the penalty provisions in other relevant Acts. Section 79 of the Bill seeks to ensure that information gathered is treated confidentially. It carries a penalty of fine of \$5,000 or 2 months imprisonment. A similar offence in the Money Laundering and Financing of Terrorism (Prevention and Control) Act carries a penalty of \$100,000 or 5 years imprisonment. A person convicted of money laundering on indictment is subject to a fine of \$2,000,000 or imprisonment for 25 years, or both (sec.6).

As a general observation, we must understand how the entities established in the Bill will function and this may only be understood if the relevant rules and regulations which would enable them to function are exposed for discussion. There needs to be a better way than involving the Governor General in the inquiry work of the investigative process of this Bill. We need to understand why the penalties provided are so low, or maybe, do you hold the view that the penalties provided in existing legislation are too high. Have we lost faith in the existing organs of the state so that we have to create an entity without parallel to manage Members of Parliament?

R.E. Guyson Mayers

General Secretary

C10



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Barbados W.I.
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August 24th, 2018

THE CLERK

Parliament of Barbados
The Parliament Building
Bridgetown , St. Michael
Barbados W.I.

Ref: INTEGRITY IN PUBLIC LIFE BILL 2018

Dear Sir,

If you will try to build for the future, you must set your foundation strong, the wise build their house on a solid foundation, fools build on the sand.

The foundation of righteousness, liberty, and justice for all, must never be taken away from the people in the effort to create stability.

After careful assessment of the Integrity In Public Life Bill 2018, I am of the opinion that

(a) The Document is a Solutions Barbados draft and one that does not reflect the correct methods or ideals necessary for creating the appropriate measures for combatting the matter of inappropriate conduct in Public life in Barbados.

(b) The Bill doesn't seek to maintain and promote fairness and privacy of life and the idea of nationhood in the minds of our people.

© This Bill is based on the Idealogy of Solution Barbados and need to be carefully examined and redefined in all aspects, it does not promote a proper method of nation building, accountability and responsibility along with cohesion of individuals within Public life.

(d) It has the potential to incite fear and malicious intent among each other if misunderstood.

Including are some of NBKA suggestions for **The Integrity, Anticorruption and Public Life Bill**.
Kindly note I'm interested in making an oral presentation concerning this Bill and any meeting deemed necessary and to discussed NBKA position where necessary.

Apostle Lynroy C. Scantlebury
ALCS/ab

012

INTEGRITY AND ANTI-CORRUPTION LEGISLATIVE ACT 2018.

VISION:

To promote good morals and operation at all levels of operation to ensure that a strong Nation is being built on the Highest standards of Trust, Integrity, Righteousness and Truths.

PURPOSE:

To the maintaining and improving of Barbados's Global standing as a preferred destination, for investment, to live and also contribute to the growth and maintenance of A Great Barbados.

To produce a Barbados where integrity in operation is at the highest level among its peers.

INTERPRETATION:

This solidifies the Code of Conduct and the understanding of accountability and responsibility by all.

THE COMMISSION:

Appointed by and Reporting to The Governor General and Chief Justice.

STRUCTURE: Eleven (11) Personnel

Three (3) Supreme Judges,

Former Prosecuting Sargeant

Element from the Central Banking (Banking Personnel)

Fraud Squad

2 from the Clergy

Representative from Attorney General Office

Secretary

Treasurer

Analyst

PURPOSE OF THE COMMISSION:

To effective and efficiently carry out all investigations where deemed necessary and to ensure that Justice is served and Expedited in a timely manner.

MISSION:

To effectively and efficiently used technology in discretion in the acquiring and processing of all information regarding the inciting of any individual in regards to the infringement of Integrity and Anti-Corruption laws.

OATHS OF THE COMMISSION:

Not to divulge any information concerning its plans of action concerning the investigation and citing of action against an individual or business until its findings constitutes indictment and further action.

In some cases the individual or business can be notified they are under investigation to have any documents need by the commission available.

All information should be treated as confidential and off limits to any person outside of the commission.

Any personnel of the commission found divulging any level of information should be immediately dismissed from the commission and brought before the same commission for disciplinary actions to be taken against them. This is where the GG and the CJ will decide on the effects of their actions and penalty for such actions.

Their obligation and reporting any level of information, queries and needed advice is directing to the Governor General and Chief Justice only unless further directed by them.

REPORTS TO: BARBADOS:

Governor General, The Chief Justice and

OTHER:

Scotland Yard and the FBI where deemed necessary.

FUNCTIONS OF THE COMMISSION:

Monthly meetings to review and overview the nation and its current position and activities.

FOR MEMBERS OF PARLIAMENT AND THE SENATE:

To maintain records, including the functioning (Job Description) of all individuals, their current Address and contact information.

Salaries

Ensure declaration of any interest or business along with their current position to see whether they pose any conflict of interest.

Address immediately any complaint against any member of parliament they deemed relevant and warrants such.

GOVERNMENT AND PRIVATE SECTORS:

The commission has the right to investigate any area of business both in the Governmental and Private sector based on solid and creditable information to prevent any scandals and infringement on the trust and functioning of that said entity.

PRIVATE SECTOR:

Any business, organisation or entity is not above the commission and can be investigated where the commission has made a decision based on factual and precise creditable information with the advice of the GG and CJ.

Where they are rumours (not malicious and hateful actions), the commission can from their own meetings (talks) and consultations make a decision to investigate the entity without their knowledge or awareness.

When the commission have secured the information, documentations and other forms of proof of misconduct, corruption, or any type of illegal practices and operations, the commission must inform the entity of their intentions and request a meeting with them and their legal representative to inform them of what actions will be taken against them, why and any documentation they need them to present to them.

The commission must obtain a legal document (search warrant or court order) for any documents, files and products etc they will be confiscating from the offender.

ENTRY OF NEW COMPANIES INTO BARBADOS:

The commission must be notified of their intentions and carry out a thorough assessment of the company, its individuals, background, affiliations and relations with the justice system, compliance to previous country mandates and any other infractions before given permission or any level of concessions are given.

Should a company has a known proceeding reputation that are in breach of this Act, they should advise along with their application and their stated procedures to rectify and make amends of such acts. The information given should be followed up to ensure it is correct and current.

Based on the level of activity in business, the commission should advise the appropriate personnel and office of any concession they deemed necessary in favour of Barbados and the employment of Barbadians.

The commission must ensure that each office carries out their duties and it is done to promote the best level of employment for both the Employer and employee.

Random checks at these institutions should be made to ensure all is in order.

In areas of taxation and the paying of all taxes, the commission must be kept informed whether there is a breach of contractual agreement and should advise the appropriate entity of the action needed.

TAKING LEGAL ACTION:

Arrest and Charge:

The commission after their finding and final decision on an investigation, must alert the Commission of Police of their intentions and will select two members of the Royal Barbados Police Force to accompany their representative (from the commission) to arrest and charge individual or company representative.

The commission representative should be the person from the Fraud Squad who would have more experience and how to proceed carefully.

This level of arrest should be very discreet and there should be no alarm and notification to the media until the person has been apprehended and in the custody of the RBPF.

Based on the individual and their connections the commission can determine whether they need the assistance of the Barbados Defence Force (BDF). This is totally based on the discretion of the commission.

OFFENCES AND PANALTIES:

Due to the nature of offences, the penalty is directly at the discretion of the Judge / Magistrate. However the Judge/ Magistrate can have consultation with the Board of the commission, or any other entity for any information He or She deemed necessary to make a decision on the sentencing of the individual.

In cases where the offence has serious and in many cases life changing challenges, the full weight of sentencing should be enforced.

For integrity, Anti-corruption and illegal activity no Penalty of money should be awarded.

DECLARATIONS OF FINANCIAL AFFAIRS:

The declaration of any individual Assets, income, liabilities, properties and those of their spouse, common law wife and children are **their own privacy and there should be no need for declaration unless there are in breach of any laws, and the commission has suspicious knowledge of any illegal activity** where they are concerned.

However for those employed and are **members of Parliament, the Senate and Permanent Secretaries, Head of Departments, Chairpersons of Boards, Chief Executive Officers, Managers, Executives Head, Magistrates, Members and Staff of Commission, etc**, the declaration of such should be complied with if and when requested by the commission based on their request.

The commission will direct persons as to the level of information they need and the purpose for such information.

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Review of the Integrity in Public Life Bill

Submission to the Select Committee of Parliament

UNITED PROGRESSIVE PARTY

August 24, 2018

Review of the Integrity in Public Life Bill

Submission to the Select Committee of Parliament

CORRUPTION

This Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption.

(OBJECTS AND REASONS)

This piece of legislation is long overdue. The United Progressive Party is of the view that corruption is one of the greatest challenges facing Barbados in pursuing sustainable and rapid economic growth.

Corruption has increased the price of doing business, in some instances has put individuals out of business and has even prevented crucial and substantial investment into new businesses.

It ensures that there is little competitiveness in the market except in the area of Bribery & Corrupt Practices. This is particularly jarring because other jurisdictions have demonstrated that, once Integrity in Public Life legislation is implemented and enforced, significant savings accrue to the public purse and the economy by these actions alone.

Corruption starts at the beginning of the election cycle where individuals and companies finance campaigns in order to be rewarded with contracts or powerful positions when the successful Party attains power.

The corrupt activities then spring from these commitments during the election period. With the several years which have passed since Universal Adult Suffrage, corruption is now endemic throughout public institutions at all levels and with respect to money, goods and services.

Barbadians as well as the international community have witnessed how Barbados' law enforcement appears ineffectual in its efforts to bring drug traffickers and gun runners to Court for punishment. They have also seen that in cases where Boards of Directors have mishandled the monies of companies for which they were responsible, they have not been called to account. Most recently they have seen that allegations of bribery and money laundering have been dealt ignored.

In a very public matter still before the Courts, Auditors confirmed that monies in the range of \$3.3 million were siphoned off from a public company into the business of another person and these funds were never disgorged in order to compensate clients.

customers or investors. The taxpaying public of Barbados was required to provide the compensation.

Barbados is no longer seen as a place where it is easy to conduct business or as a clean jurisdiction. Unless corruption is addressed with a great deal of rigour, Barbados will never see the development it deserves.

We will examine the proposed legislation in order to assist in ensuring its effectiveness and that all levels and types of corruption are addressed.

The real costs of corruption were highlighted by the UN Secretary-General Ban Ki-moon in his 2014 statement for the International Anti-Corruption Day:

"Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes."

SCOPE OF CORRUPT PRACTISES

Clauses 51-55 make an effort to set out the nature of corruption. However what it means to have integrity in public life, is yet to be defined in the legislation. Section 84 provides that the Commission should make rules concerning when a member of the House of Assembly has an interest in a Government contract; section 65 provides for the formulation of a Code of Conduct that would then be enforced by the Commission and Clause 83 makes provisions for the Attorney-General to make regulations.

Recommendation:

1. The Code of Conduct should be available now for discussion in conjunction with the Bill.(PART VIII CODE OF CONDUCT)
2. What happens when a member of the House of Assembly obtains a prohibited interest in a contract should be determined now so that it could benefit from the full glare of this review (CLAUSE 84)
3. The Regulations should be presented with the Bill. (CLAUSE 83)

INTEGRITY WITHIN THE COMMISSION

The Commissioners are the ones with the main responsibility to ensure that the objectives of this Bill are met.¹ Since the Commissioners will be investigating the circumstances of individuals at the highest levels in Barbados the Commissioners must be people of integrity and they must be fearless.

The approach taken in the Bill is to have the Governor General, the Prime Minister, the Leader of the Opposition and where possible, a regulatory or some other body, identify the individuals who should sit on the Commission.

This legislation focuses on the traditional practice of giving the Prime Minister and Leader of the Opposition significant influence in the appointment of officials. This is inappropriate for this piece of legislation. The Bill should avoid the appearance of collusion between the two people who lead the groupings from which there is a perception among the public that much of the corruption stems.

Recommendation:

1. Neither the Prime Minister nor the Leader of the Opposition should be involved in appointing any of the Commissioners, nor should they be involved in their removal. Given the nature of this Bill there must be no appearance of bias. This role can be allocated to the Governor General and some other person such as the Ombudsman, the Chief Justice, the Chairman of the Barbados Christian Council or the Governor of the Central Bank. (FIRST SCHEDULE)
2. As far as possible individuals should be retirees. Given the small size of Barbados most professionals or the firms with which they are associated are actively seeking contracts from Government and this will attract the appearance of bias which must be avoided in much the same way that active bias must be avoided. (FIRST SCHEDULE)

PROTECTION AND SECURITY OF TENURE FOR THE COMMISSIONERS

Under the proposed legislation Commissioners are appointed for only three years are eligible for re-appointment. Three years seems to be a rather short period of time especially when investigations may easily exceed that time period in complex matters. When this is linked to the fact that the Prime Minister and the Leader of the Opposition are both involved in the appointment and the removal of commissioners it seems as though the actual security of tenure is questionable. (FIRST SCHEDULE)

Recommendation:

1. Commissioners should be appointed for a period of at least five years. If individuals are chosen carefully, there should be no reason to fear a longer period than three years.
2. In addition to protecting the integrity of the hearings, there should be provisions for strict penalties due to retaliation and/or intimidation of any member of the Commission or its officers. (CLAUSE 81)

CAPTURING ALL RELEVANT PERSONS IN THE NET

There is an assumption within the legislation that public officials at the highest levels are those who will have the opportunity to engage in corrupt practices.

The scrutiny of the Commission will be brought to bear on public bodies and these are defined in the Clause 2.

The expression "circumstances of husband and wife" in defining "spouse" seems inadequate to capture all de facto spousal relationships.

The requirements of Clause 25 extend to the "specified persons in public life" who do have ostensible power. However, most people are aware that some government departments are more vulnerable than others are to corruption due to their proximity to financially sensitive areas, and because of this, the corruption may easily extend to lower than the heads of departments.

Clause 25(7) provides that after a person has died the administrator of the estate is not under an obligation to file a declaration. The purpose of filing the declaration is to determine ultimately whether there has been corruption. The death of the individual should not prevent the Commission from carrying out investigations which might require the handing over of gifts or which could have some implication for other specified persons being investigated.

Governments over the years have turned to consultants and advisers who have access to information as if they were public officials.

Recommendation:

1. Those public officials who are more easily susceptible to bribery and corruption should be drawn inside the net as well. (SECOND SCHEDULE/CLAUSE 2)
2. The Commission should concern itself with bodies within which the Government has a substantial equitable investment. It is unclear what Clause 2 is intended to cover. (CLAUSE 2)
3. The definition of spouse should be reviewed to include provisions for same-sex couples and, perhaps, other types of dependents that can also be used to conceal acts of corruption. (CLAUSE 2)
4. The personnel in decision making positions whether they are the (Head of Department) or not which positions are highly susceptible to bribery should also be included in the list of specified persons (CLAUSE 2)
5. should all make declarations. (CLAUSE 25). Clause 25 (7) should be removed.(CLAUSE 25)
6. Consideration should be given to including consultants and advisers in the definition of specified persons (CLAUSE 2)

ENSURING THE GOVERNOR-GENERAL CAN CARRY OUT HER FUNCTIONS

When it comes to "white collar" crime Barbados apart from its laws Barbados has a very poor record when it comes to enforcement. The Governor-General's powers should not be circumscribed by resources or the influence of a specified person.

At Clause 33 the Governor-General is required to consult with the Prime Minister and Leader of the Opposition in order to establish a tribunal.

Recommendation:

1. It should be made clear where the resources of the Governor-General should come to perform her duties, (CLAUSE 29 & 30)
2. The Governor-General should not be required to consult with the two political leaders. Perhaps this is where an official like the Ombudsman can be pressed into service. (CLAUSE 33)

ENSURING THE COMMISSION HAS TEETH

Clause 4(f) gives the Commission powers to investigate activities but not in instances where it is the responsibility of some other law enforcement entity.

Clause 28 allows a specified person in public life to create a blind trust and in such circumstances their declaration of assets is not required to be as detailed and can be created when alerted that there might be a breach of the legislation.

Clause 32(5) implements a limitation period of 2 years within which its enquiries should begin.

Clause 37(4) provides that registrable interests do not have to be declared once the person dies.

Recommendation:

1. The Integrity Commission should be granted the power to make recommendations and to retain its interest in the matter, even where another law enforcement agency takes a lead on the matter. It would then be up to the discretion of the Commission as to how their resources would best be applied in such a case. (CLAUSE 4(F))
2. There is no objection to the use of a blind trust to manage legitimately attained assets, however there seems to be no safeguards to ensure that it is not abused. The blind trust is not meant to be used as a tool to mitigate the requirement to disclose. (CLAUSE 28)

3. Where there is a Limitation period this should be circumscribed by whether there is any evidence that there were any wilful acts or omissions to prevent knowledge of the offence coming to the attention of the Commission.
4. The knowledge which the Commission may require could affect an ongoing investigation and should not be thwarted in its inquiry because of the death of a specified person. (CLAUSE 37(4))

ADEQUATE RESOURCES FOR THE COMMISSION

Allocating funds to the Commission is very important. Already there is legislation in Barbados facilitating the work of the Ombudsman and the Auditor-General and both offices have been plagued with a lack of resources. Clause 8(1) states that the Commission will allocate its resources according to the funds available to it. There is not much in the legislation to safeguard the Commission's allowances.

There is also a concern about the duplication of existing systems within the Commission. This is especially so within the context of Exchange of Information.

Recommendation:

1. There should be a stronger legislative nexus between the Auditor-General and the Integrity Commission in order to prevent duplication of effort and to ensure that the work of the findings of the Auditor-General can be acted upon if they fall within the remit of the Commission. Perhaps there should be a requirement that the Auditor-General's Report be presented to the Commission or there should be a responsibility that the Commission take into account the findings of the Auditor-General.
2. The Commission should ensure that it does not broaden the scope for foreign interests to engage in "fishing expeditions" in Barbados by opening itself up to the burden of complying with foreign agencies. There may already be adequate facilities in existence through the Financial Intelligence Unit and the Barbados Revenue Authority. The Commission could limit its exchange to those agencies. Sometimes exchanging information with foreign agencies is burdensome for Barbadian institutions.
3. Investigative Officers unless they are persons already coming from a similar background which provide the necessary experience will require substantial training on law enforcement techniques and the law.
4. The Report of the Commission within the context of funding should go to the Minister responsible for Finance instead of the Prime Minister.

INCENTIVES AND PROTECTION FOR WHISTLE BLOWERS

The success of the Commission will depend upon the level and quality of information provided to it in terms of complaints, informants and witness testimony. However, the fact that the action will be against persons in public service will deter persons from providing such information, especially where their own livelihood may hang in the balance. There is always the reluctance to "get involved". There is also the possibility that law enforcement will not take action against someone whom a Whistle Blower draws to the attention of the Commission. The Whistle Blower may then find him/herself in a position where they may then be accused of providing false information. There seems to be little incentive for a person to be a Whistle Blower.

Recommendation:

1. The provisions for Whistle Blowers are complex and certainly would not encourage anyone to take the risk of taking the step to report corruption. The Governor-General/the Commission should be invested with the capacity to hear a preliminary submission before exposing the Whistle Blower to making a more substantive report where he could be found liable for some offence. (PART IX)
2. There should also be physical evidence to the contrary and an aspect of malice before a person is punished for providing false information. (PART IX)
3. Provide greater protection and more incentives for Whistle Blowers. (PART IX)

EFFECTIVENESS OF SANCTIONS

Where there is a deliberate refusal to comply with the declaration of assets or registration of interests the maximum penalty is \$15,000.00 or one year's imprisonment. It should be noted that the maximum penalty for insulting a Commissioner is \$20,000.00.

The Gifts adjudged to be inappropriate personal gifts or official gifts are ordered sent to the Minister of Finance.

Recommendation:

1. For a deliberate failure to comply which amounts to obstruction, the penalty should be more severe.(CLAUSE 36&43)
2. The legislation should state what happens to the gifts. Are they auctioned and a report laid in Parliament? Are they appropriated within the Government Service? There seems to be a lack of transparency here.

EQUITY

1. There seems to be a difference in treatment where there is an inquiry concerning a Commissioner/Staff and other specified persons. It seems that if the Commissioner is found to be compliant and not in breach of the law that fact is published in the Official Gazette and Newspapers. This is not so for others.
2. When a person declares a gift and it is found to be inappropriate the person is required to give up the gift when a person wilfully refuses to comply the penalty is not less than the value of the gift.
3. Clause 47 sets out the penalty as the value of the gift when it has not been declared.
4. Clause 48 then sets out a limitation period of five years.

Recommendation:

1. All individuals who have been investigated by the commission and have been found not to be in breach of the Act should have this fact publicised in the same way. (CLAUSE 33)
2. A fixed penalty should be set for the offence and the person should also be required to give up the gift. (CLAUSE 47)
3. The Bill should avoid limitation periods in circumstances where it will encourage individuals to go to all lengths to be non-compliant until the limitation period has run its course.

TRANSPARENCY

Publication of the findings of tribunals in the newspaper works towards transparency.

Essentially there are two types of disclosures proposed by the Bill. One is the Declaration of Assets and the second is the Register of Interests. (CLAUSE 39)

Recommendation:

It is proposed that the Declaration of Assets should be available for public scrutiny upon request and that the Register of Interests should be published on a website along with the profile of the public official. (CLAUSE 39)

EDUCATION FOR THE PUBLIC AND THE MEDIA

Integrity Commissions work in countries where not only is the commission engaged but the people are engaged. It may be the case that many Barbadians do not understand the link between endemic corruption and poverty. It may be too that they have

become so used to individuals being involved in corrupt practices that they believe the activities to be simply a feature of doing business.

There is currently very little confidence that corruption would be affected by the implementation of new integrity legislation or an integrity commission.

The media must be engaged to ensure that the public believes that the entire process is as effective and as transparent as possible.

The people of Barbados, including the media, have a responsibility in ensuring that the system works. This means the inculcation of a anti-corruption culture from school to retirement is encouraged.

Recommendation:

The Commission should allocate a budget to such public relations activity and education, including on the mechanisms to complain if members of the public encounter such corruption in their lives and work.

OUTSTANDING INITIATIVES

While this legislation seeks to deal with accountability it does not address fully the transparency that needs to go hand in hand with the accountability. It is therefore necessary for Barbados to implement Freedom of Information legislation with great urgency.

There is also a requirement that law enforcement officials be given the power to trace the assets of those found to have been engaged in corrupt practices and that there be restitution.

There are still deficiencies in the tracing of assets and their confiscation under the Proceeds of Crime Act as pointed out in the CFATF 2018 evaluation of Barbados.

Modern legislation addressing campaign financing specifically is still to be brought to the policy platform.

Aspects of The Election Offences Act and the Representation of the People's Act are flouted every election. These must be enforced or amended.

CONCLUSION

This piece of legislation whatever its imperfections is a start. Barbados' deficiencies usually lie with a failure to enforce legislation, which is in fact for our own good unless forced to do so by external forces.

Hopefully as a young nation Barbados is reaching that stage where it is not afraid to discipline itself, for this legislation will never be effective unless those in high office recognise the importance of stamping out corruption as a way of life.

Members of the House of Assembly must be enlightened enough to take the lead on addressing through legislation the corrupting nature of campaign financing. It is in fact the undue influence from many of the sources of campaign financing which is the catalyst for much of the corruption in Barbados. Until attempts are made to address this fact we will still only have partially addressed the issue.

* A similar responsibility exists for the Governor-General with respect to the Commission.

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parliamentbarbados@caribsurf.com

Integrity In Public Life Bill 2018

From : Neville Greaves <romariville@hotmail.com>

Fri, Aug 24, 2018 07:18 PM

Subject : Integrity In Public Life Bill 2018

To : parliamentbarbados@caribsurf.com

Good evening,

Those fines under Section 54, especially in respect of bribery do not seem to be deterrents. They seem very weak and laughable. Bribes to secure costly or high valued projects may be largely significant. I recommend that the penalty be the lesser of:

1. \$500,000 and
2. the extent of the sum involved, whether agreed, promised or actually paid over;
plus at least 20 years in prison.

To settle unpaid fines, the property of the perpetrator and his immediate family should be confiscated.

It seems that the Bill considers that whistle blowers would consist of public officials only. I don't see any protection for other persons who may want to disclose compelling information.

Please draw from the experiences of the other territories that have passed such bills.

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MEMORANDUM



Making Barbados Work Better

FROM: DIRECTOR, FINANCIAL INTELLIGENCE UNIT
ANTI-MONEY LAUNDERING AUTHORITY

TO: Permanent Secretary, Office of the Attorney-General
Clerk of Parliament

REF: 002/054/5

DATE: August 24, 2018

Subject: Comments on the Integrity in Public Life Bill, 2018

Reference is made to the matter at caption.

2. Kindly find enclosed comments on the mater at caption.
3. The Director does not regard it necessary for the FIU to appear before the Select Committee.
4. Please be guided accordingly.

Mrs. Shelley A. Nicholls-Hunte
Director

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Comments on the Integrity in Public Life Bill, 2018

Part III Investigations

Section 18 relating to Obstruction of Investigative Officer states that a person who obstructs the investigative officer is liable on summary conviction to a fine of \$5,000 or imprisonment for 6 months or both. This penalty is low.

In the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23 (MLFTA)- Section 42 states that the penalty for anyone who obstructs the FIU, a Police Officer, authorized officer, etc is liable on summary conviction to a fine of \$50,000 or imprisonment for 2 years or both.

Part VI - Gifts

The Director FIU proposes that in relation to Section 45 (1), the word “benefit” be added after “gift”. The section refers to a gift worth \$1000. To cover a wider range of practical scenarios where a benefit may be given, for example, a level of freeness worth \$1000 or more. Practical examples may be the giver making a service, a product, or an item available on a regular basis for a specific period of time or an infinite period of time as an act of corruption.

Additionally - the gift or benefit may not be solely a one-time occasion valuing \$1000. It may be a series of gifts or benefits totalling \$1000. The Director proposes the inclusion of such terminology to express this.

Section 45(7) (b)- With respect to this subsection, the Director queries the rationale for the inclusion of the Minister of Finance. The Director suggests that the gift be given to the Commission as the report is made to the Commission. If the consideration for the inclusion of the Minister of Finance is for accounting purposes, the Director submits that the gift (money) should go to the Commission and thereafter to the Ministry of Finance.

Part VII - Acts of Corruption and Other Contraventions of the Act

Section 51 - The Director proposes the inclusion of extortion in this section. Extortion like bribery is a type of corruption. In a bribery scenario, a giver is providing something of value in exchange for a benefit offered by the recipient. With extortion, the recipient is not typically offering to provide anything of benefit to the giver. Instead the individual is threatening to take an action or engage in conduct that will harm the giver if he or she does not provide something of value usually of a significant amount or comply with the recipient's demands. Currently, none of the paragraphs explicitly refer to the element of duress, threat of harm, etc as would be included with extortion.

Section 51- The Director suggests that paragraphs (j) and (k) make reference to the Employment Sexual Harassment (Prevention) Act, 2017 as necessary and once applicable.

Section 54- Offences & Penalties in respect of acts of corruption.

The penalties seem rather low and may not be necessarily viewed locally in the minds of the public or by international organizations, like the FATF, OECD as sufficiently dissuasive sanctions or as sufficiently punitive.

It is respectfully submitted that if the culture of anti-corruption in Barbados is being redefined, then the low penalties will not assist this thrust. The Director refers to the Money Laundering and Financing of Terrorism (Prevention and Control) Act (MLFTA) 2011-23. Section 6 refers to the offense of engaging in money laundering and a penalty of \$200,000 on summary conviction or imprisonment for 5 years or both and on indictment, a penalty of \$2,000,000.00 or 25 years imprisonment or both. For aiding and abetting, the the penalty is, o summary conviction \$150,000 or imprisonment for 4 years or both and on indictment \$1,500,000.00 and imprisonment for 15 years or both. The United Nations Convention Against Corruption (UNCAC) or Merida Convention also requires the stipulation of dissuasive sanctions.

One must also note that other offences such as a failure by a financial institution or non-financial business or professional entity to file a report to the FIU relating to suspicious or unusual activity or proceeds of crime, etc may attract a penalty of \$100,000 on indictment. Non- Financial Business or Professional entity based on the Second Schedule MLFTA relates to accountants, attorneys-at-law, dealers in precious metals and stones, real estate agents and trust and company service providers. In other words, individuals as members of the DNFBPs and not merely a legal entity or arrangement may be liable on indictment to \$100,000.00.

Part X- Section 79 (1) & (2) Confidentiality of Information

The penalty of \$5000 or imprisonment for 2 months or both seems low.

Section 48 MLFTA relates to confidentiality and the penalties for breach of confidentiality by the staff of the FIU and any other related person. There is a penalty of \$100,000.00 or 5 years imprisonment or both. All staff of the FIU sign a declaration to this effect on entry to the department. This should also be repeated periodically at certain milestones; work anniversary, etc.

There is also a separate tipping off offence at Section 43 MLFTA in terms of divulging information which should not be divulged. The penalty is \$50,000 or imprisonment for 2 years or both.

These sections are mentioned here to indicate the dissuasive sanctions of another Act of Parliament.

First Schedule

Section 4 - Appointment of Chairman-

The Section states that the Governor- General appoints a Chairman of the Commission. Is this appointment on the advice of the Honourable Prime Minister after the consultation of the Leader of the Opposition?

The Director suggests that the Chairman in similar provisions of other legislative Acts of Integrity Commissions, is appointed on the advice of the Honourable Prime Minister after consultation with Leader of the Opposition.

This provision supports the notion/ principle that the Integrity Commission will possess operational independence and will not be at the whims and beck and call of the political party of the day. This is in keeping with Article 5(2) of the United Nations Convention Against Corruption (UNCAC) and Clause 4 (2) of the Integrity in Public Life Bill, 2018 . The latter states, "*In the exercise of its functions under this Act, the Commission may not be subject to the direction or control of any person or authority.*"

The Director submits that the involvement of both the Honourable Prime Minister and the Leader of the Opposition will support Clause 4(2) and assist in fostering and presenting a culture of transparency.

The Director has additionally reviewed the Integrity in Public Life legislation of the Commonwealth of Dominica. The insertion of the prerequisite for the staff of the Commission is an important focal point, "*..persons of high public standing and reputation for personal integrity.*"

FATF Recommendation 36

One of the recommendations (Financial Action Task Force Recommendation 36) emanating from the Caribbean Financial Action Task Force Mutual Evaluation Report on Barbados' anti-money laundering/counter-financing of terrorism (aml/cft) regime is that Barbados implement and ratify the United Nations Convention Against Corruption (the Merida Convention). Barbados received a Partially Compliant rating.

FATF Recommendation 36 requires that countries implement the following Articles of the Convention as a minimum:

Article 14 - Prevention of money laundering

Article 15- Bribery of national public officials

Article 16-bribery of foreign public officials and officials of public international organizations

Article 17-Embezzlement of public officials

Article 23 -Laundering of proceeds of crime

Article 24-Concealment

Article 26- Liability of legal persons (Addendum - from FIU, not from UN -legal entities & not merely individuals may be guilty of the acts of corruption. Consideration of this fact and the importance of dissuasive penalties is highlighted here)

Article 27 -Participation and attempt

Article 28-Knowledge, intent & purpose

Article 29- Statute of Limitations

Article 30 -Prosecution and sanctions

Article 31-Freezing, seizure & confiscation (Addendum from FIU -this Bill should also contemplate the Anti-Terrorism (Amendment) Act, 2015-28 and the Proceeds and Instrumentalities of Crime Bill when passed and proclaimed apart from Acts referred to at Clause 49 of the Integrity in Public Life Bill

Article 38- Cooperation with national authorities

Article 40- Bank Secrecy

Article 43- International Cooperation

Article 44- Extradition

Article 46- Mutual Legal Assistance

Article 48 - Law Enforcement Cooperation

Article 50 - Special Investigative Techniques

(Addendum from the FIU - controlled delivery, electronic and other surveillance, undercover operations and allow for the admissibility in fort the evidence derived therefrom. This is similar to FATF Recommendation 31 which stipulates that "competent authorities considering investigations should be able to use a wide range of investigative techniques for the investigation of money laundering, associated predicate offenses and terrorist financing including (a. undercover operations ; b. intercepting communications; c. Accessing computer systems; d. controlled delivery").

In Barbados' Mutual Evaluation Report, the assessors stated , "There are no measures permitting the use of a wide range of investigative techniques." Countries have been cautious in legislating for the above items for evident reasons. The Merida Convention in the above Article has made specific stipulations, a mere excerpt of which is aforementioned. The input of the Commissioner of Police of the Royal Barbados Police Force on this matter will be useful. Comments of the Commissioner of Police will also be relevant to Barbados' Mutual Evaluation process.

Article 51- Asset Recovery Reciprocity Between States

Article 52 - Prevention & detection of transfers of proceeds of crime

Article 53 - Measures for direct recovery of property

Article 54- Mechanisms for recovery of property through international cooperation in confiscation

Article 55 - International cooperation for the purposes of confiscation

Article 57 - Return and disposal of assets

Article 58 - Financial Intelligence Unit (Addendum- FIU- the establishment of an adequately resourced and maintained FIU to be responsible for its core function of receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions.)

Other General Comments

In 2015, Mrs. Shelley Nicholls-Hunte, Director, Financial Intelligence Unit had the opportunity to attend a training course in Singapore on Singapore's Anti-Corruption Strategies. The course was part of the Singapore Cooperation Programme, which is one of the vehicles used by Singapore to share its capacity-building successes with and offer technical assistance to developing countries.

The objectives of the course, which was held at the Singapore Civil Service College, were:

- To provide a bird's eye view of Singapore's anti-corruption ethos
- To demonstrate the relationship between the macro strategy and Corrupt Practices Investigations Bureau (CPIB)'s operational environment
- To understand how Singapore exchanged its high level of corruption in the public and private sectors to achieving the ranking of one of the top five least corrupt countries according to Transparency International Corruption Perception Index
- To review the operations of the CPIB
- To explore the transplantability of Singapore's anti-corruption model and other international models

Tours were made of the Attorney-General's Chambers (AGC) and the CPIB.

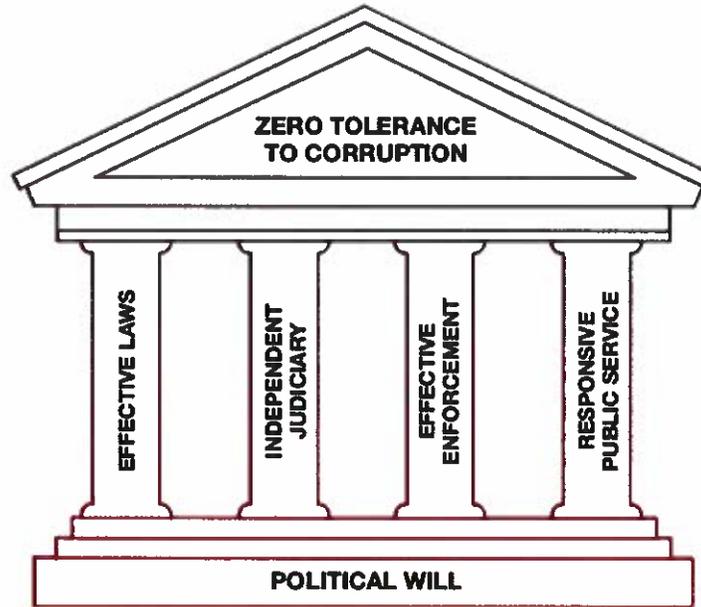
The course participants were employees of anti-corruption agencies, police, tax departments, Ministry of Foreign Affairs, Office of the Prime Minister, Office of the Ombudsman and from the Financial Intelligence Unit (Barbados) from several countries including Bhutan, Botswana, Bulgaria, Cambodia, Fiji, Georgia, Indonesia, Kenya, Kiribati, Lesotho, Maldives, Mongolia, Morocco, Namibia, Palestine, the Philippines, Samoa, Saudi Arabia, Seychelles, Solomon Islands, South Africa, Sri Lanka, Tanzania, Trinidad and Tobago and Zimbabwe.

The Director, FIU lays this context to state the following. One common thread running through the week-long course was the importance of engendering the anti-corruption culture in a country. This is not achieved alone by strong laws or enforcement measures to “scare” persons into compliance, though enforcement leading to prosecution is important. Rather, the importance of prevention was underscored ad nauseum. This is largely achieved through the education of the public on anti-corruption matters in creative ways, the importance of private sector entities’ creation and implementation of anti-corruption compliance programmes for each entity and the national thrust to fervently stress the importance of an anti-corruption culture in the public service. Participants, many of whom originated from countries with corruption challenges, were impressed with the systematic attempts made by Singapore to spread the anti-corruption gospel among its citizens.

The point was also made that the existing culture of many countries may unwittingly encourage corruption. A common example may be the culture of paying an additional sum to obtain an expedited service within a government agency without there being proper accounting systems for the collection and direction of the monies collected.

Participants were educated on the temple of anti-corruption control. The temple has 4 main pillars under the roof of the overarching principle of a zero tolerance to corruption. The pillars are effective laws, independent judiciary,

effective investigation and enforcement and an effective public service. The pillars rest on the base of political will.



Singapore's Corruption Control Framework

While the foregoing is not immediately germane to the Integrity in Public Life Bill, 2018, in order to change Barbados' ethos in relation to corruption, it must be reiterated that anti-corruption efforts is everyone's business. With every act or alleged act of public corruption or official corruption, there will be a public official or entity and a private official or entity, involved.

It is true that Barbados must proverbially "start somewhere" and that a model and novel yet natural way is that the country's leadership, the individuals with "power to wield" lead by example in the fight against corruption. The Director, however is concerned that as the name of the local Bill suggests, there is solely the present focus on the public official at the unfortunate sacrifice of the clarion call that private sector members and members of the public are also accountable and must play their part. It is noted that Parts VIII and IX of the Bill include other officers of government agencies, namely public officials. This matter may be rectified by a strong education culture of the Commission.

The articles of the UNCAC which must be at a minimum implemented to satisfy Recommendation 36 mostly relate to public officials. The point must however be made here that in a fairly brief timeframe after the ratification of the UNCAC and the commencement of the preparation for the Peer Review process, consideration must be quickly given to ensuring that the articles relating to countermeasures against corruption by private individuals and entities must also be implemented. The Director, FIU was also recently informed through the Ministry of Foreign Affairs and Foreign Trade about the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC).

The fact that local private sector entities (and public sector entities and individuals) may run into trouble and into the cold, long arms of the United States' Foreign Corrupt Practices Act and the United Kingdom's Bribery Act, is also another reason that the anti-corruption sensitisation in Barbados must be unrelenting and a concerted and intense long-term effort. Both pieces of legislation purport to have global application.

One more point must be made. Apart from the pressure of international organisations on countries for compliance with and implementation of the Merida Convention (United Nations Convention Against Corruption), at this moment, Barbados is "sticking out" like a sore thumb in terms of being one of the few countries that has not ratified the same Convention. The United Nations Office on Drugs and Crime personnel advised that Barbados was "not in good company", with other countries such as North Korea and Syria in the same company.

Like other Financial Intelligence Units, the Barbados Financial Intelligence Unit, has been a member of the Egmont Group of Financial Intelligence Units since 2002. The Egmont Group in conjunction with the Interpretive Notes of FATF Recommendation 29 require the FIU to possess operational independence and to operate without undue political interference. To operate otherwise will undermine the trust built between the FIU and its main customers, the constituents of the financial sector, whether financial institutions or Designated

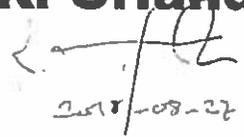
Non-Financial Businesses and Professions (DNFBPs.). It is realised that the FIU will be one of the domestic partners of the commission. It is in these parameters that the aforementioned comments are made with respect to the Integrity in Public Life Bill, 2018.

References

- *Integrity in Public Life Act of Dominica*
- *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23*
- *Caribbean Financial Action Task Force Mutual Evaluation Report of Barbados, February 2018*
- *Association of the Certified Financial Crime Specialists*
- *United Nations Convention Against Corruption*

Please find attached an article I wrote several weeks ago addressing the matter of integrity legislation. Not only does it reflect my views on the subject, I am prepared to appear before the appropriate body to elaborate on such views, if required.

R. Orlando Marville



A SUITE OF INTEGRITY LEGISLATION

Ten years ago, then Prime Minister, David Thompson asked me, then an Independent Senator, to chair an integrity commission, which would look at laws governing integrity in public life. Why he chose me or why he gave me such a distinguished panel, I do not know, even if I have some suspicions. I was to have a professional lawyer draft the legislation and I was to work with a former central banker, a former Dean, a future Principal of UWI, Cave Hill, a distinguished attorney and the head of an NGO. Professor Albert Fiadjoe did the relevant drafts, based on other Commonwealth models and we began our work.

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The draft bills included Freedom of Information, Integrity in Public Life, a new Defamation Bill, a Contractor General, An Ombudsman and Terms of Office for a Prime Minister. We neglected the terms of office segment since we thought it was more appropriate for a Prime Minister to bring a simple bill limiting his/her tenure and that of succeeding PMs to 2 terms of 5 years. The rest we completed.

Prime Minister Mia Mottley mentioned two of the pieces of legislation we dealt with- integrity and freedom of information. I believe that she was earnest and I therefore wish to weigh in on what is being proposed at the moment. First, what we called the tribunal is being called a Commission. I have also noticed some omissions that we considered important. Among those we considered as possible target of this legislation were not only heads and deputy heads of Ministries and Government Corporations, but also all Customs Officers and policemen. Some may argue that all public servants should be under the gun. We also thought that private sector individuals who were involved in any act of corruption should also be penalised. Finally, I have no idea where penalties of \$20,000 came from. If one is dealing with persons who have stolen millions of public monies, they could easily reach into their side pockets and pay such a fine. Our figures were \$500,000 and/or 5 years in prison or \$250,000 and/or 2 years. Ministers were also to establish a Ministerial code of conduct. I note that Ministers should report gifts of \$1000. I would prefer to see that figure at \$500. In South Africa, the figure was so low that when once I sent my old friend and Minister of

Transport, Mac Maharaj two bottles of old Bajan rum, it was shortly thereafter reported in the media that Mac was under such stress that his friends had sent him rum!

The second bit of legislation was the Freedom of Information. This was highly canvassed throughout Barbados and agreed by Cabinet. It was the Permanent Secretaries who had difficulty with the legislation since it proposed fines for failing to release allowable information to a public request (they argued that they could not be fined) and they felt that the resources required could be better spent by adding to their staff. It had, in fact been proposed that the information officers could be gleaned from the Government Information Service, as their role would now be less important. The CPC also weighed in negatively, since they wanted to retain the Secrecy awarded the British colonists to keep from public view what they did in their civil service. The Freedom of information Act is a very important aspect of democracy. It allows citizens, as PM Mottley has been advocating, to participate in governance. It excludes from public glare such matters as diplomatic dealings with a foreign government and mates of national security. It makes it less necessary for costly referenda.

There was too a requested change in the Defamation Act, which is still the only law on the books which presumes guilt, not innocence. The accused has to prove his or her innocence. Without a considerable improvement to this law, it will be impossible for the media to voice unfettered opinion. It will make for another condemnation to exile of a Clennell Wickham or a radio station to

have to pay a Minister because a caller asked why that Minister was so rich? We do not need to go quite as far as the USA does in this area, but we could come quite close.

Two other completed bits of legislation were the Contractor General and the Ombudsman. The Contractor General has worked very well in Jamaica. It ensures that all Government contracts pass muster. Since Government contracts are sometimes enormous, it is well that they are properly scrutinised. Here, as in other areas of the suite, it is vital that whistle-blowers are protected. Additionally, the first four bits of the suite are vital together to really put the brakes on corruption.

Finally, there was the ombudsman. This is a Scandinavian invention as the name ombuds man suggests. He is the individual, independently appointed, who can defend the ordinary man in the case of Government action against a citizen. He is the man who carries the "message" of the ordinary man when his rights are threatened. I would endorse the passing of this bill as well, since it does further the cause of democracy. What we now have is an ombudsman only in name.

We did not get into the issue of term limits. Suffice it to say that I am totally in agreement with the Prime Minister on this issue. A Prime Minister should not occupy that office for more than two five-year terms. As the Prime Minister indicated, we have enough talent to go around.



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WORKING TOGETHER FOR THE GOOD OF ALL

REF: OUT/COR/COIB/27818

27 August 2018

Mr. Pedro Eastmond
 Clerk of Parliament
 Parliament Building
 Trafalgar Street
Bridgetown

Dear Mr. Eastmond,

Please find the following comments on the Integrity Bill as submitted by the National Union of Public Workers, a member unit of the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB).

Integrity in Public Life Bill, 2018
Submission from NUPW

- **Funds of Commission Pat II s 7 (3)** – Where the Commission must prepare and forward to the Prime Minister a report of its activities; where investigation involves the Prime Minister, who should said report be forwarded to in such an instance to preserve transparency?
- Is Integrity Commission an entity on its own? An additional Government agency? As per clause at s 8 (4) referring to pensions for ‘employers of commission’, implying there could be staff other than those making up the body of the Commission.
- As per s 68 (1), why are only Public Officials benefitting from the Whistleblower protection of said section? S 68 (1) should have a broader interpretation to protect more persons who can be defined as whistleblowers.

Yours faithfully,

DENNIS DE PEIZA
 General Secretary

DDP: cpj

Zimbra**parliamentbarbados@caribsurf.com**

Integrity in public life bill

From : Peter Hunte <huncon@caribsurf.com>

Fri, Aug 31, 2018 05:09 PM

Subject : Integrity in public life bill**To :** parliamentbarbados@caribsurf.com

Dear sirs /madams,

My simple suggestion for this extremely essential and urgently needed legislation is this:

ANY public servant or government employee convicted of criminal behavior and any offence (also including offences committed some time ago –period of years can be decided –I would suggest 15) should be severely punished including but not limited to:

Immediate dismissal

Loss of any and all pensions or other service benefits

Very heavy fines, possible jail time and confiscation of all assets obtained by criminal activities.

Very heavy fines and possible jail time as well as disqualification from doing any work , advise or any service for public entities for any individual, group or companies that were involved in any illegal activities.

It can take two or more parties to defraud the public purse, and they should all bear the same penalties.

This will stop the rot!!

Best wishes,

Peter Hunte

August 31 2018

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**Integrity in Public Life Bill, 2018
 Recommendations from BARBADOS PRIVATE SECTOR ASSOCIATION
 IN SUPPORT OF SUBMISSION ALSO OF THOSE SUBMITTED BY INSTITUTE OF CHARTERED ACCOUNTANTS
 OF BARBADOS**

Section	Title	Comments
	Proclamation	<p>The bill should be proclaimed at the earliest possibility, subject to any significant amendments identified through the public consultation process or otherwise.</p> <p>Based on publicly available information only Barbados and Syria (of 140 signatories) have not yet ratified the 2003 UN Convention Against Corruption or otherwise brought its provisions into law (https://www.unodc.org/unodc/en/corruption/ratification-status.html)</p> <p>In January 2018 Barbados became the second to last of 34 OAS member states to be listed as having ratified the Inter-American Convention against Corruption, having signed the Convention in 2001. The only outstanding member now is Cuba. (http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption_signatories.asp)</p>
25, Second Schedule	Declaration of financial affairs	<p>The requirement for the filing of declarations by “Persons in Public Life” as defined in the legislation may present a number of practical challenges. Some examples from other countries are listed below. We support the requirement to file every two years as this may mitigate some of these challenges.</p> <ul style="list-style-type: none"> • The Commissions in Antigua and Jamaica have reported significant numbers of public officials who have been delinquent in filing declarations, and challenges in having these individuals prosecuted. • The Commission in Trinidad has reported significant delays in verifying the accuracy of the filed declarations as this is a manual and time-consuming process. • Difficulty in using the filed declarations to detect evidence of corruption. <p>We recommend the following:</p> <ul style="list-style-type: none"> • With respect to the declaration of assets, liabilities and income at section 25(5), the reporting format should be made available for comment as part of this consultative

		<p>process with the Joint Select Committee. We recommend that the format be clear and simple to reduce the reporting burden and encourage compliance. Persons required to file declarations must keep detailed information in support of the declaration made. This supporting information must be made available to the commission on request as either part of routine audits or special enquiry as provided in the draft bill.</p> <ul style="list-style-type: none"> • Following the 6 month extension which the Commission can grant under section 25(3) it should be empowered to make an ex parte application to the High Court for an order directing any Person in Public Life who is still delinquent in filing, to comply with the legislation (as in Trinidad) on automatic penalty of a specific fine or jail sentence.
29	Receipt and examination of declarations	Consideration should be given to amending this Section to give the Commission discretion to determine which declarations to examine and when to do so using a risk based approach.
3, First Schedule	Members of Integrity Commission	<ul style="list-style-type: none"> • Consideration should be given to including the Auditor General as an ex officio member of the Commission, as is the case in Jamaica. This will enable sharing of information between the two offices and more timely follow up of irregularities and concerns discovered by the Auditor-General during the course of his work. • The reference to “any body which is his opinion represents chartered or certified accountants in Barbados” should be replaced by a specific reference to the Institute of Chartered Accountants of Barbados
4(1)	Functions of Commission	<p>(f) examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices, except where there is a statutory duty on any other person to perform that function.</p> <p>Consideration should be given to removing the exception in the above clause, and giving the Commission the power to examine the practices and procedures either of all public bodies, or of specific public bodies where the relevant statutory duty now falls on some other person.</p>
6	Agreements and exchange of information with law	We commend the specific reference to the Financial Intelligence Unit, as it should be productive for the Commission to work closely with that Unit, as well as the financial

	enforcement	<p>crimes section of the Royal Barbados Police Force. For example, the suspicious transaction reports that must be filed by financial institutions and others will generate useful intelligence that may be utilized by the Commission.</p> <p>Parliament should ensure that the Commission is properly funded to facilitate its work.</p> <p>The Commission should be required to forward the report described in Section 7(3) to the Governor-General, instead of the Prime Minister.</p> <p>The deadline for submission of the Commission's report (included the audited financial statements) should be amended to four months after the end of the financial year. The Section currently states that it should be submitted prior to the commencement of the subsequent financial year.</p> <p>Furthermore the timeline for laying the report in Parliament should be stipulated – for example, within three months of receipt by the Governor General.</p> <p>“An enquiry shall not be commenced after 2 years from the date on which the person ceased to be a person in public life”.</p> <p>This time period appears to be too short – in contrast, the time period relevant for members and staff of the Commission (S. 33(s)) is 5 years. Article 29 of the UN Convention requires each of the signatories to “establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.”</p>
7	Funds of Commission	<p>Need clarification whether this requirement to disclose particulars of any contract made with the government relates only to those directly involving the individual, his spouse and his children, or whether it extends to government contracts made with entities in which the individual is a director or investor.</p> <p>The proposed fines and penalties are significantly lower than in the first draft of the Bill circulated immediately prior to the general elections, and significantly lower than the Prevention of Corruption Act 2012 which was passed but not proclaimed.</p>
32(5)	Commission to report where not satisfied with declaration	
38(1)(b)	Content of statement of registrable interests	
Various	Fines and penalties	

60	Complaint to Commission regarding contravention of Act	<p>It is recommended that the level of fines in the 2012 Act be used in this draft Integrity in Public Life Bill 2018.</p> <p>The Commission should be given the express power to establish a hotline to receive anonymous tips from the public, including from public sector employees (with consequential amendments to other pieces of legislation as required).</p>
	Comparison with provisions of 2003 UN Convention Against Corruption	<p>The provisions of the legislation should be compared to the requirements of the 2003 UN Convention to identify gaps that may need to be addressed.</p> <p>For instance the Convention recommends consideration of:</p> <ul style="list-style-type: none"> - Steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making that are effective, inter alia, in preventing corruption - Measures to enhance transparency in the funding of candidates for elected public office and the funding of political parties - Measures to prevent corruption involving the private sector and provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures - Procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public
	Additional measures to educate public officers and the general public	<p>We recommend:</p> <ul style="list-style-type: none"> - periodic training in ethics and fraud awareness (including corruption) for public officers - national recognition of United Nations <i>International Anti-Corruption Day</i> on December 9 each year

Written Submissions to The Joint Select
Committee of Parliament on the Integrity in
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BARBADOS BAR ASSOCIATION

Written Submissions presented to The Joint Select Committee of Parliament on the Integrity in Public Life Bill, 2018

Executive Summary

The public of Barbados, and those who invest in our economy have a right to expect the highest levels of integrity from public officials. They are also entitled to expect responsible and proper exercise of public power, which is fundamental to the operation of the rule of law.

The Barbados Bar Association sought feedback from its members on the Integrity in Public Life Bill 2018. The Association's Law Reform and Legislation Committee also conducted a comparative review of regional legislation. When the proposed Bill was benchmarked in this manner, it was noted that the Bill proposes a model similar to jurisdictions such as The Turks and Caicos and The Bahamas. In respect of the powers of the Commission, these models go further than earlier legislation enacted in jurisdictions such as Antigua and Barbuda, Trinidad and Tobago and Grenada.

The Barbados Bar Association recognises that it is important to establish a statutory regime and regulatory authority to set and maintain the standard of conduct required and expected of public officials and to which they should aspire and must adhere. It is equally important to demonstrate by legislation a zero tolerance for breaches of that standard and the need for sanctions which clearly indicate the rejection of sub-standard conduct. These standards also serve to determine conduct that merits disciplinary or other sanction.¹ To this extent, the Barbados Bar Association welcomes the introduction of legislation to govern integrity in public life.

This document treats chronologically with each section of the Bill, and reflects and incorporates member feedback thereon. The document includes a number of key recommendations including the following:

¹ Hall, Peter M: Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures p. 5, para 1.10

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1. The Bill seeks to confer wide and coercive powers on the proposed Integrity Commission. A note of caution must be sounded. Coercive powers must only be exercised with the necessary restraints, otherwise the Commission will be open to legal challenges which may encumber its work and effectiveness.
2. Following the model of Turks and Caicos and Bahamas, the Bill proposes to confer the power of arrest on the Commission's investigative officers. The investigative officer has the power of a constable to arrest any person whom he, meaning the investigative officer, reasonably suspects has committed an offence punishable by imprisonment. The view of the Barbados Bar Association is that the power of arrest must be subject to the requirement that an investigative officer obtain a warrant of arrest from a Magistrate. In the alternative, power of arrest set out by the Bill should remain the preserve of the Royal Barbados Police Force, preferably of high rank, as there are constitutional responsibilities concomitant with the role of the police officer and the execution on an arrest.
3. The Bill establishes a number of offences and penalties in the event of an adverse finding of an act of corruption. It is understood that serious offences of extortion, bribery and coercion are criminal in nature and are grounds for prosecution. However, the Bill stops short and fails to propose system for lesser offences. The current structure of the Bill is that, once there is no adverse finding of corruption by the public official, then lesser offences are not captured and there is no system of penalties. If indeed the purpose of the Bill is to maintain highest ethical standards among public officials, there must be provision for lesser breaches of the Code of Conduct.
4. There is support for the inclusion of the office of the Governor General in this Bill, as it speaks to the fact that the proposed Integrity Commission will be operating at the highest level of governance. It is noted that the Bill places a number of responsibilities on the office of the Governor General. The office of the Governor-General must be adequately resourced to carry out the mandates of the Bill when and if called upon to act. These resources must be provided from the highest level, clothed in impartiality and insulated from any possibility of interference or bias. Such resourcing and funding should be established and kept in as independent a manner as possible.

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5. The discussion of the proposed Bill would not be complete without a call for supporting legislation. The provisions of the Bill as it is drafted provides for Whistle Blower protection for public officials. While this is understood within the context of this particular piece of legislation, it gives rise to a much wider, more pressing issue. There is protection for the public official, but what protection exists for a private citizen? If a private citizen, or an employee in a private company wishes to make a disclosure about the actions of a public official, there is no protection for the average Barbadian under this Bill. The right of citizens to report wrongdoing is linked to principles of transparency and integrity. There must be an atmosphere where Barbadians, whether private citizens or public officials, feel free to report wrongdoing, thus a key means of enhancing openness and accountability in government and corporate workplaces and supporting the rule of law. It is recommended that priority be given to providing a comprehensive legislative framework to make all workplaces, including the private sector, accountable to protect whistle-blowers. There should be mandatory provisions for both public and private sector organisations above a certain size to set up whistleblowing mechanisms and we must set minimum standards and protections for such whistleblowing mechanisms.

The Barbados Bar Association will seek to expand on its comments in its oral presentation, through the Clerk of Parliament, before the Joint Select Committee of Parliament on the Integrity in Public Life Bill and is appreciative of the invitation to participate in the crafting of what is a seminal piece of legislation which is integral to and a corner stone of good governance..

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<u>Provision</u>	<u>Comment</u>	<u>Recommendation</u> <u>(where applicable)</u>
General	For such an important, far reaching and potentially draconian piece of legislation, the necessary regulations should be included. The concern is that, if the draft regulations are not included, there is likely to be a lacuna between proclamation and implementation. Furthermore, there needs to be in-depth discussion and clarity on any regulations, and such a discussion should be held in tandem with discussions on the Bill.	Include a draft of the regulations, together with the prescribed forms for comment.
	<u>PART I – PRELIMINARY</u>	
s.2 Interpretation	The Bill may benefit from a definition of the following: ‘act of corruption’ – this term should be defined with greater specificity- see comments under PART VII herein; ‘court’ The Bill does not provide a definition of ‘court’ “conduct” should be considered to include an act as well as an omission to perform an act.	
s.2 ‘document’	The question is whether this definition sufficiently captures the term ‘document’ for the purpose of evidence, given today’s sophisticated information technology.	

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s.2 "prohibited interest"	Should prohibited interest be limited merely to a contract with the Government? The range of activities in which a public official may act improperly is not limited to merely contract.	
s.2 'privileged material'	The Bill utilises the phrase 'a professional legal adviser' in respect of legal advice and the claim of privilege. In the context of Barbados law, it is recommended the term be substituted with "attorney-at law" since the privilege only extends to attorney/client relationships and does not include non-attorneys providing "legal advice".	
Parliamentary privilege	Some jurisdictions provide that parliamentary privilege remains unaffected. The Independent Commissioner Against Corruption Act 2012 of South Australia provides: <i>Parliamentary privilege unaffected</i> s.6 <i>Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.</i>	
s.2 "spouse"	This definition of a spouse is similar to the provisions to the Turks & Caicos Act, and includes a person '(b) who is living with the specified person in public life in the circumstances of husband and wife for a continuous period of one year.' This provision may bring uncertainty into the an otherwise relatively settled ² area of law in Barbados. The Family Law Act Cap 214 and the Succession Act Cap 249 define a spouse as a person who cohabits for a period of five (5) years.	Amendment of section to refer to the definition of spouse as contained in the Family Law Act Cap 214 and the Succession Act Cap 249

² The issue not settled is determining the period when cohabitation commences : Caribbean Court of Justice (CCJ) decision in Katrina Smith v Albert Selby [2017] CCJ 13 (AJ)

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Further, the definition does not provide for the circumstances which would normally disentitle a spouse from benefitting from the other spouse's assets, such as desertion for a period of 3 years or more, ceased to cohabit for a period of 5 years, or judicial separation / commencement of proceedings for divorce.

The definition of spouse in comparative legislation was useful. In Antigua and Barbuda The Integrity In Public Life Act, No. 23 of 2004:

"spouse" in relation to a person in public life means a person to whom the person in public life is married or who is living with that person in the circumstances of husband and wife for a period of three years but does not include -

(a) a married spouse who is living separate and apart from the person in public life;

(b) a married spouse who has ceased to live with that person and where proceedings have been instituted for a divorce or judicial separation during the period a declaration is required to be filed.

By way of further comparison, the Trinidad and Tobago Integrity in Public Life Act No. 83 of 2000 makes no reference to a term of years and speaks only to a 'conjugal relationship':

"spouse" in relation to a person in public life means a person to whom the person in public life is married or living with in a

BARBADOS BAR ASSOCIATION

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	<p><i>conjugal relationship outside of marriage, but does not include a person with whom the person in public life has made a separation agreement, or if their support obligations and family property have been dealt with by a court order;</i></p>	
	<p align="center"><u>PART II - INTEGRITY COMMISSION</u></p> <p>In establishing the Commission, the legislation should provide for its capacity to sue. In certain sections of the Bill, for example Section 16, an investigative officer may make application to a Judge in Chambers for production orders. It is recommended that the legislation gives the duly authorised officer proper standing before the Court to make applications on behalf of the Commission.</p> <p>By way of comparison, the Model Act on Integrity in Public Life © Commonwealth Secretariat, 2017 provides:</p> <p><i>Part III – The Integrity Commission</i> <i>Integrity Commission</i> 7(1) <i>The Integrity Commission is established</i> (2) <i>The Commission is a body corporate that:</i> (a) <i>has a seal; and</i> (b) <i>may sue and be sued and, so far as is possible for a body corporate, may in the carrying out of its functions exercise the rights, powers and privileges, and incur the liabilities and obligations, of a natural person of full age and capacity.</i></p>	<p>Amendment of section</p>

BARBADOS BAR ASSOCIATION

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<p>s.4 (2) Functions of Commission</p>	<p>This section provides that, in the exercise of its functions under this Act, the Commission "may not be" subject to the direction or control of any person or authority. It is recommended that the provision be mandatory.</p>	<p>Amendment of section to replace the term 'may not' with 'shall not'.</p>
<p>s.6 Agreements and exchange of information with law enforcement agencies</p>	<p>The need for a cross-border and multi-jurisdictional approach is understood, however, has a thorough assessment been conducted to evaluate how, if at all, the incorporation of foreign law enforcement agencies may affect Barbados' treaty or other obligations? If so, the drafters should provide a summary of that assessment. Including, but not limited to, the use of collected information in other unrelated proceedings and/or intended prosecutions. In relation to ss. (3) what protections are put in place by way of regulations or otherwise to avoid procedural breaches, arbitrariness and to ensure due process? In relation to ss. (4), by purporting to treat enforcement and administrative entities as enforcement agencies, the drafters may have muddled an important distinction, especially when it may impact the dissemination of sensitive information. Should there not be some measure and/or accreditation that is clear, to establish what may amount to an enforcement agency? As it stands, the section is dangerously broad on a critical aspect.</p>	<p>This discussion would benefit from an examination of the regulations. Establishing criteria or some form of accreditation to be used in determining what should be treated as a law enforcement agency. State whether any treaty or other obligations may be impacted.</p>
<p>s.7 Funds and Commission and</p>	<p>For the elimination of doubt, avoidance of misuse, undue influence, and political or other influence, it is difficult to understand why salary scales for officers and other support staff are not included in the draft legislation. By way of example, even the remuneration for judges,</p>	<p>The Minister of Finance ought not to have the final say on the remuneration of</p>

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<p>s.8 Officers and other employees of Commission</p>	<p>judicial officers, parliamentarians and other persons purporting to exercise public functions are generally clear and published. What is the rationale/basis for omitting such a critical aspect of the Commission's establishment? Has a cost assessment been carried out to ascertain the financial and other capacity implications for establishing and efficiently maintaining such a Commission and officers?</p> <p>In respect of s.8(4), this provision potentially opens the challenge for accusation of undue influence since the Minister of Finance must approve the pensions, gratuity and other allowances. Further, the issue of pensions, gratuity and allowances needs to be clearly expressed. Also, in its current form, the section is too broad. What is the term of service by an officer before they can accrue or be entitled to a pension and/or gratuity?</p>	<p>persons who are charged with the responsibility of ensuring the integrity of public officials.</p>
<p>s.9 Investigative officers</p>	<p>This empowers the Commission to appoint investigative officers. It expressly provides that these officers are not members of the Police Force. The rationale for the exclusion of police officers from eligibility to act as investigative officers is unclear.</p> <p>There is no further description of the competencies which persons must have in order to qualify to be investigative officers. There is also no provision for any mandatory forms of training to supplement or ensure the proper execution of the powers with which they are vested in Part III. There should be clarity on the competencies and training of such officers to give the public assurance. Questions surrounding the proper execution of the powers with which they are vested in Part III may hinder the effectiveness of investigations conducted on behalf of the Commission and/or result in allegations of the improper exercise of or abuse of the extensive powers which are vested in such officers.</p>	<p>It may perhaps be useful and expedient to second members of the RBPF of a specified rank to the post of Investigative officers of the Commission as they would be trained in criminal investigations and empowered to arrest detain and charge offenders conduct searches pursuant to warrants etc..</p>

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	<p>The Bill does not clearly define “warrant card”, a term unknown to the law. If it is for the purposes of identifying the investigative officer, it is recommended that a clear simple term such as identification card be used.</p> <p>The Commission should have a general power to revoke the appointment of such officers as they deem fit. By way of comparison, the <u>Independent Commissioner Against Corruption Act 2012</u> of South Australia provides:</p> <p><i>s.14 (2) The Commissioner may, at any time, revoke an appointment of a person or vary or revoke a condition of appointment or impose a further condition of appointment.</i></p>	
<p>s. 10 Commission’s powers to summon and examine</p>	<p>The Commission has the powers of a judge of the Supreme Court by s.10 (1) to summons witnesses, call for the production of documents and to examine witnesses and parties concerned on oath.</p> <p>It is understood that the Commission must be empowered to obtain information, and those powers are supported by sanctions for non-compliance. However, this provision raises the issue of disclosure at law generally and the appropriate test to be made out in the exercise of this power. Care must be taken that the process is not subject to legal challenge as appearing arbitrary or a fishing expedition, which would run counter to its primary purpose. The wide wording and unfettered limitation found in this section must be carefully exercised. The potential for legal challenge seems limitless.</p>	<p>In light of the Commission’s wide and coercive powers, an appropriate tests or thresholds to be met, particularly if the Evidence Act is not applicable to The Commission.</p> <p>Care needs to be taken that where there is sufficient evidence to justify making an</p>

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	<p>s. 10 (2) sets out the provisions for the issuance of the summons. In order to issue the summons, there is no precondition that material exists that is probative of the facts being investigated at the time the summons is issued. That notwithstanding, procedural fairness is important and the Commission ought not be open to potential legal challenges in respect of the same. There should be a stated test, for example, that there is a cogent basis for issuance of the summons, and that the basis relates directly or indirectly to the matter within the terms of the investigation at hand³</p> <p>Ss(3) This section provides that the Commission is not bound by the rules of the Evidence Act Cap 121, and the Commission may take into account opinion evidence and such facts as it considers relevant and material. It is to be noted that the Evidence Act already allows for certain waivers of certain rules. That notwithstanding, while the rationale for this section is understood, there still must be a threshold. The section fails to express an appropriate test or threshold to be met.</p>	<p>adverse finding against an individual or individuals, the Commission must be in a position to provide sufficient evidence that is admissible in the prosecution of corrupt conduct.</p> <p>The regulations in respect of issuance of summons must be carefully considered.</p> <p>It would be useful to examine the regulations to see the prescribed procedures</p>
<p>s.11 Duty of witnesses summoned</p>	<p>s. 11 (2) provides that the procedure for the compensation of a witness for expenses relating to attending any sitting of the Commission 'shall be paid at such time and in such manner as the Minister of Finance may direct'. The wording of this section is such that, should there be any delays, or disputes in respect of the compensation, this could prompt or opens the gateway for a challenge on the basis of bias, whereby a sitting Minister has the power to grant or pay compensation to a person</p>	<p>Regulations should prescribe a schedule or range for the payment of witnesses.</p>

³ Hall, Peter M: Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures p. 647, para 12.60

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	<p>summoned by the Commission. The payment and its timeframe should be prescribed in a manner that it cannot be seen as subject to any arbitrary exercise of power.</p> <p>Furthermore, in relation to ss. (2), should the Minister of Finance bear this responsibility, when it was the Commission, in the exercise of its function and mandate that required the attendance of a person.</p> <p>s. 11 (5) provides that in respect of evidence given to the Commission pursuant to s. 11 (1), the witness is entitled to all privileges to which a witness giving evidence before the Supreme Court is entitled. This underscores the need for the Commission to ensure</p> <p>In relation to ss.(4)(c) the formulation of the subsection is cumbersome and is susceptible to challenge. Is the phrase "to answer or to answer fully and satisfactorily to the best of his knowledge..." intended to impose an objective test or a subjective one? Or a mixed test? How does one fairly and properly assess that a witness has not answered fairly to the best of his/her knowledge? The test 'to the best of his knowledge and belief' in law, is sufficient.</p> <p>In relation to s(4)(e), explanation is needed as to the intent or basis for imposing a penalty for "insults". Was this subsection intended to address conduct that wilfully obstructs, or threatens the members of the Commission or its Secretary? If so, the drafters should so state. Is this to be an objective or subjective test? Further, is it proportionate for the penalty for an insults or threats to be treated the same as someone who has refused to attend or has refused to produce documents?</p>
s. 13 False evidence,	

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<p>how punishable</p>	<p>Where a penal sanction is involved, clarity in law is paramount. The phrase "punished accordingly" should be appropriately qualified.</p>	<p>State clearly how the sanction will be enforced.</p>
<p align="center"><u>PART III - INVESTIGATIONS</u></p>		
<p>s.15 Power of arrest</p>	<p>Section 15 (1) provides an investigative officer with the powers of a constable to arrest any person whom he "reasonably suspects" has committed an offence under the Act or any other Act that assigns responsibility to the Commission.</p> <p>Section 15 generally:</p> <p>The power to arrest is a coercive one which, of necessity, restricts the liberty of the subject. In order to exercise such a power, an individual wishing to become a member of the Police Force (a constable) must undergo a process of specialist training. This training specifically involves the identification of the circumstances which give rise to a reasonable suspicion as well as the process by which a safe arrest may be effected. Section 8 expressly excludes members of the Police Force from being investigative officers and the Bill makes no alternate provision for such specialist training. Therefore, as currently drafted, this section creates the risk of these coercive powers being improperly exercised and or abused by individuals who have not and are not required to undergo a similar process of specialist training. Given the nature of the offences contemplated under the Act, it is unlikely that an arrest will need to be effected so urgently that there will not be sufficient time for an investigative officer to secure a warrant of arrest from a Magistrate or Judge.</p>	<p>See comment relative to section 9 above.</p> <p>It is further or alternatively recommended that provision be made for investigative officers to undergo such specialist training and that any power of arrest be subject to the requirement that an investigative officer obtain a warrant of arrest from a Magistrate. In the alternative, power of arrest could remain the preserve of members of the RBPF, as there are constitutional responsibilities</p>

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	<p>These arrest provisions are draconian and must only be exercised with the necessary limitation. It would be helpful to understanding the thinking for drafting in such terms. What was the source(s) used to guide such a provision? Drafters to provide a summary of same.</p> <p>The potential for legal and constitutional challenge seems limitless in its current form.</p> <p>This section of the Bill follows the model of Turks and Caicos and Bahamas, and proposes to confer the power of arrest on the Commission's investigative officers. By way of comparison of similar legislation in the region, it is noted that no similar provision exists earlier legislation, that is, in the respective Antigua and Barbuda, Grenada nor Trinidad & Tobago <u>Integrity in Public Life Acts</u>. No similar provision is contained in the <u>Model Act on Integrity in Public Life</u> © Commonwealth Secretariat, 2017.</p> <p>In the <u>Independent Commissioner Against Corruption Act 2012</u> of South Australia, the power of arrest by the investigating officer of the Commission is limited to the specific case of a person obstructing the course of an investigation. The power of arrest is further qualified because the investigating officer must 'immediately' deliver the person into the custody of a police officer. The provisions of this Bill does not use the term 'immediately' which of course deals with the issue of deprivation of the liberty once the arrest has been made.</p> <p><i>ICAC Act Section 33 provides:</i> 33 – Obstruction</p>	<p>concomitant with the role of the police officer.</p> <p>Provision should be carefully redrafted.</p>
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	<p>(1) A person must not –</p> <p>(a) refuse or fail to provide a statement of information as required by the person heading an investigation; or</p> <p>(b) include information in a statement of information knowing that it is false or misleading in a material particular; or</p> <p>(c) without lawful excuse, refuse or fail to comply with a requirement or direction of an investigator under this Act; or</p> <p>(d) alter, destroy, conceal or fabricate a document or other thing knowing that it is or is likely to be required by an investigator performing functions under this Act; or</p> <p>(e) otherwise hinder or obstruct an investigator, or a person assisting an investigator, in the performance of his or her functions.</p> <p>Maximum penalty: \$10 000 or imprisonment for 2 years.</p> <p>(2) An investigator may arrest a person without warrant if the investigator reasonably suspects that the person has committed, is committing, or is about to commit, an offence against <u>subsection (1)</u> and –</p> <p>(a) when required to do so by an investigator the person failed to state truthfully his or her personal details or to produce true evidence of those details; or</p> <p>(b) the investigator has reasonable grounds for believing that the person would, if not arrested –</p> <p>(i) fail to attend court in answer to a summons issued in respect of the offence; or</p> <p>(ii) continue the offence or repeat the offence; or</p> <p>(iii) alter, destroy, conceal or fabricate evidence relating to the offence;</p> <p>or</p> <p>(iv) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.</p> <p>(3) On arresting a person under this section, the investigator must immediately deliver the person, or cause the person to be delivered, into the</p>
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<p>s. 17 Power of search and seizure</p>	<p><i>custody of a police officer (and the person will, for the purposes of any other law, then be taken to have been apprehended by the police officer without warrant).</i></p> <p>Again here, there is potential for legal challenge.</p> <p>The Commission must ensure that it is not faced with legal challenges in the exercise of its powers under this section. The drafters must be mindful of the grounds for challenging search warrants and issues which may arise concerning the validity of search warrants and their legality at each stage:</p> <ul style="list-style-type: none"> • At the initial stage, whether the pre-requisites for the issuance of the warrant contain the safeguards against an allegation of arbitrary interference; • At the stage of the issue of the warrant itself, including the form of the warrant; • At the stage of execution, that the execution of the warrant is lawful <p>The provisions are draconian and wide and require amendment to mitigate arbitrariness. In relation to ss. (3) what practical provisions are in place for the custody, management and/or subsequent production of seized material? Also, the likely chain of custody protections that should be in place.</p>	<p>Provision should be carefully redrafted.</p>
<p>s. 19 to 24 complaints against</p>	<p>These sections provide for a process for the investigation of complaints against investigative officers.</p>	<p>It is recommended that such provision be made.</p>

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investigative officers	The Act makes no provision for the types of recommendations which may be made by the Complaints Panel in the event that the complaint is determined to be meritorious.	
s. 20 Appointment of complaints panel	What is the rationale and/or basis for including the Commissioner of Police to sit on the complaints panel? How practical is this considering the Commissioner's other functions/responsibilities?	
s. 21 (2) Informal Disposal of complaint without investigation	There exist several procedural gaps that are important to ensure a transparent and fair determination of the complaint. The meaning of "infoam" is unclear in this subsection. Does it refer to a disposal of the complaint without investigation and with the consent of the complainant and investigative officer? What of the person whose conduct is under investigation?	
s. 24 Implementation of panel's recommendations	How did drafters intend for this provision to operate in practical terms? Is this merely a rubber stamp process where the Commission implements the recommendation(s) made?	
<u>PART IV - DECLARATIONS</u>		
s. 25 Declaration of financial affairs	It is apparent from the wording of the provision that a large part of the information contained in and extracted from the declaration is to be contained in a prescribed form of sort. This emphasizes the need to pass the regulations at the same time.	Submission of regulations together with prescribed forms.

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<p>s. 28 Blind trusts</p>	<p>Section 28 of the Bill introduces the concept of “blind trust” into which a specified person in public life may place his assets or part thereof for the purposes of the Act.</p> <ol style="list-style-type: none"> 1. The concept of a “blind trust” provided by this section does not, as drafted, exist in Barbados law. It is a concept which exists in other jurisdictions, notably United States law. 2. The Bill itself does not define ‘blind trust’; 3. The term should not be imported wholesale into our legislature in this manner. 4. Under Barbados law, there can be a creation of a simple trust. 5. Although not stated, the wording of the section presumes the trust to be revocable trust, as it is created in contemplation of the Act, and is for the term that the Specified Person in Public Life so remains in public life. <p><u>Distinction between ‘blind trust’ and a ‘trust’</u></p> <p>A blind trust is a contractual arrangement in which the trustees have full discretion over the assets, but the assets are not transferred or conveyed into the trust. The trust beneficiaries cannot have any knowledge of the holdings of the trust, and no right to intervene in their handling. That particular model or structure does not exist under Barbados law.</p> <p>With a straightforward trust, the assets are conveyed to the trust company. This is in keeping with section 28(5)(a) of this Bill which provides that the assets are to be ‘conveyed’ to the trust company. This model is a trust under Barbados law. The draft Bill refers to a model that establishes a trust, but describes it as a blind trust. This must be revisited by the drafters.</p>	<p>The section should be re-drafted to substitute the term ‘blind trust’ with the term ‘trust’. In the alternative, specifically define ‘blind trust’ as, for example, in the Trinidad & Tobago <u>Integrity in Public Life Act</u> which provides: s22(4) <i>A blind trust is created when a person in public life enters into an agreement with a qualified trust company whereby --</i> <i>(a) all or any part of his assets are conveyed to the trust company for its management, administration and control, in its absolute discretion without recourse or report to the persons beneficially entitled to those assets;</i> <i>(b) income derived from the management of the</i></p>
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	<p>That notwithstanding, it is useful to continue an examination of the section</p> <p>Creation of the trust: section 28 (1) sets up two main mechanisms by which a "blind" trust, or trust may be created. The trust may either be created voluntarily or involuntarily.</p> <p>That is:</p> <p>(1) a specified person in public life may of his or her own volition elect to place his or her assets or part thereof in a trust for the purposes of the Bill ('voluntary') ; or</p> <p>(2) the Commission, where it has reasonable grounds to believe that a specified person in public life is likely to contravene or has contravened the Act, may direct that person to place all or part of his assets in a blind trust on such terms and conditions and the Commission considers appropriate ('involuntary') .</p> <p>Rationale for Blind Trust:</p> <p>Blind trusts are normally created to eliminate the risk of either real or perceived conflicts of interest which may affect a person in public life. The blind trust is supposed to be operated in such a manner that the grantor and/or beneficiary has no control over or knowledge of the assets in the trust or their management. The theory here is that the person in public life whose assets which are subject to the blind trust would therefore be free to make decisions relating to the area of conflict without fear that he or she is making such a decision for his or her own benefit or reward.</p>	<p>assets is to be distributed to him as agreed;</p> <p>(c) should the assets be converted into other assets, that fact is not to be communicated to him, until he ceases to be a person in public life; and</p> <p>(d) after he ceases to be a person in public life, proper and full accounting is to be made to him, as the circumstances of the trust management of the trust require.</p> <p>Bearing these concerns in mind, the following are suggested to strengthen section 28.</p> <p>(1) To ensure that the trust is not revoked until after the specified person ceases to be in</p>
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	<p>Criticism Blind Trusts: Generally, the alternative to blind trust is complete divestment of the assets or interests which may give rise to the conflict.⁴ Many critics of the blind trust prefer divestment as they argue that once the assets in questions which may give rise to a conflict are disposed of the conflict of interest is likely to have been resolved. Such critics of blind trusts have raised the following questions about blind trusts:</p> <p>(1) Will the system of blind trust, with attendant secrecy, affect the framework of disclosure of assets and conflicts of interest?</p> <p>(2) What prevents the abuse of the trust?</p> <p>(3) Are there sufficient safeguards to ensure that there is no breach of the terms of the trust?</p> <p>Arguably, one of the concerns about section 28 is that the way it is structured it appears that persons who may not want to make a full declaration of assets as prescribed in section 25 may simply place their assets in a trust to avoid full scrutiny. This certainly it can be argued that this opens a loop hole in line with the first issue listed above, that is, how does it affect the framework of disclosure of assets and conflicts of interest. Transparency International notes that the reason for declaring interests and assets is the prevention of conflicts of interest and to uncover illicit enrichment.⁵</p> <p>Looking then at the intention, it is reasonable to assert that section 28 does provide for:</p>	<p>public life, the trust company may report annually directly to the Commission confirming that the trust has not been revoked, or the person in public life can be required to make that declaration under oath.</p> <p>Further, the trust company should be liable to the commission for any breaches. The Trinidad & Tobago Integrity in Public Life Act provides: 22(3) <i>Notwithstanding any other law relating to the duties of trustees, a trust company managing the assets of a person in public life by way of a blind trust</i></p>
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https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/CIB9697/97cib14

⁵ <https://knowledgehub.transparency.org/helpdesk/declaration-of-interests-and-assets-oversight-mechanisms-disclosure-policy>

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	<p>(1) identification of the assets 28 (3) which would aid in determining illicit enrichment through the requirement to provide the amount and description of the assets placed in the trust in the declaration itself as well as the requirement to file the trust deed;</p> <p>(2) a mechanism (though not without its criticisms as seen above) to prevent conflicts of interest in the form of the trust itself.</p> <p>Therefore, to that extent, it would appear that the creation of a trust would not frustrate the purpose of the section 25 declaration, as they must declare the amount and description of the assets filed in the trust.</p> <p>However, as it concerns the second and third issues raised above, that is, What prevents the abuse of the trust? And Are there sufficient safeguards to ensure that there is no breach of the terms of the trust? the draft bill seems to fail to address these.</p>	<p>shall reply fully to any enquiries of the Commission relating to the nature and management of the assets in the blind trust.</p> <p>(2) Prescribe specific penalties (outside of the general penalty clause for breaches under the Act not specifically or mentioned) for trust companies who breaches the terms of the trust.</p> <p>(3) These provisions should also apply, where relevant, to the Register of Interests which shall compile the information furnished by members of the House of Assembly pursuant to section 39</p>
<p>s. 29 Receipt and</p>	<p>The wording of the section places equal responsibility on the Commission as it does the office of the Governor General. The office of</p>	<p>Funding and resourcing for the office</p>

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<p>examination declaration s. 30 Commission or Governor General may require further information from declarant</p>	<p>the Governor-General must be adequately resourced to carry out the mandates of the Bill when and if called upon to act. These resources must be provided from the highest level and insulated from any possibility of interference or bias. How can the resourcing and funding be established and kept in as independent a manner as possible?</p>	<p>of the Governor General under this Bill must be non-partisan and must address how it can be established and kept in as independent a manner as possible.</p>
<p>s. 36 Offences and penalties in respect of declarations</p>	<p>The penalties in this section (and throughout the Bill) are generally too low and do not serve as a serious deterrent. By way of comparison, under s. 21 of the Trinidad & Tobago equivalent legislation, the penalty is TT\$250,000.00 (i.e. approximately BBD \$83,000.00) and ten years' imprisonment on conviction.</p>	<p>Fines for breach should be increased commensurate with the importance of this duty.</p>
	<p><u>PART V - REGISTER OF INTEREST</u></p>	
<p>s. 39 Register of Interests</p>	<p>See our note under s.28 - Blind Trusts. The reason for declaring interest and assets is the prevention of conflicts of interest and to uncover illicit enrichment. s39(2) permits inspection of the Register by the public. Some are of the view that the Commission should be given the discretion that if the</p>	<p>Model Act on Integrity in Public Life © Commonwealth Secretariat, 2017, Clause 4(2) provides: 'If the Commission is of</p>

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	<p>public official's personal or family's security might be put at risk by disclosure of the exact location and street address of their residence, the Commission may, to that extent only, redact the information that gives rise to the security risk⁶. Others are of the view that the description only needs to be in the nature of the asset, and such details are not necessary to meet the requirements of the Act. It would be useful to have sight of the regulations to assist in the discussion.</p>	<p>the opinion that a public official's personal security might be put at risk by disclosure of particular information under subsection (1), it may, to that extent only, redact the information disclosed to the public.'</p>
<p>s. 40 Commission may require further information and conduct inquiry regarding statements of registrable interests</p>	<p>In the Trinidad & Tobago Integrity In Public Life Act, the Commission appoints a Tribunal specifically for this purpose. This may be one aspect where the Commission can effectively delegate responsibility to be more efficient in its function, particularly since in many other regards, the proposed/ purported responsibilities of the Commission are very far reaching. In relation to subsection (1), at the last line, the term "reasonable opportunity" should be</p>	
<p>s. 41(1) Procedure at inquiry regarding registrable interests</p>	<p>This section provides that the Commission shall not, in the conduct of an inquiry under this Part, issue a determination against a member of the House of Assembly or the Senate without giving the member 'an opportunity to be heard.'</p>	<p>Amendment of the section is recommended</p>

⁶ Model Act on Integrity in Public Life © Office of Civil and Criminal Justice Reform, Commonwealth Secretariat 2017, Clause 4(2) and footnote 14

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s. 43 Offences and penalties in respect of statements of registrable interests	<p>The term "reasonable opportunity" should be employed instead of merely "an opportunity" to be heard.</p> <p>The penalties are too low and should be revised accordingly to serve as a deterrent.</p>	Penalties for breach should be reviewed.
s. 48 Limitation on prosecution for section 47 offences	<p align="center"><u>PART VI - GIFTS</u></p> <p>The question is whether the limitation period of five (5) years prescribed for prosecuting an offence pursuant to section 47 is sufficient and proportionate with the infraction. An offence committed while in public office is a serious one and perhaps should not be so restricted.</p> <p>By comparison, for such a serious infraction, the limitation period is even shorter than one for a civil debt which is six (6) years. Furthermore, it may often take several years to discover wrong-doing and investigate all the circumstances.</p>	
s.51 Acts of corruption generally	<p align="center"><u>PART VII - ACTS OF CORRUPTION AND OTHER CONTRAVENTIONS OF THIS ACT</u></p> <p>Greater attention should be paid to these provisions. It is not clear whether the list of actions amounting to corruption was intended to be</p>	

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<p>s.52 Bribery in procurement s.53 Transnational bribery</p>	<p>exhaustive. However, the range of circumstances giving rise to corruption, coercion and collusion are likely to develop over time and therefore, it may be useful to make it clear that the list is non-exhaustive.</p>	<p>Revision of provisions to provide that the list is not exhaustive</p>
<p>S. 54 Offences and Penalties in respect of acts of corruption</p>	<p>The penalties for committing an act of corruption or bribery as set out in section 54 are wholly inadequate to act as a deterrent, and should be reconsidered accordingly. Fine pursuant to this section must have a dissuasive effect.</p>	<p>Penalties for committing an act of corruption need to be significantly increased.</p>
<p>s. 57 Possession of unaccounted property or pecuniary resource</p>	<p>This section empowers to Commission, if they suspect that a public official is in possession of property or resource which is disproportionate to his known sources of income, to summon said public official to produce “satisfactory evidence” that the possession of property or resource was acquired by lawful means. If he fails to do so, he is subject to a criminal penalty.</p> <ol style="list-style-type: none"> 1. This section fails to qualify the extent of the suspicion which is required to summon the public official. There is potential for legal challenges. In light of the criminal penalties which may flow from a finding of guilt, it is recommended that at least a “reasonable” suspicion be required. 2. This section permits the Commission to presume the guilt of the subject by making no reference to the production of and right to challenge the validity of the “evidence” which gave rise to the suspicion 	<p>It is recommended that at least a “reasonable” suspicion be required.</p> <p>It is recommended that the drafters reframe this section to allow the evidence which gave rise to the suspicion of the Commission be produced in the presence of the public official and only thereafter shall he be obligated to produce contrary evidence.</p>

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	<p>of the Commission. There is potential for legal challenge. It is recommended that this be clearly stated.</p> <p>3. The term “satisfactory evidence” is one which is unknown to law as a general standard of proof as well as one based upon which criminal penalties may be imposed. It appears to be a nebulous concept which may give rise to varied and potentially unfair outcomes. It is proposed that the common standard of “on a balance of probabilities” be expressed as the standard of proof which is to be met by the public official.</p>	
	<p align="center"><u>PART VIII - CONDUCT IN PUBLIC LIFE</u></p>	
<p>s.65 Formulation of a Code of Conduct</p>	<p>Section 65(1) provides that the Commission shall by Order, after public consultation, establish a code to be called the Code of Conduct for Persons in Public Life, to govern the conduct of public officials.</p> <p>In addition to appointed public officials, the Commission has jurisdiction in respect of the conduct of elected public officials, namely Ministers of the House of Assembly and the Senate (clause 1) and Members of Cabinet (clause 2) by virtue of the definition of ‘public official’ and ‘public body’ as contained in the Interpretation (section 2) of the Bill.</p> <p>It is to be expected that there will be several codes of conduct to reflect the classes of persons set out in the Second Schedule ‘Specified Persons</p>	<p>The Code of Conduct should reflect the various codes of conduct expected for the respective classes of persons set out in the Second Schedule ‘Specified Persons in Public Life’</p>

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in Public Life” This section is framed to cover both appointed as well as elected officials and it can be argued that there is no one code of conduct to cover both. Similarly, it is expected that consultations with the public on the same will also take the respective classes of person into account.

By way of comparison, it was noted that the Model Act on Integrity in Public Life⁷ proposes a model that requires the public official to sign the Code of Conduct, along with the declaration. Both the Code of Conduct and the declarations must be renewed annually. Others argue that signing the Code of Conduct should be limited to elected public officials. Requiring a public officer to sign the Code of Conduct could potentially be considered as forming a part of, or altering, the contract of employment for a public officer.

Section 3 of the Model Law provides:

Codes of Conduct and declarations of private interests and liabilities

3(1) A public official must abide by the relevant Code of Conduct in Schedule III, and within the prescribed period of taking office:

- (a) sign a copy of the Code relevant to him or her; and*
- (b) make and sign a written declaration in the prescribed form of his or her private interests and liabilities.*

(2) In the case of a senior public official, the written declaration under subsection (1) (b) must be renewed annually.

⁷ Model Act on Integrity in Public Life © Commonwealth Secretariat, 2017, and footnote 11. A failure to abide would not automatically subject the official concerned to criminal proceedings (for those to be considered the conduct would have to come within the relevant section), although it might of course subject the individual to disciplinary proceedings

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<p>s.66 Commission may request further information and conduct formal inquiry</p>	<p>An examination of this section would be more complete if the accompanying regulations were available to understand the proposed conduct of a formal inquiry.</p> <p>It has been found that the use of public hearings as an investigative tool is limited and of declining value⁸. The preferred model is to conduct all initial investigations, including hearings, in private, before making the report of adverse findings public⁹. This satisfies a number of objectives, i.e.:</p> <ol style="list-style-type: none"> 1. Need to protect the identity of informants; 2. Need to protect a witness who may not fall to be protected under the Whistle Blower provisions of Part IX from detriment in their employment; 3. Where in the public interest there is a need to maintain confidentiality, for example, in an ongoing tender process¹⁰ 4. limiting risk of unnecessary damage to reputation, 5. protects the integrity of the investigation, in particular, where premature disclosure of evidence may alert other individuals involved in corrupt who have yet to be investigated; 6. preserves Commission's role in publicly exposing corrupt conduct once findings are concluded, and allows for the strategic use of investigative methodologies in the confidential investigation stage.¹¹ 	<p>Regulations accompanying the Bill should be made available for further comment</p>
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⁸ Recommendations of the Parliamentary Joint Committee on the ICAC (Independent Commission Against Corruption) www.icac.nsw.gov.au 'The conduct of ICAC Hearings' (June 2002) Chapter 8, page 44

⁹ Investigation into Tendering for Vinyl Floor Products, p.4

¹⁰ Sydney Water Board and Sludge Tendering Investigation Report, p.2

¹¹ Ibid, at p. 44

	<p align="center"><u>PART IX - WHISTLE BLOWER PROTECTION</u></p> <p>The provisions of the Bill as it is drafted provides for Whistle Blower protection for public officials. While this is understood within the context of this particular piece of legislation, it gives rise to a much wider, more pressing issue. There is protection for the public official, but what protection exists for a private citizen?</p> <p>It is therefore contemplated that if a private citizen, or an employee in a private company wishes to make a disclosure about a public official, there is no protection for the average Barbadian under this Bill. The right of citizens to report wrongdoing is part of the right of freedom of expression, and is linked to principles of transparency and integrity.</p> <p>There must be an atmosphere where Barbadians, whether private citizens or public officials, feel free to report wrongdoing. thus a key means of enhancing openness and accountability in government and corporate workplaces.</p> <p>Whistle-blowers play an essential role in exposing corruption, fraud, and mismanagement that threatens financial integrity and the rule of law. The time has also come for a comprehensive legislative framework to make all workplaces, including the private sector, accountable to protect whistle-blowers. There should be mandatory provisions for both public and private sector organisations above a certain size to set up whistleblowing mechanisms and we must set minimum standards and protections for such whistleblowing mechanisms.</p>	
<p>s.68 to 77</p>		<p>This gives rise to the recommendation that priority be given to establishing separate, comprehensive Whistle-blower legislation to support the provisions of this Bill and the work of the Commission in general.</p>

	<p>Transparency International in its 2018 Best Practice Guide for Whistle blower legislation¹² recommends:</p> <ul style="list-style-type: none"> • Provide wide-ranging protections from all unfair treatments, including more discrete forms such as ostracising; • Confidentiality should cover all information identifying the whistle-blower. • Consider allowing anonymous disclosures. • Mandatory provisions for both public and private sector organisations above a certain size to set up whistleblowing mechanisms • Set out minimum standards for whistleblowing mechanisms. 	
	<p><u>PART X - MISCELLANEOUS PROVISIONS</u></p>	
	<p><u>SECOND SCHEDULE</u></p>	
<p>Specified persons in Public Life</p>	<p>There is a need for much greater clarity on the ‘Specified Persons in Public Life.’</p>	<p>Amendment of the schedule to provide greater clarity to the</p>

¹² Transparency International Report - 2018 Best Practice Guide for Whistleblowing legislation https://www.transparency.org/whatwedo/publication/best_practice_guide_for_whistleblowing_legislation

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	<p>In clauses 3 and 4 the terms '...and Officers of Related Grades' and 'Heads of Departments in Public Service' requires greater specificity in identifying those persons. Once identified, the list should be subject to regular review.</p> <p>The phrase in ss.6 speaks to Chief Executive Officers and to '...or other Entities established by Statute' Is the provision too wide or does it capture , for example, the Principal of a School, or its Deputy Principal- after all, a school is established by statute. Is that the drafters' intention?</p> <p>By way of comparison, the Trinidad & Tobago <u>Integrity In Public Life Act</u> has a short but specific list:</p> <p><u>SCHEDULE</u> (Section 2) <u>PERSONS IN PUBLIC LIFE</u></p> <ol style="list-style-type: none">1. <i>Members of the House of Representatives</i>2. <i>Ministers of Government</i>3. <i>Parliamentary Secretaries</i>4. <i>Members of the Tobago House of Assembly</i>5. <i>Members of Municipalities</i>6. <i>Members of Local Government Authorities</i>7. <i>Members of the Boards of Statutory Bodies and State Enterprises as prescribed in accordance with section 138(2) of the Constitution.</i> <p>Grenada 2013 Integrity in Public Life Act 24 341 <u>FIRST SCHEDULE INTEGRITY IN PUBLIC LIFE ACT (Section 2)</u> <i>List of persons in Public Life</i></p> <ol style="list-style-type: none">1. <i>Members of the Commission</i>	<p>classes of persons who are 'Specified Persons in Public Life."</p>
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	<ol style="list-style-type: none">2. <i>Members of the House of Representatives</i>3. <i>Members of the Senate</i>4. <i>President of the Senate</i>5. <i>Speaker of the House of Representatives</i>6. <i>Parliamentary Secretaries</i>7. <i>Secretary to the Cabinet</i>8. <i>Permanent Secretaries, Deputy Permanent Secretaries</i>9. <i>Senior Administrative Officers</i>10. <i>Chief Budget Officer</i>11. <i>Accountant-General and Deputy Accountant-General</i>12. <i>Attorney-General</i>13. <i>Clerk of Parliament</i>14. <i>Commissioner of Police and Deputy Commissioner of Police</i>15. <i>All police officers</i>16. <i>Chief Immigration Officer, Deputy Chief Immigration Officer and all other immigration officers</i>17. <i>Commissioner of Prisons and all prison officers</i>18. <i>Comptroller of Customs, Deputy Comptroller of Customs and all customs officers</i>19. <i>Comptroller of Inland Revenue, Deputy Comptroller of Inland Revenue and all Inland Revenue officers</i>20. <i>Chief Personnel Officer</i>21. <i>Legal Officers employed by the State</i>22. <i>Director of the Financial Intelligence Unit and all the employees of the Financial Intelligence Unit</i>23. <i>Director of Public Prosecutions</i>24. <i>Director of Audit</i>25. <i>Magistrates</i>26. <i>Labour Commissioner, Deputy Labour Commissioner and all labour officers</i>27. <i>Chief Technical Officers of Ministries</i>	
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	<p>28. <i>Members of Public Service Commission</i></p> <p>29. <i>Members of Public Service Board of Appeal</i></p> <p>30. <i>Chairperson and Deputy Chairperson of statutory bodies</i></p> <p>31. <i>Chief Executives Officers and Deputy Chief Executives Officers, by whatever name known, of statutory bodies</i></p> <p>32. <i>Members of the Tenders Board</i></p> <p>33. <i>All Public Officers including non-established officers receiving a salary in excess of two thousand dollars per month</i></p> <p>Antigua and Barbuda Integrity in Public Life Act the Schedule is also quite specific:</p> <p>FIRST SCHEDULE (Section 2)</p> <p>PERSONS IN PUBLIC LIFE</p> <ol style="list-style-type: none">1. <i>Member of the Commission and the Secretary to the Commission</i>2. <i>Members of the House of Representatives</i>3. <i>Members of the Senate</i>4. <i>President of the Senate</i>5. <i>Speaker of the House of Representatives</i>6. <i>Parliamentary Secretaries</i>7. <i>Secretary to the Cabinet</i>8. <i>Members of the Barbuda Council</i>9. <i>Members of the Electoral Commission</i>10. <i>Financial Secretary and Deputy Financial Secretary</i>11. <i>Budget Director and Deputy Budget Director</i>12. <i>Permanent Secretaries and Principal Assistant Secretaries</i>13. <i>Heads and Deputy Heads of Diplomatic Missions</i>14. <i>Solicitor General</i>15. <i>Clerk to Parliament</i>	
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	<p>16. Chief Establishment Officer</p> <p>17. Accountant General and Deputy Accountant General</p> <p>18. Managers, Heads and Deputy Heads of Departments and Divisions 19. Commander and Deputy Commander of the Defence Force</p> <p>20. Commissioner and Deputy Commissioner of the Police Force</p> <p>21. Police Officers of the rank of Inspector and above</p> <p>22. Chief Immigration Officer, Deputy Chief Immigration Officer and Senior Immigration Officers</p> <p>23. Superintendent of Prison and the Chief Officer</p> <p>24. All commissioned and warrant officers of the Antigua and Barbuda Defence Force</p> <p>25. Comptroller of Customs, Deputy Comptroller of Customs and Senior Customs Officers</p> <p>26. Commissioner of Inland Revenue, Deputy Commissioners, Senior Inland Revenue Officers and Auditors of Inland Revenue</p> <p>27. Legal Officers employed by the Government of Antigua and Barbuda 28. Director of Public Prosecutions 29. Magistrates</p> <p>30. Labour Commissioner and Deputy Labour Commissioner</p> <p>31. Chief Technical Officers of Ministries</p> <p>32. Members of the Public Service Commission</p> <p>33. Members of the Police Service Commission</p> <p>34. Member of the Public Service Board of Appeal</p> <p>35. Chairman, Deputy Chairman and Secretary of the Boards or governing bodies of statutory bodies</p> <p>36. Chief Executives and deputy chief executives, by whatever name known, of statutory bodies</p> <p>37. Heads and Deputy Heads of Divisions of statutory bodies</p> <p>38. Members of the Tenders Board</p> <p>39. Tax Compliance Officers</p> <p>40. Director of Audit and Deputy Director of Audit</p>	
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|--|---|--|
| | 41. Members of the Tax Appeal Board
42. Property Evaluation Officers
43. Senior Casino Inspectors | |
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ANALYTICAL NOTES

Honourable Attorney General



INTEGRITY IN PUBLIC LIFE BILL, 2018

(Under Consideration by the Select Committee)

You will recall that I reviewed the captioned Bill and attended the second and third meetings of the Select Committee as I was in charge of the Office at that point in time and Mrs Elie, the officer to whom the matter was assigned, was on vacation leave.

2. Having reviewed the Bill, I am submitting the following additional comments (mainly relating to the removal of gaps and conflicts) for your consideration and that of the Select Committee if you so desire.

3. It is my understanding that the deadline given for the review of the model Bill by the Chief Parliamentary Counsel's Office was too short to allow for a complete analysis of the Bill and so it is understandable that some areas of concern may not have been detected.

4. It should be noted that the points raised in the comments are not substantive in nature but are technical points and would therefore impact on the efficacy of the Bill. As such therefore, the points raised were not addressed in the written or oral submissions given thus far. It is believed that the matters identified are important and must be addressed to strengthen the legal framework and ensure the efficacy of the Bill.

5. In addition, there are some editorial changes to the Bill which are recommended. These include the correction of headings and subheadings and the tidying up of the language in some provisions to ensure consistency or remove ambiguity. As such changes are not substantive in nature, they need not engage the attention of the members of the Select Committee at this stage, but can be made by our Office and subsequently submitted for your approval and the approval of the Select Committee.

6. The recommended editorial corrections are highlighted in the attached notated copy of the Bill.

7. The technical matters which should be addressed are identified in the analytical note hereto:

ANALYTICAL NOTE

Clause 2 - Definitions

“Child”

The definition is not on all fours with the law in Barbados. It does not take into consideration the *Status of Children Reform Act*, the *Minors Act*, the *Family Law Act* and the *Adoption Act*. Appropriate amendments are therefore required to the definition.

“Code of Conduct”

The definition should be revised to reflect that the Code is not only to be published by the Commission but more importantly, “established” by them.

“Public body”

- i. Paragraph (d) is ambiguous and inaccurate. The *Appropriation Act* only relates to Ministries and Departments. These are already covered under paragraph (b). Also, the reference to the *Financial Management and Audit Act*, Cap. 5 should be deleted as that Act does not relate to the *Appropriation Act*.
- ii. If it is intended to include bodies which receive Government subventions, the provision should read as follows:
 - a. “any other bodies which receive any payment of monies from the Consolidated Fund or any other statutory fund”.
- iii. The use of the term “Public body” along with “statutory body” is confusing. In addition, the current definitions do not allow for any clear differentiation. The definitions should therefore be reviewed for the purposes of clarity.
- iv. Consideration should be given to replacing the term “statutory body” with the term “statutory board” as that term has the advantage of long usage and is clearly defined in the *Interpretation Act*.

“Public official”

The use of this term is confusing given its wide definition. The term official suggests that a person is in a position of seniority. However, as the term includes **all** public officers, it captures public officers such as clerical officers, maids and messengers who are not officials in any sense of the word. The use of the term “public official” should be in keeping with its natural meaning. Therefore, the term “public officer” should be removed from the definition. The expression “public officer” should only be used when a provision in the Bill applies to all public officers.

“Spouse”

There is a gap in the law since the definition does not make provision for separated married persons.

“Specified person in public life” (Persons to whom the Act applies)

- i. There is uncertainty as to whether the Bill applies to certain categories of public officers. These include Principals since Principals are heads of schools and not “Heads of Departments”.
- ii. Also, there is uncertainty as to whether the Bill applies to persons who are only acting as a Head of Department. Where a person is acting, the acting period may be short term or long term. The Bill must address the issue of whether it applies to persons who are acting. If it applies to such persons, it must also be clear whether it applies to short term acting such as when a Head of Department goes on vacation leave or sick leave or to longer term acting such as maternity leave and training leave.

“Staff member”

This definition is ambiguous and may prove problematic in certain circumstances because it would operate to exclude persons who are indeed employees but of a junior rank. To avoid this result, the term “officer” or senior officer should be used to make the distinction between junior and senior employees.

“Statement of registrable interests”

For the purposes of certainty, these provisions should be reviewed to determine whether Senators should be required to file statements of registrable interests. It should be noted that the model Bill does not require Senators to file such interests.

“statutory body”

To avoid confusion, the term “statutory board” which is defined in the *Interpretation Act* and used throughout the Statute Book, should be used.

“House of Assembly or the Senate”

The expression “**House of Assembly or the Senate**” appears several times in the Bill. It makes for easier reading and would also be tidier to use the shorter expression “Parliament” when a provision relates to both Chambers.

Clause 3 - Establishment of Integrity Commission

- i. There is uncertainty as to whether the Commission is to be a body corporate. However, since the Commission has the power to employ staff and enter into contracts, it should be a body corporate. In that case, (in keeping with the convention embodied in section 21 of the *Interpretation Act*) that provision should apply to the Commission.
- ii. There is only one subheading in this Part. In keeping with the standard legislative drafting practice that there must be at least two subheadings, another subheading must be inserted. The required subheading can be styled “*Functions and powers of the Commission*”.

Clause 4 – Functions of Commission

- i. Paragraph (h) requires an editorial correction. Please see the notated Bill.
- ii. Subclause (2) is ambiguous. The provision should be mandatory and not merely permissive. The word “may” should therefore be changed to “shall”.

Clause 7 - Funds of Commission and annual report

- i. Please see the notated Bill for the suggested editorial corrections.
- ii. This provision as drafted relates to the funds of the Commission as well as an annual report. As such therefore, the shoulder note should be revised for the purposes of accuracy to include the annual report.
- iii. Preferably, the provisions relating to the report should be placed in a separate section as the two matters are unrelated.

Clause 8 - Officers and other employees of Commission

- i. Please see the notated Bill for the suggested editorial corrections.
- ii. Subclause (3) is unclear. It does not speak to either “secondment” or “transfer” which are the known and well understood terms used in legislation relating to the public service. The provision should be redrafted to reflect the standard precedents.
- iii. Subclause (4) is novel and would give rise to an ad hoc approach to pensions. The settled practice is for a Bill to make provision for pension to be granted under the *Pensions Act* Cap. 25 or the *Statutory Boards Pensions Act* Cap. 384.

Clause 9 - Investigative officers

- i. Please see the notated Bill for the suggested editorial corrections.
- ii. Subclause (3) should be deleted in as much as there can be no doubt in Barbados that an investigative officer cannot be a member of the Police Force as that officer would not be recruited under the *Police Act* nor be subject to the chain of command of the Police Force.

Clause 11 - Duty of witnesses summoned

For the avoidance of doubt, it is suggested that Clause 11(1)(b) be retained as it is not new to Barbados. A similar provision is found in the Second Schedule to the *Constitution* at paragraph 7(1) in relation to giving evidence before tribunals. Another similar provision is found in s. 12 of the *Commissions of Inquiry Act*, Cap. 112. Such a

provision is necessary to facilitate the giving of evidence by witnesses as a public duty and to remove the burden of any expenses from their shoulders.

Clause - 14 Constables detailed to attend Commission

Please see the notated Bill for suggested editorial corrections.

Clause - 25 Declaration of financial affairs (re appointed day)

Clause (1)(a) contains an error in relation to the appointed day. It requires persons to file declarations "on or before the appointed day". This is not possible as no one can know beforehand what the appointed day is. Rather, persons must be required to file after the appointed day. Please see the notated Bill for a suggested amendment.

Clause 29 - Receipt and examination of declarations

- i. Paragraph (a) requires the Governor General to examine declarations and documents. This is a novel provision which would necessitate the appointment of requisite staff. However, there is no provision in the Bill for the Governor General to appoint staff to make the necessary examinations. It is very important to ensure that adequate provision for staffing is inserted in the Bill so as to avoid a situation where the lack of resources causes the Governor General to be in breach of the law.
- ii. For the purposes of understanding this provision, it is important to reference this provision with cl. 33 and any other clause which is inserted to provide for staffing.

Clause 32 - Commission to report where not satisfied with declaration

- i. Subclause (1) permits the Commission to make a report to the appropriate Service Commission, board or other authority and to the Director of Public Prosecutions, in circumstances where the Commission is not satisfied with any aspect of the declaration or any related information or documents. Since at this early stage there will be no finding of malfeasance, the Commission should interrogate the declarant rather than be making a report to several authorities. It may well be that the declarant may be able to give acceptable explanations if asked, whereas the reports and charges by the DPP would be irreparably damaging to an innocent person.

- ii. There appears to be a gap in these provisions in that the Bill does not address the action to be taken if at any point in time a person holding the office of DPP is in breach of these provisions.

Clause 33 - Further information from members and staff of Commission in respect of their declarations

- i. Subclause (4) should be reviewed. If the provision is only providing for hearings to be heard in camera, it should simply state that fact. As phrased, the surplusage of words creates ambiguity.
- ii. If the provision is intended to give the tribunal the same powers of the Commission, it must be appropriately revised.

Clause 34 - Publication of failure to file declaration or furnish information

The following points are raised in relation to this clause:

- i. The provision should be directory rather than mandatory as there may be a good reason such as sickness or leave of absence of some kind which may prevent a person from filing a declaration. The provision should therefore be appropriately qualified.
- ii. If non-filing is cause for disciplinary action to be taken, it should not be inferred but should be expressly stated in the law.
- iii. As no offence has been created in the Bill for non-filing, it conflicts with the matter being referred to the DPP.
- iv. These provisions are ambiguous in relation to public officers and should be reviewed as they are open to the interpretation that, contrary to established practice and convention, public officers who do not file declarations would be subject to disciplinary action and criminal prosecution at the same time. In addition, it is necessary to review whether the names of public officers should be published for non-filing as this would also be contrary to established practice and procedure.

- v. There appears to be a gap in these provisions in that the Bill does not address the action to be taken if a person holding the office of DPP is in breach of the filing requirement.
- vi. Please see the notated Bill for suggested corrections.

Clause 42 - Determination regarding prohibited interests

Please see the notated Bill for suggested corrections

Clause 45 - Report to Commission on gifts

This provision allows public officers to receive gifts of a value not exceeding \$1000. However, it conflicts with the *General Orders* and the *Public Service Act* which prohibit public officers from receiving gifts, of any value.

Clause 52 - Bribery in procurement

- i. For the avoidance of doubt, it is suggested that subclause (1)(b) relating to the giving of benefits to persons must be retained as it is necessary to avoid a gap in the law.
- ii. The offences in this Part of the Bill should be reviewed to ensure that not only public officers are punishable when a bribe is given but equally, the briber is also punishable.

Clause 53 - Transnational bribery

Consideration should be given to whether the term "Government official" should be introduced here or whether the term "public official" be used for consistency and clarity.

Clause 54 - Offences and penalties in respect of acts of corruption

Subclause (3) should be redrafted to take the provisions of s.22 (7) of the *Interpretation Act* into consideration. In particular, the provision should reflect the settled jurisprudence in Barbados that attempts and other inchoate offences should carry the same penalty as the main offence.

Clause 57 - Possession of unaccounted property or pecuniary resource

The following points arise in relation to these provisions:

- i. To avoid a gap in the law, it is necessary to insert a provision to allow for innocent bona fide purchasers to retain property.
- ii. There should be a time limit for prosecutions as in other provisions of the Act.
- iii. These provisions should be reviewed to ensure that they apply to all specified persons and the staff of statutory boards and not only to public officers.
- iv. A review is also necessary to ensure that it is appropriate to apply the provisions to all public officers as distinct from “specified persons”.
- v. Subclause (3) should be reviewed and redrafted as the mandatory penalty in that provision is unconstitutional since it removes the court’s discretion to vary the penalty.

Clause 59 – Making false allegations

Please see the notated Bill for a suggested editorial correction.

Clause 61 - Duty of public officials to report contravention of Act

Subclause (3) is ambiguous and should be reviewed. It is clear that in the stated circumstances there is no offence with which a public officer who gives information can be charged. Perhaps, what is required is protection from civil suit where incorrect information is given and a person suffers as a result.

Clause 64 - Cases of public allegation

The requirement to “lodge a complaint with the Commission **not later than 3 months from the date on which the public allegation was first made**” is problematic for two reasons.

- First, how will a member of the public determine what constitutes a valid public allegation as distinct from a rumour?

- Second, how will a member of the public or the court determine what date the allegation commenced on, in order that it can be verified that the complaint was made within the prescribed time frame.

First Schedule

Paragraph (1)(b) which relates to the appointment of a Judge to the Commission should become paragraph (1). This would be in keeping with established protocol and the official table of precedence as a Judge would be the most senior member of the Commission. For this reason also, the Judge should be the chairman.

Paragraph 9

This is an important substantive provision and not merely a matter of procedure. The provision should therefore be in the body of the Act rather than in the Schedule.

Consequential Amendments

- i. In order to avoid any conflict in the law, consequential amendments may be required to a number of other Acts, such as s. 32 of the *Parliament (Privileges, Immunities and Powers) Act Cap. 9*, which currently provide for bribery offences. This matter should be discussed with the DPP's Department as it is necessary to ensure that if a prosecution is brought, the accused cannot raise the argument that they were charged under the wrong Act.
- ii. Also, the Bill should make it clear whether the existing bribery and corruption offences in various Acts are being repealed by the Bill.

Second Schedule

Please see the notated Bill for suggested corrections.



ROLANDA WILLIAMS
Deputy Chief Parliamentary Counsel (Ag.)
2018-10-16

NEW BILL

2019-12-03

OBJECTS AND REASONS

This Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption, alter the *Constitution* to the extent necessary for the purpose and provide for related matters.

7

Arrangement of Sections

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

INTEGRITY COMMISSION

3. Establishment of Integrity Commission
4. Functions of Commission
5. Consultation
6. Agreements and exchange of information with law enforcement agencies
7. Funds of Commission
8. Annual reports
9. Staff of Commission
10. Investigative officers

**PART III
DECLARATIONS**

- 11. Declaration of financial affairs**
- 12. Full disclosure**
- 13. Trust property**
- 14. Blind trusts**
- 15. Examination of declarations**
- 16. Publication of failure to file declaration or furnish information**
- 17. Offences in respect of declarations**

**PART IV
REGISTRABLE AND PROHIBITED INTERESTS**

- 18. Filing of statements of registrable interests**
- 19. Register of Interests**
- 20. Offences in respect of statements of registrable interests**
- 21. Disqualification of member from holding public office**
- 22. Prohibited interests**

PART V

GIFTS

- 23. Reports on gifts**
- 24. Offences in respect of gifts**

PART VI

CONDUCT IN PUBLIC LIFE AND CONTRAVENTIONS OF ACT

- 25. Code of Conduct**
- 26. Complaint to Commission regarding contravention of Act**
- 27. Duty of persons exercising public functions to report contravention of Act**
- 28. Oral complaints to be put into writing**
- 29. Examination of complaints**
- 30. Offences in respect of false complaints**

PART VII

**POWER TO REQUIRE FURTHER INFORMATION AND TO CONDUCT
INQUIRIES**

- 31. General powers of Commission to investigate or inquire**
- 32. Conduct of inquiries**
- 33. Commission's powers to summon and examine witnesses**
- 34. Duty of witnesses summoned**

35. Witness expenses
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BARBADOS

A Bill entitled

An Act to establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption, alter the *Constitution* to the extent necessary for the purpose and provide for related matters.

ENACTED by the Parliament of Barbados in accordance with section 49 of the *Constitution* as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Integrity in Public Life Act, 2019*.

Interpretation

2. In this Act,

“appointed day” means the day on which this Act comes into operation;

“assets” means all property, including any right or interest in property, held by a person in Barbados or elsewhere;

“benefit” includes any property, service or advantage, whether direct or indirect;

“Chairman” means the chairman of the Commission appointed in accordance with the *First Schedule*;

“child”, in relation to a person, means any child of the person and includes a stepchild and an adopted child and, in respect of a man, includes a child

(a) in respect of whom the man has been adjudged the father by a court of competent jurisdiction; or

(b) who the man has acknowledged to be his child;

“Code of Conduct” means the Code of Conduct for Persons in Public Life referred to in section 25;

“Commission” means the Integrity Commission established by section 3;

“declaration” means a declaration filed or required to be filed pursuant to section 11 and includes any statement or other information filed or required to be filed with such a declaration;

“dependent child” means any child of a person, whether a minor or not, who is unmarried and is being maintained by the person;

“disclosure order” means an order made under section 42(1);

“document” includes

- (a) anything on which there is writing;
- (b) a map, plan, drawing or photograph; and
- (c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from the information so recorded or stored;

“Head of Department” has the meaning assigned to it by section 2 of the *Public Service Act, Cap. 29*;

“income” includes

- (a) money or money’s worth derived from whatever source or acquired in Barbados or elsewhere, whether directly or indirectly; and
- (b) all receipts by way of salary, fees, wages, requisitions, profits, grants, emoluments, rents, interest, commissions, bonuses, pensions, annuities or benefits;

“investigative officer” means a person designated as such under section 10(1);

“liabilities” means all the obligations of a person to pay money or to provide goods or services in Barbados or elsewhere;

“Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency” means the agency established by section 4 of the *Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency Act, 2019 (Act 2019-)*;

“member of the House of Assembly or the Senate”, as the case may be, shall be construed to include, in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House

of Assembly is held, a person who was a member of the House of Assembly or the Senate, as the case may be, before the dissolution of Parliament;

“Permanent Secretary” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“persons exercising public functions” includes

- (a) all specified persons in public life;
- (b) public officers;
- (c) members, chief executive officers, managers, directors and employees of state-owned enterprises; and
- (d) all other persons who hold a legislative, executive, administrative or judicial office in the Government of Barbados, whether appointed or elected, permanent or temporary or paid or unpaid,

but does not include a judge of the Supreme Court;

“privileged material” means

- (a) communications between an attorney-at-law and his client, or any person representing his client, made in connection with the giving of legal advice to the client;
- (b) communications between an attorney-at-law and his client, or any person representing his client, or between such an attorney-at-law or his client, or any such representative, and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) material enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the communications or material are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

“prohibited interest” means an interest in a contract with the Government or a state-owned enterprise, the acquisition of which by a specified person in public life is prohibited by rules made under section 22;

“property” includes money and all other property whether real, personal or things in action;

“public officer” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“Register of Interests” means the register established pursuant to section 19;

“senior officer” means an employee of the Commission who is at or above the rank of Secretary to the Commission;

“specified person in public life” means a person who holds an office listed in Part I of the *Second Schedule*;

“spouse”, in relation to a specified person in public life, means a person

(a) to whom the specified person in public life is married; or

(b) with whom the specified person in public life is in a union other than marriage;

“statement of registrable interests” means a statement described in section 18(1);

“state-owned enterprise” means

(a) a company within the meaning of section 2(1) of the *Companies Act*, Cap. 308; or

(b) a statutory board,

listed in Part II of the *Second Schedule*;

“union other than marriage” has the meaning assigned to it by section 39 of the *Family Law Act*, Cap. 214.

PART II

INTEGRITY COMMISSION

Establishment of Integrity Commission

- 3.(1) There is established a body corporate to be known as the Integrity Commission.
- (2) Section 21 of the *Interpretation Act*, Cap. 1 applies to the Commission.
- (3) The *First Schedule* has effect with respect to the constitution of the Commission and otherwise in relation thereto.
- (4) The members of the Commission are entitled to such remuneration and allowances as the Minister responsible for Finance determines.
- (5) Subject to this Act, the Commission may regulate its own procedure and may make rules for the purpose.

Functions of Commission

- 4.(1) The functions of the Commission are
- (a) to receive, keep on record, examine and inquire into all declarations, statements of registrable interests and reports of gifts filed under this Act;
- (b) to request such information and conduct such investigations and inquiries as may be necessary to verify or determine the accuracy of all such declarations, statements of registrable interests and reports of gifts;
- (c) to investigate, on its own initiative or upon receipt of a complaint
- (i) any alleged contravention of this Act or the Code of Conduct;
- (ii) any acquisition by any specified person in public life of a prohibited interest; and

- (iii) any alleged offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission;
 - (d) to examine the practices and procedures of public authorities to determine whether such practices and procedures are likely to facilitate the occurrence of acts of corruption and to recommend appropriate changes in such practices and procedures, except where there is a statutory duty on any other person to perform such functions; and
 - (e) to perform such other functions as may be required by this Act or any other enactment.
- (2) In the discharge of its functions, the Commission shall not be subject to the direction or control of any person or authority.
- (3) The Governor-General may in writing require the Commission to inquire into or investigate any matter within the scope of its functions.

Consultation

5. The Commission may consult with any person in the discharge of its functions, including in the conduct of an investigation or inquiry.

Agreements and exchange of information with law enforcement agencies

- 6.(1) The Commission may enter into such written agreements, arrangements or memoranda of understanding with a law enforcement agency as the Commission considers necessary or desirable for the discharge of its functions.
- (2) The Commission shall be treated as a law enforcement agency for the purpose of receiving disclosures of information which are relevant to its functions from any law enforcement agency.
- (3) Subject to section 51, the Commission may disclose to a law enforcement agency any information disclosed to the Commission.

(4) The Financial Intelligence Unit referred to in section 9(1) of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) and foreign financial intelligence units, by whatever name called, shall be treated as law enforcement agencies for the purpose of this section, regardless of whether they operate as enforcement or administrative entities.

(5) In this section “law enforcement agency” includes a foreign law enforcement agency.

Funds of Commission

7.(1) The Commission shall have such funds as may be voted by Parliament.

(2) The Commission shall keep proper accounts of its receipts, payments, assets and liabilities and those accounts shall be audited annually by the Auditor-General.

Annual reports

8.(1) The Commission shall, before the commencement of each financial year, prepare and forward to the Prime Minister a report of its activities during the previous financial year, including a statement of its accounts audited in accordance with section 7(2).

(2) A copy of the report, together with the Auditor-General’s report, shall be laid in Parliament.

Staff of Commission

9.(1) The Commission may employ such staff and retain the services of such persons as it requires for the discharge of its functions, on such terms and conditions as it determines appropriate.

(2) The *Statutory Boards (Pensions) Act, Cap. 384* applies to employees of the Commission with such modifications and adaptations as may be necessary.

Investigative officers

10.(1) The Commission may designate such staff as it determines appropriate as investigative officers and may issue to such officers an identification card, which shall be *prima facie* evidence of the designation of the officers.

(2) An investigative officer may conduct an investigation into any matter, whether or not involving an alleged offence, in respect of which the Commission discharges functions under this Act or any other enactment.

(3) Notwithstanding subsections (1) and (2), the Commission may, where it considers it appropriate to do so, require the Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency to conduct an investigation on its behalf.

PART III

DECLARATIONS

Declaration of financial affairs

11.(1) A person who

- (a) is a specified person in public life shall, within 90 days of the appointed day and on or before the biennial anniversary of the appointed day;
- (b) becomes a specified person in public life shall, within 90 days from the date on which he becomes a specified person in public life;
- (c) ceases to be a specified person in public life shall, within 90 days from the date on which he ceases to be a specified person in public life,

file in accordance with subsection (3), a declaration containing the particulars set out in subsection (5).

(2) Notwithstanding subsection (1)(a), a person who files a declaration under subsection (1)(b) in a particular year is not required to file another declaration in the same year.

- (3) A specified person in public life shall file his declaration with
 - (a) the Commission, where he is not a member or senior officer of the Commission; and
 - (b) the Governor-General, where he is a member or senior officer of the Commission.
- (4) The Commission may, in exceptional circumstances, grant to a specified person in public life required to file a declaration with it, an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.
- (5) A declaration shall be in the Form I set out in the *Third Schedule* and shall give full, true and complete particulars of
 - (a) the income, assets and liabilities of the specified person in public life; and
 - (b) the income, assets and liabilities of his spouse and dependent children.
- (6) A declaration may be accompanied, where a specified person in public life so desires, by a statement giving details of his income, assets and liabilities, certified by an accountant.
- (7) Where a specified person in public life dies, there is no obligation on the personal representative of his estate to file the declaration which the specified person in public life would have been required to file, had he lived.
- (8) For the avoidance of doubt, this Part applies to a person who ceases to be a specified person in public life but is required to file a declaration pursuant to subsection (1)(c) as it applies to any other specified person in public life.
- (9) The Governor-General has, in respect of a specified person in public life who is required to file a declaration with him and any declaration so filed, the same functions that the Commission has in this Act in respect of a specified person in public life who is required to file a declaration with it and any declaration so filed.

Full disclosure

12. A specified person in public life shall disclose in his declaration such details in respect of his income, assets and liabilities and those of his spouse and dependent children as, by the exercise of reasonable care, should be known to him including

- (a) any benefit accruing to his income and assets and those of his spouse and dependent children; and
- (b) any income, assets and liabilities acquired, held or incurred by any other person as agent or on behalf of himself and his spouse and dependent children or any of them.

Trust property

13. Where a specified person in public life holds any money or other property in trust for a person who is not his spouse or child or another specified person in public life, he shall so state in his declaration but he shall not be required to disclose the terms of the trust.

Blind trusts

14.(1) A specified person in public life may place all or part of his assets in a blind trust for the purpose of this Act and file a copy of the trust deed with

- (a) the Commission, where he is not a member or senior officer of the Commission; or
- (b) the Governor-General, where he is a member or senior officer of the Commission.

(2) Where the Commission has reasonable grounds to believe that a specified person in public life who is required to file a declaration with it is likely to

contravene or has contravened this Act, the Commission may direct the person to

- (a) place all or part of his assets in a blind trust on such terms and conditions as the Commission considers appropriate; and
 - (b) file a copy of the trust deed in accordance with subsection (1).
- (3) Where a specified person in public life places assets in a blind trust, he shall not be required to provide in his declaration more particulars of the assets than the amount and description of the assets and the date they were placed in the trust.
- (4) Notwithstanding any other law relating to the duties of trustees, a qualified trust company which manages the assets of a specified person in public life by way of a blind trust shall reply fully to any inquiries of the Commission relating to the nature and management of the assets.
- (5) A blind trust is created where a specified person in public life enters into an agreement with a qualified trust company whereby
- (a) all or any part of his assets or those of his spouse or his children are conveyed to the qualified trust company for the management, administration and control thereof, in its absolute discretion without recourse or report to the person beneficially entitled to the assets;
 - (b) income derived from the management of the assets is to be distributed, in accordance with the agreement, to him, his spouse or his children until he ceases to be a specified person in public life; and
 - (c) after he ceases to be a specified person in public life, proper and full accounting is to be made to him, his spouse or his children as the circumstances of the management of the trust require.

- (6) For the purpose of this section
- (a) a trust company is a qualified trust company where
 - (i) it is incorporated in or outside Barbados and is carrying on business in Barbados;
 - (ii) no more than 5 per cent of the stated capital in the trust company or its affiliate is held or controlled by the specified person in public life who enters into an agreement referred to in subsection (5) with it, or by any other person associated with him; and
 - (iii) neither the specified person in public life nor his spouse nor any of his children hold any directorship or office in the trust company or its affiliate;
 - (b) a company is an affiliate of another company where it holds more than 5 per cent of the stated capital in that other company or where that other company holds more than 5 per cent of the stated capital in the first mentioned company;
 - (c) a person is associated with another where that other person is
 - (i) the spouse or child of the person;
 - (ii) the partner of the person in a profession, trade or commercial undertaking; or
 - (iii) a corporation, and the first mentioned person or any person mentioned in subparagraph (i) controls the corporation, its holding corporation or a corporation affiliated with either.

Examination of declarations

15.(1) The Commission shall examine every declaration it receives in order to determine whether the declaration is a complete and accurate statement of the financial affairs of the specified person in public life who filed it.

(2) Where the Commission

(a) is satisfied that the declaration

- (i) has been fully made and all questions satisfactorily answered; or
- (ii) is incomplete but the specified person in public life cannot reasonably obtain the information required to complete it,

the Commission shall forward to the specified person in public life a certificate of compliance in the Form 2 set out in the *Third Schedule* and, at the request of the person, publish a statement regarding its satisfaction with the declaration in the *Official Gazette* and in a daily newspaper in general circulation in Barbados; or

(b) is not satisfied with any aspect of the declaration, the Commission may report the matter to the appropriate Service Commission, board or other authority and to the Director of Public Prosecutions, setting out such details as it considers appropriate.

Publication of failure to file declaration or furnish information

16. Where a person who is required to do so fails to file a declaration in accordance with this Part or to furnish particulars or other information or documents in accordance with section 31, the Commission shall

- (a) publish that fact in the *Official Gazette* and in a daily newspaper in general circulation in Barbados; and
- (b) report the matter to the appropriate Service Commission, board or other authority and to the Director of Public Prosecutions, setting out such details as it considers appropriate.

Offences in respect of declarations

17.(1) A person who

- (a) without reasonable cause, fails to file a declaration that he is required to file;

- (b) knowingly files a declaration that is incomplete or false in any material particular; or
- (c) without reasonable cause, fails to comply with a direction given under section 14(2) within the time specified therefor, or knowingly gives any false or incomplete information in a trust deed filed under section 14,

is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 or to imprisonment for one year or to both.

(2) Where an offence referred to in subsection (1)(a) or (b) involves the non-disclosure, by a specified person in public life, of property, which should have been disclosed in a declaration, the magistrate shall order the specified person in public life to make full disclosure of the property within a specified period.

(3) Where a specified person in public life fails to comply with an order made under subsection (2) within the specified period, the offence shall be deemed to be a continuing offence and the specified person in public life shall be liable to a further fine of \$3 000 for each day on which the offence continues.

PART IV

REGISTRABLE AND PROHIBITED INTERESTS

Filing of statements of registrable interests

18.(1) Every member of the House of Assembly and of the Senate shall file with the Commission, in addition to his declaration, a statement that contains the following information in respect of the member, his spouse and his children:

- (a) particulars of any directorships held in any company or other body corporate;
- (b) particulars of any contract made with the Government or a state-owned enterprise;

- (c) the name and description of any company, partnership or association in which the person is an investor;
 - (d) a concise description of any trust in respect of which the person is a beneficiary or trustee;
 - (e) any beneficial interest held in land;
 - (f) any fund to which the person contributes;
 - (g) particulars of any political, trade or professional association to which the person belongs;
 - (h) particulars of any sources of income; and
 - (i) any other substantial interest, whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty.
- (2) Every member of the House of Assembly and of the Senate shall file his statement of registrable interests in the Form 3 set out in the *Third Schedule* within 90 days after
- (a) the day on which he becomes a member, in respect of his interests on the day on which he becomes a member; and
 - (b) the 31st day of December in each year during any part of which he is a member, in respect of his interests on the 31st day of December in that year.
- (3) Notwithstanding subsection (2)(b), a member who files a statement of registrable interests in the period of 6 months preceding the 31st day of December in a particular year is not required to file another such statement for that same year.
- (4) Where a member dies, the personal representative of his estate is not required to file the statement of registrable interests which the member would have been required to file, had he lived.

- (5) Nothing in this section shall be taken to require disclosure of the actual amount or extent of any financial benefit, contribution or interest.
- (6) The Commission shall examine every statement of registrable interests it receives in order to determine whether it is complete and accurate.

Register of Interests

- 19.(1) The Commission shall keep a register, to be called the Register of Interests, containing all information furnished by members of the House of Assembly and of the Senate under this Part.
- (2) Every member of the House of Assembly and of the Senate shall notify the Commission of any change which occurs in his interests, or those of his spouse or children, within 6 weeks of the change.
- (3) The Commission shall make the Register of Interests available for public inspection.

Offences in respect of statements of registrable interests

- 20.(1) A member of the House of Assembly or the Senate who
 - (a) without reasonable cause, fails to file a statement of registrable interests that he is required to file; or
 - (b) knowingly files with the Commission a statement of registrable interests that is incomplete or false in any material particular,is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 or to imprisonment for one year or to both.
- (2) Where an offence referred to in subsection (1)(a) or (b) involves the non-disclosure, by a member of the House of Assembly or the Senate, of information which should have been disclosed in a statement of registrable interests, the magistrate shall order the member to make full disclosure of the information within a specified period.

(3) Where a member of the House of Assembly or the Senate fails to comply with an order made pursuant to subsection (2) within the specified period, the offence referred to in subsection (1) shall be deemed to be a continuing offence and the member shall be liable to a further fine of \$3 000 for each day on which the offence continues.

Disqualification of member from holding public office

21. A member of the House of Assembly or the Senate who is convicted of an offence under section 17 or 20 is liable, in addition to any other penalty prescribed by law, to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

Prohibited interests

22.(1) The Commission shall make rules prescribing the circumstances in which the acquisition by a specified person in public life of an interest in a contract with the Government or a state-owned enterprise is prohibited.

(2) The Commission shall not issue a determination that a specified person in public life has acquired a prohibited interest where the person notifies the Commission of the interest and the Commission is of the opinion that the interest

- (a) is unlikely to affect the person's obligations under the Code of Conduct; or
- (b) is likely to affect the person's obligations under the Code of Conduct but that the person, his spouse or child, as the case may be, has divested himself of the interest or has placed it in a blind trust on such terms and conditions as the Commission considers appropriate.

PART V

GIFTS

Reports on gifts

23.(1) A specified person in public life, other than a member or senior officer of the Commission, who receives a gift worth more than \$2 500, or whose spouse or child receives such a gift, shall make a report of that fact to the Commission in the Form 4 set out in the *Third Schedule* and shall state in the report

- (a) the name and address of the donor;
- (b) the description and approximate value of the gift; and
- (c) whether, in the opinion of the recipient, the gift is a personal gift or an official gift.

(2) A specified person in public life who is a member or senior officer of the Commission shall, in the circumstances referred to in subsection (1) make the report referred to in that subsection to the Governor-General.

(3) This section does not apply to a personal gift received by a specified person in public life from a relative or friend.

(4) A specified person in public life who is unsure whether a gift received from a relative or friend is a personal gift or an official gift may apply to the Commission seeking an opinion as to the proper classification of the gift.

(5) A specified person in public life shall make a report or an application under subsection (1), (2) or (4) within 30 days of the receipt of the gift.

(6) The Commission shall determine whether the gift is a personal gift or an official gift and such decision shall be final.

- (7) Where the Commission finds that
- (a) a gift was given to a specified person in public life personally and
 - (i) was trivial; or
 - (ii) was not trivial but was not intended to be a motive or reward for doing or forbearing to do anything in the course of the discharge of his official functions or for causing any other person to do or forbear from doing anything,the Commission shall allow the specified person in public life to retain the gift; or
 - (b) a gift was not of the kind described in paragraph (a), the Commission shall in writing direct the specified person in public life to deliver the gift or its value to the Minister responsible for Finance within a specified period not exceeding 30 days, and the specified person in public life shall comply with the direction within the time so specified.
- (8) Nothing in this Part shall be taken to alter any law, rule or decision which prohibits a particular specified person in public life or class of specified persons in public life from receiving gifts in the course of discharging official functions.
- (9) The Governor-General has, in respect of a specified person in public life who is required to make a report to him under subsection (2) and any report so made, the same functions that the Commission has in this Act in respect of a specified person in public life who is required to make a report to it under subsection (1) and any report so made.

Offences in respect of gifts

- 24.(1) A specified person in public life who
- (a) without reasonable excuse, fails to comply with section 23(1) or (2), as the case may be;
 - (b) knowingly makes a report pursuant to section 23(1) or (2) that is incomplete or false in any material particular; or

- (c) without reasonable excuse, fails to comply with a direction given under section 23(7),

is guilty of an offence and is liable, on summary conviction, to a fine, which shall not be more than three times the value of the gift involved in the commission of the offence, or to imprisonment for 6 months or to both.

- (2) No prosecution for an offence under subsection (1) shall be instituted after 5 years from the date when the person alleged to have committed the offence ceased to be a specified person in public life.

PART VI

CONDUCT IN PUBLIC LIFE AND CONTRAVENTIONS OF ACT

Code of Conduct

25.(1) Every person exercising public functions shall comply with the Code of Conduct for Persons in Public Life set out in the *Fourth Schedule*.

(2) The Commission shall, where it has reasonable grounds to suspect, or it receives a complaint, that the Code of Conduct has been contravened, inquire into or investigate the matter.

(3) Where the Commission determines that a person has contravened the Code of Conduct, it may include in its report any recommendations as to punishment or disciplinary measures that it considers appropriate.

(4) Subsection (1) does not derogate from the obligations of a public officer under the Code of Conduct and Ethics established by section 11 of the *Public Service Act*, Cap. 29.

Complaint to Commission regarding contravention of Act

26. A person who has reasonable grounds to believe that another person has contravened this Act may make a complaint to the Commission stating

- (a) the particulars of the contravention;
- (b) the nature of the evidence that he proposes to produce in support of the complaint; and
- (c) such other particulars as may be prescribed.

Duty of persons exercising public functions to report contravention of Act

27.(1) A person exercising public functions who knows or suspects that another person has been, is or is likely to be engaged in a contravention of this Act shall report his knowledge or suspicion to the Commission.

(2) A person exercising public functions who, without reasonable excuse, fails to report his knowledge or suspicion as required by subsection (1) is guilty of an offence and is liable, on conviction on indictment, to a fine of \$50 000 or to imprisonment for one year or to both.

Oral complaints to be put into writing

28. The Commission shall ensure that any oral complaint it receives is put into writing by one of its employees.

Examination of complaints

29. The Commission may, upon examination of a complaint

- (a) reject the complaint where it considers that the complaint is frivolous or does not relate to a matter the Commission is empowered to address;
or
- (b) conduct an inquiry into the complaint.

Offences in respect of false complaints

30. A person who knowingly makes a false allegation or maliciously provides false information related to a contravention of this Act is guilty of an offence and is liable

- (a)* on conviction on indictment to a fine of \$100 000 or to imprisonment for two years or to both;
- (b)* on summary conviction to a fine of \$50 000 or to imprisonment for one year or to both.

PART VII

POWER TO REQUIRE FURTHER INFORMATION AND TO CONDUCT INQUIRIES

General powers of Commission to investigate or inquire

31.(1) The Commission may, where it considers it necessary in order to determine whether

- (a)* a declaration is a complete and accurate statement of the financial affairs of the specified person in public life who filed it;
- (b)* a statement of registrable interests is complete and accurate;
- (c)* a specified person in public life has acquired a prohibited interest;
- (d)* a gift given to a specified person in public life is a personal gift or an official gift;
- (e)* a person exercising public functions has contravened the Code of Conduct; or
- (f)* a person has otherwise contravened this Act,

take any action specified in subsection (2).

- (2) For the purposes of subsection (1)(a) to (f), the Commission may
- (a) make such independent inquiries as it considers appropriate;
 - (b) in writing request any specified person in public life or other person exercising public functions involved to furnish such further particulars or other information or documents as it considers appropriate; or
 - (c) conduct an inquiry and require the person involved to attend before it to answer any questions and to be heard on any matter relating to the subject of the inquiry.
- (3) A person who receives a request pursuant to subsection (1)(b) shall comply with the request within the time the Commission specifies.

Conduct of inquiries

32.(1) The Commission shall conduct inquiries in private.

- (2) A person whose conduct is the subject of an inquiry or who is in any way implicated or concerned in a matter under inquiry
- (a) is entitled to be represented at the inquiry by an attorney-at-law or such other person as he chooses, and any other person who desires to be so represented may, by leave of the Commission, be represented in that manner; and
 - (b) may require the Commission to summon witnesses in relation to the inquiry,

and the Commission shall not take an adverse decision against such a person without giving the person an opportunity to be heard.

- (3) An inquiry shall not be commenced after 5 years from the date on which a person ceases to be a specified person in public life or other person exercising public functions, as the case may be.

Commission's powers to summon and examine witnesses

33.(1) The Commission shall, in respect of an inquiry, have the powers of a judge of the Supreme Court to summon witnesses and to call for the production of documents.

(2) A summons to attend an inquiry to give evidence or to produce documents

(a) shall be

(i) in such form as the Commission may determine;

(ii) issued under the hand of the Chairman or another member of the Commission; and

(iii) served on a person by handing it to, or leaving it with, the person, or in such other manner as the Commission may direct to ensure that it is brought to the attention of the person; and

(b) may be served by a person authorised by the Commission for the purpose.

(3) The Commission may

(a) require that any facts, matters or things relating to the subject of an inquiry be verified or otherwise ascertained by the oral examination of witnesses; and

(b) cause any witnesses and parties concerned to be examined on oath.

(4) The Chairman or the Secretary of the Commission may administer an oath for the purpose of subsection (3).

(5) The Commission may, if it thinks fit, receive oral or written evidence, but it is not bound by the rules of evidence in the *Evidence Act*, Cap. 121, and it may take into account opinion evidence and such facts as it considers relevant and material.

Duty of witnesses summoned

34.(1) A person summoned to attend to give evidence or to produce documents at any sitting of the Commission is bound to obey the summons served upon him as fully in all respects as witnesses are bound to obey subpoenas issued from the Supreme Court.

(2) A person who

- (a) without sufficient cause, refuses or omits to attend at the time and place mentioned in the summons served on him;
- (b) attends but leaves the Commission without the permission of the Commission;
- (c) without sufficient cause, refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Commission;
- (d) without sufficient cause, refuses or omits to produce any document in his possession or under his control and mentioned or referred to in the summons served on him; or
- (e) at any sitting of the Commission, wilfully insults a member of the Commission or the Secretary of the Commission,

is guilty of an offence and is liable, on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both.

(3) A person who gives evidence before the Commission shall

- (a) notwithstanding subsection (2), not be compellable to incriminate himself; and
- (b) in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by the witness before the court.

Witness expenses

35.(1) A person summoned to attend to give evidence or to produce documents at any sitting of the Commission shall, where the Commission allows him expenses

- (a)* be entitled to the same expenses as if he had been summoned to attend the Supreme Court on a criminal trial;
- (b)* be paid
 - (i)* at such time and in such manner as the Minister responsible for Finance may direct; and
 - (ii)* as far as possible, by the same procedure as that for the payment of witnesses before the Supreme Court.

(2) The Commission may disallow the whole or any part of the expenses of a person referred to in subsection (1) in any case where the Commission thinks fit.

Marshals to attend Commission

36. The Chief Marshal may, where so required by the Commission, assign marshals to

- (a)* attend proceedings of the Commission to preserve order;
- (b)* perform such other duties as usually pertain to their office when in attendance upon the Supreme Court;
- (c)* serve summonses on witnesses; and
- (d)* perform such other duties as the Commission may direct.

Inquiry reports etc.

37.(1) The Commission shall prepare a written report of its findings and determinations in respect of each inquiry it conducts and send a copy of the report,

together with copies of any complaint and material documents submitted during the inquiry

- (a) to the person whose conduct was the subject of the inquiry; and
 - (b) where that person is,
 - (i) a public officer, to the Head of the Public Service, the appropriate service Commission and the Governor-General;
 - (ii) a member of the House of Assembly or the Senate, to the Governor-General and the Speaker of the House of Assembly or the President of the Senate, as the case may be;
 - (iii) the Head of the Public Service, to the Governor-General; and
 - (iv) concerned with any state-owned enterprise, to the state-owned enterprise and the Minister with responsibility for the enterprise; and
 - (c) to the Director of Public Prosecutions, where the Commission considers that an offence may have been committed.
- (2) Where a person is exonerated following an inquiry into an alleged contravention of this Act, the Commission shall
- (a) in writing inform the person who made the complaint and the person alleged to have contravened this Act of the finding of the inquiry; and
 - (b) at the request of the person whose conduct was the subject of the complaint, publish the finding of the inquiry in the *Official Gazette* and in a daily newspaper in general circulation in Barbados.

Action by Director of Public Prosecutions

38.(1) The Director of Public Prosecutions shall, as soon as practicable after receiving any complaint, report and other documents pursuant to this Act, in any

case in which he considers that a person ought to be prosecuted for an offence, institute and undertake criminal proceedings against the person and inform

- (a) the Commission of any action taken following the receipt of the information;
 - (b) the appropriate Service Commission, where the complaint relates to a public officer; and
 - (c) the appropriate board or other authority with which the person alleged to have contravened this Act is employed or in respect of which he is a member.
- (2) Where criminal proceedings are commenced against a person exercising public functions, no disciplinary procedures shall be instituted pending the determination of the criminal proceedings.
- (3) The Director of Public Prosecutions may authorise any person having an official duty under this Act to furnish information to any officer of the court or member of the Police Force or any other person the Director of Public Prosecutions specifies.

Offences in respect of requests for information and inquiries

- 39.** A person exercising public functions who
- (a) without reasonable cause, fails to comply with a request made under section 31(2)(b) within the time specified therefor or knowingly gives any false or incomplete information pursuant to such a request;
 - (b) without reasonable cause, fails to attend an inquiry when summoned to do so; or
 - (c) knowingly gives false or incomplete information at such an inquiry,
- is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 or to imprisonment for one year or to both.

Governor-General to appoint tribunal to perform functions

40.(1) The Governor-General shall, after consultation with the Prime Minister and the Leader of the Opposition, appoint a person who has held the office of judge in a superior court of record in any part of the Commonwealth as a tribunal to discharge the functions of the Governor-General under this Act on his behalf.

(2) Without prejudice to the generality of sections 11(9) and 23(9), sections 11(4), 14(2) and (4), 15, 16, 22(2), 23(4) to (7), 25(2) and (3), 26, 28, 29 and 31 to 38 apply to the Governor-General and a specified person in public life required to file a declaration with or make a report to him under section 11(3)(b) or 23(2), with such modifications and adaptations as may be necessary, as those sections apply to the Commission and other specified persons in public life, and the Governor-General has the same functions as the Commission in those sections.

PART VIII**INVESTIGATIONS***Powers of Investigative Officers***Power of arrest**

41.(1) An investigative officer has, in carrying out his functions, the powers of a constable to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment under this Act or any other enactment that assigns responsibility for investigations to the Commission.

(2) An investigative officer shall, after making an arrest, deliver the person arrested to the custody of a member of the Police Force who shall immediately bring the person before a magistrate.

Disclosure orders

42.(1) Where on an application made by an investigative officer, a judge in Chambers is satisfied that each of the requirements set out in subsection (3) is fulfilled, the judge may make an order authorising the officer to give to any person the officer considers has relevant information, notice in writing requiring the person, with respect to any matter relevant to the investigation for the purposes of which the order is sought, to

- (a)* answer any question, either at a time specified in the notice or at once, at a place so specified;
- (b)* provide any information specified in the notice, by a time and in a manner so specified;
- (c)* produce any document, or any documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(2) An application for a disclosure order shall be made without notice and shall state that a person specified in the application is subject to an investigation under this Act or any other enactment that assigns responsibility for investigations to the Commission.

(3) The requirements referred to in subsection (1) are that there are reasonable grounds for

- (a)* suspecting that the person specified in the application has committed an offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission; and
- (b)* believing that
 - (i)* information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and

- (ii) it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(4) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

(5) A person who

- (a) without reasonable excuse, fails to comply with a requirement imposed on him under a disclosure order; or
- (b) in purported compliance with a requirement imposed on him under a disclosure order
 - (i) makes a statement which he knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

(6) An offence under subsection (5) is punishable upon summary conviction by

- (a) a fine of \$10,000 or imprisonment for 2 years, or both, where the offender is an individual;
- (b) a fine of \$50,000, where the offender is a body corporate.

(7) Subject to subsection (8), a statement made by a person in response to a requirement imposed by a disclosure order may not be used in evidence against the person in criminal proceedings.

(8) Subsection (7) does not apply in the case of

- (a) proceedings for contempt of court;
- (b) a prosecution for an offence under subsection (6);

- (c) a prosecution for an offence under the *Perjury Act*, Cap. 142; or
 - (d) a prosecution for another offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (7).
- (9) A statement may not be used by virtue of subsection (8)(d) against a person unless
- (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.
- (10) A disclosure order has effect notwithstanding any obligation as to confidentiality or any other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.
- (11) For the purposes of subsection (1), “relevant information” is information, whether or not contained in a document, which the investigative officer considers to be relevant to the investigation.
- (12) Sections 145 and 148 of the *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17) apply in respect of a disclosure order made under this section as those sections apply to a disclosure order made under that Act and for the purpose of this Act, any reference in section 145 of that Act to a police officer shall be construed to include an investigative officer.

Search and seizure warrants

- 43.(1)** Where on an application made by an investigative officer, a judge in Chambers is satisfied of the circumstances set out in subsection (3), the judge may issue a warrant authorising the officer to
- (a) enter and search the premises specified in the application for the warrant; and

- (4) The conditions referred to in subsection (3)(b)(i) are that
- (a) there are reasonable grounds for believing that
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (b) it would not be appropriate to make a disclosure order because
 - (i) it is not practicable to communicate with any person against whom the disclosure order could be made;
 - (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) the investigation might be seriously prejudiced unless an investigative officer is able to secure immediate access to the material.
- (5) The conditions referred to in subsection (3)(b)(ii) are that
- (a) there are reasonable grounds for believing where the material cannot be identified at the time of the application, that there is material on the premises specified in the application for the warrant that
 - (i) relates to the person specified in the application or the question whether he has committed an offence under this Act or any other enactment that assigns responsibility for investigations to the Commission; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and

- (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (c) one of the following applies:
 - (i) it is not practicable to communicate with any person against whom a disclosure order could be made;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation might be seriously prejudiced unless an investigative officer arriving at the premises is able to secure immediate entry to them.
- (6) A search and seizure warrant does not confer the right to seize privileged material.

Obstruction of investigative officer

44. A person who resists or obstructs an investigative officer in the execution of his duty is guilty of an offence and is liable, on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both.

Complaints regarding Investigative Officers

Complaints concerning conduct of investigative officers

45.(1) A person may address a complaint in writing to the Commission in respect of the conduct of an investigative officer in the discharge of the officer's functions where the person

- (a) has been personally affected by the conduct;
- (b) has witnessed the conduct;
- (c) has a substantial and direct interest in the complaint; or

(d) has been authorised by a person referred to in paragraph (a), (b) or (c) to make a complaint in that person's name.

(2) The Commission shall refer a complaint made under subsection (1) to a panel appointed under section 46.

Appointment of complaints panel

46. The Governor-General may appoint an *ad hoc* panel consisting of
- (a) a judge or magistrate or a retired judge or magistrate, who shall be the chairman;
 - (b) the Commissioner of Police, who shall hold office *ex officio*; and
 - (c) a person, other than a member or former member of the Police Force, to represent the public,

to hear and adjudicate a complaint made under section 45.

Disposal of complaint without formal investigation

47.(1) A panel appointed under section 46 may direct that no investigation of a complaint be carried out where in its opinion

- (a) the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (b) having regard to all the circumstances, an investigation or further investigation is not necessary or reasonably practicable.

(2) Where no direction is given under subsection (1), the panel and the Commission shall

- (a) consider whether the complaint can be disposed of informally; and
- (b) with the consent of the complainant and the investigative officer whose conduct is the subject matter of the complaint, attempt to dispose of the complaint informally before a formal investigation is undertaken.

(3) Where a complaint is disposed of informally, the panel shall prepare and send the following documents to the complainant, the investigative officer and the Commission:

- (a) an overview of the facts that gave rise to the complaint;
- (b) the name of the person who conducted the informal disposition;
- (c) a statement of the manner in which the complaint was disposed of; and
- (d) evidence of agreement to the disposition of the complaint by the complainant and the investigative officer.

Formal investigation of complaint

48.(1) Where a complaint is not disposed of informally, the Commission shall investigate the matter and send a complaint resolution report to the panel, the complainant and the investigative officer whose conduct is the subject matter of the complaint.

(2) The complaint resolution report shall contain

- (a) a summary of the complaint;
- (b) the results of the investigation;
- (c) a summary of any action that has been or will be taken with respect to resolution of the complaint; and
- (d) a statement that the complainant may refer the complaint to the panel for review within 28 days of the receipt of the complaint resolution report where he is not satisfied with the disposition of the complaint by the Commission.

(3) A complainant who is not satisfied with a direction given under section 47(1) or with the disposition of his complaint by the Commission under subsection (1), may refer the complaint to the panel in writing within 28 days after the date on which he receives notice of the direction or the complaint resolution report, and the panel shall review every complaint so referred.

Review of complaints by panel

- 49.(1) Where, after reviewing a complaint, the panel
- (a) is satisfied with the disposition of the complaint by the Commission, the panel shall send to
 - (i) the Commission, a complaint review report to that effect setting out such findings and recommendations with respect to the complaint as the panel sees fit; and
 - (ii) the complainant and the investigative officer whose conduct is the subject matter of the complaint, a report of the conclusion of the review together with any finding or recommendation referred to in subparagraph (i); or
 - (b) is not satisfied with the disposition of the complaint by the Commission or considers that further inquiry is warranted, the panel may take any or all of the following measures:
 - (i) send a report to the Commission indicating the reasons for its dissatisfaction;
 - (ii) request the Commission to conduct a further investigation into the complaint;
 - (iii) make such inquiries as it deems necessary in the circumstances;
 - (iv) investigate the complaint further;
 - (v) institute a hearing to inquire into the complaint.
- (2) The panel shall, on completion of any further investigation, inquiry or hearing that it orders under subsection (1)(b) send to
- (a) the Commission, a complaint review report setting out
 - (i) such findings with respect to the complaint as the panel sees fit; and

- (ii) such recommendations, including any disciplinary measures to be taken with regard to the investigative officer, as the panel sees fit; and
 - (b) the complainant and the investigative officer, a report of the conclusion of the review, together with any finding or recommendation referred to in paragraph (a).
- (3) The Commission shall give effect to any recommendations in a complaint review report sent to it.

PART IX

MISCELLANEOUS

Commissioner of Police to assist Commission etc.

50. The Commissioner of Police shall provide to the Commission such assistance as it requests in connection with the discharge of its functions.

Confidentiality of information

51.(1) Any information received by any member or employee of the Commission, in the discharge of the functions of such person under this Act, including information contained in any document received by that person by virtue of this Act, shall not be divulged by any such member or employee, except where the information is required to be produced for the purpose of complying with any other enactment or an order of any court or for the purpose of prosecution for an offence.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years.

(3) Any person who receives any information or anything contained in any document described in subsection (1), knowing or having reasonable ground to

believe at the time when he receives it, that it is communicated to him in contravention of this section, unless he proves that the communication to him of the information or anything contained in such document was contrary to his desire, is guilty of an offence and is liable, on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years.

(4) Every member of the Commission and every person performing any function in the service or as an employee of the Commission shall treat all records, and information relating to declarations, as secret and confidential and shall not disclose or communicate the text of any record, information or declaration to any unauthorised person or allow any unauthorised person to have access to any records, information or declarations.

(5) A person who contravenes subsection (4) is guilty of an offence and is liable, on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years or to both.

(6) This section applies to a person appointed as a tribunal by the Governor-General under section 40, as it applies to a member of the Commission.

Conflicts of interest

52.(1) Where a member of the Commission is interested in a matter before the Commission or in a person who is a party to proceedings before the Commission, the member so interested shall disclose the nature of his interest to the Commission and shall not participate in its sittings in relation to the matter or person.

(2) Where a person appointed as a tribunal by the Governor-General is interested in a matter before the tribunal or in a person who is a party to proceedings before the tribunal, the person so interested shall disclose the nature of his interest to the Governor-General and shall not participate in its sittings in relation to the matter or person.

(3) Where, in the opinion of the Governor-General or of the Commission, a member of the Commission is interested in a matter before the Commission or in a person who is party to proceedings before the Commission, the Governor-

General or the Commission, as the case may be, shall direct the member not to participate in the sittings of the Commission in relation to the matter or person.

Protection from suit

53. No member or employee of the Commission shall be liable to any action or suit for any matter or thing done by him in good faith as a member or employee of the Commission or in the exercise of his functions or the course of his employment, as the case may be.

Oaths

54.(1) Every member of the Commission and every person appointed as a tribunal by the Governor-General under this Act shall, before assuming the functions of his office, take before the Governor-General the applicable oath of office and oath of secrecy in the forms set out in Parts I and III, respectively, of the *Fifth Schedule*.

(2) Every person performing functions in the service of or as an employee of the Commission shall, before assuming the functions of his office, take before the Chairman, or in his absence, another member of the Commission, the applicable oath of office and oath of secrecy set out in the forms in Part II of the *Fifth Schedule*.

Amendment of Second and Third Schedules

55. The Minister may by order

- (a) amend Part II of the *Second Schedule*;
- (b) after consultation with the Commission, amend the *Third Schedule*.

Regulations

56. The Minister may make Regulations generally for giving effect to this Act and, in particular, for any matter

- (a) required to be prescribed by this Act; and

(b) related to any report, investigation or inquiry under this Act.

Alteration of *Constitution*

57. Section 112 of the *Constitution* is amended to the extent necessary to give effect to this Act.

Commencement

58. This Act shall come into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE*(Sections 2 and 3)***INTEGRITY COMMISSION****Members of Commission**

1. The Commission shall consist of
 - (a) a person who has held the office of judge in a superior court of record in any part of the Commonwealth, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition;
 - (b) an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the *Legal Profession Act*, Cap. 370A, appointed by the Governor-General, after consultation with the Council of the Barbados Bar Association;
 - (c) a chartered or certified accountant of at least 7 years' standing appointed by the Governor-General after consultation with any body which in his opinion represents chartered or certified accountants in Barbados;
 - (d) a member of the clergy, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition;
 - (e) a person appointed by the Governor-General on the advice of the Prime Minister; and
 - (f) a person appointed by the Governor-General on the advice of the Leader of the Opposition.

Disqualification from membership

2. A person who
 - (a) is a member of the House of Assembly or the Senate;

- (b) would be disqualified in accordance with section 38 or 44 of the *Constitution*, as the case may be, from being a member of the House of Assembly or the Senate;
- (c) has, at any time during the period of 5 years preceding the proposed date of his appointment, held office in a political party; or
- (d) has, at any time during the period of 3 years preceding the proposed date of his appointment, been a public officer,

is not qualified to be appointed as a member of the Commission.

Tenure of office

3. A member of the Commission shall
- (a) be appointed by instrument in writing;
 - (b) subject to paragraphs 2, 5 and 6, hold office for a period of 3 years; and
 - (c) be eligible for re-appointment.

Appointment of Chairman

- 4.(1) The Governor-General shall, acting in his discretion, appoint a member of the Commission to be the Chairman.
- (2) The Chairman shall preside at all meetings of the Commission at which he is present.
- (3) Where the Chairman is absent from any meeting, the members present and forming a quorum shall elect one among them to preside at the meeting.

Vacancy in membership of Commission

- 5.(1) The office of a member of the Commission shall become vacant
- (a) at the expiration of the term specified in the member's instrument of appointment;

- (b) where he notifies the Governor-General in writing of his intention to resign his office, and the resignation shall take effect when the letter of resignation is received by the Governor-General;
- (c) on the death, retirement or removal of a member; or
- (d) on the absence of a member from 3 consecutive meetings of the Commission, unless such absence is approved by the Governor-General.

(2) Where any vacancy occurs in the membership of the Commission, the vacancy shall be filled by the appointment of another person from the categories of persons in paragraph 1.

Removal of member

6.(1) A member of the Commission may be removed from office by the Governor-General for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour, and shall not be removed except in accordance with this paragraph.

(2) A member shall be removed from office by the Governor-General where the question of his removal is referred to a tribunal appointed under sub-paragraph (3) and the tribunal recommends to the Governor-General that the member should be removed for inability to discharge the functions of his office or for misbehaviour.

(3) Where the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of removing a member ought to be investigated, the Governor-General shall appoint a tribunal to inquire into the matter, report on the facts thereof to him and recommend to him whether the member should be removed.

(4) The tribunal referred to in subparagraph (3) shall consist of

- (a) a judge of the Supreme Court;

- (b) an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the *Legal Profession Act*, Cap. 370A; and
 - (c) one other person of high integrity and appropriate qualifications.
- (5) The tribunal shall give the member an opportunity to be heard as to why he should not be removed.
- (6) Where the question of removing a member is referred to a tribunal, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the member from the exercise of the functions of his office.
- (7) A suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect where the tribunal recommends to the Governor-General that the member should not be removed.

Proceedings and meetings

- 7.(1) Subject to subparagraph (4), the Commission shall meet at such times as it considers necessary or desirable for the discharge of its functions.
- (2) A quorum of the Commission shall be four.
- (3) The proceedings of the Commission shall not be affected by a vacancy among its members or a defect in the appointment of a member.
- (4) The Governor-General may in writing request the Commission to meet at such times as he thinks fit.

Secretary to the Commission

- 8.(1) There shall be a Secretary to the Commission.
- (2) The Secretary shall
 - (a) attend the meetings of the Commission;.

- (b) record the proceedings of the Commission and keep the minutes of each meeting in proper form; and
- (c) generally perform such duties connected with the work of the Commission as the Commission may require.

Publication in the *Official Gazette*

9. The appointment, resignation and revocation of appointment or death of a member of the Commission shall be published in the *Official Gazette*.

SECOND SCHEDULE

(Sections 2 and 55)

SPECIFIED PERSONS IN PUBLIC LIFE

PART I

1. Members of the House of Assembly and the Senate
2. Members of the Cabinet
3. Permanent Secretaries
4. Heads of Departments within the Public Service and holders of public offices in the same grade as that of such Heads of Department
5. Chairpersons of the state-owned enterprises listed in Part II
6. Chief Executive Officers, General Managers and other executive heads of the state-owned enterprises listed in Part II
7. Magistrates
8. Director of Public Prosecutions
9. Auditor-General
10. Members and senior officers of the Commission

PART II

1. Air Transport Licensing Authority
2. Barbados Accreditation Council

3. Barbados Agency for Micro-Enterprise Development Ltd.
4. Barbados Agricultural Credit Trust Ltd.
5. Barbados Agricultural Development and Marketing Corporation
6. Barbados Agricultural Management Co. Ltd.
7. Barbados Cane Industry Corporation
8. Barbados Conference Services Ltd.
9. Barbados Community College
10. Barbados Defence Force
11. Barbados International Business Promotion Corporation
12. Barbados Investment and Development Corporation
13. Barbados National Oil Co. Ltd.
14. Barbados National Standards Institute
15. Barbados National Terminal Ltd.
16. Barbados Port Inc.
17. Barbados Revenue Authority
18. Barbados Tourism Investment Inc.
19. Barbados Tourism Marketing Inc.
20. Barbados Tourism Product Authority

21. Barbados Vocational Training Board
22. Barbados Water Authority
23. Caribbean Aircraft Handling Co. Ltd.
24. Caribbean Airways International Ltd.
25. Caribbean Broadcasting Corporation
26. Caves of Barbados Ltd.
27. Child Care Board
28. Community Legal Services Commission
29. Cultural Industries Authority
30. Enterprise Growth Fund Ltd.
31. Fair Trading Commission
32. Financial Services Commission
33. Grantley Adams International Airport Inc.
34. Gymnasium Ltd.
35. Hotels and Resorts Ltd.- Gems of Barbados
36. Kensington Oval Management Inc.
37. National Assistance Board
38. National Conservation Commission

- 39. National Council on Substance Abuse
- 40. National Cultural Foundation
- 41. National Housing Corporation
- 42. National Insurance Board
- 43. National Petroleum Corporation
- 44. National Productivity Council
- 45. National Sports Council
- 46. Needham Point Development Inc.
- 47. Needham Point Holdings Ltd.
- 48. New Life Investment Company Inc.
- 49. Queen Elizabeth Hospital
- 50. Resolution Life Assurance Company Ltd.
- 51. Rural Development Commission
- 52. Sanitation Service Authority
- 53. Southern Meats Inc.
- 54. Student Revolving Loan Fund
- 55. Technical and Vocational Education and Training Council
- 56. Transport Authority

- 57. Transport Board
- 58. Urban Development Commission

THIRD SCHEDULE

(Sections 11, 15, 18, 23 and 55)

FORMS FOR PARTS III, IV AND V

<p>CONFIDENTIAL</p> <p></p> <p>Form 1 <i>Integrity in Public Life Act, 2019</i> (Act 2019-)</p> <p>DECLARATION OF INCOME, ASSETS AND LIABILITIES FOR THE YEAR ENDED 31ST DECEMBER, 20... <i>(Pursuant to section 11 of the Integrity in Public Life Act, 2019)</i></p> <p><i>(If there is insufficient space for the items falling under any PART of this Form, additional information may be provided on separate sheets.)</i></p> <p>WARNING: Under section 17 of the <i>Integrity in Public Life Act, 2019</i> it is an offence punishable by a fine of \$25 000 or imprisonment for 18 months or both to knowingly file a declaration that is incomplete or false in any material particular.</p>
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PART I
IDENTIFICATION SECTION

1. DECLARANT

NAME OF DECLARANT (*Surname, Other Names*)

DATE OF BIRTH OF DECLARANT (*yyyy/mm/dd*)

POSITION HELD

HOME ADDRESS OF DECLARANT

OFFICE ADDRESS OF DECLARANT

DECLARANT'S CONTACT INFORMATION

(a) Telephone _____ (Home) _____ (Office) _____ (Mobile)

(b) Email _____

(c) Fax _____

Third Schedule - (Cont'd)

3. DECLARANT'S SPOUSE

 NAME OF DECLARANT'S SPOUSE (Surname, Other Names)

 DATE OF BIRTH OF DECLARANT'S SPOUSE (yyyy/mm/dd)

 HOME ADDRESS OF DECLARANT'S SPOUSE

OFFICE ADDRESS OF DECLARANT'S SPOUSE

SPOUSE 'S CONTACT INFORMATION

(a) Telephone _____ (Home) _____ (Office) _____ (Mobile)
 (b) Email _____
 (c) Fax _____

NOTE: Under section 2 of the Integrity in Public Life Act, 2019 "spouse" includes a person with whom the declarant is in a union other than marriage as defined by section 39 of the Family Law Act, Cap. 314.

Third Schedule - (Cont'd)

2. INCOME FROM TRADE, PROFESSION OR VOCATION
(Please state Net Income—after deduction of expenses)

Name and Address of Business	Nature of Business	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Annual Net Income \$

3. INCOME FROM PROPERTY
(Please state Net Income—after deduction of expenses)

Address and Description of Property	Tenant's Name	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Annual Net Income \$

Third Schedule - (Cont'd)

4. INTEREST INCOME

Name and Address of Organisation/ Persons from whom Interest Received	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Annual Income \$

5. DIVIDED INCOME (from shares and stock)

Name and Address of Organisation from which Dividend Received	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Annual Income \$

Third Schedule - (Cont'd)

6. GAINS/PROFITS

Description of Any Assets Sold	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Purchase Price and Additional Capital Expenditure <i>(a)</i> \$	Expenses Relative to Sale <i>(b)</i> \$	Proceeds of Sale <i>(c)</i> \$	Gains/Profits <i>c - (a + b)</i> \$

7. OTHER BENEFITS FROM EMPLOYMENT (including Housing, Travelling)

Name and Address of Employer	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Description of Benefit	Value \$

Third Schedule - (Cont'd)

(b) COMPANY SHARES AND STOCK (Unquoted)

Name and Address of Company	Nature of Business	Stock Units/ Shares Held	In Whose Name Held (Declarant/Spouse/Dependent Child)	Estimated Value \$
				\$

7. INVESTMENT IN PARTNERSHIPS, JOINT VENTURES AND OTHER BUSINESSES

Name and Address of Company or Business	Nature of Business	Percentage Ownership	In Whose Name Held (Declarant/Spouse/Dependent Child)	Investment as at Dec. 31, 20... \$
				\$

Third Schedule - (Cont'd)

8. OTHER ASSETS

(a) MOTOR VEHICLES

Make and Model	Registration Number	Year of Acquisition	Purchase Price \$	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Estimated Value as at Dec. 31, 20... \$

(b) MONEY LOANED

Name and Address of Borrower	Amount Lent \$	Date Lent	Name of Lender <i>(Declarant/Spouse/Dependent Child)</i>	Balance Due as at Dec. 31, 20... \$

Third Schedule - (Cont'd)

(c) GOVERNMENT AND CORPORATE BONDS

Issuing Organisation	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Date of Purchase	Interest Rate	Maturity Date	Face Value \$

(d) CREDIT UNIONS

Name and Address of Credit Union	Type of Account <i>(Shares/Savings/ Fixed Deposit)</i>	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Account Number	Balance as at Dec. 31, 20.... \$



Form 2
Integrity in Public Life Act, 2019
(Act 2019-)

CERTIFICATE OF COMPLIANCE
(Pursuant to section 15 of the Integrity in Public Life Act, 2019)

This is to certify that the declaration required under section 11 of the Integrity in Public Life Act, 2019 has been submitted by _____ and has been satisfactorily made.

Dated this _____ day of _____ 20__.

Chairman of the Integrity Commission/Governor-General

NOTE: The statement of registrable interests required under section 18 of the Act has/not*been filed.

* Delete as applicable.



Form 3

Integrity in Public Life Act, 2019
(Act 2019-)

STATEMENT OF REGISTRABLE INTERESTS FOR THE YEAR ENDED 31ST DECEMBER, 20...

(Pursuant to section 18 of the Integrity in Public Life Act, 2019)

Complete this Form and file it together with the Declaration of Income, Assets and Liabilities which you are required to file with the Integrity Commission under section 11 of the *Integrity in Public Life Act, 2019*.

NOTE: There is no requirement to disclose in this Statement the actual amount or extent of any financial benefit, contribution or interest. Please notify the Secretary to the Commission of any change which occurs in your interests as set out in this Statement within 6 weeks of the change occurring.

(If there is insufficient space for the items falling under any section, additional information may be provided on separate sheets.)

WARNING: Under section 20 of the *Integrity in Public Life Act, 2019* it is an offence punishable by a fine of \$50 000 or imprisonment for 2 years or both to knowingly file a statement of registrable interests that is incomplete or false in any material particular.

Third Schedule - (Cont'd)

STATEMENT OF REGISTRABLE INTERESTS

NAME OF DECLARANT *(Surname, Other Names)* _____

DATE OF BIRTH OF DECLARANT *(yyyy/mm/dd)* _____

POSITION HELD *(Tick one)* Member of the House of Assembly Senator

DATE ELECTED/APPOINTED *(yyyy/mm/dd)* _____

The following information is provided pursuant to section 18 of the Act:

1. I/MY SPOUSE/MY CHILD HOLD(S) DIRECTORSHIPS IN THE FOLLOWING COMPANIES OR OTHER CORPORATE BODIES:

Name of Company or other Corporate Body	Address

Third Schedule - (Cont'd)

2. I/MY SPOUSE/MY CHILD HAVE (HAS) MADE OR AM (IS) A PARTNER IN A FIRM OR A DIRECTOR OR MANAGER OF A COMPANY THAT HAS MADE CONTRACTS WITH THE STATE AS FOLLOWS:

Date of Contract	Particulars of Obligations Undertaken

3. I/MY SPOUSE/MY CHILD HAVE (HAS) INVESTMENTS IN THE FOLLOWING COMPANIES, PARTNERSHIPS OR ASSOCIATIONS:

Name of Company/Partnership/Association	Address

Third Schedule - (Cont'd)

8. I/MY SPOUSE/MY CHILD HOLD(S) MEMBERSHIPS IN THE FOLLOWING POLITICAL, TRADE OR PROFESSIONAL ASSOCIATIONS:

Name and Address of Association	Nature of Association <i>(Political/Trade/Professional)</i>

7. I/MY SPOUSE/MY CHILD HAVE (HAS) RECEIVED INCOME FROM THE FOLLOWING SOURCES:

Description of Income	Source

Third Schedule - (Cont'd)

10. I/MY SPOUSE/MY CHILD HAVE (HAS) THE FOLLOWING OTHER SUBSTANTIAL INTERESTS WHICH MAY APPEAR TO RAISE A MATERIAL CONFLICT BETWEEN MY PRIVATE INTEREST AND MY PUBLIC DUTY:

Name of Interest (Pecuniary or Non-Pecuniary)

Dated this _____ day of _____ 20_____

Signature of Declarant: _____

CONFIDENTIAL



Form 4

Integrity in Public Life Act, 2019
(Act 2019-)

REPORT OF GIFT

(Pursuant to section 23 of the Integrity in Public Life Act, 2019)

WARNING: Under section 24 of the *Integrity in Public Life Act, 2019*, it is an offence punishable by a fine or imprisonment for 3 months or both, to knowingly make a report pursuant to section 23 that is incomplete or false in any material particular.

Third Schedule - (Concl'd)

NAME OF DECLARANT *(Surname, Other Names)*

POSITION HELD

DESCRIPTION AND VALUE OF GIFT (\$)

IN YOUR OPINION, IS THE GIFT *(Tick one)* A PERSONAL GIFT AN OFFICIAL GIFT

NAME OF RECIPIENT *(Surname, Other Names)*

RELATIONSHIP TO DECLARANT *(Tick one)* SPOUSE CHILD N/A

NAME OF DONOR *(Surname, Other Names)*

ADDRESS OF DONOR

Dated this _____ day of _____ 20_____

Signature of Declarant: _____

FOURTH SCHEDULE*(Section 25)***CODE OF CONDUCT FOR PERSONS IN PUBLIC LIFE****Use of office**

- 1. A person exercising public functions**
 - (a)* shall
 - (i)** ensure that he performs his functions and administers the public resources for which he is responsible in an effective and efficient manner;
 - (ii)** be fair and impartial in exercising his public functions; and
 - (iii)** afford no undue preferential treatment to any person;
 - (b)* shall not
 - (i)** use his office for the improper advancement of his own or his family's personal or financial interests or the interest of any other person;
 - (ii)** engage in any transaction, acquire any position or have any commercial or other interest that is incompatible with his office, function and duty or the discharge thereof;
 - (iii)** use or allow the use of public property or services for activities not related to his public functions;
 - (iv)** directly or indirectly use his office for private gain; and
 - (v)** use his official influence in support of any scheme or in furtherance of any contract or proposed contract with respect to which he or a member of his immediate family has an interest.

Use of information

2. A person exercising public functions shall not for his personal advantage, benefit or gain, communicate to anyone or make use of any information or the contents of any document acquired in his official capacity, which is not in the public domain.

Private interests and conflicts of interest

3.(1) A person exercising public functions shall not allow his private interest to conflict with, or interfere with the proper discharge of, his public functions or improperly influence his conduct in the discharge of his public functions.

(2) A conflict of interest is deemed to arise if a person exercising public functions were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of a member of his family or of any other person associated with him.

(3) Where there is a possible or perceived conflict of interest, the person exercising public functions involved shall disclose his interest in accordance with such procedures as may be appropriate and disqualify himself from any decision-making process.

FIFTH SCHEDULE

(Section 54)

FORM OF OATHS

PART I

MEMBERS OF INTEGRITY COMMISSION



Form 1

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF OFFICE

I _____ do swear/affirm that I will exercise the functions of member of the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) without fear or favour, affection or ill-will according to the Laws of Barbados. So help Me God.

Dated this _____ day of _____, 20__ .

Signature

Fifth Schedule - (Cont'd)

PART I - (Concl'd)

MEMBERS OF INTEGRITY COMMISSION



Form 2

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF SECRECY

I _____ member of the Integrity Commission do swear/affirm that I shall treat all declarations filed with the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such record, information or declaration. So help Me God.

Dated this _____ day of _____, 20____.

Signature

Fifth Schedule - (Cont'd)

PART II

**EMPLOYEES AND OTHER PERSONS PERFORMING FUNCTIONS
IN THE SERVICE OF THE INTEGRITY COMMISSION**



Form 3

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF OFFICE

I _____do swear/affirm that I will exercise my functions (in the service of/as employee of) the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) without fear or favour, affection or ill-will according to the Laws of Barbados. So help Me God.

Dated this _____day of _____, 20____.

Signature

Fifth Schedule - (Cont'd)

PART II - *(Concl'd)*

EMPLOYEES AND OTHER PERSONS PERFORMING FUNCTIONS
IN THE SERVICE OF THE INTEGRITY COMMISSION



Form 4

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF SECRECY

I _____employee/performing a function in the service of the Integrity Commission do swear/affirm that I shall treat all declarations filed with the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such record, information or declaration. So help Me God.

Dated this _____day of _____, 20____.

Signature

Fifth Schedule - (Cont'd)

PART III
PERSONS APPOINTED AS TRIBUNALS



Form 5

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF OFFICE

I _____ do swear/affirm that I will exercise my functions as a tribunal under the *Integrity in Public Life Act, 2019* (Act 2019-) without fear or favour, affection or ill-will according to the Laws of Barbados. So help Me God.

Dated this _____ day of _____, 20____.

Signature

Fifth Schedule - (Concl'd)

PART III - (Concl'd)

PERSONS APPOINTED AS TRIBUNALS



Form 6

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF SECRECY

I _____ appointed as a tribunal under the *Integrity in Public Life Act, 2019* (Act 2019-) do swear/affirm that I shall treat all declarations filed with the Governor-General and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such record, information or declaration. So help Me God.

Dated this _____ day of _____, 20__.

Signature

INTEGRITY IN PUBLIC LIFE BILL, 2019

EXPLANATORY MEMORANDUM

The Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption and provide for related matters.

PART I - PRELIMINARY

- Clause 1:** provides the short title.
- Clause 2:** defines the terms used in the legislation, including the term “specified person in public life”, which is any person listed in the *Second Schedule* including a Member of Parliament.

PART II - INTEGRITY COMMISSION

Establishment and Functions of Commission

- Clause 3:** provides for the establishment of the Integrity Commission, the constitution of which is set out in the *First Schedule*.
- Clause 4:** sets out the functions of the Commission.
- Clause 5:** empowers the Commission to consult with any person in the exercise of its functions.
- Clause 6:** provides for the Commission to enter into written agreements, arrangements or memoranda of understanding with law enforcement agencies.
- Clause 7:** provides for the funds of the Commission and mandates the Commission to keep proper accounts.

- Clause 8:** requires the Commission to produce annual reports on its activities.
- Clause 9:** provides for the Commission's staff.
- Clause 10:** empowers the Commission to designate persons to be investigative officers.

PART III - DECLARATIONS

- Clause 11:** requires all persons in public life specified in the *Second Schedule* to file, every 2 years, declarations of their financial affairs with the Commission, or, in the case of members and senior officers of the Commission, with the Governor-General.
- Clause 12:** stipulates that the declaration must contain details of the income, assets and liabilities of the person in public life and those of his spouse and dependent children.
- Clause 13:** exempts a person from declaring certain trust property in detail.
- Clause 14:** permits a person in public life to place his assets in a blind trust, and, where he does so, exempts him from the requirement to declare details of those assets.
- Clause 15:** provides for the receipt and examination of declarations and explains the steps the Commission must take in relation to both satisfactory and unsatisfactory declarations.
- Clause 16:** imposes a duty to publish the name of any person who fails to file a declaration or to furnish further information concerning his declaration, in the *Official Gazette* and in a daily newspaper.

Clause 17: makes it an offence, among other things, to fail to file a declaration or to give false or incomplete information in a declaration.

PART IV - REGISTRABLE AND PROHIBITED INTERESTS

Clause 18: requires every member of the House of Assembly and of the Senate to file a statement of registrable interests with the Commission with details, for example, of any directorships held and any associations to which the person belongs.

Clause 19: provides for the Commission to maintain a register, to be called the Register of Interests, in which must be recorded all information furnished by members of the House of Assembly and of the Senate concerning their statements of registrable interests and which would be available for public inspection.

Clause 20: makes it an offence to fail to file a statement of registrable interests or to give false or incomplete information concerning such a statement.

Clause 21: disqualifies a member of the House of Assembly or the Senate who is convicted of an offence related to his declaration or statement of registrable interests from holding any public office for a period of 5 years from the date of conviction for the offence.

Clause 22: provides for the Commission to make rules regarding the circumstances in which a specified person in public life would be prohibited from acquiring an interest in a contract with the Government or a state-owned enterprise.

PART V - GIFTS

- Clause 23:** requires every specified person in public life who receives a gift worth more than \$2500 to report that fact to the Commission or, in the case of a member or senior officer of the Commission, to the Governor-General, for determination as to whether the gift is a personal or official one, and requires the person in public life to deliver any gift that is not personal to the Minister of Finance.
- Clause 24:** makes it an offence, among other things, to fail to report a gift or to comply with a direction to deliver a gift to the Minister of Finance but places a limitation period of 5 years from when a person ceases to be a person in public life for the institution of proceedings.

PART VI - CONDUCT IN PUBLIC LIFE AND CONTRAVENTIONS OF ACT

- Clause 25:** establishes a code of conduct for persons exercising public functions and provides for the Commission to investigate alleged contraventions of the code. The code is set out in the *Fourth Schedule*.
- Clause 26:** provides generally for complaints to be made to the Commission in relation to contraventions of the legislation.
- Clause 27:** imposes a duty on persons exercising public functions to report suspected contraventions of the legislation.
- Clause 28:** requires that any oral complaint that the Commission receives be put in writing.
- Clause 29:** provides for the Commission to examine each complaint and to reject any that is frivolous or outside its jurisdiction.

Clause 30: makes it an offence to knowingly make a false allegation or provide false information relating to a contravention of the legislation.

PART VII - POWER TO REQUIRE FURTHER INFORMATION AND TO CONDUCT INQUIRIES

Clause 31: empowers the Commission to make independent inquiries and request further information for several purposes including to determine whether any declaration or statement of registrable interests is complete and accurate and whether any person has contravened the Code of Conduct or otherwise contravened the legislation.

Clause 32: addresses the conduct by the Commission of formal inquiries.

Clause 33: gives the Commission the power of a judge to summon and examine witnesses.

Clause 34: outlines the duties of witnesses summoned by the Commission and makes non-compliance an offence.

Clause 35: provides for the expenses of witnesses.

Clause 36: provides for the Chief Marshal to detail marshals to preserve order at proceedings of the Commission.

Clause 37: provides for the Commission to prepare written reports of each inquiry it conducts.

Clause 38: speaks to action by the Director of Public Prosecutions upon receipt of information from the Commission.

Clause 39: makes it an offence, among other things, to fail to furnish information requested by the Commission or attend an inquiry, without reasonable cause.

Clause 40: provides for the Governor-General to appoint a person as a tribunal to discharge her functions on her behalf.

PART VIII - INVESTIGATIONS

Powers of Investigative Officers

Clause 41: gives an investigative officer the same power of arrest as a constable where he reasonably suspects that a person has committed an offence under the legislation.

Clause 42: allows an investigative officer to obtain a disclosure order from a judge in Chambers for the purpose of obtaining material relevant to his investigation.

Clause 43: provides for an investigative officer to obtain a search warrant.

Clause 44: makes it an offence to obstruct an investigative officer in the execution of his duty.

Complaints regarding Investigative Officers

Clause 45: provides a procedure for complaints about the conduct of an investigative officer to be made.

Clause 46: requires the Governor-General to appoint a panel to hear and adjudicate such complaints.

Clause 47: permits the panel to dispense with trivial complaints and to dispose of complaints informally.

Clause 48: provides for the complaints to be investigated formally by the Commission in certain cases.

Clause 49: requires the panel to review the Commission's disposition of a complaint and report thereon.

PART IX - MISCELLANEOUS

Clause 50: provides for the Commissioner of Police to assist the Commission in connection with the discharge of its functions where the Commission so requests.

Clause 51: imposes, among other things, a general duty of confidentiality on members and employees of the Commission with respect to information received in the discharge of their functions.

Clause 52: provides for the manner in which conflicts of interest are to be addressed.

Clause 53: protects members and employees of the Commission from suit for acts done in good faith in the exercise of their functions.

Clause 54: provides for an oath of office and of secrecy to be taken by members and employees of the Commission and other persons performing specified functions under the legislation. The forms of the oaths are set out in the *Fifth Schedule*.

Clause 55: empowers the Minister to amend Part II of the *Second Schedule* and the *Third Schedule*.

Clause 56: provides for the Minister to make regulations to give effect to the legislation and empowers the Commission to make rules for its procedure.

Clause 57: provides for the amendment of section 112 of the *Constitution*.

Clause 58: provides for the commencement of the legislation by Proclamation.

**TABLE
OF
CONCORDANCE**

INTEGRITY IN PUBLIC LIFE BILL, 2019

TABLE OF CONCORDANCE

This Table sets out the changes made to the *Integrity in Public Life Bill, 2018* pursuant to the decisions of the Joint Select Committee of Parliament constituted to consider the Bill and decisions taken by the Office of the Attorney-General with a view to improving the Bill and creating greater consistency among its provisions and with other Laws of Barbados.

As regards the matter of penalties for offences created in the Bill and the decisions of the Committee thereon, it should be noted that the Attorney-General's office, having reviewed the offences and penalties, was obliged to depart from some proposed penalties to achieve a more uniform approach on the matter throughout the Bill.

INTEGRITY IN PUBLIC LIFE BILL, 2018	INTEGRITY IN PUBLIC LIFE BILL, 2019	COMMENTS on CHANGES MADE TO THE INTEGRITY IN PUBLIC LIFE BILL, 2018
Long title	Long title	<p>The Long Title This was amended to reflect that the <i>Constitution</i> is intended to be altered. This was necessary since the Bill is intended to affect two offices – the offices of the Director of Public Prosecutions and of Auditor-General – which enjoy a certain amount of constitutional protection. The enacting clause of the Bill was also amended to for the same purpose.</p>
1	1	<p>Short title</p>
2	2	<p>Interpretation – (7th and 8th Meeting Minutes of the Joint Select Committee (“JSC” or “the Committee”) and Analytical Notes of the Chief Parliamentary Counsel’s Office (“the Analytical Notes”))</p> <p>Definition of:</p> <p>“appointed day” was refined for clarity.</p> <p>“assets” – “money” was deleted from “assets” since money is already mentioned in the definition of “property” which is a term used in the definition of “assets”.</p>

	<p>“child” – was revised.</p> <p>“declaration” – (NEW) – was inserted for ease of reference.</p> <p>“dependent child” – (NEW) – was inserted for clarity. This term is used in clauses 11(5)(b) and 12.</p> <p>“disclosure order” – (NEW) – was inserted for consistency with the new regime established by the <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-17) which came into operation on 1st August, 2019. In keeping with that Act, the mechanism to allow for the production of documents was changed from production orders to disclosure orders (see clause 42) and a definition of disclosure order inserted in clause 2.</p> <p>“document” – (JSC 7th Meeting) – While the Committee’s minutes and Hansard suggest that the definition of “document” in the Bill is to be replaced by that in the <i>Interpretation Act</i>, Cap. 1, this was a misstatement. What was meant was the <i>Evidence Act</i>, Cap. 121. Indeed, there is no definition of “document” in the <i>Interpretation Act</i>. The definition of “document” in the <i>Evidence Act</i> was therefore used.</p> <p>“Head of Department” – (NEW) – was inserted for clarity. This term is used in the list of specified persons in public life in the <i>Second Schedule</i>.</p> <p>“Permanent Secretary” – (NEW) – was inserted for additional clarity.</p> <p>“persons exercising public functions” – (NEW) – this term was substituted for public officials and public officers everywhere in the Bill. The reason is that it better captures the group of persons who should be governed by the Code of Conduct and who should have a duty to report suspected contraventions of the legislation. It should be noted that employees, members, chief executive officers, managers and directors of state-owned enterprises are included in the definition.</p> <p>“prohibited interest” – was revised in keeping with the Committee’s decision that all specified persons in public life and not just members of the House of Assembly or the Senate, should be subject to rules on acquiring prohibited interests.</p> <p>“spouse” – was revised in accordance with the discussions of the Committee at its 7th meeting.</p> <p>“staff member” – was changed to “senior officer” in clause 2 and in the rest of the Bill to avoid ambiguity.</p>
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		<p>“state-owned enterprise” (NEW) – this term was substituted for the definition of “state-owned company” and revised in accordance with the instructions of the Committee at its 8th meeting to replace “statutory body” with “statutory board”. The latter term is used in the <i>Interpretation Act</i> and therefore did not have to be defined in the Bill. The Attorney-General, having reconsidered submissions made that a specific list of specified persons in public life should be provided, has now provided a list of the relevant state-owned enterprises in Part II of the <i>Second Schedule</i> for additional certainty. The list is pertinent to the interpretation of Part I of that Schedule. With the provision of the list, there was no need to use the criterion of controlling interest as contemplated by the Committee.</p> <p>“union other than marriage” (NEW) – was inserted as a consequence of the revision of the term “spouse” in keeping with the decision of the Committee.</p> <p>Deleted Definitions: The following definitions were deleted as those terms are no longer used in the Bill: “government official of another State”, “public body”, “public official” and “statutory body”.</p> <p>Query Concerning whether “Conduct” should be Defined (JSC 7th Meeting – The Committee discussed the word “conduct” as used throughout the Bill and whether it should be defined. It was agreed that the Chief Parliamentary Counsel’s office would review the word in context, relying on the <i>Interpretation Act</i> and report back to the Committee.)</p> <p>The Chief Parliamentary Counsel’s office believes that the discussion surrounding “conduct” arose out of a comment by the Barbados Bar Association that “conduct” should be defined to include omissions. In the opinion of this office, the use of the term “conduct” without a definition does no harm. Section 46 of the <i>Interpretation Act</i> provides a definition of the word “act”. That definition suggests that the word “act” or any other word which refers to acts done (including the word “conduct”) in relation to offences or civil wrongs is to be treated as including omissions. In the context of the Bill, therefore, “conduct” includes omissions.</p>
3	3	<p>Establishment of Integrity Commission (JSC 8th Meeting – The Committee agreed to accept the recommendations, editorial changes and amendments in the Analytical Notes in respect of clauses 3 to 8 of the 2018 Bill).</p> <p>Clause 3 now clearly states that the Commission is a body corporate to which section 21 of the <i>Interpretation Act</i> applies. Provision for the remuneration of members of the Commission has also been made.</p>

4	4	<p>Functions of Commission This clause was generally refined.</p> <p>In clause 4(1)(c)(ii), [formerly 4(1)(d)(iii)] in relation to prohibited interests, the reference is now to specified persons in public life in keeping with the decision of the Committee.</p> <p>In clause 4(1)(e), [formerly 4(1)(h)], the word “powers” was removed since, by virtue of section 46 of the <i>Interpretation Act</i>, “functions” includes “powers”.</p> <p>Clause 4(2) was amended as requested by the Committee.</p>
5	5	<p>Consultation This was refined to reflect the wide definition of “person” in section 36 of the <i>Interpretation Act</i>.</p>
6	6	<p>Agreements and exchange of information with law enforcement agencies This clause was refined.</p>
7	7	<p>Funds of Commission Clause 7 of the 2018 Bill was made the subject of two separate provisions, now clauses 7 and 8, as recommended in the Analytical Notes accepted by the Committee.</p>
”	8	<p>Annual reports</p>
8	9	<p>Staff of Commission Changes were made to this clause based on recommendations in the Analytical Notes approved by the Committee.</p>
9	10	<p>Investigative officers (JSC 8th Meeting – the Committee accepted the recommendations in the Analytical Notes with respect to this clause, including deletion of the former clause 9(3) of 2018 Bill.)</p> <p>NEW – clause 10(3) would allow the Commission to require the new Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency to conduct an investigation on its behalf.</p>
10	33	<p>Commission’s powers to summon and examine witnesses Clause 10(2)(a)(iii) of the 2018 Bill was revised to make the provision regarding the service of documents more consistent with the <i>Supreme Court of Judicature (Civil Procedure) Rules, 2008</i>.</p>
11	34	<p>Duty of witnesses summoned</p>

”	35	Witness expenses
12	33	Commission’s powers to summon and examine witnesses
13	deleted	Clause 13 of the 2018 Bill on perjury was deleted since section 4 of the <i>Perjury Act</i> , Cap. 142 already covers false testimony on oath in proceedings other than judicial proceedings.
14	36	Marshals to attend Commission (Revised in accordance with JSC 8 th Meeting Minutes – “Delete the Words “Commissioner of Police” in line 1 and substitute “Chief Marshal” ” and the instructions of the Attorney-General)
15	41	Power of arrest Clause 41(2) – Revised in accordance with JSC 8 th Meeting Minutes - “Delete the words “as soon as practicable” and insert “immediately”.
16	42	Disclosure orders See comments on the definition of “disclosure order” under clause 2.
17	43	Search and seizure warrants This clause was made consistent with a similar provision in the <i>Proceeds and Instrumentalities of Crime Act, 2019</i> .
18	44	Obstruction of investigative officer (JSC 12 th Meeting – the Committee agreed that the fine be harmonised at \$10 000.)
19	45	Complaints concerning conduct of investigative officers
20	46	Appointment of complaints panel
21	47	Disposal of complaint without formal investigation
22	48	Formal investigation of complaint This provision was revised to remove discrepancies relating to the period for a complainant to challenge decisions of the Commission relating to his complaint. A complaint will now have 28 days to challenge any such decision.
23 and 24	49	Review of complaints by panel
25	11	Declaration of financial affairs The Committee determined that judges should be included among the list of specified persons in public life in the <i>Second Schedule</i> and therefore should be required to file declarations with the Governor-General.

		<p>The Attorney-General, however, having reviewed the case law highlighted by the Barbados Bar Association opines that including judges would create a variation in their terms and conditions and give rise to a constitutional hurdle. Consequently, judges were omitted from the list of specified persons in public life.</p> <p>The form of the declaration to be used by those persons who are required to declare their assets is provided in the <i>Third Schedule</i>.</p> <p>Clause 25(5)(c) of the 2018 Bill, which required the declaration of gifts received, was deleted since there was also in clause 45 of that Bill, (now clause 23 of the 2019 Bill) a requirement to report the receipt of gifts on an <i>ad hoc</i> basis.</p> <p>A new clause 11(8) was inserted, for the avoidance of doubt, to make it clear that persons who are required to declare after ceasing to be specified persons in public life have the same obligations in relation to their declarations as other specified persons in public life.</p> <p>A new clause 11(9) addresses the functions of the Governor-General in respect of declarations in wider terms. See also clause 40. The effect of these clauses is that the Governor-General essentially steps into the place of the Commission in respect of persons required to file declarations with her. She can therefore request further information from, and conduct inquiries into the financial affairs of, such persons.</p>
26	13	Trust property
27	12	<p>Full disclosure</p> <p>This clause was revised to ensure that it is clear that the requirement to disclose in relation to children relates to dependent children.</p>
28	14	<p>Blind trusts</p> <p>This provision was expanded to allow for the Governor-General to deal with blind trusts and trust deeds in respect of members and senior officers of the Commission.</p>
29	4 (1)(a)	Functions of Commission
	15(1)	Examination of declarations
	31	<p>General powers of Commission to investigate or inquire</p> <p>All the provisions of the 2018 Bill that spoke to the Commission's power to inquire into matters and to request further information were compiled, streamlined and placed in Part VII of the 2019 Bill. It then became clear that certain related offences such as</p>

		<p>failing to attend an inquiry attracted different penalties depending on the purpose of the inquiry. To remove the inconsistencies in what was essentially the same offence, the most frequently occurring penalty was used.</p> <p>40 Governor-General to appoint tribunal to perform functions This provision seeks to clarify the role of the Governor-General in relation to members and senior officers of the Commission.</p>
30	31	General powers of Commission to investigate or inquire
	40	Governor-General to appoint tribunal to perform functions
31	31	General powers of Commission to investigate or inquire
	32	Conduct of inquiries
	15(2)(a)	Examination of declarations This provision was revised to include the form of the certificate of compliance (to be found in the <i>Third Schedule</i>) and to provide for the Commission, at the request of a specified person in public life, to publish a statement regarding its satisfaction with his declaration in the <i>Official Gazette</i> and in a daily newspaper.
32	15(2)(b)	Examination of declarations
	37	Inquiry reports etc.
	38(2)	Action by Director of Public Prosecutions
	32(3)	Conduct of inquiries
33	31	General powers of Commission to investigate or inquire
	40	Governor-General to appoint tribunal to perform functions
	32	Conduct of inquiries
34	11(9)	Declaration of financial affairs
	16	Publication of failure to file declaration or furnish information
35	51	Confidentiality of information (JSC 12th meeting – the Committee agreed to increase the fine to \$50 000 and that the term of imprisonment be reduced to 2 years.) In reviewing the Bill, the Attorney General’s office discovered that the Committee’s decision as to the penalty in this clause would have resulted in an inconsistency in that the same subject

		matter would have attracted two different fines, that is \$100 000 and \$50 000, but the same term of imprisonment. The fine was set at \$100 000 for consistency.
36	17	Offences in respect of declarations (JSC 12 th Meeting Minutes – The Committee agreed to increase the fine (in subclause (1)) to \$25 000 and the term of imprisonment to 18 months. It also agreed that the continuing fine in subclause (3) should remain.) The penalty was set at \$50 000 and one year’s imprisonment.
	39	Offences in respect of requests for information and inquiries
37	18	Filing of statements of registrable interests (JSC 9 th Meeting – The Committee agreed to delete the word “administrator” and substitute “personal representative”.) This change was made in subclause (4).
38	18	Filing of statements of registrable interests
39	19	Register of Interests The requirement for the form of the Register of Interests to be prescribed was deleted since that was unusual and appeared to be unnecessarily restrictive. The period for notification of changes in a statement of registrable interests was changed from 6 months to 6 weeks in keeping with general practice and what might have been the original intention.
40	31	General powers of Commission to investigate or inquire
41	32	Conduct of inquiries
	37	Inquiry reports etc.
42	22	Prohibited interests This provision was revised in keeping with the Committee’s decision that all specified persons in public life and not just members of the House of Assembly or the Senate, should be subject to rules on acquiring prohibited interests. The question therefore arose as to whether the Governor-General should have, in relation to specified persons in public life who must file their declarations with her, the function of also determining whether they have acquired a prohibited interest. Clause 40 allows for the Governor-General to perform the function.

43	20	<p>Offences in respect of statements of registrable interests (JSC 12th Meeting Minutes – The Committee agreed to increase the fine (in subclause (1) to \$50 000 and the term of imprisonment to 2 years. It also agreed that the continuing fine in subclause (3) should remain.) The penalty was set at \$50 000 and one year’s imprisonment.</p> <p>39 Offences in respect of requests for information and inquiries</p>
44	21	<p>Disqualification of member from holding public office</p>
45	23	<p>Reports on gifts (JSC 9th Meeting - The Committee agreed that the Chief Parliamentary Counsel should extend the clause to include other representatives. E.g. friend, etc. (as opposed to representation only by an attorney-at-law)</p> <p>The threshold for gifts was changed from \$1000 to \$2500. Provision for a person to be given notice of an inquiry and to be represented at the inquiry was removed from this clause, widened to include representation by persons other than attorneys-at-law and placed in a general provision on conducting inquiries – see clause 32.</p> <p>A new subclause (8) was added to clause to address potential conflicts between the Bill and other rules, for example, the General Orders, to which public officers in particular are subject in respect of gifts.</p> <p>32 Conduct of inquiries</p>
46	23	<p>Reports on gifts</p> <p>32 Conduct of inquiries Provision for the Governor-General to appoint a fit and proper person as a tribunal to receive any report of a gift made to the Governor-General was included pursuant to discussions with the Chairman of the Committee on a related matter. The provision is consistent with the treatment in clause 23, of declarations made to the Governor-General pursuant to clause 11(3).</p> <p>40 Governor-General to appoint tribunal to perform functions</p>
47	24	<p>Offences in respect of gifts (JSC 9th Meeting -The Chief Parliamentary Counsel to reconsider the fine and sentence giving discretion to the magistrate.)</p> <p>The fine was altered to provide for a maximum fine rather than a minimum one in keeping with standard practice, with a term of 6 months’ imprisonment.</p>

48	24	Offences in respect of gifts
49 to 58	Deleted	Deleted in light of Government's intention to proceed with separate prevention of corruption legislation.
59	30	<p>Offences in respect of false complaints (JSC 12th Meeting – the Committee agreed to the use of the term “knowingly” and with respect to</p> <p>(a) the former clause 59(a), to increase the fine to \$100 000 and reduce the term of imprisonment to 1 year; and (b) the former clause 59(b) to increase the fine to \$50 000 and the term of imprisonment to 5 years.</p> <p>This appeared to be an error. The result is that the term of imprisonment on summary conviction is longer than that for conviction on indictment.</p> <p>The terms of imprisonment were therefore set at two years and one year, respectively.</p>
60	26	Complaint to Commission regarding contravention of Act (JSC 11 th – with respect to clause 60(1), it was agreed that the words “in writing” be deleted.
	28	Oral complaints to be put into writing (New)
61	27	<p>Duty of persons exercising public functions to report contravention of Act (JSC 11th and 12th Meetings - The ambiguity of the former clause 61(3) was discussed. The Committee agreed to delete the subclause and to amend the former clause 61(2) by the inserting words “without reasonable excuse” after the word “who” in line 1. The Committee also agreed to increase the fine to \$100 000 and the term of imprisonment to 1 year.</p> <p>The penalty was set at \$50000 and one year's imprisonment.</p>
62	29	Examination of complaints With respect to the former clause 62(1)(b), provision for the person alleged to have contravened the Act to be given an opportunity to be heard was deleted and placed in clause 32.
	32	Conduct of inquiries
	37	Inquiry reports etc.

		The former clause 62(2) was revised and placed in clause 37(2) to allow for an exonerated person to require the Commission to also publish its finding in a daily newspaper, instead of publication in the <i>Official Gazette</i> alone.
63	38	Action by Director of Public Prosecutions
64	Deleted	JSC 11 th – the Committee agreed that the former clause 64 be deleted.
65	25	Code of Conduct NEW – the term “person exercising public functions” is used to capture specified persons in public life, public officers and employees, members, chief executive officers, managers and directors of state-owned enterprises. A Code of Conduct for Persons in Public Life has also been placed in the <i>Fourth Schedule</i> for the approval of the Committee instead the former provision requiring the Commission to establish such a code after the Bill is passed.
	32	Conduct of inquiries (JSC 11 th Meeting – the Committee agreed to delete the word “2” in line 1 and substitute the word “5” from the former clause 65(4), now clause 32(3).) It was observed that the 2018 Bill provided a limitation on inquiries in respect of declarations (former clauses 32(5) and 33(3) and contraventions of the Code of Conduct but there was no limitation in other cases, for example, in relation to inquiries on registrable interests. Clause 32(3) removes this inconsistency.
66	31	General powers of Commission to investigate or inquire
	39	Offences in respect of requests for information and inquiries (JSC 12 th Meeting - The Committee agreed to increase the fine to \$50 000 and the term of imprisonment to 2 years). The penalty was set at \$50 000 and one year’s imprisonment.
	32	Conduct of inquiries The provision in the former clause 66(3) for a person to be given an opportunity to be heard was removed and place in the general provision on inquiries in clause 32.
67	25	Code of Conduct
	37	Inquiry reports etc.
68 to 77	Deleted	Deleted in light of the Government’s intention to proceed, in keeping with best practice, with separate whistleblower legislation.
78	50	Commissioner of Police to assist Commission etc.

		The former clause 78(2) was deleted.
79	51	Confidentiality of information (JSC 12th meeting - The Committee agreed to increase the fine to \$100 000 and the term of imprisonment to 2 years.)
80	32	Conduct of inquiries
	52	Conflicts of interest Provision on this subject was taken from the <i>First Schedule</i> , modified to also apply to persons appointed as a tribunal by the Governor-General and placed as a separate clause.
81	53	Protection from suit
82	Deleted	(JSC 11th Meeting - It was agreed that the clause should be deleted.)
	54	Oaths Paragraph 8 of the First Schedule to the 2018 Bill was deleted and replaced with a wider provision in this clause. The forms for the oaths were placed in the <i>Fifth Schedule</i> .
	55	Amendment of Second and Third Schedules
83	56	Regulations This was revised so that it would be entirely up to the Commission to make rules for its procedure under clause 3.
84	3(5)	Establishment of Integrity Commission
	22	Prohibited interests
85	Deleted	The <i>Prevention of Corruption Act</i> , Cap. 144 will instead be repealed by the new Act that Government intends to introduce in Parliament at almost the same time as the Integrity in Public Life Bill, 2019. Furthermore, in light, among other things, of the change of the scope of the Bill, it was no longer necessary to include the provisions for consequential amendments in the Bill.
	57	Alteration of Constitution (NEW) This provides for section 112 of the <i>Constitution</i> to be altered in light of the specific inclusion of the offices of Director of Public Prosecutions and Auditor-General in the <i>Second Schedule</i> .
86	58	Commencement

Dated 2019-12-02

JUDICIAL DECISIONS

9

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 1735 of 2005

**IN THE MATTER OF THE INTEGRITY IN PUBLIC
LIFE ACT, 2000 AS AMENDED**

AND

**IN THE MATTER OF THE CONSTRUCTION OF
PARAGRAPHS 8 AND 9 OF THE SCHEDULE TO THE
INTEGRITY IN PUBLIC LIFE ACT, 2000 AS AMENDED**

BETWEEN

THE INTEGRITY COMMISSION

PLAINTIFF

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

**Mr. D. Mendes S.C. and Mrs. D. Peake S.C. instructed by Mr. D. Ramkissoon for
the Plaintiff.**

**Mr. M. Daly S.C. and Mr. E. Prescott S.C. instructed by Ms. D. Jean-Baptiste for
the Defendant.**

Mr. P. Deonarine for the Board of Film Censors

**Mr. S. Marcus S.C., instructed by Ms. Glenda Edwards for the Law Reform
Commission.**

Mr. D. Bhagoutie for the Law Revision Commission

Dr. C. Denbow S.C. and Mr. D. Allahar instructed by Ms. D. Denbow for National Flour Mills Limited and T.S.T.T.

Mr. R. Martineau S. C. and Mr. N. Bisnath instructed by Ms. L. Mendonca for the Judges and Magistrates

Mr. A. Ramlogan instructed by Mr. N. Lalbeharry for U.N.C. Opposition

JUDGMENT

1. By an Originating Summons filed on the 22nd July 2005 the Plaintiff, the Integrity Commission (“the Commission”) seeks the determination of the following questions of law:

- (1) Whether having regard to the provisions of the Constitution of the Republic of Trinidad and Tobago (“the Constitution”) and the Integrity in Public Life Act as amended (“the Act”) Judges and Magistrates are persons in public life subject to the provisions of the Integrity in Public Life Act as amended?
- (2) What is the meaning of the expression “Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest” in paragraph 9 of the Schedule to the Integrity in Public Life Act as amended?

The Attorney General has been named the Defendant to the application.

History of the Proceedings

2. By consent of the parties, on the 28th October 2005, leave was granted for a notice of the application to be published in the newspapers inviting persons with a sufficient interest an opportunity to be heard.

3. In response to the notice the following persons or bodies sought to be heard on the application:

- (i) the Board of Film Censors;
- (ii) the Law Reform Commission;
- (iii) the Law Revision Commission;
- (iv) the National Flour Mills Ltd (“NFM”);
- (v) the Telecommunications Services of Trinidad and Tobago Ltd.(“TSTT”);
- (vi) the Judges and Magistrates;

4. Leave was granted to these persons to be heard on the application and directions given for the filing of written submissions by them.

5. In addition, an application was made for me to recuse myself on the grounds of bias. I refused the application citing the doctrine of necessity. A separate written ruling was delivered in this regard

6. As well, applications were made by certain members of the Senate to have the Court consider their position with respect to the Act; certain individuals who represented

that they were current members of the local chapter of Transparency International and civic minded citizens of Trinidad and Tobago to be heard and the United National Congress (“the UNC”), the official party in opposition in Parliament to be joined as a party to the action.

7. After hearing submissions by these persons, as well as the Commission and the Attorney General, the application on behalf of the members of the Senate was refused on the ground that what was sought was outside the remit of the proceedings as filed. With respect to the application by certain members of the local chapter of Transparency International, it was conceded by Attorney for those persons that the persons were not representative of the local chapter but that the application was in reality an application by those persons as public minded citizens. That being the case the application was refused on the ground that these persons showed no particular interest over and above the interests of any other citizen of Trinidad and Tobago nor were they in any special position to assist the Court with the legal issues for determination.

8. Upon the undertaking given by Counsel for the Commission and the Attorney General that if, upon the determination of the matter before me, an application was made by the UNC for leave to be joined as a party for the purpose of an appeal they would not object. I refused the application by the UNC to be joined as a party and granted them leave to be heard on the application

9. On the 29th March 2006 after the time limited for all the parties to file their submissions had expired, but before the actual filing of submissions by the Attorney General an application was made by the Attorney General to have the proceedings amended to include the following questions for the Court's determination:

(1) Whether in circumstances where the Integrity Commission is uncertain or has conflicting views as to the interpretation and/or application of any provision of the Integrity in Public Life Act to the persons listed in the schedule to the Act:

(a) has the Integrity Commission the power to require persons or category of persons to comply or has the power to exclude persons or categories of persons from complying with the provisions of the Act? or

(b) should the Integrity Commission seek an interpretation by the High Court of the relevant provisions of the Act?

(2) Whether the Integrity Commission is given the power in any circumstances by the Integrity in Public Life Act to decide that it will not require a person or category of persons listed or referred to in the schedule to that Act to file declarations of income, assets and liabilities?

10. After hearing submissions from those persons who wished to be heard on this application to amend I refused the application with a promise to state my reasons at a later date. I now give my reasons.

11. The amendment sought raises issues that, in my opinion, although peripheral to the application, are not appropriate to a construction summons. Of even more importance is the timing of the application, it coming at a time when all submissions ought to have been filed. To accede to the Attorney General's application at this stage would cause undue delay in the determination of these proceedings. In my opinion, the application was made at too late a stage of these proceedings. In any event, it would seem to me that procedurally the Attorney General as the defendant to the application could not seek to amend same but rather ought to have filed an application and sought to have the Court hear both applications together.

Factual Basis

12. The application is supported by an affidavit deposed to by the Registrar of the Commission, which has not been challenged. In this affidavit he refers to the relevant statutory provisions of the Act and the difficulties experienced by the Commission in ascertaining the persons who, from time to time, are persons in public life and subject to the Act. According to the affidavit, a number of individuals and organisations have written seeking advice from or furnishing the Commission with legal opinions on the question of whether they or its members are persons in public life required to file declarations under the Act. These persons include Judges and Magistrates and members of Statutory Boards and State Enterprises.

13. According to the affidavit, as a result several questions of law, including the question of the validity of certain sections of the Act in the light of provisions of the

Constitution, have arisen. In particular, the affidavit refers to the stated position of the Judges and Magistrates and annexes a statement made by the Attorney General read in the House of Representatives in December 2004 in which he discloses his advice to Cabinet on that issue and the intention of his government to seek to have the Act amended. Also annexed to the affidavit is a list compiled by the Commission of some 103 Statutory Bodies the members of which it states may be subject to the Act.

14. No other affidavits have been filed in support of or in opposition to the substantive application.

Submissions

15. The submissions of the parties who were granted leave to be heard can be divided into three categories: those submissions that deal with the validity of the application before the Court; those which deal with the first question to be determined and those which deal with the second question to be determined.

16. For the purposes of convenience, I propose to deal with the submissions as to the validity of the application before the Court first before embarking on the questions to be determined.

Validity of the Application before the Court

17. In essence, the submissions are:

- (i) the Court has no jurisdiction to deal with the constitutionality of an Act of Parliament on the application before the court;
- (ii) there being no issue or matter in dispute between the Attorney General or the State and the Commission the Court has no jurisdiction to pronounce upon a hypothetical question;
- (iii) the Attorney General is not a proper party to this suit, as a result it is an abuse of process and in the circumstances the Court ought to use its power under order 15 rule 6 of the Rules of the Supreme Court to remove the Attorney General as a party to the action.

18. In a nutshell the effect of these submissions seem to be that: the Court has no jurisdiction to make pronouncements on the constitutionality of an Act on an interpretation application; in the absence of any “live” issue before the court it has no jurisdiction to interpret an Act of Parliament; and since there is no issue or dispute between the Commission and the Attorney General not only is the Attorney General not a proper party but it is possible that the positions of the Plaintiff and the Defendant are the same.

19. These proceedings were brought pursuant to the **Orders and Rules of the Supreme Court of Judicature of Trinidad and Tobago 1975** (“the Rules”). **Order 5** of the Rules deals with the manner in which civil proceedings are to be brought in the High Court. **Order 5 Rule 3** specifies the type of proceedings that must be commenced by Originating Summons that is proceedings by which application is to be made to the Court

under an Act or Ordinance unless that statute specifically provides for some other mode of commencing the proceedings.

20. Further **Order 5 Rule 4** provides that unless specified by the rules or a statute, proceedings may be commenced by either Writ or Originating Summons. Further where the sole or principal question at issue is one of construction of an Act, some other question of law, and there is unlikely to be any substantial dispute of fact it is appropriate to begin the proceedings by Originating Summons.

21. In this matter the only questions to be answered are questions of the construction of a statute and law. There are no issues of fact that require my determination.

22. Further, in my opinion, by **Order 7** of the Rules it was open to the Commission to make the application by way of ex parte originating summons leaving it to the Court to order service on or the joinder of such parties as it deemed appropriate.

23. Therefore, the fact that the Attorney General has been joined as a defendant cannot invalidate the proceedings. In any event, given the nature of the questions posed by the Application, the obvious defendant if there is to be a defendant, in my view, would be the Attorney General as the representative of the State.

24. The Commission is not by this application seeking remedies pursuant to section 14 of the Constitution nor is the Commission seeking a declaration of constitutionality or

unconstitutionality of the Act. Accordingly this Court is not being called upon to determine the constitutionality of the Act, what this Court is called upon to determine by one of the questions posed is, the interpretation to be placed on an amendment to the Act in the light of the provisions of the Constitution. This to my mind is a perfectly legitimate use of a construction summons.

25. Further, **section 36 (1) of the Act** provides that:

“(1) A person in public life or a person exercising a public function may, by application in writing, request the Commission to give an opinion and make recommendations on any matter respecting his own obligations under this Act”. **By section 36(2):** “The Commission may make such enquiries as it considers appropriate and provide the person making the application with a written opinion and recommendations.” **Section 37** allows the Commission “on its own initiative to consider any matter with respect to the duty or obligation of a person under this Act, where in its opinion it is in the public interest to do so.”

26. Whereas at first blush section 37 may be interpreted to deal only with the Commission’s investigatory or inquisitional powers when the section is looked at in conjunction with section 36, in my view, it allows the Commission, on its own initiative, to consider whether a person has any duty or obligation to it under the Act and in that regard make the appropriate enquiries including, in my view, enquiries of the Court.

27. It is clear from the evidence before the Court that, pursuant to section 36 of the Act, the Commission had been swamped with requests from members of the public for the opinion of the Commission as to whether they are persons with obligations under the Act. In addition the Commission had received opinions, on its own initiative and provided by interested parties, on the questions now for the Court's determination.

28 As well, the Commission would have been faced with the statement of the Attorney General in Parliament in which, after referring to the uncertainty expressed to him by the Commission as to its powers and authority with respect to judicial officers, he states inter alia:

“...In my capacity as Attorney General I have advised the Cabinet that the relevant provisions are in fact unconstitutional and that the constitution, properly interpreted, intended that only the Judicial and Legal Service Commission would have oversight over Judicial Officers.

Mr. Speaker, in these circumstances, it would be irresponsible of the Government to ignore fundamental constitutional principles and to allow the law to stand as it is currently drafted.

That is not to say Mr. Speaker that Cabinet is in any way endorsing the position that judicial officers are a law unto themselves or that they should not be subjected to the most rigorous scrutiny in respect of which all other significant public office holders and politicians are held. Cabinet has

concluded however, that the reporting requirements in the present law are not the way to call judicial officers into account.

The Executive proposes now to move quickly to repeal the offending provisions of the legislation and of the Constitution...”

29. Faced with this situation and given the Commission’s duty to make such enquiries as it considers appropriate it is not surprising that some 7 months after the Attorney General’s statement the Commission took the proactive step of applying to the court for guidance.

30. It would seem to me therefore that the issue is a ‘live’ one and the questions appropriate for the determination of the Court.

31. The Commission has come to the Court in circumstances where it is under a duty to give opinions and recommendations as to a person’s obligations under the Act and where it is of the view that, given the relevant legislation, it is unable to do so. In my opinion, this is the sensible and proper approach. The application in my view raises an important point of law, the determination of which must be in the public interest.

32. The sting in the tail of these submissions as I understand them is the fear that the positions of the parties to the action are the same, at least in relation to the first question, “himself suing himself”. The fact that the application is to be determined by a Judge who

herself is one of the persons affected by the application, a person to whom the Act may or may not apply, seeks only to heighten such concern. A concern not unfounded by any means.

33. I have in a ruling given earlier in these proceedings made reference to the doctrine of necessity in so far as the involvement of the Judges of the Supreme Court in these proceedings are concerned. In any event, in this particular case, events have overtaken the submission to some extent.

34. In the first place, by an order made on the 28th October 2005, at the request of both the Plaintiff and the Defendant, notice of this application was ordered to be published in both the Sunday and Daily newspapers of general circulation in Trinidad and Tobago. The notice provided for any person with a sufficient interest to apply to be heard on the application.

35. In the second place, the submissions of the Defendant before this court were not in accordance with the Attorney General's Statement referred to above. Rather the Attorney General placed, before this court, arguments in support of the constitutionality of a construction including the Judges and Magistrates under ambit the Act.

36. Thirdly, rather than proffer an opinion the Commission, quite properly in my view, in its submissions, was at pains to place before the court all the possible arguments and opinions received by it on both questions.

37. Fourthly, persons with sufficient interest were given an opportunity to be heard by the filing of written submissions in this regard.

38. Finally, in the course of the UNC's application to be joined as a party, both the Plaintiff and the Defendant undertook not to oppose an application for it to be joined as a party to an appeal if it became necessary. It would seem to me that the integrity of the proceedings before the court is protected by the employment of these safeguards.

QUESTION NO. 1.

Whether having regard to the provisions of the Constitution of the Republic of Trinidad and Tobago and the Integrity in Public Life Act 2000 as amended Judges and Magistrates are persons in public life subject to the provisions of the Integrity in Public Life Act as amended?

39. As with all constitutions patterned on the Westminster Model, the concept that there are three distinct functions of government: legislative, executive and judicial, discharged by three separate agencies- the Legislature in the form of the parliament, the Executive in the form of the ministers and the government departments and agencies for which they are responsible and the Judiciary in the form of the judges and the courts is the cornerstone of our Constitution. In accordance with this principle of the separation of powers our Constitution makes provision for a Legislature, an Executive and a Judicature, each with its particular role and function.

40. This principle is not one created by these written constitutions neither are the provisions contained in these constitutions to be considered exhaustive with respect to the width and depth of the principle.

“The new constitutions, particularly in the case of the unitary states, were evolutionary not revolutionary. They provided for continuity of government through successor institutions, legislative, executive and judicial, of which members were to be selected in a different way, but each institution was to exercise powers which, although enlarged, remained of a similar character to those that been exercised by the corresponding institution that it had replaced.

Because of this a great deal can be, and in drafting practice often is, left to necessary implication from the adoption in the new constitution of a governmental structure which makes for a Legislature, an Executive and a Judicature. It is taken for granted that the basic principle of the separation of powers will apply to the exercise of their respective functions by these three organs of government....”:

Lord Diplock in Hinds v R [1975] 24 W.I.R. 326 at page 330 letters F and H.

41. Indeed there maybe situations, as in the Hinds case, where despite the fact that a constitution does not expressly prohibit the exercise of legislative powers by the

executive or judicial powers by either the executive or the legislature, a court is bound to read into the constitution basic principles of constitutional law.

42. Inherent in and inseparable from the separation of powers is the principle of the rule of law integral to which are the concepts of the supremacy of Parliament, and its corollary, the independence of the Judiciary.

“Whatever overlap there may be under constitutions on the Westminster model between the exercise of executive and legislative powers, the separation between the exercise of judicial powers on the one hand and legislative and executive on the other is totally or effectively so. Such separation based on the rule of law, was recently described by Lord Steyn as “a characteristic feature of democracies”: R (Anderson) v Secretary of State for the Home Department [2003] 1 AC 837. 890-891 para 50”

per Lord Bingham of Cornwall in DPP of Jamaica v Mollison [2003] 2 AC 411 at page 424.

43. With respect to its legislative powers, while it cannot be doubted that in our jurisdiction Parliament is supreme it is equally true that such legislative powers may only be exercised in accordance with the Constitution. It is the Constitution that provides the framework within which Parliament can legitimately exercise its powers. This framework includes the method by which Parliament may alter the Constitution: **section 54**, or pass

laws inconsistent with the human rights provisions: **section 13**. The Constitution therefore, while describing the foundation upon which our society is to function, is not static but rather provides a means by which it can itself evolve to meet the changing needs of society through the legislature.

44. The rule of law requires that the exercise by Parliament of its supreme legislative powers, whether by way of alteration of the Constitution or by the creation of new laws, be always subject to the scrutiny of and review by the Judicature. With respect to the Constitution such scrutiny is two-fold, firstly, it ensures that fundamental principles of constitutional law and the provisions of the Constitution have not impermissibly been violated and secondly, that if the Constitution is to be altered or legislation passed contrary to its provisions such legislation has been passed in accordance with the formula prescribed by the Constitution.

45. In this regard it is the Judiciary that is the watchdog of the Constitution. In order to function as such the principle of the separation of powers recognizes that what is required is a Judiciary insulated from and independent of the other arms of Government. The framework to ensure the Judiciary's continued independence is prescribed in the Constitution.

46. By its provisions therefore the Constitution establishes the basis for both the individual and institutional independence of the Judicature. Individual, insofar as it deals with the insulation of the individual judge from the interference by the executive or the

legislature in an arbitrary and capricious manner and institutional, insofar as it deals with the establishment of a Supreme Court of Judicature and regulates its relationship to those branches of government exercising its legislative and executive functions.

“The rationale for this two pronged modern understanding of judicial independence is recognition that the courts are not charged solely with the adjudication of individual cases. That is of course, one role. It is also the context for the second, different and equally important role, namely as protector of the Constitution and the fundamental values embodied in it— rule of law, fundamental justice, equality, preservation of the democratic process, to name perhaps the most important. In other words judicial independence is essential for fair and just dispute-resolution in individual cases. It is also the lifeblood of constitutionalism in democratic societies.”

Dickson CJ in *Beauregard v Canada* [1986] 2 SCR 56 at paragraph 24

47. In our Constitution Chapter 7 and sections 136 and 137 identify and establish the parameters of judicial independence determined necessary by our society to preserve the rule of law. To this end, sections 102, 104, 106, 107, 136 and 137 deal with the appointment to and tenure in office of Judges of the Supreme Court. These sections are entrenched in the Constitution requiring for its alteration the support through Parliament of the votes of not less than two-thirds of all the members of each House.

48. By the Constitution Judges of the Supreme Court are appointed by the President and hold office until they reach the age of retirement subject only to removal by the President on the advice of the Judicial Committee of the Privy Council (“the Judicial Committee”) and only as a result of inability to perform the functions of office or for misbehaviour.

49. **Section 106 (1)** provides that a Judge shall hold office in accordance with sections 136 and 137 of the Constitution. **Section 106(2)** specifies that no office of Judge shall be abolished while there is a substantive holder of that office.

50. **Section 136** deals with the tenure of a Judge. Subsection (1) provides that a Judge shall vacate office on attaining the age of sixty-five or any other age as may be prescribed by Parliament. Subsection (2) allows the President acting on the advice of the Chief Justice to extend the time for a Judge to continue in office past the retirement age for the limited purpose of delivering a judgment or completing proceedings commenced before the Judge attained retirement age.

51. By **section 136 (5)** the salaries and allowances of Judges are a charge on the Consolidated Fund. **Section 136(6)** provides that the salary and allowances payable to a Judge as well as the other terms of service shall not be altered to the Judge’s disadvantage after appointment.

52. The Constitution, as well, by **section 137**, provides a specific procedure to be followed for a Judge's removal or suspension from office. In this regard, in the case of the Chief Justice, the procedure for removal is initiated by the President acting on the advice of the Prime Minister, with respect to all other Judges of the Supreme Court it is initiated by the President acting on the advice of the Judicial and Legal Service Commission (the "JLSC"). Similarly with respect to suspension a Judge may only be suspended by the President acting, on the advice of the Prime Minister in the case of the Chief Justice, or on the advice of the JLSC in the case of the other Judges and only where the question of the removal of that Judge, including the Chief Justice, has been referred to a tribunal of Judges, appointed by the President under **section 137(3): section 137** of the Constitution.

53. In addition to the above-mentioned sections, sections 110 and 111 of the Constitution establish the JLSC. The composition of the JLSC is prescribed by section 110 of the Constitution. Unlike section 111, which deals with the appointment of persons to offices required by Parliament to be held by persons holding legal qualifications and does not require any special majority for its alteration, section 110 is an entrenched section requiring a vote of not less than two-thirds of the members in both Houses of Parliament for its alteration.

54. The JLSC is comprised of:

- (i) the Chief Justice who functions as the Chairman,

- (ii) the Chairman of the Public Service Commission, appointed by the President after consultation with the Prime Minister and the Leader of the Opposition: **section 120(2)** of the Constitution; and
- (iii) such other persons appointed by the President in consultation with the Prime Minister and the Leader of the Opposition: one of which shall have held office as a judge of unlimited jurisdiction in civil and criminal matters in the Commonwealth or in a court having jurisdiction in appeal from such a court and, after consultation by the President with such organisations as he shall think fit, two persons with legal qualifications at least one of whom is not in active practice.

55. By the Constitution members of the JLSC shall hold office for a period of between three to five years as specified by the President at the date of their appointment: **section 126(3)(a)**, and in accordance with sections 136(5) to (11) of the Constitution.

56. With respect to Judges, with the exception of the Chief Justice, the role of the JLSC is limited to advising the President to appoint to office and, with respect to a Judge's removal from office, to representing to the President that the question of the removal of a Judge ought to be investigated and assisting the President with respect to the composition of the investigating tribunal in this regard.

57. By the Constitution therefore the independence of the individual Judge is preserved by providing that:

- (i) Judges be appointed by the President on the advice of an independent body whose composition is established by the Constitution and whose members are insulated from political interference by the said Constitution or, in the case of the Chief Justice, by the President after consultation with the Prime Minister and the Leader of the Opposition;
- (ii) Judges hold office for a fixed period, to be extended only by the President on the advice of the Chief Justice and only for a specific purpose;
- (iii) While in office a Judge's terms of service, including salary and allowances, not be altered to the Judge's disadvantage;
- (iv) a Judge not be subject to the control of anyone in the performance of the Judge's duties or subject to any disciplinary procedure except in so far as steps may be taken for the Judge's removal;
- (v) such disciplinary procedure shall be instituted only by the President acting on the advice of the Prime Minister, with respect to the Chief Justice, and the JLSC, with respect to the other Judges and the ensuing enquiry conducted only by persons who hold or have held office as a Judge of a court of unlimited jurisdiction in the Commonwealth or a court with jurisdiction in appeal from such a court;
- (vi) a Judge may only be removed by the President acting on the advice of the Judicial Committee following the strict procedure as set out in the Constitution;

- (vii) a Judge may only be suspended by the President acting on the advice of the Prime Minister, in the case of a Chief Justice, or the JLSC and only where the question of that Judge's removal has been referred to the tribunal of Judges;

58. It must be noted that whereas the above are all facets of the office of a Judge not all of these facets are established by express provisions of the Constitution. Rather, some of these are arrived at by necessary implication from the provisions of the Constitution and principles of constitutional law established long before this Constitution came into existence. For example, there is no provision of the Constitution which specifically states that a Judge shall not be subject to the control of anyone in the performance of the Judge's duties, yet it cannot be disputed that this is inherent in the office of a Judge and fundamental in maintaining the Judge's independence. Indeed such a conclusion can only be arrived at by an interpretation of sections 106, 136 and 137 of the Constitution rendered necessary by those very principles of Constitutional law that demand such independence for the preservation of the rule of law.

59. While no express mention is made of Magistrates in the Constitution, there can be no doubt that Magistrates also discharge judicial functions and have a role to play in the judicial function of government.

“The distinction between the higher judiciary and the lower judiciary is that the former are given a greater degree of security of tenure than the latter. There is nothing in the Constitution to protect the lower judiciary

against Parliament passing ordinary laws (a) abolishing their office, (b) reducing their salaries while they are in office, or (c) providing that their appointments to judicial office shall be only for a short fixed term of years, Their independence of the good-will of the political party which commands a bare majority in Parliament is thus not fully assured. The only protection that is assured to them by section 112 is that they cannot be removed or disciplined except on the recommendation of the Judicial Service Commission.”

Lord Diplock in Hinds v DPP at page 336 paragraphs B and C.

60. If the last sentence of that quotation is reworded to read, ‘The only protection that is assured to them by section 111 of the Constitution is that they cannot be removed or disciplined except by the Judicial and Legal Service Commission’ the quotation describes exactly the position of Magistrates in this jurisdiction.

61. By section 111 of the Constitution and section 3 of the Judicial and Legal Service Act (“the JLS Act”), the power to appoint, transfer, promote and discipline Magistrates vests in the JLSC. Section 127(1)(a) of the Constitution permits the JLSC, with the approval of the Prime Minister, to delegate those powers to any of its members or a Judge. A Magistrates’ security of tenure is ensured under the Constitution therefore by those provisions that protect the JLSC from unwarranted intrusions by the Executive or the Legislature.

62. The question for consideration requires the examination of both the procedure adopted by Parliament to pass the Act as well as the changes in the substantive law wrought by the Act.

63. Briefly, in order to pass the Act in its present form Parliament first amended the Constitution to increase the ambit of the Commission as established by the Constitution and to enlarge the power of Parliament to make laws in respect of the Commission. The amendment to the Act that sought to make Judges and Magistrates appointed by the Judicial and Legal Service Commission subject to the Act was passed in both Houses at the same time as the amendment to the Constitution.

64. The question posed by this application arises from the fact that, while those sections specifically dealing with the Commission and Parliament's powers to legislate with respect to the Commission were amended, Parliament failed to amend those sections of the Constitution which dealt with the Judiciary and which, as we have seen, were designed to ensure an independent judiciary.

65. In order to answer the question posed, in my view, it is necessary first to examine both the legislative history of the Act and those provisions of the Constitution dealing with the Commission, that is **sections 138 and 139** of the Constitution.

Sections 138 and 139 of the Constitution

66. When first enacted, **sections 138 and 139** of the **Constitution of the Republic of Trinidad and Tobago, 1976** ("the Constitution") provided as follows:

“138. (1) There shall be an Integrity Commission (in this section and in section 139 referred to as “the Commission”) for Trinidad and Tobago consisting of such number of members qualified and appointed in such manner and holding office upon such tenure as may be prescribed.

(2) The Commission shall be charged with the duty of-

(a) receiving, from time to time, declarations in writing of the assets, liabilities and income of members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers;

(b) the supervision of all matters connected therewith as may be prescribed.”

139. Subject to this Constitution, Parliament may make provision for-

(a) the procedure in accordance with which the Commission is to perform its functions;

(b) conferring such powers on the Commission and imposing such duties on persons concerned as are necessary to enable the Commission to carry out effectively the purposes of section 138;

(c) the proper custody of declarations and other documents delivered to the Commission;

- (d) the maintenance of secrecy in respect of information received by the Commission in the course of its duties with respect to the assets, liabilities and income of any member of Parliament and any other person; and
- (e) generally to give effect to the provisions of section 138.”

67. Thereafter two Acts amending the Constitution, insofar as it dealt with the Commission and Parliament’s power to enact legislation in this regard, were passed: Constitution Amendment No. 2 and Constitution Amendment No.4. Both Acts sought to amend sections 138 and 139. Both these sections together with other sections of the Constitution comprise what are commonly referred to as “entrenched provisions” in that they, together with other sections of the Constitution, require a vote of more than a simple majority for their alteration: section 54(2) and (3) of the Constitution. With respect to both sections 138 and 139 of the Constitution what is required is a vote of not less than three-fourths of all the members of the House of Representatives and two-thirds of all the members of the Senate.

68. Following the usual procedure for Acts seeking to alter the Constitution the preamble of both amending Acts refer to section 54 of the Constitution, the votes required to effect an alteration to that section of the Constitution and declares that it is an Act intended to alter the Constitution. Indorsed on both amending Acts are certificates of the Clerk of the Senate and the Acting Clerk of the House certifying that the Act has

received the votes of not less than two-thirds of all the members of the Senate and not less than three- fourths of the members in the House of Representatives.

69. The first amendment, **Constitution Amendment No.2, Act No 81 of 2000** (“**Constitution Amendment No. 2**”) was assented to on the 20th October 2000. With respect to section 138, this amendment deleted the words “Permanent Secretaries and Chief Technical Officers” from the list of persons identified in section 138 (2) (a) and replaced them with the words ‘members of the Tobago House of Assembly, members of Municipalities, members of those Local Government Authorities, members of those statutory boards and state enterprises and the holders of such other offices as may be prescribed’. The Act also introduced two new paragraphs to section 138(2) thereby charging the Commission with:

- (i) “the supervision and monitoring of standards of ethical conduct prescribed by Parliament to be observed by the holders of the offices referred in paragraph (a) as well as Senators, members of the Diplomatic Service, Advisers to the Government and any person appointed by a Service Commission or the Statutory Authorities’ Service Commission.”: **section 138(2)(c)**;
- (ii) “the monitoring and investigating of conduct, practices and procedures which are dishonest and corrupt”: **section 138(2)(c)**.

70. With respect to section 139, this amendment also empowered Parliament to make provision for the preparation by the Commission of a Register of Interests for public inspection.

71. **Constitution Amendment No.4, Act No. 89 of 2000 (“Constitution Amendment No.4”)** was assented to on the 2nd November 2000. By this amendment section 138 (2)(a) was repealed and replaced by the following paragraph:

“(a) in paragraph (a) by deleting the words “Permanent Secretaries and Chief Technical officers” and substituting the words “Senators, Judges, Magistrates, Permanent Secretaries, Chief Technical Officers, Members of the Tobago House of Assembly, Members of Municipalities, Members of Local Government Authorities and members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed”.

The word “Senators” in section 138 (2)(c) was also deleted. No amendment was made to section 139.

72. The effect of these amendments is that sections 138 and 139 of the Constitution now reads:

“138 (1) There shall be an Integrity Commission (in this section and in section 139 referred to as “the Commission”) for Trinidad and Tobago consisting of such number of members qualified and appointed in such manner and holding office upon such tenure as may be prescribed.

(2) The Commission shall be charged with the duty of:

(a) in paragraph (a) by deleting the words “Permanent Secretaries and Chief Technical Officers” and substituting the words “Senators, Judges, Magistrates, Permanent

Secretaries, Chief Technical Officers, Members of the Tobago House of Assembly, Members of Municipalities, Members of Local Government Authorities and members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed.

- (b) The supervision of all matters connected therewith as may be prescribed;
- (c) the supervision and monitoring of standards of ethical conduct prescribed by Parliament to be observed by the holders of offices referred to in paragraph (a) as well as, members of the Diplomatic Service, Advisers to the Government and any person appointed by a Service Commission or Statutory Authorities' Service Commission;
- (d) the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.”

“139. Subject to this Constitution, Parliament may make provision for-

- (a) the procedure in accordance with which the Commission is to perform its functions;
- (b) conferring such powers on the Commission and imposing such duties on persons concerned as are necessary to enable the Commission to carry out effectively the purposes of section 138;

- (c) the proper custody of declarations and other documents delivered to the Commission;
- (d) the maintenance of secrecy in respect of all information received by the Commission in the course of its duties with respect to the assets , liabilities and income of any member of parliament and any other person and
- (da) the preparation by the Commission, of a Register of Interests for public inspection.
- (e) generally to give effect to the provisions of section 138.”

The Integrity in Public Life Act

73. In 1987 Parliament enacted **The Integrity in Public life Act 1987 (“the 1987 Act”)**. The preamble to the 1987 Act states that it was passed pursuant to section 13 of the Constitution and that it shall have effect even though it is inconsistent with sections 4 and 5 of the Constitution. On the face of the Act there is certified the fact that it was passed with the relevant majorities in accordance with section 13 of the Constitution.

74. The 1987 Act applied to all persons in public life, defined by section 2 and the first schedule to be members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers.

75. **The Integrity in Public Life Act, No 83 of 2000 (“the 2000 Act”)** assented to on the 27th October 2000 repealed and replaced the 1987 Act. This Act was passed in both

Houses of Parliament at the same time as Constitution Amendment No 2. By its preamble, like the 1987 Act, this Act recited section 13 of the Constitution and declared that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution. The 2000 Act, like the 1987 Act contains a certification by the Clerk to the Senate and the House of Representatives that it was passed with votes of the majorities in Parliament necessary to pass an Act in accordance with section 13 of the Constitution, not less than three-fifths of all the members of both Houses.

76. By the 2000 Act the words “ Members of Boards of Statutory Bodies and State Enterprises as prescribed in accordance with section 138(2) of the Constitution” were included in the definition of persons in public life.

77. The **Integrity in Public Life (Amendment) Act No.88 of 2000** (“ **Act No. 88 of 2000**”) was passed in both Houses of Parliament on the same day as Constitution Amendment No. 4 and assented to on the 2nd November 2000. As in the 1987 Act and the 2000 Act reference is made to section 13 of the Constitution. The Act declares that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and has the certificates of the Clerk of the Senate and the House of Representatives with respect to the proportion of members whose votes supported the Bill in both the House of Representatives and the Senate.

78. In this case the certificate reads, with respect to the House of Representatives, that at the final vote the Bill “has been supported by the votes of not less than three-fifths of

all the members of the House, that to say the votes of twenty-seven members of the House.” With respect to the Senate the certificate reads that at the final vote the Bill “has been supported by the votes of not less than three-fifths of all the members of the Senate that is to say the votes of twenty-nine Senators.”

79. Act No. 88 of 2000 amended the schedule to the Act to include “Judges and Magistrates appointed by the Judicial and Legal Services Commission”. The schedule to the Act now reads:

“PERSONS IN PUBLIC LIFE

1. Members of the House of Representatives
2. Ministers of Government;
3. Parliamentary Secretaries
4. Permanent Secretaries
5. Chief Technical Officers
6. Members of Local Government Authorities
7. Senators
8. Judges and Magistrates appointed by the Judicial and Legal Services Commission
9. Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest
10. Permanent Secretaries and Chief Technical Officers.”

The effect of the Amendments

80. As we have seen sections 138 and 139 of the Constitution set out both the jurisdiction and reach of the Commission and the legislation giving life to the Commission. Section 138 (1) establishes the Commission, section 138(2) the duties of the Commission and section 139 describes the parameters of Parliament's legislative powers with respect to the Commission. It is pursuant to section 139 therefore that Parliament is empowered by the Constitution to give life to the Commission by the enactment of Integrity legislation.

81. As originally drafted, section 138 charged the Commission with the duty of receiving declarations of assets and income from persons elected to hold parliamentary office and senior members of the executive. As well the Commission was charged with the supervision of all matters connected to the duty of receiving the declarations as prescribed by Parliament.

82. Similarly, section 139 permitted Parliament to make laws for:

- (i) the procedure by which the Commission was to perform its function of receiving declarations and the supervision of all matters in connection therewith;
- (ii) conferring such powers on the Commission and imposing duties on persons as necessary in order to enable the Commission to effectively carry out those purposes;
- (iii) the proper custody of documents delivered to the Commission;

- (iv) the maintenance of secrecy in respect of all information received by the Commission with respect to the assets, liability and income of any member of Parliament and any other person; and
- (v) generally to give effect to section 138

83. In 1987 the 1987 Act was passed presumably to give effect to these provisions of the Constitution.

84. By **Constitution Amendment No 2** the category of persons from which the Commission had the duty to receive declarations was widened to include “members of the Tobago House of Assembly, members of Municipalities and Local Government Authorities, members of those statutory boards and state enterprises and the holders of such offices as may be prescribed.”

85. The amendment also enlarged the duty of the Commission to require it to:

- (a) supervise and monitor standards of ethical conduct prescribed by Parliament with respect to those persons already specified as well as Senators, members of the Diplomatic Service, advisers to the Government and any person appointed by a Service Commission or the Statutory Authorities’ Commission ;
- (b) monitor and investigate dishonest or corrupt conduct, practices and procedures; and
- (c) prepare a Register of Interests for public inspection

86. **Constitution Amendment No 2** therefore sought to further widen the ambit of persons from whom the Commission was required to receive declarations from senior members of the executive and the elected members of the legislature to include other persons performing functions on behalf of the executive. With respect to members of Statutory Boards and State Enterprises Parliament was given the ability to determine the members of which of those bodies would be subject to the jurisdiction of the Commission.

87. As well, the Commission was now charged with the additional responsibility of supervising and monitoring standards of ethics determined by Parliament of those persons as well as other specified office holders, a motley bunch comprising members of the upper house of the legislature, public servants, members of the diplomatic service, advisors to government and any other person who may be appointed by a Service Commission. The net with respect to standards of ethics was therefore widened to include persons exercising or advising with respect to both executive and legislative functions. The Commission was also endowed with the general duty of monitoring and investigating dishonest or corrupt conduct, practices and procedure. By this amendment Parliament was also empowered to enact legislation mandating the Commission to make public certain of the information received by it.

88. Simultaneously with the passing of Constitution Amendment No.2 Parliament acting under the mandate of the section 139, as enlarged by the amendment, repealed and replaced the 1987 Act by the 2000 Act. Up to October 2000 therefore, in neither the

Constitution or the Act, is any reference made to Judges and Magistrates coming under the jurisdiction of the Commission.

89. Thereafter Constitutional Amendment No 4 was passed. At the same time the 2000 Act was amended to include in the definition of persons in public life, and by extension persons to whom the Act applied, “Judges and Magistrates appointed by the Judicial and Legal Service Commission”, and, “Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest”. The Act now for the first time included persons exercising judicial functions as persons in public life.

90. Although strictly speaking this Court is not called upon to determine the construction to be placed on section 138 it is obvious that the construction to be placed on the section will have some relevance to both questions to be answered. Both the Commission and the Attorney General submit that the Court ought not to give section 138(2)(a) of the Constitution a literal meaning. To do so, they submit, would be contrary to the clear intention of Parliament. They submit that a purposive interpretation is more appropriate.

91. I accept that in this case the purpose of Constitutional Amendment No.4 could only have been to enable Parliament to enact legislation which would have the effect of making Senators, Judges, Magistrates, Permanent Secretaries and Chief Technical

Officers subject to the jurisdiction of the Commission with respect to financial disclosure as well as a code of conduct to be prescribed by Parliament.

92. Reference has been made to the Parliamentary debates in this regard. In my view it is not necessary here to go to the debates to assist in the construction to be placed on the section. Given the history of the legislation and the amendments to the Act and the Constitution, in this regard, it is reasonable to assume that the underlying intention of Parliament could only have been to include the holders of the offices described as persons from whom, by the passage of the necessary legislation, the Commission may be required to receive declarations. It would seem to me that rather than substantially narrow the ambit of the Commission Parliament was seeking, over the years, to gradually expand the category of persons over whom the Commission was able to exercise its jurisdiction.

93. It is clear to me that the actual wording of the subsection could only have been a drafting error. The real question here is whether this court ought to interpret the section so as to correct such an error.

94. There are no doubt circumstances where in interpreting legislation the courts can correct what is clearly a drafting mistake. In this regard the Commission referred the Court to the case of **Inco Europe v First Choice Distribution [2000] 2 All E R 109** and in particular the statement of **Lord Nicholls** found at **page 115 letters b to g**.

95. According to Lord Nicholls at letter f the power to correct drafting errors is to be confined to plain cases of drafting mistakes and only by exercising,

“considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used had the error in the Bill been noticed.”

96. I accept this as a general statement of the law. All three of the criteria identified by Lord Nicholls are present in this case. The underlying intention of Parliament must have been to widen the category of persons from whom the Commission had a duty to receive declarations to include the holders of offices specified in the subsection. By inadvertence the draftsman and Parliament failed to give effect to that purpose. In addition the substance of the provision Parliament would have made, if not the exact words, is abundantly clear.

97. The difficulty arises from the statement of Lord Nicholls immediately following that referred to above:

“Sometimes, even when these conditions are met, the court may find itself inhibited from interpreting the statutory provision in accordance with what it is satisfied was the underlying intention of Parliament. The alteration in

language may be too far reaching. In *Western Bank v Schindler*[1976] 2 All E.R. 393 at 404, [1977] Ch 1 at 18 Scarman LJ observed that the insertion must not be too big, or too much at variance with the strict interpretation of the statutory language used by the legislature. Or the subject matter may call for a strict interpretation of the statutory language, as in penal legislation.”

98. It would seem to me that, these categories apart, another circumstance in which a court may consider itself inhibited from interpreting the statutory provision in accordance with what it is satisfied was the underlying intention of Parliament is where the statute concerned is contrary to provisions of the Constitution. In other words the presumption of constitutionality, which requires the Court wherever possible to construe statutory language in such a manner so as to avoid conflict with constitutional limitations: **Attorney General of The Gambia v Monodou Jobe [1984] AC 689; Hector v Attorney- General (1990) 37 WIR 216**, may militate against such an interpretation.

99. It may very well be that a purposive interpretation of the section may render the ambit of the Commission and the legislative reach of Parliament in this regard in conflict with other sections of the Constitution more particularly those sections that seek to preserve the independence of Judges and Magistrates. A literal interpretation, on the other hand, may avoid those conflicts.

100. On a purposive interpretation of section 138 (a), with respect to Judges and Magistrates, the effect of sections 138 and 139 is that Parliament may enact legislation

empowering the Commission to require Judges and Magistrates to submit to the Commission declarations of their assets, liabilities and income; supervise all matters in connection with such a requirement and supervise and monitor standards of ethical conduct as prescribed by Parliament.

101. On a literal interpretation of the subsection, with respect to Judges and Magistrates, the effect of sections 138 and 139 is that Parliament may only enact legislation that requires the Commission to supervise and monitor those standards of ethical conduct prescribed by Parliament with respect to those persons.

102. It seems to me therefore that, at this stage, rather than determine the interpretation to be placed on the section it may be more appropriate to examine the provisions of the Act in the light of those provisions of the Constitution that deal with Judges and Magistrates to determine whether the Act subjects Judges and Magistrates to legislation which, in relation to them, is inconsistent with the Constitution and if so,

- (i) whatever the interpretation adopted, whether the provisions of the Act are inconsistent with the Constitution, and
- (ii) whether this court finds itself inhibited from interpreting the statutory provision in accordance with what it is satisfied is the underlying intention of Parliament.

The Act

103. The Preamble to the Act identifies it as an Act which shall have effect although inconsistent with sections 4 and 5 of the Constitution.

The Act is divided into five Parts.

104. **Part I** is preliminary. It establishes that the Act complies with those provisions of the Constitution necessary to pass an Act inconsistent with sections 4 and 5; the definitions to be applied and that the Act is to apply to every person in public life and persons exercising public functions.

105. **Part II** establishes the Commission. It provides that the Commission shall comprise five members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The powers and functions of the Commission are set out in this Part in section 5.

106. The functions of the Commission, as identified by section 5, can be divided into two general categories, those that deal with the power to receive declarations and those that deal with its power to monitor and investigate corrupt and dishonest practices. With respect to the latter the functions are basically directed to an examination of the systems in place to deal with corruption within public bodies and advising on how those systems may be improved; public education and the receipt and investigation of complaints under the Prevention of Corruption Act and the investigation of “the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption.”

107. **Section 5(2)** provides that in the exercise of its powers and the performance of its functions under the Act the Commission “shall not be subject to the direction and control of any other person or authority”.

108. No term of office for members is specified by the Act however **section 8** deals with vacancies in membership and provides that:

A vacancy in membership occurs on:

- (a) the death, resignation or revocation of the appointment of a member;
- (b) the absence of a member from three consecutive meetings unless such absence is approved by the President after consultation with the Chairman;
- (c) the expiration of the term specified in the member’s instrument of appointment;

section 8(1).

109. A member may be removed from office by the President acting in his discretion for inability to discharge the functions of his office whether from infirmity of mind or body or any other cause, or for misbehaviour. It ought to be noted here that the procedure for such removal shall be in accordance with the procedure established by section 136 of the Constitution. The Constitution, as well, provides that the salaries and allowances paid to the Commission shall be a charge on the Consolidated Fund and that the salary, allowances and other terms of service shall not be altered to the member’s disadvantage after appointment.

110. By **section 10** the Commission is required to make an annual report to Parliament on its activities. The report shall be tabled in the House of Representatives and the Senate but shall not disclose particulars of any declaration filed with the Commission.

111. **Part III** of the Act deals with financial disclosure and requires that a person in public life make:

- (i) periodic financial disclosure to the Commission, by way of a declaration: **section 11(1)**. Such disclosure shall include, in so far as it may be known to the declarant, particulars of the income, assets and liabilities of a spouse and dependant children and of any property held by that person in trust for anyone: **section 12**.
- (ii) a statement of registrable interests: **section 14**.
- (iii) any further particulars with respect to the person's financial affairs as may be required by the Commission: **section 13**.

112. In particular section 14 provides that the contents of the statement of registrable interests shall contain:

- (i) particulars of all directorships held in any company or other corporate body;
- (ii) particulars of any contract with the State;
- (iii) the name or description of any company , partnership or association in which the person is an investor;
- (iv) any trust to which the person is a beneficiary or a trustee;

- (v) the beneficial interest held in any land;
- (vi) any fund to which the person contributes;
- (vii) particulars of any political, trade or professional association to which the person belongs;
- (viii) particulars relating to sources of income;
- (ix) any other substantial interest, pecuniary or not, which that person considers may appear to raise a material conflict between the person's private interests and public duty;

and shall be made available to the public by way of a Register of Interests.

113. By **section 12(5)** if the declaration discloses an income which, in the opinion of the Commission, is insufficient to support the accretion in value of the net assets "so as to raise the inference that there must have been other income to account for the acquisition of such assets" the person in public life shall be deemed to have been in possession of income which has not been disclosed and the onus on that person to establish the source of such income. An offence is committed where such person fails to account for such further income or where upon an enquiry it is determined that such other income or assets existed and the person in public life deliberately omitted to disclose such information in the declaration: **section 21(2)**.

114. By **section 13** the Commission is mandated to examine the declarations filed to ensure compliance with the Act. Thereafter the Commission may request further information or explanation and may request that the declarant furnish such particulars as

it considers necessary, attend the Commission's office to verify the declaration or require the declaration to be certified by a chartered or certified accountant. If the Commission is satisfied that the declaration has been fully made it shall issue a certificate of compliance.

115. Where a person in public life fails to file a declaration or statement of registrable interest or without reasonable cause fails to provide such further particulars as may be requested by the Commission, the Commission shall publish such fact in the Gazette and at least one daily newspaper and may after such publication make an ex parte application to the High Court for an order directing such person to comply with the Act. In addition to making such an order the Court may impose such conditions as it thinks fit: **section 11 (6) and (7)**. Breach of the order or any of the conditions imposed renders the person liable to conviction and a fine of \$150,000.00, **section 11(8)**.

116. **Section 15** empowers the Commission to advise the President to appoint a tribunal comprising at least two members of the Commission to conduct an enquiry to verify the contents of the declaration or the statement of registrable interests in circumstances where it is of the view that there should be further inquiry into any declaration in order to ascertain whether there has been full disclosure.

117. A tribunal appointed under the Act has the power to:

- (i) request that the person in public life or any other person, whom it reasonably believes has knowledge of the matters to be enquired into, attend before it and furnish such further information and documents as it may require;

- (ii) require the Commissioner of Police or any public officer to make available any information received in the course of any investigation carried out into the subject matter of an enquiry under this Act, and may direct the Commissioner of Police or such other officer to make such further enquiries and investigations as it thinks necessary.

118. Save that the hearings shall be held in private a tribunal appointed under the Act shall have and exercise all the powers of a commission of enquiry under the Commissions of Enquiry Act: **section 16.**

119. Where, on the basis of that enquiry, the Commission is satisfied that:

- (i) a breach of any of the provisions of the Act has been committed the Commission is empowered by the Act to take such action as it deems appropriate; or
- (ii) an offence has been committed it shall refer the matter to the Director of Public Prosecutions and forward a report of its findings to the President.

section 17.

120. Where, in the opinion of the Commission, a breach of the Act has been committed or a conflict of interest has arisen **section 22** mandates the Commission to order a person in public life to place his assets or part of his assets in a blind trust on such terms and conditions as the Commission thinks appropriate.

121. Although the term “conflict of interest” has not been defined in section 2 of the Act **section 29** of the Act provides that:

“(1) For the purposes of this Act, a conflict of interest is deemed to arise if a person in public life or a person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought to reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of his family or of any other person.”

122. Part III also creates offences for the failure to comply with the provisions of the Act and the penalties for such failure: **section 21**. This section requires the Commission to obtain the written consent of the Director of Public Prosecutions for the prosecution of offences under the Act.

123. **Part IV** of the Act establishes a code of conduct applicable to persons in public life and persons exercising public functions. **Sections 24 to 30** comprise the code.

124. By **section 29(2)** where there is a possible or perceived conflict of interest, a person in public life or a person exercising public functions shall disclose his interest in accordance with prescribed procedures and disqualify himself from any decision making process.

125. By **section 31** the Commission is required to report any breach of Part IV to the appropriate Service Commission, Board or other Authority and to the Director of Public Prosecutions.

126. **Part V** of the Act deals with the Commission's powers of investigations. In particular **Section 32** allows a member of the public to complain to the Commission that a person in public life:

- (i) is in contravention of the Act;
- (ii) in relation to the register of interests, has a conflict of interest; or
- (iii) is committing or has committed an offence under the Prevention of Corruption Act.

127. By **section 33** the Commission:

- (a) may on its own initiative or
- (b) shall upon the complaint of any member of the public

consider and enquire into any alleged breaches of the Act or any allegations of corrupt or dishonest conduct.

128. **Section 34** of the Act specifies the special powers of Commission with respect to such investigation and creates offences for the failure to disclose information or produce documents requested by the Commission, knowingly misleading the Commission or any officer employed by it or giving false information.

129. **Section 37** allows the Commission to consider on its own initiative any matter with respect to the duty or obligation of any person under the Act where it is of the opinion that it is in the interest of the public to do so.

130. **Section 39** protects the members of the Commission from liability for any matter or thing done pursuant to the Act.

131. By **the Schedule** persons in public life are identified to include 'Judges and Magistrates appointed by the Judicial and Legal Service Commission'.

132. Persons in public life are therefore required by the Act to:

- (i) make annual disclosure of their assets as well as the assets of members of the person's spouse and dependant children which are known or held by such family member in trust for or as agent of the person in public life;
- (ii) disclose all registrable interests as defined by the Act;
- (iii) comply with the code of ethics;

to the satisfaction of the Commission.

133. A failure to comply with the provisions of the Act renders the person in public life liable to summary conviction the penalties for which range from a fine of \$100,000.00 to a fine of \$250,000.00 and 10 years imprisonment; the placing of all or some of their assets in a blind trust by the Commission or to such action as the Commission thinks appropriate.

134. Further, by the Act, with respect to the persons in public life,
- (i) the issue of a Certificate of Compliance,
 - (ii) an order that assets be placed in a blind trust,
 - (iii) the commencement of an investigation for failure to make proper disclosure;
 - (iv) the conduct of an enquiry pursuant to section 15;
 - (v) the determination as to whether a breach of the Act, including a conflict of interest, has been committed; and
 - (vi) upon the obtaining of the consent of the DPP, the prosecution for an offence under the Act,

are in the sole discretion of the Commission.

135. Broadly speaking, and insofar as it is relevant to these proceedings the Act therefore mandates disclosure of assets, income and liabilities by persons in public life; empowers the Commission to investigate breaches of the Act which investigation includes the power to conduct a private enquiry with all the powers of a commission of enquiry appointed under the Commission of Enquiry Act; creates offences for the breach of the requirement of full disclosure; establishes a code of ethics applicable to both persons in public life and persons performing public functions and empowers the Commission to punish persons for breach of the duty to disclose as well as the code of ethics.

136. The first observation to be made is that, what ever the interpretation of section 138(a) employed, neither sections 138 or 139 of the Constitution empower Parliament to make provision for or give the Commission the power to punish for a breach of the Act.

137. Assuming for the moment the wider interpretation of section 138, then by the section the Constitution empowers the Commission to:

- (i) receive declarations ;
- (ii) supervise all matters connected with the receipt of declarations;
- (iii) supervise and monitor of standards of ethical conduct prescribed by Parliament; and
- (iv) monitor and investigate dishonest or corrupt, practices, procedures and conduct.

138. With respect to these functions, by section 139, Parliament is empowered, subject to the Constitution, to make provision for:

- (i) the procedure by which the Commission is to perform those functions as well as confer on the Commission and persons concerned such duties and powers necessary for the performance of such functions;
- (ii) the proper custody of the declarations and documents delivered to the Commission;
- (iii) the maintenance of secrecy in respect of all information received by the Commission in respect of its duties with respect to the receipt of declarations;

- (iv) the preparation by the Commission of a Register of Interest for public inspection; and
- (v) generally to give effect to the provisions of section 138.

139. In other words by section 139, subject to the provisions of the Constitution, Parliament is empowered to enact legislation which will:

(a) with respect to declarations in writing of assets, liabilities and income of office holders described in section 138(2)(a):

- (i) establish the procedure by which the Commission is to receive declarations in writing of assets, liabilities and income of those office holders under its purview;
- (ii) establish the procedure by which the Commission is to supervise all matters connected with the receipt of such declarations;
- (iii) confer on the Commission such powers as will enable it to carry out its duty to receive and supervise the receipt of such declarations; and
- (iv) impose on persons concerned such duties as are necessary to enable the Commission to receive and supervise the receipt of such declarations.

(b) with respect to the office holders described in section 138(2)(a) and the additional office holders described in section 138(2)(b) provide for standards of ethical conduct to be observed by those office holders and:

- (i) establish the procedure by which the Commission is to supervise and monitor those standards;

- (ii) confer on the Commission such powers as will enable it to carry out its duty of supervising and monitoring those standards; and
 - (iii) impose on persons concerned, that is the office holders described in section 138(2)(a) and (c), such duties as are necessary to enable the Commission to carry out effectively its duty to supervise and monitor those standards;
- (c) with respect to its duty to monitor and investigate conduct, practices and procedures which are dishonest or corrupt:
- (i) establish the procedure by which the Commission is to monitor and investigate such practices;
 - (ii) confer on the Commission such powers as are necessary for it to monitor and investigate such conduct, practices and procedures; and
 - (iii) impose such duties on persons concerned, the public generally, as are necessary to enable the Commission to carry out the monitoring and investigation of such conduct, practices and behaviour.

140. By section 139 therefore legislation giving life to the Commission, integrity legislation, shall, subject to the Constitution empower the Commission in accordance with the powers and functions prescribed by section 138 of the Constitution and impose such duties on the persons subject to the integrity legislation as will enable the Commission to carry out its functions.

141. It is not, in my view, open to dispute that given the wording of section 138(2)(c), the power given to Parliament to enact provisions which would “give effect to the provisions of section 138” allows Parliament to prescribe standards of ethical conduct for the persons covered by the Act. In my view however neither those words nor the words “the supervision of all matters connected therewith” permit Parliament to confer on the Commission the power to punish for breaches of the Act or conflicts of interest. This is so whatever interpretation is placed on section 138(2)(a) of the Constitution.

142. Further it would seem to me that by the use of the words: “Subject to this Constitution, Parliament may make provision for” in section 139 the power of Parliament to legislate with respect to the Commission must be subject to the other provisions of the Constitution.

143. Accordingly, and in keeping with the question to be answered, it is now necessary to examine the other provisions of the Constitution insofar as Judges and Magistrates are concerned.

Is the Act inconsistent with the provisions of the Constitution in relation to Judges and Magistrates?

144. It may be appropriate here to first identify the persons covered by the phrase “Judges and Magistrates appointed by the Judicial and Legal Services Commission” These words, in my view, are capable of two conflicting interpretations. The words can

be interpreted as meaning: 'Judges appointed by the JLSC and Magistrates appointed by the JLSC' or 'Judges, and Magistrates appointed by the JLSC'.

145. If the latter meaning is adopted then, since Judges of the Supreme Court are not appointed by the JLSC but by the President, Judges of the Supreme Court are not subject to the Act. The Commission submits that this is an interpretation open to the Court because there are other persons who are commonly referred to as Judges, that is Judges of the Tax Appeal Board and Judges of the Industrial Court. Of those two categories, it submits, Judges of the Tax Appeal are appointed by the JLSC. The fact that, like Magistrates, pursuant to section 111 of the Constitution, the duty to discipline these 'Judges' vests in the JLSC makes this interpretation even more attractive.

146. Two difficulties however arise. The first is that, nowhere in the statutes establishing the Tax Appeal Board or the Industrial Court are the members of the Court referred to as Judges. Both Acts refer to these persons as members of the Court. The use of the word therefore seems to have arisen from the function exercised by these persons that is rendering judicial decisions, judging.

147. The second is that, since there seems to be no other group of persons but the "Judges" of the Tax Appeal Board who fall into the category of Judges appointed by the JLSC. If that was the intention of Parliament it would have been far simpler and certainly clearer to state in the schedule 'Judges of the Tax Appeal Board and Magistrates'.

148. Since it is open to the Court “where the expression of legislative intention is genuinely ambiguous or obscure or where a literal or prima facie construction leads to a manifest absurdity and where the difficulty can be resolved by a clear statement directed to the matter in issue”: **Pepper (Inspector of Taxes) v Hart [1992] 3 WLR 1032** to refer to the records of Parliamentary proceedings as an aid to the construction of a statute it is possible here to turn to the Hansard for assistance. In this regard it must be noted that both Acts, that is the amendment to the Constitution and the Act, were laid in Parliament at the same time. At that time what was stated in Parliament was that the category of persons in public life should be widened to include Judges. No limit was placed on this category by the mode of the appointment. In my view the intention of Parliament as divined by the use of the word Judges without the words of limitation placed by the Act could not have been to limit the category of Judges to those appointed by the JLSC.

149. It would seem to me, however, that in any event insofar as the Constitution and Act No. 88 of 2000 refers to Judges they ought not be interpreted to refer to persons who are not Judges properly so called, that is persons who are not termed Judges by the appointing legislation. In my view, to do so would be extending the meaning of the words ‘Judges’ to mean “persons who judge”. This, to my mind, is too wide a meaning to be placed on the word. The word “Judges” in the Act must be taken to mean Judges properly so called and referred to as such by the appointing legislation.

150. In the circumstances I am of the opinion that the words “appointed by the Judicial and Legal Service” in the phrase “Judges and Magistrates appointed by the Judicial and

Legal Service” though superfluous relate only to Magistrates and the words should be read as ‘Judges, and Magistrates appointed by the Judicial and Legal Services Commission.’

151. As we have seen the provisions in the law are not the same for Judges as they are for Magistrates it is therefore necessary to examine each category separately. Before doing so it is important to deal with one issue suggested rather than raised in the course of the submissions placed before the Court. The argument goes like this, Judges and Magistrates, like ordinary citizens, are subject to the laws of the land, criminal or otherwise. The Act is just one of these laws.

152. The fallacy of this argument is that, except insofar as the Act gives the Commission the general power to deal with offences under the Prevention of Corruption Act, the Act does not purport to be an Act of general application to all citizens. Rather the Act seeks to impose duties on Judges and Magistrates in their capacity as Judge or Magistrate and empower the Commission to enforce such duties. Insofar as it refers to Judges and Magistrates it is to be applicable to them in their capacity as a Judge or a Magistrate not in their capacity as an ordinary citizen. In their capacity as ordinary citizen, like other citizens, Judges and Magistrates are subject to the law, criminal or otherwise. It is when legislation, as the Act does, seeks to deal with the Judge or the Magistrate in the capacity of a Judge or a Magistrate, qua Judge or Magistrate, and not as an ordinary citizen that special considerations may arise, fueled by the Constitution and the concept of the separation of powers.

Judges

153. With respect to Judges, therefore, the question is whether by subjecting them to the provisions of the Act those provisions have the effect of:

- (i) altering the Judge's terms of service to that Judge's disadvantage;
- (ii) controlling the Judge in the performance of that Judge's functions of office;
- (iii) providing a means by which Judges may be disciplined for misconduct other than misconduct recognized by the Constitution; or
- (iv) empowering a body other than a tribunal established under section 137(3)(a) to conduct an enquiry with respect to a Judge with respect to a duty imposed on the Judge qua Judge.

(i) Alteration in the terms of service

154. The Constitution provides that the salaries and allowances and other terms of service of a Judge shall not be altered to the Judge's disadvantage after appointment. The submission on behalf of the Attorney-General is that the terms and conditions of service of Judges are contained in the Judges Salaries and Pensions Act and the Judges (Conditions of Service and Allowances) Regulations Nos.1 and 2 and that the Act does not purport to affect those terms and conditions.

155. **The Judges Salary and Pensions Act Chap. 6:02** states that it is an Act to provide for the salaries, pensions and other conditions of service of Judges of the Supreme Court of Judicature. This Act came into operation on the 31st August 1962 and deals only with salaries and pensions. By section 16 the President is empowered

to make regulations generally for the carrying out of the provisions of the Act and “without prejudice to the generality of the foregoing, may make Regulations relating to the conditions of service of, and the allowances payable to, a Judge”.

156. The Regulations, the **Judges (Conditions of Service and Allowances) Regulation Nos. 1 and 2**, made under the Act deal with matters of vacation, housing, transport allowances, medical treatment and income tax. While it cannot be disputed that this legislation contains terms of service of Judges the question is whether these are the only terms of service.

157. The phrase “terms of service” has not been judicially defined. In the case of **Cory Lighterage Ltd. v Transport and General Workers Union and others [1973] 2 All E.R. 558** the phrase ‘terms and conditions of employment’ was thought to be a reference only to contractual terms and conditions: per **Lord Denning MR at page 566b** and **Orr LJ at page 573c**.

158. In the later case of **British Broadcasting Corporation v Hearn and others [1977] 1 WLR 1004 at 1010** however Lord Denning MR had this to say about the words ‘terms and conditions of employment’:

“It was suggested that those words related only to the contractual terms and conditions. Some of us said as much in **Cory Lighterage Ltd v Transport and General Workers’ Union [1973] 1 WLR 792, 814,**

821. But that, I think, would be too limited. Terms and conditions of employment may include not only the contractual terms but those terms which are understood and applied by the parties in practice, or habitually, or by common consent, without ever being incorporated into the contract.”

159. In my view the phrase ‘terms of service’ is far wider than the contractual terms with respect to salary and pension and other allowances as submitted by the Attorney-General. In my opinion the words “terms of service” must include those terms or conditions under which a Judge serves which are understood and applied by the parties in practice, or habitually, or by common consent. In other words the Constitution requires that no term applicable to the service of a Judge, be it established by way of statute, by practice or custom, shall be altered to the Judge’s disadvantage after appointment. The words must therefore be construed as referring to any term applying to a Judge’s service however established. That this must be the meaning to be given to the words is obvious given the width and breath of the concept of the separation of powers and the independence of the individual Judge as required by the rule of law. This is, to my mind, confirmed by the use of the words: “The salary and allowances.....and his other terms of service....” in the section.

160. Under the terms of service of a Judge, appointed before 2nd November 2000, that Judge was not required to make annual disclosure of assets or a statement of registrable interests or comply with the code of ethics established by the Act. In

my view such requirements constitute an alteration of the terms of service of the Judge. In this regard it is important to note that the only Judges affected here are those Judges appointed before the amendment, that is, those Judges appointed before 2nd November 2000.

161. Is this an alteration to the Judge's disadvantage? While it cannot be said that subjecting Judges to a code of ethics per se is to the disadvantage of the Judge, in my opinion, the same cannot be said for the requirement that a Judge each year file a declaration of income, assets and liabilities of the Judge as well as such particulars as are known by the Judge of a spouse and dependent children and a statement of registrable interests. In my opinion such a requirement is an alteration of the terms under which that Judge previously served to that Judge's disadvantage. That this is so, in my view, is emphasized by the penalties attendant upon the failure to comply with this requirement to the satisfaction of the Commission.

162. Further, if the Act provides for control, disciplinary or otherwise, other than in the manner specified by the Constitution at the time of appointment, in my view, that too would constitute an alteration of the terms of service, of a Judge appointed before the 2nd November 2000 to that Judge's disadvantage.

(ii) Control in the performance of the Judge's functions of office

163. It cannot be disputed that by its very nature a code of ethics seeks to control the manner in which persons perform the functions of their office. Whereas in

principle it cannot be objectionable for Judges to be subject to a code of ethics the requirement that the independence of the Judiciary be maintained raises two concerns. The first is, whether the imposition of such a code of ethics by Parliament, however innocent or laudable the intention, in fact presents a means of controlling the manner in which Judges perform their functions. If it is, and in my opinion it is, this must be contrary to the principle of the separation of powers and the independence of the Judiciary. The second concern is in fact a subset of the first and requires a consideration of the contents of the code prescribed by Parliament to show not only its inappropriateness in the circumstances but also to bring to the fore the manner by which the statutory code seeks to control Judges in the performance of their duties.

164. **Section 29 of the Act** provides:

“ (1) For the purpose of this Act, a conflict of interest is deemed to arise if a person in public life or a person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of any member of his family or of any other person.

(2) Where there is a possible or perceived conflict of interest, a person to whom this part applies, shall disclose his interest in accordance with prescribed procedures and disqualify himself from any decision making process.”

165. In relation to the duties of a Judge, the circumstances in which a conflict of interest is deemed to arise under the Act are wide and far-reaching. The code of conduct requires the disqualification of a Judge, whether sitting alone or with other Judges, in any case in which there is an opportunity, directly or indirectly, to further the private interest of either that Judge, a member of that Judge's family or any other person.

166. The phrase "private interest" is not specially defined by the Act. Given its natural and ordinary meaning it would therefore encompass any interest or concern that is not a purely public interest. It would seem to me that given the nature of the matters coming before the Supreme Court it is difficult to conceive of a matter that would qualify as a matter of public interest and not further the private interest of some person. Very few matters, if any at all, would qualify to be heard by any Judge. By its very nature a judicial determination whether in the civil or criminal or public law field involves the furtherance of someone's private interest.

167. Even ignoring the words "or any other person", no Judge of the Supreme Court would be able to hear any case in which it is possible or it can be perceived that it is possible, even indirectly, to further the private interest of a Judge or a member of that Judge's family. Indeed, it would be difficult to conceive of a matter of national interest in the civil jurisdiction of the court which, given the provision, it would be open to a Judge to decide or which, particularly given the size of our society and the powers of the Commission under section 22, a Judge would risk hearing. In fact no

Judge in Trinidad and Tobago, whether sitting alone or in the Court of Appeal, would be able to adjudicate on this case without breaching the code of ethics.

168. It seems to me that by subjecting Judges to a code of ethics the Act impermissibly seeks to control the manner in which Judges deal with cases and function in their office. This, in my opinion, attacks the very basis of the independence of the Judiciary and the doctrine of the separation of powers.

(iii) Discipline

169. By the Constitution disciplinary action against a Judge is limited by:

- (i) the nature of the offence: inability to perform the functions of office or misbehaviour ;
- (ii) the punishment: removal from office and suspension only where the process towards removal has been commenced;
- (iii) the persons who may initiate disciplinary action: the JLSC or the Prime Minister;
- (iv) the persons who may investigate allegations of misconduct: a tribunal comprising Judges or to a very limited extent insofar as such investigation is required to initiate the disciplinary action: the JLSC or the Prime Minister, and
- (v) the persons who may punish: the President acting on the advice of the Judicial Committee.

As we have seen these provisions ensure that the independence of the Judiciary and its constitutional role are not compromised.

170. **The Concise Oxford Dictionary 11th Edition** defines the verb ‘discipline’ as: “ to punish or rebuke formally for an offence”. Accordingly the words disciplinary action must be taken to mean proceedings taken with a view to punishing or rebuking formally for an offence. It would be a fallacy therefore to assume that discipline only arises in circumstances that lead to a dismissal or suspension as has been suggested.

171. It cannot be disputed that although the word misconduct is not used, the Act provides that, with respect to disclosure of assets and obedience to the code of ethics, a failure to comply with the terms of the Act constitutes misconduct punishable by criminal prosecution; the placing of the offender’s assets in a blind trust or by such action as the Commission shall deem appropriate.

172. In my view, in the context of the instant case, any method of punishment for an offence or misconduct arising out of a duty imposed upon a person by a term of service or a duty imposed on that person by virtue of their office constitutes a method of disciplining that person and any action aimed at inflicting punishment for such an offence or misconduct constitutes disciplinary proceedings. By providing for the investigation and punishment of a Judge for breaches of the Act, the Act therefore seeks to discipline Judges in their capacity as Judges in a manner that is contrary to

the provisions of the Constitution designed to ensure the independence of the Judiciary.

173. Additionally, with respect to disciplinary proceedings, the Constitution is very specific with respect to the nature of the complaints that may be made with regard to a Judge, the persons who may punish a Judge and the persons who may enquire into the complaints. The Constitution ensures that in this latter regard the investigation is by a tribunal comprising persons who hold or have held the office of a Judge in the Commonwealth, a tribunal of peers. The Constitution also provides the manner by which complaints may be sifted and weighed by the appropriate functionary, the Prime Minister with regard to the Chief Justice and the JLSC with regard to the other Judges, before the commencement of any formal investigation.

174. Again the rationale for these safeguards is clear and it is to ensure that as far as possible the separation of powers remains intact and the independence of the Judiciary and a Judge's ability to function is not lightly compromised.

175. The Act empowers the Commission to investigate and hold an enquiry as to breaches of the Act by Judges. It allows both the Commission and members of the public to initiate such investigations: **sections 15, 32 and 33 of the Act**. In addition the Act, **by section 17**, gives the Commission the power take any action against a Judge as it deems appropriate if it is of the opinion that a breach of any of the provisions of the Act has been committed. As well, **by section 22**, where it appears to

the Commission that a breach of the Act has been committed or a conflict of interest may have arisen, the Commission shall order that the Judge to place some or all of that Judge's assets in a blind trust.

176. The Act therefore provides for complaints, additional to those permitted under the Constitution, to be made against a Judge for a breach of duties imposed in the capacity of Judge; for these complaints to be made by the Commission and members of the public; for the Commission to hold an enquiry with respect to the alleged breaches and for the Commission to punish Judges for the said breaches. In addition by creating offences punishable by summary conviction for breaches of the Act, the Act provides an additional means of punishing Judges for duties imposed on Judges as Judges.

177. In my view therefore the provisions of the Act which allow for action to be taken and punishment to be inflicted against a Judge for duties imposed in the capacity as Judge are inconsistent with section 106 and 136 and 137 of the Constitution. Further, since neither sections 138 or 139 of the Constitution gives the Commission the power to punish for breach of a duty under the Act as sections 17(1)(a) and 22 seek to do the power to punish for a disciplinary breach is also contrary to those sections.

Magistrates

178. As we have seen the Act seeks to vest an element of disciplinary control over Magistrates to the Commission. In my view this is inconsistent with sections 111 and 127

of the Constitution which vests this power solely in the JLSC or, with the consent of the Prime Minister, a Judge of the Supreme Court.

179. In this regard it is important to note that a comparison of the statutory provisions establishing the JLSC and the Commission reveal that with respect to its composition the JLSC is specifically geared towards dealing with persons exercising judicial functions. As we have seen the JLSC comprises at least four persons with legal training one of whom is the Chief Justice and another a person who is or has held the post of a Judge in the Commonwealth.

180. That the composition of the JLSC is specially designed to deal with persons exercising judicial functions is illustrated by the fact that by section 121(2) of the Constitution, the Public Service Commission “shall not remove, or inflict any punishment on, a public officer on the grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him unless the Judicial and Legal Service Commission concurs therein.” Section 123(2) provides a similar injunction to the Police Service Commission.

181. The composition of the Commission, on the other hand, is established not by the Constitution but by the Act. The Commission comprises five persons: a Chairman, a Deputy Chairman and three ‘persons of integrity and high standing’ one of whom must be an Attorney at Law for at least 10 years and the other a Chartered or Certified Accountant.

182. With respect to tenure, section 136 (5) to (11) of the Constitution applies to both members of the Commission and the JLSC alike. However, unlike the members of the JLSC who by section 126 (3) of the Constitution hold office for not less than three and not more than five years, the period of office of the members of the Commission is not specified by the Constitution but rather, from a reading of section 8(1) of the Act. By that provision the period of office for a member of the Commission is in the discretion of the President.

183. It would seem to me therefore that not only is the JLSC by its composition better able to deal with discipline of Magistrates but the fact that the term of office of members and the manner of their appointment are fixed by the Constitution provides the JLSC with greater insulation from executive or legislative action. This, to my view, is necessary in order to maintain a level of independence necessary to ensure that Magistrates as members of the lower Judiciary are accorded the autonomy appropriate to their status as members of the Judiciary.

184. In my view, therefore, not only is the provision giving the Commission some disciplinary control over the Magistrates inconsistent with the Constitution but given the statutory provisions establishing the Commission, an exercise of disciplinary control over Magistrates by the Commission would not provide the insulation acknowledged by the Constitution to be necessary to ensure that the independence provided to Magistrates as members of the Judicial arm of the State is not eroded.

185. While it cannot be doubted that it is within the power of Parliament, as supreme law maker, to enact legislation which is inconsistent with the Constitution it also cannot be doubted that such power is limited by the procedure set out in the Constitution.

Section 54 of the Constitution

186. The Constitution while confirming its position as the supreme law also confirms the supremacy of Parliament to enact laws for the peace, order and good government of Trinidad and Tobago “so however the provisions of this Constitution..... may not be altered except in accordance with the provisions of section 54.”: **section 53.**

187. Parliament’s power, therefore, to pass any law for the peace, order and good government is curtailed by the requirement that such laws comply with the Constitution and that they not be altered except in the manner prescribed by section 54. Further by **section 2 of the Constitution:** “any other law inconsistent with this Constitution is void to the extent of the inconsistency”.

188. In so far as it is relevant **section 54** provides:

- “
- (1) Subject to the provisions of the section, Parliament may alter any of the provisions of this Constitution.....
 - (2) In so far as it alters –
 - (a) sections.....101 to 108, 110.....133 to 137;

A Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House.

(3) In so far as it alters-

(a) this section;

(b) sections.....138 and 139....

A Bill for an Act under this section shall not be passed by Parliament unless it is supported at the final vote thereon---

(i) in the House of Representatives, by the votes of not less than three-fourths of all the members of the House; and

(ii) in the Senate, by the votes of not less than two-thirds of all the members of the Senate.

(4) No Act other than an Act making provision for any particular case or classes of case, inconsistent with provisions of this Constitution, not being referred to in subsections (2) and (3) shall be construed as altering any of the provisions of this Constitution.....unless it is stated in the Act that it is an Act for that purpose.

(5) In this section references to the alteration of any of the provisions of this Constitutioninclude references to repealing it, with or without re-enactment thereof or making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith, to modifying it and to suspending its operation for any period.”

189. The section therefore deals with two situations. The first restricts the method by which certain sections of the Constitution, that is those provisions referred to in sections 54 (2) and (3), the entrenched provisions, may be altered. That is, it restricts the manner in which those sections may be repealed, repealed and re-enacted, different provisions made in place of, provisions made for any particular case or class of case inconsistent with, modified, suspended or changed in any way. In any of these instances a Bill seeking to do so must be passed with the requisite majorities in both Houses of Parliament.

190. The second deals with the non-entrenched provisions of the Constitution and ensures that no Act inconsistent with any of these sections is construed as altering them unless it is stated that it is an Act for that purpose.

191. The rationale for this is two fold. First, the Constitution acknowledges that there are certain provisions, entrenched provisions, which provide the foundation of the Constitution and upon which our society rests and ensures that these sections not be altered except by the will of the people as expressed by more than a bare majority of its representatives. Second, and equally as important, it serves to direct the mind of those legislators to the fact that the intention of the Bill is to alter existing provisions of the Constitution, be those provisions entrenched or non-entrenched. In other words it serves to warn the members of both Houses of the magnitude of the proposed legislation, that its intention is to alter the supreme law of the land.

192. Section 54 therefore, consistent with the supremacy of the Constitution, ensures that no section of the Constitution is altered by implication or inadvertently.

193. It must be noted here however that special provisions are made by section 13 with respect of Acts inconsistent with sections 4 and 5 of the Constitution, the 'Human Rights provisions'. With respect to those Acts whereas the validity of such an Act does not require an alteration to the Constitution, not only must the Act declare its inconsistency but it must specifically declare that it is inconsistent with those sections, it must be passed with the votes of not less than a three-fifths majority in both Houses and it must be an Act which is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

194. The conjoint effect of section 2 and section 54 of the Constitution is therefore:

- (i) with respect to the entrenched provisions, save with respect to an Act containing provisions inconsistent with sections 4 and 5 of the Constitution for which special provision is made by section 13, any Act inconsistent with any of those provisions is void to the extent of the inconsistency;

- (ii) Parliament may however repeal, repeal and replace, make different provisions in place thereof, make provisions for any particular case or class of cases inconsistent with, modify or suspend any of the entrenched provisions by the passage of a Bill for that purpose, that is for the purpose of any of the above, with the required votes in both Houses of Parliament;

- (iii) accordingly therefore sections 4 and 5 apart, in order to pass an Act the provisions of which are inconsistent with any entrenched provision Parliament would first have to amend the Constitution to facilitate such an Act. Such a Bill to amend the Constitution would have to be passed by the required majorities in both Houses;
- (iv) with respect to the non- entrenched provisions, an Act containing provisions inconsistent with those provisions of the Constitution shall be construed as altering the Constitution if it declares that it is an Act for that purpose;
- (v) an Act containing provisions inconsistent with any of the non-entrenched provisions of the Constitution which does not state that it is an Act for that purpose, that is for the purpose of altering a non-entrenched provision of the Constitution will be void to the extent of its inconsistency with the Constitution;
- (vi) in order to pass an Act the provisions of which are inconsistent with any of the non-entrenched provisions of the Constitution, while not required to be passed by a special majority, the Bill for such an Act will have to state that it is an Act for that purpose.

195. Therefore save insofar as the Constitution has first been altered to accommodate a provision inconsistent with an entrenched provision, any Act containing provisions

inconsistent with an entrenched provision of the Constitution, sections 4 and 5 excepted, is void to the extent of that inconsistency. In the case of a non-entrenched provision, however, once the Act states that it is an Act for the purpose of altering the Constitution even if the actual provision of the Constitution is not amended in any way the Act shall be construed as altering the Constitution. In the case of a non-entrenched provision therefore the voting majority is irrelevant what matters is the statement that the Act alters the Constitution.

196. In the instant case Constitution Amendment No 4 amended the Constitution insofar as the Commission and the legislative power of Parliament in that regard were concerned. As we have seen that amendment did not extend to endowing the Commission or allowing Parliament to endow the Commission with the power to punish for breaches of any Integrity Legislation. Neither did Constitution Amendment No. 4 purport to nor did it amend sections 106, 136 and 137. These sections, all entrenched, were therefore not altered to facilitate the inclusion of Judges of the Supreme Court under the regime of the Integrity Legislation. In particular insofar as the Act with respect to these Judges purports to:

- (i) alter the terms of service of Judges appointed prior to the 2nd November 2000;
- (ii) control the manner in which a Judge discharges his or her duty;
- (iii) empowers the Commission to investigate or discipline a Judge;
- (iv) empowers the Commission or any other body to punish a Judge for duties imposed by virtue of the Judge's office

the Act is inconsistent with sections 106, 136 and 137 of the Constitution and void to the extent of that inconsistency.

197. In my view therefore it is not sufficient to look at the certificate of the Clerks of respective Houses and calculate whether the Act was passed with the majorities necessary to alter those sections. Section 54 requires that to pass an Act inconsistent with sections 106, 136 and 137 of the Constitution those provisions must have been specifically altered and that a Bill for an Act for that purpose, that is, to alter any one of the sections specified in subsections (2) or (3) must be passed with the requisite majorities.

198. In other words the Bill must have been for the purpose of repealing, repealing and replacing, making different provisions in place thereof, making provision for a particular case or class of case inconsistent therewith, modifying, suspending or changing in any way an entrenched provision.

199. In the instant case the Bill for the purpose of altering the Constitution, Constitution Amendment No.4 changed section 138 by repealing and replacing subsection 138(2)(a) and deleting the word "Senators" from subsection 138(2)(c).

200. The Act, despite the fact that on a mathematical calculation it may have complied with the votes required to alter the Constitution, did not purport to nor did it alter sections 106, 136 and 137 of the Constitution. In any event those being entrenched sections the Constitution could not have been altered in that manner nor could the Act be interpreted

as altering the Constitution in that manner. In the circumstances the Act insofar as it is inconsistent with sections 106, 136 and 137 of the Constitution it is void to the extent of those inconsistencies.

201. With respect to Magistrates, as we have seen, the Act is inconsistent with section 111 of the Constitution. Section 111 is not an entrenched section of the Constitution. In order therefore for the Act to be construed so as to alter the Constitution to give effect to those inconsistent provisions the Act must state that that it is an Act for that purpose. The question is whether this Act has done so.

202. Since the purpose of the preamble of any Act is “to assist in explaining the purport and purpose of the written law”: section 11(1) of the Interpretation Act. It is necessary to first examine the preamble to Act No 88 of 2000. As we have seen in its preamble this Act recites section 13 of the Constitution and complies with the requirements necessary to pass a law inconsistent with that section. In the case of **Attorney- General of Trinidad and Tobago v Mcleod [1984] 1WLR 552**, referred to by the Commission, the long title of the Act challenged was “An Act to amend the Constitution of the Republic of Trinidad and Tobago Act 1976”. In that case this was deemed sufficient to alter a non-entrenched provision of the Constitution and there was no requirement for the Bill to be passed by a special majority.

203. This Act, in accordance with section 13, merely states that it is an Act inconsistent to two entrenched sections, section 4 and 5, of the Constitution. Unlike Constitution

Amendment No. 4 no mention is made of section 54 of the Constitution in the preamble to Act No. 88 of 2000. Further nowhere in the body of that Act does it state that it is an Act for the purpose of altering the Constitution. Indeed no reference is made to the Constitution in the body of the Act. In the circumstances I am of the view that with respect to Magistrates the Act cannot be read as altering the Constitution and is inconsistent with sections 111 and 127 of the Constitution insofar as it seeks to vest disciplinary control of Magistrates in the hands of the Commission and void to the extent of such inconsistency.

204. In this regard the case of **Kariapper v Wijesinha [1967] 3 All ER 485** referred to by the Commission is distinguishable on the facts. In **Kariapper** the Constitution of Ceylon, unlike our Constitution, did not require the Act to state that it was an Act to alter the Constitution. That Constitution merely required that the Act be endorsed with a certificate of the speaker certifying that the Act received the required number of votes in the House of Representatives. Since the Act was so endorsed it was valid despite the fact that it did not purport to amend the Constitution. Nonetheless the statement of the Judicial Committee in the judgment of Sir Douglas Menzies at page 494 letter I is of some assistance:

“Accordingly, therefore, on general principles and with the guidance of earlier authority, their lordships have come to the conclusion that the Act, inconsistent as it is with the Constitution of Ceylon, is to be regarded as amending that constitution unless there is to be found in the constitutional

restrictions imposed on the power of amendment some provision which denies it constitutional effect.”

205. In my opinion there is to be found in section 54 of our Constitution constitutional restrictions that deny the Act effect with respect to both Judges and Magistrates. It seems to me that Parliament proceeded on the erroneous basis that in order to subject Judges and Magistrates to the Act all that was needed was an alteration to section 138 of the Constitution and failed to consider the effect of sections 106, 136, 137, 111 and 127 of the Constitution on the Act as amended.

206. Further, and equally as important, by the inclusion of the words “Subject to this Constitution...”section 139 of the Constitution explicitly limits the power of Parliament to enact legislation to give effect to section 138 to legislation which conforms with the other sections of the Constitution.

Conclusions

207. One of the difficulties presented by these proceedings is the fact that we are dealing here with the effects of two separate pieces of legislation, Constitution Amendment No.4 and Act No. 88 of 2000, on the Act.

208. The first is the Act that amended the Constitution, the Constitution Amendment No 4. This is the Act that purports to give the Commission and Parliament the power to subject Judges and Magistrates to the jurisdiction of the Commission and any legislation

enacted by Parliament in that regard. As we have seen this amendment seeks to bring Judges and Magistrates under the jurisdiction of the Commission whether it be for the limited purpose of enforcing a code of ethics established by Parliament or for the wider purposes referred to earlier.

209. In my opinion, with respect to the provisions of the Constitution, whatever the interpretation placed on section 138(2)(a),

- (i) as regards Judges of the Supreme Court, any Act passed by Parliament under the authority of section 139 inconsistent with sections 106, 136, 137 and 138 of the Constitution will be void to the extent of that inconsistency,
- (ii) with respect to Magistrates, any Act inconsistent with sections 127, 128 and 138 of the Constitution will be void to the extent of that inconsistency unless that Act states that it is an Act for the purpose of altering the Constitution.

210. With respect to the provisions of the Constitution there is still outstanding however the interpretation to be placed on section 138(2)(a). It is the duty of the Court to place a meaning on the section. This duty exists even though, as in this instance, any meaning to be placed on the section offends against a provision of the Constitution.

211. The presumption of constitutionality referred to earlier is not a rule of law but merely an aid to be used to assist in the resolution of “ambiguities or obscurities in the actual words used in a statute”: **Attorney-General of the Gambia v Momodou Jobe [1984] 1 A.C.689 at page 702 C**. That being the case it seems to me that since by neither

interpretation can the Court give effect to this presumption then the presumption can not assist in the construction to be used in the construction to be placed on the section.

212. In these circumstances it seems to me that I ought to give the section the wide interpretation that was intended by Parliament. That is the section should be interpreted as charging the Commission with the duty of “receiving from time to time, declarations in writing of the assets, liabilities and income of members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Senators, Judges, Magistrates, Permanent Secretaries, Chief Technical Officers, Members of the Tobago House of Assembly, Members of the Municipalities, Members of Local Government Authorities, members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed.” This is despite the fact that, as I have found, such an interpretation, with respect to Judges and Magistrates, offends against other sections of the Constitution namely sections 106, 111, 127, 136 and 137.

Since section 2 of the Constitution only renders such an interpretation void where inconsistent with any other law save insofar as it refers to Judges and Magistrates to place such a construction on the section in my view would not be rendered void by virtue of section 2 of the Constitution.

213. The second piece of legislation Act No 88 of 2000. This amendment, as we have seen, seeks to include in the Act “Judges and Magistrates appointed by the JLSC” into the definition of persons in public life and accordingly persons to whom the Act applies by amending the relevant schedule to include Judges and Magistrates.

214. As we have seen the Act seeks to do three things: impose on persons subject to the Act a duty to disclose assets; provide for compliance with a code of ethics and punish for breaches of the duty to disclose and the code of ethics. Insofar as the duty to disclose assets are concerned that duty is inconsistent with the Constitution with respect to those Judges appointed prior to 2nd November 2000. Insofar as the Act provides for compliance with a code of ethics we have seen that, with respect to Judges, those provisions are inconsistent with those sections of the Constitution which protects a Judge from control in the manner in which the Judge discharges the functions of office. Insofar as the Act seeks to punish or mandate the institution of disciplinary proceedings for the breach of obligations imposed by the Act we have seen that it is inconsistent with those sections which, in the case of Judges, limit disciplinary proceedings and, in the case of Magistrates, vest the power to discipline in the JLSC or a Judge of the Supreme Court. Further, in any event, insofar as the Act purports to give the Commission the power to punish for breaches of the Act it is contrary to section 138 of the Constitution.

215. In accordance with section 2 of the Constitution therefore the Act is void to the extent of those inconsistencies. With respect to the inclusion of Judges and Magistrates therefore,

“The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or whether on a fair review of the whole matter it can be assumed

that the legislature would have enacted what survives without enacting the part that is ultra vires at all”:

per Viscount Simon in Attorney-General for Alberta v Attorney General for Canada [1947] A.C. 503 at page 518.

216. The specific remit of this Court is to consider whether, in the light of the provisions of the Constitution, Judges and Magistrates are subject to the Act. Given my findings with respect to the inconsistencies between the Act and the Constitution, in order to answer the question posed I must consider, insofar as the amendment to the Act seeks to apply the Act to Judges and Magistrates, how much of the Act is inconsistent with the provisions of the Constitution in this regard and therefore void pursuant to section 2.

217. My options therefore are to read the Act as though there was no reference to Judges and Magistrates, in other words by ignoring item 8 in the schedule, or to read the Act as requiring:

- (i) only Judges appointed after the 2nd November 2000 be subject to the Act and only insofar as it requires those Judges to declare their assets, liabilities and income and make a statement of registrable interests and no more; and
- (ii) Magistrates be subject to the Act but only so far as they are required to declare their assets, liabilities and income, make statements of registrable interests and be subject to the code of ethics prescribed by Parliament.

218. In this regard, in my view, there are two relevant considerations. The first is, the manner by which Judges and Magistrates were incorporated into the Act. As we have seen this was by way of an amendment which, while not disturbing the existing provisions of the Act, sought to include Judges and Magistrates into the definition of persons in public life via the schedule to the Act. It seems to me that by amending the Act in this manner, with respect to Judges, Parliament sought to subject all of the Judges to all of the duties and liabilities under the Act. Similarly with respect to Magistrates, Parliament sought to subject the Magistrates to all of the duties and liabilities under the Act. It seems to me that, by the inclusion of Judges and Magistrates into the Act by incorporation into the schedule, the intention of Parliament could not have been to treat Judges differently dependent on their date of appointment. Nor could it have been to subject Magistrates to some and not all the provisions of the Act.

219. The second consideration, and by far the most important in my opinion, arises from the use of the words “Subject to this Constitution” in section 139 of the Constitution. It cannot be disputed that Parliament’s power to enact the legislation, “imposing such duties” on Judges and Magistrates “ as are necessary to enable the Commission to carry out effectively the purposes of section 138” is by section 139 to be subject to the other provisions of the Constitution. Pursuant to section 139 Parliament sought to impose those duties on Judges and Magistrates by way of Act No 88 of 2000. As we have seen such incorporation is inconsistent with sections 106, 136 and 137 of the Constitution. Accordingly it would seem to me that that part of the amendment to section 138(2)(a) which seeks to incorporate Judges and Magistrates into the Act is rendered

ultra vires the power of Parliament to so legislate by the use of the words 'subject to this Constitution' in section 139.

220. In these circumstances it seems to me that rather than reading the Act as incorporating some Judges and not others and applying some provisions to Magistrates but not all the Act must be read so as to delete item 8 of the schedule. Accordingly therefore it seems to me that the Act should be read as not including Judges and Magistrates as persons in public life.

221. I am of the view therefore that having regard to the provisions of the Constitution of the Republic of Trinidad and Tobago and the Integrity in Public Life Act Judges and Magistrates are not subject to the provisions of the Integrity in Public Life Act as amended.

QUESTION NUMBER 2

What is the meaning of the expression "Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest"?

222. As we have seen the Judiciary is that arm of the State charged with the responsibility of exercising the State's judicial functions. One of these functions is to ascribe legal meanings to legislation enacted by the legislative arm of the State. In other words one of the duties of the Courts is to give meaning to the words used by Parliament

to express its intention. Unlike the first question posed where this Court was required to examine the validity of Parliament's intention in the light of the Constitution, here the Court is required to ascribe a meaning to the words adopted by Parliament to describe its intention.

223. It cannot be over emphasized that by this question this Court is not called upon to identify those organizations the members of which are covered by these words. Neither am I called upon to editorialise on Parliament's intention. The role of the Court here is to assist the Commission as to the intention of Parliament ascertained from the words used by it in order that the Commission may determine the persons under the purview of the Act and thereby exercise its mandate under section 138 of the Constitution.

224. This question requires the Court to place a legal meaning on the expression "Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest" found in the schedule to the Act, the schedule that identifies the persons in public life subject to the provisions of the Act.

225. In seeking to ascribe a legal meaning to the words used in the Act assistance can be obtained from two sources. Since the use of the words originated from sections 138 and 139 of the Constitution, the use of the words or phrases or the meaning ascribed to those words or phrases in those sections or any other provisions of the Constitution will assist in the interpretation of those words as used in the Act. The second is, insofar as there are ambiguities in the meaning to be placed on the words, the purpose and intent of

those amendments incorporating the provision into the Act, that is, Constitution Amendment No.4 and Act No. 88 of 2000 would also be relevant.

226. With regard to the latter, as we have seen, the purpose of these amendments was to widen the scope of persons who were to be subject to integrity legislation from, Judges and Magistrates apart, specific members of the legislature: members of the House of Representatives, and senior members of the executive: Permanent Secretaries and Chief Technical Officers, to include the members of the Senate and persons exercising executive functions on behalf of the State.

227. At the end of the day the Commission seeks guidance on the persons whom Parliament intended to make subject to the Act by the use of the words: “Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest.”

228. Consequently the following questions arise:

- (i) What are the bodies referred to by the use of the words: “Statutory Bodies”, “State Enterprises”?
- (ii) What is meaning and effect of the words: “members of the Boards of” immediately preceding those categories of bodies?
- (iii) What is the meaning to be ascribed to and the effect of the words “including those bodies in which the State has a controlling interest” found immediately after the two categories of organisations?

(i) **“Statutory Bodies”, “State Enterprises”.**

“Statutory Bodies”

229. The term ‘Statutory Bodies’ though used in both the Act and the Constitution has not been defined in either. Reference has been made to the **Exchequer and Audit Act Chap. 69:01** which, by **section 2**, defines the term “statutory body” to mean “ any municipality, county council, board, commission or similar body corporate established and incorporated by an Act.” Since section 138(2)(a) of the Constitution however makes specific reference to Municipal Corporations and Local Government Authorities. It is clear therefore that the words as used in the Act could not have been intended to refer to those bodies.

230. In their natural and ordinary meaning the term must be taken to mean: ‘those bodies or organizations established by statute.’ In my view there is no other possible meaning that can be ascribed to these words.

“State Enterprises”

231. Again no statutory definition has been given to this term in the Constitution or the Act. In its natural and ordinary meaning the word “enterprise” has been defined by the **Concise Oxford Dictionary** as: “a business or company”.

232. Some assistance however can be obtained from the use of the words elsewhere in the Constitution. In **sections 116(3) and 119(8) of the Constitution** reference is made to enterprises owned or controlled by the State. **Section 116** establishes the office and

functions of the Auditor-General. **Section 116(3)** empowers the Auditor-General to carry out audits of “all enterprises that are owned or controlled by the State”. Similarly **section 119** deals with the Public Accounts Committee of Parliament and provides for a Public Accounts (Enterprise) Committee who shall consider and report to the House of Representatives on the audited accounts, balance sheets and other financial statements of “all enterprises that are controlled by or on behalf of the State”: **section 119(8)**.

233. **Section 119(9)** provides as follows:

“For the purposes of subsection (8) and section 116(3) an enterprise shall be taken to be controlled by the State if the Government or any body controlled by the Government –

- (a) exercises or is entitled to exercise control directly or indirectly over the affairs of the enterprise;
- (b) is entitled to appoint a majority of the directors of the Board of Directors of the enterprise; or
- (c) holds at least fifty per cent of the ordinary share capital of the enterprise,

as the case may be.”

234. It would seem to me that it is appropriate to ascribe to the term “State Enterprises” a meaning consistent with the use of similar words in the Constitution. In my view the words “State Enterprises” must be taken to mean: ‘a business or company owned or controlled by or on behalf of the State’. For the purpose of determining control

by the State regard must be had to the indicies of control identified in section 119(9) of the Constitution.

(ii) “Members of the Board of all Statutory Bodies and State Enterprises”.

235. In this regard it must be noted that the Interpretation Act Chap 3:01 makes specific reference to another category of organization created by Statute, the Statutory Board: **sections 34 to 36 of the Interpretation Act.** While the term is not expressly defined, **section 34** deals with appointments to Statutory Boards and defines the word “board” as including “corporation, tribunal, commission, committee or other similar body.” This definition is however stated to be the definition to be used for the purposes of sections 34, 35 and 36 of the Interpretation Act.

236. The question here whether these bodies, Statutory Boards, are included in the ambit of Statutory Bodies or State Enterprises. In my view the answer depends entirely on whether such an organisation can fit itself into either of the categories specified by section 138. So that if the Statutory Board is a body or organisation established by statute or is a business or company controlled by or on behalf of the State then it falls into one of the categories referred to in the Constitution and the Act. It seems to me therefore that a Statutory Board being a body or organisation established by Statute it falls within the category of Statutory bodies referred to in section 138 of the Constitution and the schedule to the Act.

237. To properly answer this part of the question posed by this application however regard must be had to the history of the legislation insofar as amendments were made to it and section 138 of the Constitution.

238. As we have seen initially no reference was made to Statutory Bodies or State Enterprises in section 138 of the Constitution. By Constitution Amendment No.2, the Constitution was amended to include: "members of those Statutory Boards and State Enterprises.....as may be prescribed." Consequently the 2000 Act provided for: "Members of the Boards of Statutory Bodies and State Enterprises as prescribed in accordance with section 138(2) of the Constitution" to be subject to the Act. The Constitution therefore empowered Parliament to include under the jurisdiction of the Commission two classes of persons, members of Statutory Boards and members of State Enterprises. The Act however referred to another type of organization instead of Statutory Boards, Statutory Bodies, thereby impermissibly widening the scope of the Act. As well, instead of prescribing the members of or those organisations which it determined ought to be subject to the Act, the Act merely repeated the phrase 'as prescribed in accordance with section 138(2) of the Constitution'.

239. Understandably therefore less than one month afterwards Parliament revisited the legislation and amended the Constitution by deleting the words: "members of those Statutory Boards and State Enterprises" replacing them with the words: "members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed". The discrepancy between the Constitution and the Act was therefore

corrected and the jurisdiction of the Commission with respect to the organisations under its purview increased. While doing so Parliament limited the persons in those organizations coming under the jurisdiction of the Commission from: all the members of those organizations to the members of the boards of those organisations. The schedule of the Act was then amended to read: “Members of the Boards of all Statutory Bodies and State Enterprises” thereby prescribing for only members of the Boards of these bodies to be subject to the Act.

240. It is clear that in the Act the words “members of the Boards of” refer to both Statutory Bodies and State Enterprises. Once again there is no definition in the Act of the word ‘Board’. Nor is there such a definition in the Constitution. There can be no doubt that the word “Board” cannot be interpreted to mean Statutory Board since to adopt that meaning would lead to an absurdity. In any event the definition of ‘board’ in section 34 of the Interpretation Act does not purport to be a definition of general application nor is it a definition found in another part of the relevant legislation.

241. **The Jowitt’s Dictionary of English Law** defines “Board” as:

“An official or representative body organised to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions. *Commissioners of State Ins. Fund v Dinowitz* 179 Mics 278, 38 NYSs 2d 34, 38.”

“A committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of magisterial, representative, or fiduciary character. Thus “board of aldermen”, “board of health”, “board of directors”, “board of works”.”

“Group of persons with managerial, supervisory or investigatory functions and power”.

Black’s Law Dictionary defines Board as body of persons having delegated to them certain powers of central government,or set up for the purpose of local government, usually for the purpose of administering a service within the area of two or more local authorities; or elected as directors by the shareholders of a company.”

242. As we can see the definition of Board in the legal dictionaries give the word two meanings: the first, accords with the definition of board used in the context of Statutory Board adopted in the Interpretation Act, that is, a body of persons having delegated to them certain powers of the central government; the second, a group of persons with managerial, supervisory or investigatory functions and powers as in the board of directors of a company.

243. **The Concise Oxford Dictionary** defines Board as “the decision making body of an organization”.

244. To adopt the first meaning ascribed to the words by the legal dictionaries, as we have seen will result in an absurdity. To adopt the second meaning in my view accords with the natural and ordinary meaning of the word. In my view this accords with the common use of the word as understood in the phrase “board of directors”: persons responsible for the decision-making and or management of a company.

245. In my opinion in the word “Board” as used in the phrase must be taken to mean: “the decision making body of an organization or that part of an organization responsible for its management ”. In my view therefore the phrase “Members of the Boards of Statutory Bodies and State Enterprises” refers to the members of that part of those organisations responsible for its decision-making or management.

(iii) “including those bodies in which the State has a controlling interest”

246. The first thing to be acknowledged is that if by the use of these words in the Act Parliament intended to extend the meaning of the words ‘Statutory Bodies’ or ‘State Enterprises’ as used in the Constitution to include additional organizations such an extended meaning would be impermissible and ultra vires its powers under section 139 of the Constitution. In any event in my view “.... the word “includes” is used really for no other reason than to provide illustrations of things which fall within the definition and which would be considered to fall within it in any event in a normal construction of language.”: **de la Bastide CJ in Board of Inland Revenue v Young (1997) 53 WIR 335 at page 366g.**

247. In the circumstances I am of the opinion that these words serve no purpose other than to illustrate and remove from all doubt that these organizations, that is those bodies in which the State has a controlling interest, fall within the definition of Statutory Bodies or State Enterprises.

Conclusion

248. In my opinion therefore the words “Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest” as found in the Act must be taken to mean:

‘the members of the management or decision making body of:

- (i) all organisations or bodies established by Statute;
- (ii) all businesses or companies controlled by or on behalf of the State’.

249. Further for the purpose of determining control by or on behalf of the State a business or company shall be taken to be controlled by the State if the State exercises or is entitled to exercise control directly or indirectly over its affairs; if the State is entitled to appoint a majority of the directors of the Board of Directors or holds at least fifty percent of the capital of that body.

250. This interpretation to my mind is in accord with the purpose and intention of the legislation as expressed by the Constitution and the Act, that is, to preserve and promote the integrity of persons exercising executive or legislative functions on behalf of the State.

251. It may very well be that given the number of organisations the members of which are brought or are liable to be brought under the purview of the Act by these words Parliament may wish to consider whether the intention of Parliament was in fact to include the members of the Board of bodies who, although exercising functions on behalf of the executive, by virtue of their functions and duties as established by the relevant statutes are not in positions which are amenable to the type of corruption the Act seeks to prevent. This however is not a matter for the Court but rather for Parliament.

Dated this 15th day of October, 2007.

.....
Judith A. D. Jones
Judge



REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 30 of 2008

IN THE MATTER OF THE INTEGRITY IN PUBLIC LIFE ACT, 2000 AS AMENDED

AND

**IN THE MATTER OF THE CONSTRUCTION OF PARAGRAPHS 8 AND 9 OF THE
SCHEDULE TO THE INTEGRITY IN PUBLIC LIFE ACT, 2000 AS AMENDED**

BETWEEN

**TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO LIMITED
INTERESTED PARTY/APELLANT**

AND

**THE INTEGRITY COMMISSION
PLAINTIFF/RESPONDENT**

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
DEFENDANT/RESPONDENT**

**PANEL: I. Archie C.J.
A. Mendonça J.A.
G. Smith J.A.**

APPEARANCES:

Mrs. D. Peake S.C. and Ms. Marcelle Ferdinand
on behalf of the Integrity Commission

Mr. S. Marcus S.C. and Ms. Glenda Edwards
on behalf of the Law Reform Commission

Mr. F. Hosein S.C., Mr. A. Bullock and Ms. Indarsingh
on behalf of the Attorney General of Trinidad and Tobago

Dr. C. Denbow S.C., Mr. D. Allahar and Mrs. D. Denbow
on behalf of Telecommunications Services of Trinidad and Tobago Limited

DATE OF DELIVERY: 27th June, 2013.

I have read the judgment written by Smith J.A.
I agree with it and have nothing to add.

**I. Archie
Chief Justice**

I, too, have read the judgment written by Smith J.A.
I also agree with it and have nothing to add.

**A. Mendonça
Justice of Appeal**

Delivered by G. Smith J.A.

JUDGMENT

INTRODUCTION

1. Sections 138 and 139 of the Constitution of the Republic of Trinidad and Tobago (the Constitution) and the **Integrity in Public Life Act** Chapter 22:01 (the Integrity Act) have established an Integrity Commission with far reaching powers.

Persons who are subject to the jurisdiction of the Integrity Commission (the Commission) have onerous duties and responsibilities placed upon them. For instance, they are required to file exhaustive and detailed annual financial returns with the Commission in respect of themselves, their spouses and dependent children.¹ Breaches of the provisions of the Integrity Act can be visited by severe penalties. By way of illustration, failing (a) to file the required returns, (b) to give information required by the Commission or (c) to attend an inquiry or (d) the giving of a false declaration are criminal offences punishable on summary conviction by a fine of

¹ See sections 11 to 14 of the Integrity Act.

\$250,000.00 and imprisonment for ten years. Individuals who are caught by the Integrity Act are also subject to a stringent code of conduct and to a thorough investigation by the Commission.²

It is a matter of considerable importance for an individual to know if he is subject to the jurisdiction of the Commission. The Appeal of Telecommunications Services of Trinidad and Tobago Limited (TSTT) arises out of such a concern on behalf of the members of its Board of Directors.

2. Equally, the Commission is an autonomous creature of the Constitution, answerable to no one³ and vested with sweeping and invasive powers over persons and bodies under its jurisdiction.⁴ Its functions are very expansive and comprehensive. By way of illustration, the Commission is tasked with examining and retaining all returns filed; making inquiries to verify the accuracy of those returns; investigating complaints with respect to breaches of the Integrity Act; investigating conduct which may be considered corrupt; instructing, advising and assisting heads of public bodies in respect of practice and procedure and carrying out programs of public education.⁵

To ensure its proper and efficient functioning and in the interests of good administration it is essential that the Commission should be aware of the persons or bodies over whom it exercises jurisdiction.

It is in these circumstances that the Commission commenced this interpretation summons and now also pursues an appeal from the trial judge's findings.

3. More specifically, this appeal addresses the interpretation of the phrase:

**“Members of the Boards of all Statutory Bodies and State Enterprises
including those bodies in which the State has a controlling interest”**

as it appears in the Schedule to the Integrity Act as being persons who are deemed to be persons in public life and so subject to the jurisdiction of the Commission.

Even though we heard four sets of addresses in this appeal, there are really two distinct areas of focus in respect of the two parties who have appealed.

² See Part IV of the Integrity Act.

³ See section 5(2)(a) of the Integrity Act

⁴ See for example section 5 of the Integrity Act.

⁵ See note 4 above.

4. TSTT asks us to review the trial judge's decision in respect of the meaning of the phrase **"Members of the Boards of all ... State Enterprises including those bodies in which the State has a controlling interest"**.

The trial judge decided that for the purposes of the Integrity Act, a State Enterprise is (*inter alia*) a company or business controlled by or on behalf of the State. Further, for the purpose of determining control by or on behalf of the State one had to look to section 119(9) of the Constitution where it says (*inter alia*) that, **"...a company shall be taken to be controlled by the State if the State either exercises or is entitled to exercise control directly or indirectly over its affairs..."** (my emphasis).⁶

TSTT contends that the trial judge applied a wrong method of statutory interpretation in coming to this decision. The test of direct or indirect control is too wide and produces an unintended result as well as too much vagueness in the application of the Integrity Act to Members of the Boards of State Enterprises.

We find that the test of direct and indirect control was not an appropriate one to be applied to the Integrity Act and sections 138 and 139 of the Constitution (jointly referred to as the Integrity Provisions). We adopt firstly the test of de jure or legal control to all cases and in exceptional cases, resort may be had to the de facto or factual test of control.

In the present matter, on an application of the de jure test, TSTT is not a State Enterprise to which the Integrity Act applies. Further, on the evidence before us there are no exceptional circumstances to pray in aid the de facto test of control so as to have TSTT declared a State Enterprise. The members of its Board are not subject to the jurisdiction of the Commission.

5. The second area of focus concerns the Commission's appeal. They ask us to review the decision of the trial judge in respect of the phrase **"Members of the Boards of all Statutory Bodies... including those bodies in which the State has a controlling interest"**. The trial judge applied a literal or **"natural and ordinary interpretation"** to the phrase.

The Commission contends that this literal interpretation of the phrase in the Integrity Act is too wide. It would extend the reach of the Commission far beyond its intended purpose and reign in hundreds of people who really should not be subject to the Act. This in turn will make the functioning of the Commission impossible. The Commission suggests an interpretation of this phrase which limits its application to members of the board of statutory bodies which are public in nature and/or which exercise public functions and/or functions on behalf of the State.

⁶ See paragraphs 235, 236 and 251 of the trial judge's decision.

We are of the opinion that the application of this part of the Schedule to the Integrity Act is limited to the members of the boards of those statutory bodies which exercise public functions.

6. Before delivering an analysis of our reasons it is first necessary to give a brief context and history of the relevant legislation so as to get a proper grasp of the decision.

LEGISLATIVE CONTEXT AND HISTORY

7. Sections 138 and 139 of the Constitution in its original form provided for the establishment of an Integrity Commission whose primary function was the receipt and declaration of assets from limited and defined persons namely:

“members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers”.

The jurisdiction of the Commission was basically limited to persons in public political life.

It was not until 1987 that, pursuant to section 139 of the Constitution that Parliament enacted the Integrity in Public Life Act No. 8 of 1987. That Act established the Commission. It declared that it applied to every person in public life. A person in public life was further defined as a person referred to in the First Schedule to that Act. The First Schedule itself listed the same persons as those stated in section 138 of the Constitution (referred to above) as being persons in public life.

Thus the Constitution and the Integrity in Public Life Act of 1987 were in sync with respect to the persons who were subject to the jurisdiction of the Commission.

8. In 2000 Parliament extended the jurisdiction of the Commission by virtue of (a) two constitutional amendments; (b) the repeal and replacement of the 1987 Integrity in Public Life Act; and (c) the Amendment of the 2000 Integrity Act.

By virtue of the two constitutional amendments in 2000 (and the correction of a drafting error) the Commission now had jurisdiction over the following persons (see the 2006 Revised Edition of the Laws of Trinidad and Tobago):

“...members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Senators, Judges, Magistrates, Permanent Secretaries and Chief Technical Officers, Members of the Tobago House of Assembly, Members of Municipalities, Members of Local Government Authorities and members of Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed.”

(I have underlined the new persons and bodies added by the Constitutional Amendments to the Commission’s original jurisdiction)

9. Like in the case of the 1987 Integrity Act, the new Integrity Act of 2000 declares that it applies (*inter alia*) to every person in public life.⁷ A person in public life is further defined as a person referred to in the First Schedule. The First Schedule lists the same persons as those stated in the new section 138 of the Constitution save for one difference.

The Constitution applies (*inter alia*) to “**...Members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed**”.

However, the corresponding section of the First Schedule of the new Integrity Act applies to “**9. Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest**” (the change is underlined).

10. Another relevant change to the new Integrity Act is in section 3. Whereas section 3 of the old Integrity Act stated that the old Act applied to every person in public life, section 3 of the new Integrity Act applies to every person in public life “**and to persons exercising public functions.**”

Section 2 of the new Integrity Act defines ‘persons exercising public functions’ as including all persons holding office under each of the Service Commissions as well as members of the of the Diplomatic Service and Advisers to the Government. As we will discuss later in this judgment,⁸ this method of defining persons exercising public functions as including certain categories of persons, was not intended to be an exhaustive definition of those persons but mere illustrations of the persons who would be included in the expression ‘persons exercising public functions’.

In any event, there is no issue in this case with the application of the Integrity Provisions to ‘persons exercising public functions’ as stated in section 3 of the Integrity Act. The focus of

⁷ See section 3 of the integrity Act.

⁸ See paragraphs 50 and 51 below.

this case is the application of the Integrity Act in Section 3 and the First Schedule to persons in public life as it relates to “**Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest**”.⁹

11. A point to note about this case is that in the earlier part of her judgment the trial judge ruled that the attempt to extend the jurisdiction of the Commission to Judges and Magistrates was unconstitutional. There is no appeal from this finding. This appeal is only concerned with the trial judge’s findings in respect of persons listed at item 9 of the Schedule to the Integrity Act as stated above.

ANALYSIS

12. I now consider the position of the two Appellants, namely (A) TSTT and (B) The Integrity Commission.

A. TSTT is not a State Enterprise

13. A proper starting point for this discussion is a brief statement of the corporate structure of TSTT. The information for this statement is garnered from the uncontested affidavits of Mr. Norris Campbell, Corporate Secretary of TSTT.

TSTT is a privately owned company. It is the product of a joint venture arrangement between the Government of Trinidad and Tobago (the Government) and the Cable and Wireless Group (C&W). Under the joint venture arrangement, the Government held a 51% shareholding in TSTT and C&W held a 49% shareholding in TSTT. The joint venture was managed through a Shareholders’ Agreement. Under the terms of this Shareholders’ Agreement, it would be correct to say that the Government did not enjoy a free hand in the business of TSTT. In fact the Government, even though it was the majority shareholder, had to manage in sync with the directives of C&W. One example of the lack of a free hand of the Government was the fact that under the Shareholders’ Agreement, the Board of Directors of TSTT was to be comprised of nine

⁹ See item 9 of the First Schedule of the Integrity Act.

Directors; five appointed by the Government and four by C&W. At the time of the affidavit of Mr. Norris Campbell, none of the four C&W Directors was resident in Trinidad and Tobago.

14. In 1999 the Government incorporated a company called National Enterprises Limited (NEL). The purpose behind NEL was for the Government to divest itself of its shareholdings in three companies, namely, National Flour Mills Limited, Trinidad Nitrogen Company Limited and TSTT.

The Government's 51% shareholding in TSTT was transferred to NEL, which was a publicly traded company and the Government then proceeded to sell some of its shares in NEL on the stock market. At the time of the affidavit of Mr. Campbell, the Government held 82% of the shares in NEL and members of the public held the other 18% of the shares in NEL.

15. NEL and not the Government is now the holder of the 51% shareholding in TSTT. Further, NEL has entered into a Deed of Adherence to comply with the original Shareholders' Agreement with C&W (which is still the holder of the remaining 49% of the shares in TSTT).

16. Given these facts, can TSTT be said to be a State Enterprise? A factor to bear in mind is that if TSTT is a State Enterprise, the members of its Board would be subject to the jurisdiction of the Integrity Commission. This may very well apply to the four foreign C&W Directors and would be an odd and probably unintended consequence of the Integrity Act.

17. In answering this question, the trial judge correctly noted that there was no definition of the term "State Enterprise" in either the Constitution or the Integrity Act.

However, the trial judge considered apparently comparable terminology in the Constitution to assist her in defining the term "State Enterprise".

18. Section 116(3) of the Constitution empowers the Auditor General to carry out audits of **"all enterprises that are owned or controlled by the State"**.

Similarly, section 119(8) enables the Public Accounts (Enterprises) Committee to consider and report on the accounts (etc) of **"all enterprises that are owned or controlled by or on behalf of the State"**.

Finally, section 119(9) provides that **"For the purposes of subsection (8) and section 116(3) an enterprise shall be taken to be controlled by the State if the Government...—**

- (a) exercises or is entitled to exercise control directly or indirectly over the affairs of the enterprise;**

- (b) is entitled to appoint a majority of the directors of the Board of Directors of the enterprise; or**
- (c) holds at least fifty per cent of the ordinary share capital of the enterprise”.**

19. Prior to the formation of NEL, (b) and (c) above would have applied to TSTT to make it a State Enterprise because of the Government’s right to appoint five of the nine members of the TSTT Board¹⁰ and/or its 51% shareholding in TSTT.¹¹

Now, after the formation of NEL it is only (a) above which could apply to TSTT to make it a State Enterprise, because it is at least very arguable that the Government can exercise control indirectly over TSTT by the use of its majority shareholding in NEL.

This test of direct and indirect control now left the Commission with the task of investigating the day to day management of TSTT to determine whether the Government did in fact exercise indirect control over TSTT to such an extent that it would be a State Enterprise.

20. TSTT argues that the trial judge was wrong to resort to section 119(9) of the Constitution as an aid to determining the meaning of the term State Enterprise.

I condense TSTT’s arguments as stating that:

- (1) Section 119(9) of the Constitution is not of a similar context to the Integrity Provisions and a fortiori, even further removed in context from the Integrity Act.
- (2) If Parliament had intended those tests in section 119(9) of the Constitution to apply to the Integrity Provisions, Parliament could and should have done so, as it did with sections 116(3) and 119(8) mentioned above. In other words, Parliament could have stated that section 119(9) would apply to the Integrity Act and to sections 138 and 139 of the Constitution.

21. TSTT suggests that the correct test to apply in determining what is a State Enterprise has to be the de jure or legal control test. Namely, one examines those legal sources that determine control (such as articles of incorporation, share register and legal shareholders’ agreements).

If this test is adopted one need only examine TSTT’s share register and Shareholders’ Agreement to determine who controls the company. This would show that NEL and C&W, and not the Government control TSTT. That being the case TSTT would not be a State Enterprise.

¹⁰ See section 119(9)(b) of the Constitution.

¹¹ See section 119(9)(c) of the Constitution.

22. The Commission argues (in summary) that the trial judge was not wrong to pray in aid section 119(9) of the Constitution to arrive at a definition of a State Enterprise. However, they contend that it was inappropriate to do so in this case since: (1) It created further uncertainty, especially by the “indirect control” test and (2) It was too wide a definition given that the Integrity Act is penal in nature and also infringes fundamental rights and freedoms.

Interestingly enough, the Commission referred the Court to the **Tobago House of Assembly Act Chapter 25:03** where in section 3 there is a definition of the term “State Enterprise”, namely “**an enterprise that is controlled by or on behalf of the State**”. This suggests that control is a key feature in determining a State Enterprise.

Also, the Commission referred the Court to the **Prevention of Corruption Act Chapter 11:11** (which is an Act of 1987) where in section 2 “State Enterprise” is defined as “**all enterprises referred to in section 119(9) of the Constitution**”. This suggests that if Parliament (in the year 2000) had intended for section 119(9) of the Constitution to apply to the term “State Enterprise” as it appears in the Integrity Provisions, they could and would have done so.

23. However, unlike TSTT, the Commission does not accept that the de jure test of control is always appropriate to determine what is a State Enterprise. They suggest that resort may be had to the de facto or factual control test in cases where for instance the de jure test is being used as a ruse to evade the statute; For example, if Company 1 owns all the shares in Company 2 which in turn owns all the shares in Company 3, there can be no doubt that Company 1 controls Company 3 even though it holds no shares in Company 3.¹²

In such a case the de jure or legal test can be used to avoid the Integrity Provisions. A situation that should not be condoned by a court. In such a case a court can properly resort to the factual control test.

24. The Attorney General submits that the trial judge was not at fault in applying the tests laid out in section 119(9) of the Constitution in determining the meaning of the term State Enterprise. However the Attorney General suggests that the Court should adopt a more cautious and case by case approach in determining what is a State Enterprise rather than sticking to the tests in section 119(9) of the Constitution.

¹² And see **British American Tobacco Limited v Inland Revenue Commissioners** [1943] AC 335 at pages 338 et seq.

25. We are of the view that the tests of control as set out in section 119(9) of the Constitution are not appropriate to determine what is a State Enterprise for the purposes of the Integrity Provisions. We say so for the following three reasons:

26. Firstly, the tests set out in section 119 (9) of the Constitution have a very different context from the term “State Enterprise” as it appears in the Integrity Provisions.

Section 119(9) only subjects an “enterprise” to an audit or public report of its accounts. The Integrity Provisions directly affect individuals and expose them to onerous personal duties and penalties, which would otherwise be contrary to their constitutional rights.

A court ought to be cautious in applying the same tests to two different contextual provisions.

27. Secondly, and as a consequence of the contextual difference, the test of “direct and indirect” control is too uncertain to apply to a situation where Parliament is imposing onerous duties and penalties on individuals. A fortiori, the test of indirect control is so vague that it could possibly extend the reach of the Commission way beyond its capacities.

Legislation or executive action can affect many entities indirectly in such a way as to enable government to exercise indirect control over them. How far is the test of indirect control to be applied? Where can the Commission draw the line in applying this test of indirect control to the demanding and personal obligations of the Integrity Provisions? The test of indirect control is too uncertain.

28. Thirdly, we agree with the arguments of TSTT and the Commission that say that if Parliament had intended that the section 119(9) tests should have applied to the term “State Enterprise”, they could and should have done so.¹³

29. Given that the section 119(9) tests were inappropriate to apply to the Integrity Provisions, what tests or yardsticks should guide the Commission in deciding what is a State Enterprise?

30. We are of the view that given the onerous personal duties and severe penal consequences that the Integrity Provisions create, one should err on the side of caution in extending the jurisdiction of the Commission.

In that regard we find that the narrower de jure or legal test of control should be the first guide for the Commission in determining what is a State Enterprise.

¹³ See paragraphs 20 and 22 above.

As stated above, the Commission need only examine the legal sources that determine control such as articles of incorporation, the share register and any relevant and legal shareholders agreements.

However in exceptional circumstances, as mentioned in paragraph 23 above, the Commission can resort to the de facto or factual test of control. To repeat, if for example there is a good likelihood that the legal sources cover up a naked attempt to evade the Integrity Provisions, the Commission may resort to the de facto or factual test of control.

31. With respect to TSTT, an examination of the legal sources of control, namely the shareholding and the Shareholders' Agreement reveals that NEL and C&W have control of TSTT, not the Government. As such, TSTT is (prima facie) not a State Enterprise.

Further, given the uncontested evidence, there are no exceptional circumstances here which call for the application of the de facto or factual test of control to be applied. There is no suggestion that the Government's divestment of its 51% shareholding in TSTT to NEL was anything other than a bona fide divestment of its 'control' over TSTT.

TSTT is not a State Enterprise and the Integrity Provisions do not apply to the members of the Board of TSTT.

B. The Commission's Appeal

32. The Commission's Appeal is really an application to vary that part of the trial judge's decision in respect of the phrase that appears in the Schedule to the Integrity Act, namely:

“Members of the Boards of all Statutory Bodies... including those bodies in which the State has a controlling interest.”

33. The trial judge decided that this phrase meant that the Integrity Act applied to the members of the management or decision making body of all organisations or bodies established by statute.

34. The Commission and the Attorney General contend that this phrase should only apply to those members of the decision making body of bodies established by statute which bodies are public in nature in that they exercise public functions and/or functions on behalf of the State or the Executive.

35. As we stated in the introduction to this judgment we are of the opinion that this phrase only applies to the members of the boards of those statutory bodies which exercise public functions.

The analysis of our decision will comprise of three sub-sections as follows:

- (i) An application of a purposive construction to the phrase in the statute;
- (ii) The meaning of the words “**Members of the Boards of all Statutory Bodies**”; and
- (iii) The meaning of the words “**Including those bodies in which the State has a controlling interest**” (the tailpiece).

- (i) An application of a purposive construction to the phrase in the statute

36. In cases where a literal interpretation of legislation would clearly defeat the purposes of the legislation itself, a court can adopt a purposive approach to the construction of the legislation in question. In adopting this purposive construction the court can “**correct obvious drafting errors**”¹⁴ and “**In suitable circumstances... the court will add words, or omit words or substitute words.**”¹⁵

37. As stated before, the trial judge preferred a literal interpretation of the phrase in question¹⁶ and decided that the Integrity Provisions applied to the members of the management or decision making body of all organisations or bodies established by statute.¹⁷

The Commission and the Attorney General rightly accept that if this literal interpretation is adopted, hundreds of persons who were not hitherto regarded as subject to the Integrity Act and who have no connection with public life whatsoever would now be caught by the Integrity Provisions. By way of illustration, this would include every manager or director of every charitable, sporting, professional, religious and cultural association, organisation and society once that body is incorporated by statute.

As a corollary to this, the work of the Commission would increase so dramatically that the business of the Commission would be over burdensome and unworkable.

This could not have been the intention of Parliament.

¹⁴ Fazal Ghany v The Compensation Committee and The Attorney General of Trinidad and Tobago Civil Appeal 197 of 2008 per Stollmeyer JA at paragraph 38 applying Inco Europe Limited v First Choice Distribution and Others [2000] 2 All ER 109 (HL) and The Commissioner of Police and The Attorney General of Trinidad and Tobago v Ulric Skerrit Civil Appeal 156 of 2008.

¹⁵ See note 13 above.

¹⁶ See paragraph 5 above.

¹⁷ See paragraph 33 above.

In fact the trial judge recognized that the literal interpretation would extend the scope of the Commission to persons who were **“not in positions which were amenable to the type of corruption that the Act seeks to prevent”**.¹⁸ However she felt that this was something for Parliament to correct and not the Courts.

38. We disagree. We are of the opinion that a court can and in this case should have applied a purposive construction to the Integrity Act.

39. The Courts of Trinidad and Tobago have decided that before a purposive construction is applied, three conditions must be satisfied:¹⁹

- (a) the Court must be satisfied of the intended purpose of the statute or provision in question;
- (b) that by inadvertence the draftsman and Parliament failed to give effect to that purpose; and
- (c) the Court must feel sure of the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error been noticed.

I will now demonstrate that these three conditions are satisfied in this case so as to permit the application of the purposive construction of the phrase in question.

(a) The intended purpose of the statute or provision in question:

40. The intention of the Integrity Act was to make provision for the prevention of corruption of persons in public life and to regulate the conduct of persons exercising public functions. This can be clearly gleaned from the Long Title to the Integrity Act and section 3 of the Integrity Act. The Long Title to the Integrity Act states that it is:

“An Act to provide for the establishment of the Integrity Commission; to make new provisions for the prevention of corruption of persons in public life...; to regulate the conduct of persons exercising public functions...”

Section 3 of the Integrity Act states that it **“applies to every person in public life and to persons exercising public functions.”**

It is safe to say that the Integrity Act was not meant to apply to persons or bodies engaged in private life or in the exercise of private functions.

(b) Parliamentary Inadvertence:

¹⁸ See paragraph 253 of the trial judge’s judgment.

¹⁹ See **Fazal Ghany v The Compensation Committee and The Attorney General of Trinidad and Tobago** (op cit.)

41. Parliament could not have intended to legislate beyond the scope of its expressed purpose. A fortiori, in this case where this extension beyond purpose would impose new and heavy duties, burdens and penalties upon persons in private life.

It is in this sense that one can infer Parliamentary inadvertence to the possible extension of a statute (the Integrity Act) aimed at public officials exercising public functions to persons exercising private functions.

(c) The substance of the provision Parliament would have made:

42. This poses no difficulty. The intention of the Integrity Act is clear. There is no difficulty giving such a meaning to the phrase in question that it applies only to the members of the Boards of those Statutory Bodies which exercise public functions.

There is no need for us to state as well that the relevant part of the First Schedule of the Integrity Act applies to persons in public life. Section 3 of the Integrity Act and its application to the First Schedule deems that “**Members of the Boards of all Statutory Bodies**” are persons in public life. In other words it would be tautologous for us to state that the relevant provisions apply to persons in public life who are members of the Boards of those statutory bodies which exercise public functions. The expression “**Members of the Boards of all Statutory Bodies**” as we have interpreted it, necessarily extends to persons in public life as defined by the Integrity Act.

43. The suggestion of the Commission and the Attorney General to give the phrase a more limited meaning would seem to go beyond the expressed intention in the Long Title and section 3 of the Integrity Act and indeed in the Integrity Provisions.

The Commission and the Attorney General suggest that the phrase should apply to those Statutory Bodies “which are public in nature in that they exercise public functions and/or functions on behalf of the State or of the Executive” (my emphasis).

The words that are emphasised do not appear in the Long Title and section 3 of the Integrity Act nor indeed do they appear in a limiting or defining capacity anywhere in the Integrity Provisions. It would be second guessing Parliament to assume that Parliament would have intended that the jurisdiction of the Commission would be limited to those statutory bodies that are both “public in nature” and which exercise public functions “on behalf of the State or of the Executive”.

Those additional words would not pass the third test of purposive construction in the sense of being surely representative of the substance of the provision that Parliament would have made.

Addendum

44. We recognize that the construction we have given to the phrase, that limits its application to the members of the boards of those statutory bodies which exercise public functions, is not exhaustive. It does not define or delimit those bodies which exercise public functions.

As we stated before, the construction we have given to the phrase is in keeping with the purpose stated in the Long Title and section 3 of the Integrity Act. Further, we do not wish to tread on the special province of the Commission as is stated in section 36 of the Integrity Act.

Under section 36, a person can apply to the Commission to determine whether he is subject to the jurisdiction of the Commission and if so, to what extent. The Commission is also enabled to make enquiries upon such an application and to give its opinion and recommendations.

It is left to the Commission to determine which statutory bodies exercise public functions. If an individual or a statutory body has a concern, he, or the statutory body can apply to the Commission to determine the issue. Further, in cases of doubt, the Commission, the individual or the statutory body can refer to the Court upon an interpretation summons (as in the present matter) for further assistance.

(ii) “Members of the Boards of all Statutory Bodies”

45. Before analysing the meaning of the phrase “**Members of the Boards of all Statutory Bodies**” it is well to remember that the full phrase in the Integrity Act is “**Members of the Boards of all Statutory Bodies and State Enterprises...**”.

The trial judge correctly reasoned that the word “**Board**” as used in that part of the phrase was meant to be the equivalent of the Board of Directors of a company.²⁰ Hence, the trial judge concluded that “**the phrase “Members of the Boards of Statutory Bodies and State Enterprises” refers to the members of that part of those organisations responsible for its decision-making or management.**”²¹

²⁰ See paragraph 244 of the trial judge’s judgment.

²¹ See paragraph 245 of the trial judge’s judgment.

46. While this is a practical, working definition we prefer to adopt a definition that is closer to the functions of a board of directors of a company as set out in section 60(b) of the **Companies Act Chapter 81:01**.

We state that the phrase “**Members of the Boards of all Statutory Bodies...**” refers to the committee, group or other similar body within a statutory body which ‘**directs the management of the business and affairs**’ of that statutory body.

47. We recognize that even with this more specific definition, thorny issues can arise in its application to the myriad of situations that may exist in respect of statutory bodies. Some of these were identified by the Commission in its skeleton arguments, and they called upon the Court for assistance.

To give three such situations:

- (a) What if there is more than one decision-making body in a statutory body? Which, if any, would be subject to the Integrity Provisions?
- (b) What about the case where the Board of a statutory body performs merely in an advisory capacity e.g. to advise a Minister on a course of action. Would such a body be subject to the Integrity Provisions?
- (c) What about those boards which perform very minimal management functions and are really quasi-judicial bodies such as the Tax Appeal Board?

48. We do not propose to give definitive answers in respect of the questions posed by the Commission for the following two reasons:

Firstly, as stated before,²² pursuant to section 36 of the Integrity Act, it is the Commission that has the first responsibility to determine these issues. We do not wish to tread on the special province of the Commission.

Secondly, we are not privy to the special facts and circumstances of any statutory body which may or may not make the members of its governing body subject to the Integrity Provisions.

In these circumstances we are of the opinion that the general guidance we have previously given would be the best assistance we can give to the Commission in deciding which members of the Boards of statutory bodies which exercise public functions are subject to the

²² See paragraph 44 above.

Integrity Provisions. In cases of real doubt as we have stated before,²³ the Commission, the individual/s or the statutory body can refer to the Court for further assistance.

49. There is however, one area of concern which we wish to address. That is the enquiry of the Commission as to whether the word “Board” is to be interpreted literally and narrowly. That is, whether the Integrity Provisions would apply only to those statutory bodies that have a “Board”. By this definition bodies for example which are run by a “Commission”²⁴ or by an “Authority”²⁵ would be exempt from the Integrity Provisions.

50. To their credit, the Commission adopts a neutral position on this issue and presents the Court with compelling arguments either way.

On the one hand, they recognize that the Integrity Act is a penal statute that creates heavy burdens and sanctions. In such a case, they argue that one should err on the side of caution and construe its provisions as narrowly as possible. Therefore only statutory bodies with “Boards” would fall within the Integrity Provisions.

On the other hand, the Commission recognizes that by section 18 of the **Interpretation Act** Chapter 3:01, in a written law, a name commonly applied to a body or thing means the body or thing to which the name is commonly applied. In that case the word “Board” is usually applied to the body which “**directs, controls, governs the work of the relevant Statutory Body**”.²⁶ This would include those bodies which direct the management of the business affairs of a Statutory Body such as an “Authority” or a “Commission”. This wider interpretation of the word “Board” would also be in keeping with the purposes of the Integrity Provisions.

51. We are of the opinion that the word “Board” is to be given its wider meaning so as to include those bodies, by whatever name they are referred to, which direct the management of the business affairs of a Statutory Body which exercises public functions.

This is more in keeping with both section 18 of the Interpretation Act referred to above and the declared intent behind the Integrity Act as stated in the Long Title, namely “...**the prevention of corruption of persons in public life... to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions...**”

²³ See paragraph 44 above.

²⁴ For example the Trinidad and Tobago Electricity Commission.

²⁵ For example the Water and Sewerage Authority.

²⁶ See paragraph 27 of the skeleton submissions of the Integrity Commission.

The literal or narrow meaning would clearly frustrate the declared intention of Parliament as it would allow many persons to whom the Integrity Provisions are addressed to slip through the net of the Commission.

(iii) “Including those bodies in which the State has a controlling interest”

52. The trial judge opined that these words serve no other purpose but of being illustrative of those State Enterprises and Statutory Bodies which fall within the reach of the Commission. They were not meant to be words that define the jurisdiction of the Commission. So, for instance, those words would not mean that the Integrity Provisions would include those State Enterprises where the State has a controlling interest in addition to those where the State did not have such a controlling interest. Nor does this mean that the Integrity Provisions would include all Statutory Bodies where the State has a controlling interest and would exclude all Statutory Bodies where the State does not have a controlling interest.

The words are only illustrative of which Bodies can fall within the jurisdiction of the Commission.

This approach to the interpretation of the phrase was the same as that adopted by the Court of Appeal in **Board of Inland Revenue v Young**.²⁷

53. We agree with the opinion of the trial judge. The tailpiece is only meant to be illustrative of those bodies which fall within the jurisdiction of the Commission. It is not meant to define or delimit the ambit of the Commission’s jurisdiction.

While this tailpiece generated much discussion by Counsel, it is of less relevance to our opinion bearing in mind what we have said before. In fact this tailpiece confirms and illustrates what we have said in relation to:

- (a) State Enterprises: namely, that the “controlling interest” of the State would refer to de jure control and de facto control in exceptional cases; and
- (b) Statutory Bodies: where the Commission would have jurisdiction over those Statutory Bodies which exercise public functions whether or not the State has a controlling interest in them.

²⁷ (1997) 53 WIR 335 per de la Bastide C.J. at page 366 g.

CONCLUSION

54. TSTT is not a State Enterprise. The members of its Board are not subject to the Integrity Provisions.

55. It is only the members of the Boards of those Statutory Bodies which exercise public functions that are subject to the jurisdiction of the Commission.

G. Smith
Justice of Appeal

HANSARD TRANSCRIPTS

I.

**FIRST MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY
IN PUBLIC LIFE BILL, 2018,
HELD IN
THE SENATE CHAMBER OF PARLIAMENT
TUESDAY, AUGUST 21, 2018**

First SESSION 2018-2023

PRESENT:

Hon. D. D. MARSHALL, Q.C., M.P., (Chairman)
Bishop J.J.S. ATHERLEY, M.P.
(Leader of the Opposition)
Mr. R. A. THORNE, Q.C., M.P.
Hon. C. McD. GRIFFITH, M.P.
Hon. Miss C. Y. FORDE, M.P.
Senator Miss L. R. CUMMINS,
Senator C. A. FRANKLYN,
Senator Ms M. C. TAITT, Q.C.

ABSENT:

Senator Dr. J. X. WALCOTT,
Hon. C. E. JORDAN, M.P.

An excuse for being late was expressed by the
Honourable
W.A. Abrahams, M.P.

IN ATTENDANCE:

Mr. PEDRO EASTMOND (Clerk of Parliament)
Mr. NIGEL JONES (Deputy Clerk of Parliament)
Ms. SUZANNE HAMBLIN. (Assistant to the Clerk of
Joint Select Committees)

AGENDA

1. Appointment of Chairman
2. Appointment of Deputy Chairman
3. Welcome
4. Technical Support
5. Procedure
6. Any Other Business.

Meeting commenced at 1:45 p.m.

The CLERK: It feels good to actually call this meeting to order. Good afternoon, everyone, before we could formally start our First Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, we need to appoint a Chairman. Do we take a

Motion for the appointment of a Chairman at this time?
On the motion of Senator Miss L. R. CUMMINS, seconded by Senator C. A. FRANKLYN, the Honourable D. D. MARSHALL was appointed CHAIRMAN of the Joint Select Committee on the Integrity in Public Life Bill, 2018.

The CLERK: Mr. Attorney-General, the Chair is yours.

The Honourable D. D. Marshall, Attorney-General, assumed the Chair as Chairman of the Joint Select Committee on the Integrity in Public Life Bill, 2018.

Mr. CHAIRMAN: Colleagues, thank you very much for the confidence that you have reposed in me. We now move to Item 2 of the Agenda, the appointment of the Deputy Chairman.

APPOINTMENT OF DEPUTY CHAIRMAN

A motion was moved by Senator Miss Lisa R. Cummins, seconded by Mr. Ralph A. Thorne, that the Hon. Wilfred A. Abrahams be appointed Deputy Chairman of the Committee.

Senator C. A. FRANKLYN: Mr. Chairman, I do not know if the Member has accepted.

Mr. CHAIRMAN: Senator Franklyn, the Honourable Member has indicated to me that he is on his way and that he will happily accept, but we can defer that item later in the Agenda. It is not a big issue right now. We will now defer that matter.

Senator Ms. M. C. TAITT: Mr. Chairman, I wonder if it might be more prudent if one were to suggest a Deputy Chairman of a different persuasion, of the different House. It is just a question.

Asides.

Senator Ms. M. C. TAITT: And in as much as the Chairman is a Government Chairman, I was wondering if the Committee would not be minded to have a Deputy Chairman that is either from the Opposition or from the Independent Senators. I am new to this Joint Select Committee setup, but I was just wondering if that would not be something that could be considered by the Honourable Members present here

this afternoon.

Bishop J.J.S. ATHERLEY: Mr. Chair, my understanding is that the workings of the Committee is largely bipartisan and I do not necessarily see that we have to have a Deputy that comes from one of the other interest groups, so to speak, but I do concur with you that perhaps we could have a Deputy from the Other Chamber, the Senate, rather than the Lower House.

Mr. CHAIRMAN: Members, I am informed by the Clerk of Parliament and I am also informed by the proceedings of the most recent Joint Select Committee back in 2011, that the Deputy Chair is generally done on an ad hoc basis if and when the Chair is absent. I personally do not like an ad hoc Deputy Chair, basically, I like to know who that Chair is going to be. I do not think we need to delay the Honourable Chamber too much on this, let us defer it until Mr. Abrahams comes, but I do not have any difficulty with an appointment being made from the Senate.

Senator C. A. FRANKLYN: Mr. Chair, I think I would welcome Mr. Abrahams' comments because it suggests that, you know, that Mr. Abrahams is the Deputy Chairman and if he wanted to, then he should come here early, I do not accept these appointments and stuff, to come or turn up late and those kinds of stuff, if he is going to be late now for the first meeting, then he is going to be late for the rest. We need to show some sort of commitment and we need to show some sort of seriousness about this thing, I do not know where he is, I do not care where he is, but he should be here and I do not agree that we should delay anything until he comes. So, if he does not come, are we going to defer it to the next meeting?

Mr. CHAIRMAN: Mr. Franklyn, a motion has been put and seconded. I have conferred...

Asides.

Mr. CHAIRMAN: You know, if we are going stand on ceremony, we have to do it all the time, so I would urge you not to go that way.

The CLERK: Mr. Chair, if I may interject, the rules generally in these types of Committees is less formality, so actually calling by name is actually standard for these types of Committees. The reason for having a Select Committee and a smaller Committee is that you can get away from a lot of the formalities which sometimes add as a block to real good discussion. So that Mr. Franklyn you can ease with the Honourable Member for this meeting.

Asides.

Mr. CHAIRMAN: We can either do it on an ad hoc basis or not, I do not propose to tie up Minutes of our time dealing with this. A motion has been put, it has been seconded, Mr. Abrahams has already indicated to me as Chair that he would accept.

Senator C. A. FRANKLYN: No, we cannot do it like that.

Mr. CHAIRMAN: So, I am suggesting that we defer it until later in the agenda.

Senator C. A. FRANKLYN: Mr. Chair, he could not have indicated that to you as Chair because

you only became Chair two minutes ago.

The CLERK: Mr. Chairman, if I may, there is a Procedural Rules for Joint Select Committees.

Asides.

The CLERK: There is a document that was circulated entitled "Procedural Rules for Joint Select Committee." This is actually taken from the Standing Orders of the House and there is no provision in there for the appointment of a Deputy Chairman, and it is actually done on an ad hoc basis but if the Committee wants to go away from that, then it is free to do that. So that if the appointment of a Deputy Chair is going to stall the appointment of the Committee then you could proceed...

Mr. CHAIRMAN: A motion has been put, I am happy for it to be withdrawn so that we can get on.

Senator Miss L. R. CUMMINS: Mr. Chair, if you may, I would like to withdraw the motion.

Senator C. A. FRANKLYN: Mr. Chairman, I beg to second that motion.

Mr. CHAIRMAN: Members, in the few short weeks that we have to deal with this, I would like us to move ahead with less emphasis on such matters, but nonetheless it gives me a certain amount of pleasure to welcome all of Members of this Joint Select Committee to this meeting. I do not intend that we should tarry long, there are a few matters that I have asked the Clerk of Parliament to assist us with, I feel that we should not be having to deal, on the occasion of the first time next week, with housekeeping matters. I also want to ensure that Members are fully apprised of how we proceed and that we set our work programme going forward.

I do not think that I need to introduce everyone around the table, I would, though, like to introduce the Special Advisor to the Attorney-General, Nicole Thompson, who is going to be helping me on an administrative basis. She will not be a member of the Committee but I crave your indulgence in having her sit at the table, unless there are any objections. We need to set our quorum. This Committee consists of 11 Members, I think that [a quorum] of three would be cutting it a little bit on the bony side.

The CLERK: Mr. Chairman, I was thinking that probably six Members could comprise the quorum.

Asides.

The CLERK: But in relation to these Rules, the quorum is usually three Members, and on the last occasion when we sat as a Joint Select Committee with 12 Members we took the position that seven would have been an adequate number. The reason for having the quorum is that you obviously will not get the full 11 every time but you still want to be able to carry on the business of the Committee. Six Members is an okay number.

Asides.

The CLERK: We thought three was a bit low given the size of the Committee and the importance of the work.

Asides.

Senator Ms M.C. TAITT: Mr. Chairman. I would like to put a Motion for the Quorum to be the number, 6.

Senator Miss L.R. CUMMINS: I second that Motion.

The CLERK: In terms of technical support, we are recommending that the Chief Parliamentary Counsel (CPC) or someone senior from that office be in attendance at all future meetings of the Committee to assist us with any issues of interpretation or the proposing by Members of Amendments to legislation. Of course, from our end, technical support will also come from myself as Clerk, Mr. Nigel Jones as Deputy Clerk and Miss Suzanne Hamblin who functions in a procedural officer role to the Committee.

Mr. CHAIRMAN: I certainly support having someone from the CPC's Office here, and in those circumstances unless there is any objection I will issue the appropriate direction that somebody from the CPC Office should be in attendance. Thank you very much. Miss Hamblin will also be available to attend to any copying of papers and documents which might be required from time to time. You can see that that work has already started because we have already got a fairly handsome package of materials which you can go through at your leisure and which, I think and hope, will inform the deliberations of this Committee and help us to come up with a sound approach to our work and come up with sensible legislation.

Having got past technical support, unless there are any questions....

Asides.

The CLERK: Two sets of written material will be available. You will get the actual verbatim report of the deliberations, and Mr. Jones will write Minutes, which will be Minutes of decisions. The Hansard script will be the verbatim report of the proceedings.

Senator Ms. M.C. TAITT: Thank you for the clarity. My emphasis was on getting the reports in a timely manner. Not that I am casting aspersions on anyone, but if we are meeting on a regular basis or however we are meeting, it would be useful to have what transpired.

The CLERK: We would assure you that both the verbatim report and the Minutes would be available in adequate time.

Senator Ms. M.C. TAITT: Much obliged, Mr. Chairman.

Mr. CHAIRMAN: Fine, so we have gotten that out of the way. In relation to the invitations to the public and the publications of the date and time of the first meeting, can you appraise us of the status of that, please?

The CLERK: As Members might be aware, we issued Press releases in The Nation, The Advocate and on the Government Information Service as recently as yesterday. On Sunday there was a Press release very similar to what you see here, setting out the Terms of Reference and the Members of the Committee, and that

we have asked persons to have written submissions sent to the Committee. Those who, in addition to sending written submissions, want to make an oral presentation, have been encouraged to do that. We have had the Bills at several of the post offices, and they are supposed to be at libraries and online as well, although I did get an email from someone who said that they had difficulty accessing the Bill on our site, but when I checked there was no such difficulty so sometimes it depends on the computer which the person is using. The Bills are available, and we have so far received written submissions from Solutions Barbados.

Senator Miss L.R. CUMMINS: Mr. Chairman, will the submissions which have been received in written form already be circulated prior to the meeting on August 28?

The CLERK: We have them that we can circulate now. We would have written the General Secretary of the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), the General Secretary of the Democratic Labour Party, the United Progressive Party, the Bar Association, the Barbados Integrity Movement, the Institute of Chartered Accountants of Barbados (ICAB), Men's Educational Support Association (MESA), the Barbados Private Sector Association, as well as the Barbados Integrity Group.

Hon. W.A. ABRAHAMS: Mr. Chairman, might I as well suggest that you write the Commissioner of Police?

Mr. CHAIRMAN: The Bar Association as well.

The CLERK: We have written the Bar Association. Let us hope that we have better luck than last time, because on the last occasion when we met as a Committee to deal with the Prevention of Corruption Bill, we had written the Bar Association and there was no response. We wrote them and then we asked them to make an oral presentation, and they did not take up either offer.

Mr. CHAIRMAN: Let me just make it clear. It is not that these entities or individuals are any worthier of presentation than anyone else, but we did feel the need to reach out to particular interest groups over and above the advertisements. The advertisements have been in the newspaper and other media, and on Parliament's website as well, so I think it is fair to say that we have publicised it as well as we possibly could.

Asides.

Mr. CHAIRMAN: The only challenge with Government departments is that there is a policy which says that public servants cannot speak on matters of policy or Government matters unless they have the permission of the Permanent Secretary, but I imagine that we could find a way.

Asides

Mr. CHAIRMAN: Permanent Secretaries and Heads of related grades meet the first Monday in every month, so it may be that we could offer them the

opportunity but I suspect that they would not likely comment on it. Yes, Bishop Atherley.

Bishop J. J.S. ATHERLEY: The proposed Commission, the Bill, tends to involve the participation formally of the religious community but no mention of a letter to any religious community entity, notwithstanding what you said.

Mr. CHAIRMAN: May I suggest, Bishop Atherley, that if you just give the Clerk.... Perhaps if you could just suggest to the Clerk what religious groupings we could direct correspondence to.

Bishop J.J.S. ATHERLEY: The Islamic Community has been fairly involved nationally but then there are two church, Christian communities, the Barbados Christian Council and the Barbados Evangelical Association, a faith-based organisation; the Anglican's Head at this time, the Barbados Christian Council in the person of Canon Burke and Dr. Taylor is known to the Government very well.

Mr. CHAIRMAN: And the over-arching Islamic body would be whom?

Bishop J.J.S. ATHERLEY: I think Suleiman Bulbia has been the contact person.

Mr. CHAIRMAN: I was only asking what association it would be, other than the Christian Council and the Evangelical Association.

Hon. Miss C. Y. FORDE: Mr. Chairman, there are other Christian councils that might be interested.

Asides.

Mr. CHAIRMAN: I do not have a difficulty. I do not want us to get into an exhaustive list of bodies. I do not want to leave out anybody but just tell us who they are. You can just pass it to the Clerk. I think, though, that we have sent out invitations fairly far and wide, so I hope that people would accept the opportunity to present.

The CLERK: Just one other issue, Mr. Chairman, there was an editorial in the Sunday Sun of 19th August and they seem to be suggesting that we probably should have had a town hall meeting given the nature of the matter. I am just saying that was what was in the editorial as we are canvassing wide.

Mr. CHAIRMAN: While it is good to accept and to embrace the notion of going out to people, it is a Select Committee of Parliament. We have a machinery, we have Hansard and all these kinds of things and if they want to participate, I mean they come and participate. I do not know that it makes sense us trying to go out to one community or the next, we would find ourselves in an impractical situation.

The CLERK: And what is different, Mr. Chairman, with this committee as opposed to previous Committees is that the hearings of this Committee will be held in public.

Mr. CHAIRMAN: We have to agree to that in a minute.

The CLERK: The Prevention of Corruption Bill was not done in public?

Senator Ms. M. C. TAITT: I am sorry, I am

not hearing, Mr. Eastmond.

The CLERK: I was saying that unlike previous Committees, we have taken the decision, hopefully ratified by the Committee, that all our future meetings will be in public and that there will be live streaming and the public is invited to come in. Actually, CBC, the Nation and the GIS have asked that we stream...

Mr. CHAIRMAN: Is that a substantive item now?

The CLERK: Yes.

Mr. CHAIRMAN: I take it then that we are reasonably satisfied that we have reached out adequately to the public and invite their views so unless there is any further contribution in that regard, I would like to suggest that...

Senator Ms. M. C. TAITT: Mr. Chairman, is it that we are going to reach out to the persons suggested by Bishop Atherley? Is it that we are going to add to the list that was shared by the Clerk? We are going to add the persons provided by Bishop Atherley and to be provided by Minister Forde, to include the religious component? Is that what we are saying?

Mr. CHAIRMAN: I did not hear any dissent and therefore, I think that the Clerk was prepared to act on that in the absence of a vote.

Senator Ms. M. C. TAITT: Very well, Sir.

Mr. CHAIRMAN: That segues us very nicely into the matter of the nature of our hearings. It is proposed that these hearings should not only be public but that they should be streamed live on all of the media who are willing to stream us live. Let me say that this became a vexed issue even though it should not be during hearings of the Public Accounts Committee. You might recollect that the Standing Orders provide that hearings of the Public Accounts Committee are exactly that, public, but on that occasion there was loud and strident objection to members of the Press coming in. There was also objection to the proceedings being streamed live. I do not know how Members feel about it. I am happy to receive your views.

Senator C.A. FRANKLYN: In those circumstances people may feel that we have something to hide. I do not think anybody on this Committee has anything to hide, especially when it comes to discussion on the Integrity in Public Life Bill, 2018.

The CLERK: Mr. Chairman, I think that we should note that normally with Select Committees there is a Standing Orders 61, which says that evidence taken before any Select Committee and any document presented to a Select Committee shall not be published by any member of the Committee or by any other person before the Committee has presented its report. Sir, that was the nature of the objection last time to going public. What we did do in the House when this Bill was sent to a Select Committee, the House agreed to the suspension of this Standing Order for the duration of the Sittings of this Committee. There might have been other reasons but procedurally, that was the objection to the Committee being held in public.

Senator Ms. M. C. TAITT: Mr. Chairman. I was just wondering, in order to speak to whether you agree or object to the proceedings being made public, perhaps if we knew, or perhaps if I knew what the procedure is going to be, I would be in a better position to respond to your query as to whether I would object to it being heard in public or not. I would prefer to hear what the procedure entails so that I can make an informed decision whether or not it is upheld or taken into consideration. Thank you very much.

Mr. CHAIRMAN: This Select Committee, and Members would have seen the terms of reference.
Asides.

Mr. CHAIRMAN: Do Members have the Terms of Reference that is included in the bundle? Please make sure that you have them. The Terms of Reference should have been included in the Members' bundles. This is not to investigate anything or even to take any evidence. I am not going to go over this verbatim but it is to enquire into whether the Bill as drafted effectively fulfils its expressed objects: To examine whether as drafted, it will upon effective implementation contribute...this is to look at the Bill and to receive public views on the Bill itself. Now, I have no doubt that there are members of the public who will want to come and rant and rail and point fingers but it would be for us to ...

Mr. CHAIRMAN: I do not expect you to recollect them but there would have been ...
Asides.

Mr. CHAIRMAN: Do you have copies that the members can see? The terms of reference. I did not want to read from them without your... Can you circulate them please? The point is this is not to investigate any particular happening, this is to look at the Bill and it is to give the public the opportunity to comment on the Bill and to say to us whether they think it is going to be effective, whether they think it is a waste of time, people will want to come and say various things and call people's names but we are going to have to, as a Committee rule that is not the purpose of this. This is not an opportunity to vent about who paid what to whom, suffice it to say they are free to come and say that people have paid to somebody but this is not a Committee to investigate anything so there is nothing that we say here, that in my view, would not be said by a reasonable Opposition in Parliament.

Senator Ms. M. C. TAITT: Mr. Chairman, just for clarification. What is the procedure for the public engaging with the members of the Select Committee? I asked that only insofar as I make reference to instances where there are live broadcasts and when you are not certain what someone will say on air, you have a delay or something like that. If we cannot control what other people are going to say, what were the implications for the media houses, in particular, who may be live streaming this?

Mr. CHAIRMAN: That is a very good question. I know about Caribbean Broadcasting

Corporation and the other media houses all have a 10-second delay so they would limit their own exposure but this is a Committee of Parliament.

Senator C. A. FRANKLYN: With all due respect, they do not have any exposure if it is coming directly from here. The thing is that somebody may get up and blurt out something that even though it is covered in here, the person is not here to represent themselves.

The CLERK: Mr. Chairman, additionally, the only time we should be hearing from the public is if we invite them to make oral presentations, because not every member of the public is going to be allowed to speak in the Chamber. Members of the public would be viewing the proceedings, but in terms of the oral presentations the Committee itself has to determine do we want to hear from X or Y. They cannot just come in and appear before the Committee.

Hon. W. A. ABRAHAMS: Not just that, Mr. Chairman, when I was coming down in the vehicle there was a quite an extensive advertisement that covered almost everything everybody is asking. I think, what we should do is print out a set of rules for people giving oral presentations and advise them not to call names, whatever, and be constructive and just give each person beforehand and let them sign it.

Mr. CHAIRMAN: Any thoughts on that procedure?

Senator C. A. FRANKLYN: It makes sense.

Mr. CHAIRMAN: You will still have somebody who, in their exuberance, will do that but we do have the protection of privilege but this is not an opportunity to come in and name names, our purpose is to look at the Bill. You will obviously want to relate the Bill as drafted to scenarios that may have happened in the past that can potentially happen but we are just going to have to try and limit the exposure. I certainly am not in favour of anybody making allegations about individuals who are not here to protect their own good name. I do not think that is what Parliament is here for, but Parliament is broadcast live and we do have some rules when attending Parliament but I think, the Honourable Wilfred Abrahams' recommendation is a good one and I am sure the clerks can assist us with that. If you would be so kind as to circulate it more or less by round-robin beforehand, if there is any difficulty we can weigh in on it but when people are coming we can ask them to be mindful of where they are and what they are saying.

Senator C. A. FRANKLYN: This may not have specific reference to this Committee. It might mean Parliament altogether. When I served at the City of Bridgetown Credit Union on the Supervisory Committee they used to send everything. Some days we got so much paper. They cut out the paper by giving me this.

Mr. CHAIRMAN: And you still got it?

Senator C. A. FRANKLYN: Yes, I still have it.
Asides.

Senator C. A. FRANKLYN: No, it was written off. Three years. What I am saying to you is that we need to do something like that. If I want a specific document I will ask you for it instead of giving me all of this because I am not so strong anymore.

Asides.

Senator C. A. FRANKLYN: I mean to walk about with all that load.

The CLERK: Mr. Chairman, I think Trinidad which probably has a more extensive history of Committees, I am certain they have a manual for persons who appeared before Committees that we can probably use and tweak it to our own purpose for any sitting of this Committee, so I will endeavour to...

Hon. W. A. ABRAHAMS: I do not think that is what Mr. Franklyn was saying. I think, Mr. Franklyn was saying that he expects the generation of a lot of paper and can we please get it electronically.

Mr. CHAIRMAN: May I suggest that inasmuch as Members of the Select Committee are drawn exclusively from the House and the Senate we should not use the Committee as an opportunity to raise the issue of technology use but you should raise it in the respective parent body, as Senator Taitt is now well-known for.

The CLERK: We could email all of the articles. Does he need more than that?

Senator C. A. FRANKLYN: I think it is more than that, not only emailing...

Mr. CHAIRMAN: He wants a device.

The CLERK: Do you want a device?

Senator C. A. FRANKLYN: I want a computer.

The CLERK: This is a Select Committee of the main Houses and if the original Members do not have laptops supplied by Parliament it would be very difficult for...

Asides.

The CLERK: It is the same thing. The Members have been asking for that for a long time.

Mr. CHAIRMAN: If we can get back to the matter of the proceedings. Our first meeting is set for next week Monday and so far we have only got one written submission.

The CLERK: We have one written submission but I should inform you, Mr. Chairman, that I spoke with Sir David Simmons yesterday and he has accepted the invitation to your presentation before the Committee on Monday.

Mr. CHAIRMAN: So we will have Sir David and also Solutions Barbados. We are to start at 1:30 p.m. Are we minded to give individuals who opt to make oral presentations a time limit?

Asides.

Hon. W. A. ABRAHAMS: Mr. Chairman, all the advertisements and publicity suggest that people should email in their comments beforehand and if they wish to make a written presentation, apply to do so. so

chances are that the bulk of the time the people who are coming to speak would already have sent in written submission but you have to be able to put it together within ten minutes.

Mr. CHAIRMAN: Let me say, though, that if we were not keen on public engagement, we need not have had a Committee at all. We could have just told people if they had comments to email them and we would read them in our spare time. I think that the real value of this is that we have an opportunity for people to engage in a way that sending a written submission would not do.

I can say that I sat on the Select Committee to do with this issue back in 2012 and that even though ICAB, for example, sent in a written submission, their robust oral submissions were more impactful than anything that we have read. May I suggest that we... I do not want to say ten minutes. If we have a written submission, I think that we should adopt some flexibility but in no instance should we allow anybody to go past 20 minutes or something like that?

Senator C. A. FRANKLYN: Could I suggest that we give 20 minutes but if a fellow is making sense you could gauge your clock.

Mr. CHAIRMAN: That might be a practical way of doing it.

Senator C. A. FRANKLYN: But if he is talking rubbish then you can...

Mr. CHAIRMAN: No, what would happen is that I would leave the meeting and appoint a Deputy Chair.

Asides.

Hon. W.A. ABRAHAMS: Senator Franklyn, you just need to know that all of these comments are being read into the record too.

Senator Ms. M. C. TAITT: Mr. Chairman, while you may be concerned about the ten minutes, I do agree with Minister Abrahams that we should try to manage presentations so that we can encourage dialogue and reduce rambling which can then be tedious. Leading on from that, what happens after the submissions? What is it that we are seeking to do? Who is going to collate the information and condense it into something for our deliberation, and what is it that we as a Select Committee supposed to doing? Are we reading this information and doing a report on them? What is it that we are supposed to be doing as a Select Committee, please? Will somebody clarify which one it is?

The CLERK: This is actually determined, (1) by the Terms of References, and once we hear the submissions, our job is to then make recommendations back to the two Houses as to whether the Bill as drafted should remain, whether there should be changes, and all presentations both written and oral should help us to distill what is good from those presentations and what can add to the Bill. One of the key features of this Committee is that the Bill is coming to Committee before the conclusion of the Second Reading and therefore the Committee still has the opportunity to look

at the principles of the Bill. Normally, once the Second Reading is completed all the Committee is concerned with is whether the clauses as drafted express those principles but we are a bit wider than that. As I have said, our job is then to recommend to the House what changes, if any, that we see should be made to the Bill.

Senator Ms. M. C. TAITT: Thank you, Mr. Eastmond. Mr. Chairman, when someone is finished making their submission, are we going to just say thank you, or are we going to engage in dialogue and if so which one of the Committee members will do so, or if somebody comes in here and says but, Dale Marshall, so and so and so and so, is that out of order, or how is it happening?

Mr. CHAIRMAN: Members of the Committee are entitled to ask questions, to respond in any way to a comment. It is an interactive engagement. It is not an evening conversation in a restaurant but if people posit certain arguments, you are entitled to say, I do not agree, perhaps there is a better way, you certainly are not going to say you are talking foolishness but it is an opportunity really for us to engage and get their ideas. Some people may say something that you cannot possibly ask them anything but others will speak in such a way as to encourage dialogue. The Public Accounts Committee, while useful, is not entirely apposite but you are not to cross-examine the individual who is making his contribution but dialogue is encouraged.

Senator Ms. M. C. TAITT: Thank you, Mr. Chairman.

Mr. CHAIRMAN: And then we say thank you.

The CLERK: Mr. Chairman, I know, certainly on my experience, you get written submissions but there are not many people who are prepared to come and make oral submissions in Parliament, but we will see.

Senator Ms. M. C. TAITT: Yes, but it is a new day.

Hon. W. A. ABRAHAMS: All you need is for a couple to come and as it is being streamed more will then come. You just need three people in here to come with their presentations and then a lot of people will come.

Mr. CHAIRMAN: That then perhaps takes us to the question of when we meet and perhaps....

The CLERK: Mr. Chairman, before you go there, we have a deadline for the written submissions and if by next week, which is the deadline, we only have one other submission, do we close off submissions and proceed apace with the work, or do we extend?

Mr. CHAIRMAN: I would like to suggest that we decide that later on.

The CLERK: And do we start with those submissions or do we go through the Bill as a Committee? Do we start with the submissions or do we go through the Bill as a Committee before we get to dealing with the submissions?

Mr. CHAIRMAN: I think that everybody has

the Bill and I am assuming that Members would have used the time and will continue to use the time to familiarise themselves with the content of the Bill. We have invited submissions so let us go straight into the submissions. I think it is pointless us considering the Bill, then getting submissions to reconsider the Bill.

Senator C. A. FRANKLYN: I have made note on some aspects of the Bill, so why do not we get them out of the way first?

Asides.

Mr. CHAIRMAN: They may have the same criticisms as you.

Senator C. A. FRANKLYN: Alright, I will be guided by the...

Mr. CHAIRMAN: Ms. Taitt, as you often are.

The CLERK: Mr. Chairman, I should let you know that Solutions Barbados, through its President, Grenville Phillips, has indicated that he will be out of the island from 27th until the 30th, so in relation to oral presentations, he would like to make one but obviously it would have to be after the 31st.

Bishop J. J. S. ATHERLEY: I just have a bit of trivia, dress code. For this internal meeting, I understand that but when you are interacting with the public, what would wear, parliamentary dress?

Mr. CHAIRMAN: Are you pointing at me because I do not have a tie on today?

Asides.

Bishop J.J. S. ATHERLEY: No, no, I am saying this is quite fine today for this internal thing but when we are interacting with the public, what do we wear?

Mr. CHAIRMAN: It is a Subcommittee of Parliament and one would expect sober dress, though I can say to you that at Public Accounts Committee meetings, while Members did not necessarily wear a tie, they invariably wore a jacket or shirt jack but I am happy to wear a tie if you prefer.

Bishop J. S. ATHERLEY: No, I am just asking, I want to be guided.

The CLERK: Business attire is fine.

Hon. W. A. ABRAHAMS: Mr. Clerk, may I suggest that before we actually have this meeting that you get these microphones checked because the quality of your mike in particular is horrible. Actually, I had to be lip reading you to follow what you are saying.

Senator Miss L. R. CUMMINS: Mr. Chairman, just to point out that for the purpose of live streaming, there is no challenge with the audio but this room, the microphones, each time we have Senate, this is the problem, the audio is terrible, we cannot hear one person from down there, so this is a substantial issue.

Asides.

Senator Miss L. R. CUMMINS: Which is probably why Senator Franklyn shouts so loudly.

Asides.

Mr. CHAIRMAN: I mean, I am having trouble hearing too, so let us just get them checked.

okay. Before we move speedily to a conclusion just let me say that the individuals who are making presentations will be accommodated at the table at the other end, so they will be at the table, people will be allowed to sit in the Public Gallery on either side, and I am assuming that the video and audio people would set up and do their various tests and checks beforehand.

The CLERK: Well, CBC wants to carry the Monday one live and I suspect going forward they would want to do that, so they have actually written asking for permission, so I take it that we could...

Mr. CHAIRMAN: Do we have any difficulty with the broadcast then?

The CLERK: No.

Mr. CHAIRMAN: Good.

The CLERK: CBC wants to carry the proceedings of the Committee live on Monday, and GIS and the Nation have asked.... What we do is that we give them a link into our streaming, GIS wants to stream it to their Facebook page, CBC wants to carry it live and the Nation Newspaper wants to carry it, so we have given permission.

Senator Ms. M. C. TAITT: Mr. Chairman, did we finalise the query about the 10 seconds delay, as to how we address that in the House?

Mr. CHAIRMAN: As Senator Franklyn pointed out, we are protected by qualified privileges but I will undertake as Chairman and I would ask that we all discourage people from...

The CLERK: You have absolute privilege.

Mr. CHAIRMAN: Absolute privileges, so there you go, so that is not an issue but we would obviously discourage people from being reckless and inconsiderate, Minister Forde?

Hon. Miss C. Y. FORDE: I just want to ask if we had come to an arrangement as to the deadlines for presentations because we could not hear.

Mr. CHAIRMAN: I think the consensus was that we take it as it goes because so far we have one person. We have invited Sir David and we only have one contribution, so let us wait and see what happens. If there is a deluge we will cut it off and if there is no deluge then we will just take them as they go.

Senator Miss L. R. CUMMINS: Well, this is just a follow on question to that because in trying to pre-empt Senator Franklyn in terms of receipt of documents and circulation time and preparation for the actual discussion, you know Senator Franklyn would stand and say, well, you know we only saw them on Saturday. The cut off time is Friday evening, if we get a deluge at the eleventh hour, how do we make sure that we get the documents in in time for the meeting on Monday?

Hon. W. A. ABRAHAM: Mr. Chairman, if I may assist, based on the fact that the Terms of Reference for this... This is not a fact-finding committee, so to be honest with you if things come in late and we do not have anything else to put before the Committee, then let us deal with the late ones, I would not think it as a big issue because we are just looking to

get recommendations and pick apart the Act, as opposed to winning a debate or trying to get to a certain point in law or fact.

Senator Miss L. R. CUMMINS: I am not talking about the actual substance of the questions, I am talking about the time and the ability to read a large quantum of them if they come in at the eleventh hour prior to the start of the meeting.

Senator Ms. M. C. TAITT: Mr. Chairman, are we only doing one meeting?

Mr. CHAIRMAN: No, no.

Senator Ms. M. C. TAITT: Oh, I am sorry.

The CLERK: We have a meeting on Monday so anything that comes over the weekend obviously would not be put before that meeting.

The CLERK: Senator, do not confuse the Committee's work with legislation which has different timelines.

Mr. CHAIRMAN: How much time would we want to meet for on Monday? Solutions is unavailable on Monday. We have Sir David, and I think we can have a fairly lively discussion with Sir David, but we should not want that to go for more than an hour. When it is finished, it is finished but what I am suggesting is that if there are other submissions that come in we should put those people on standby to join us on Monday if they are available.

Senator Miss L. R. CUMMINS: I just referred to Anthony Shaw to ask if IGB, [Integrity Group Barbados] is preparing a submission, did he affirm yes?

Mr. CHAIRMAN: He affirms that he has already prepared an editorial.

Senator Miss L. R. CUMMINS: So I assume that there are two pieces being prepared for submission which means that we should have them by Friday.

Mr. CHAIRMAN: Well, I have no difficulty with inviting them for Monday.

Mr. CHAIRMAN: I know that you have some place to go or to go back to. So our first meeting then is next week Monday, same time, same place. Now, we have the option of setting our next meeting then but I would rather we think ahead and try to set at least two possible meeting times now, so that we have an idea of what is happening. I do not have to be here, we could have a Deputy Chairman but I know that I will be away for a few days in the first week of September and then again for a few days in the second week of September and I would not want us to miss those weeks just because I am not here.

Mr. CHAIRMAN: So we meet on the 27th, that is Monday.

Senator C. A. FRANKLYN: For how long? Because if we have oral submissions and they do not fill up the time we could probably go into discussing the actual Clauses of the Bill that we have, I think if we start at 1:30 and finish with Sir David by 2:00, that we could then maybe go from 2:00 to 4:00 discussing the Bill.

Mr. CHAIRMAN: To my mind, I do not

think we need to do that discussion publicly. I think we can do that in Committee without cameras and we can speak candidly around the table and so on without the formality.

Asides.

Mr. CHAIRMAN: No. I think what Senator Franklyn was suggesting is that in the event that we start at 1:30 and finish with Sir David by 2:00, that we could then maybe go from 2:00 to 4:00 discussing the Bill. I am sure we can plan our business better than that. The public is not interested in us having another parliamentary debate in Committee.

This question was asked but you did not actually get to it. When once all of the public work of the Committee is done, the Clerks will begin to prepare a draft report but we will sit together, go through the Bill, look at the various proposals, say what we like, what we do not like, what we can accept, what we do not accept and then we come up with a report, and its form is quite sterile. It says we met. Section 1 is approved; Section 2 approved; Section 3 amendment recommended in the following terms; Section 4 amendment recommends the following terms; Section 5, we recommend deletion. That is the kind of report that we will produce that can then go back to Parliament, can go to the Chief Parliamentary Counsel if Parliament agrees, and then be amended.

The proceedings of the Committee will be available in transcript and will form part of the record but the actual results of our deliberations will be presented to Parliament in a report that really is very sterile, and you could have dissenting views if you wish. We have had dissenting views in Select Committees before. The Opposition has had dissenting views.

The CLERK: This is just the Bill and the submissions.

Mr. CHAIRMAN: Yes.

Senator Ms. M. C. TAITT: Mr. Chair, we are looking at a date?

Mr. CHAIRMAN: Well, we can set the next date after we meet but I would just like us to have it in mind. I know that the Honourable Ralph Thorne is away on the 27th.

Mr. R.A. THORNE: No, that is changed.

Mr. CHAIRMAN: Oh, that is changed? Okay, good, alright, fine, so then there is just the question of setting the next date. I am unavailable until September 7. How about Monday, September 10, 2018?

Asides.

Mr. CHAIRMAN: Members, let me just say that on the behalf of the Government the idea is that the Committee should be thorough but that we should try and work with some dispatch. I would like from the Government's perspective that if we could complete our work no later than during the month of October, sooner if possible, but that may depend on the volume of submissions, so that if we give ourselves a six-week period of consultation and work, by the middle of October...

Senator Ms. M. C. TAITT: Mr. Chairman, I understand the Government's need to move with dispatch but from a realistic standpoint, inasmuch as everybody who sits on this Committee is not a public servant dedicated to Government Business, I am not sure if that is 100 per cent feasible if you expect the non-governmental persons to actually read, particularly if we get, to use Senator Cummins's words, a deluge.

Mr. CHAIRMAN: Well, let us say if we do get a deluge, well, that is why we have a quorum. I do not expect that all 11 Members will be here at all times. I certainly may not be, but we will just get on with the business.

Senator Ms. M. C. TAITT: Thank you, Mr. Chairman.

Mr. CHAIRMAN: The hardest part of this exercise will be the Report itself, so that if we can assume that we should be able to programme the public consultation part for a four-week period, depending on the level of submissions...

Senator Ms. M. C. TAITT: Mr. Chair, is this proposed date September 10 a continuation of the public hearing? Is that what it is?

Mr. CHAIRMAN: I am assuming... We are meeting on the 27th. We know that Solutions cannot present at our First Meeting so that they would want to push back. We have to wait and see how people submit and so on, so that I am suggesting that the next possible date could be 10th. It is not fixed in stone, we can set that on 27th but I would just like us to have an idea of when we are likely to meet so that we can pencil it in tentatively.

Senator Ms. M. C. TAITT: Mr. Chair, so that when you talk about six weeks, do you mean six weeks to complete the entire process or just the public hearing?

Mr. CHAIRMAN: Well, if we could complete the entire process, I would like that, if we cannot, because of the volume of... This is a win-win situation. I really want the public to weigh in on this subject and I am not going to do anything to stymie public dialogue, not on something as critical as this, but at the same time I do not want that well into next year that we are still having Committee meetings.

Senator Ms. M. C. TAITT: Very well.

The CLERK: Mr. Chair, the document that was circulated, with the blue cover, is a printout of the procedural rules: one of those rules says that a Joint Select Committee to which a Bill has been committed shall report to the House not later than three months after the committal of the Bill, providing that any period during which the House is in recess shall not be counted for this purpose.

Mr. CHAIRMAN: So that that effectively sets the timeline for us.

The CLERK: So that is actually three months, let us say to the end of October.

Mr. CHAIRMAN: Members, what the Clerk does not want to tell you is that having committed the Bill on 17th July, that we have three months from 17th

July. I wish he had told me so back then. Anyway, we will get it done. I am not too worried about that.

Asides.

Mr. CHAIRMAN: No, no, we are not extending anything. Are there any other matters that Members would want to raise? Transcripts will be available before every meeting. I happen to like mine in writing because I like to write mine up but for those of you who want theirs emailed.... Senator Franklyn cannot have his emailed because he said it would jam up his I-pad and Parliament cannot give him a new one.

Asides.

The CLERK: Mr. Chairman, what we will do is that we will email the transcripts, as well as to provide hard copies to Members.

Mr. CHAIRMAN: Can I ask that the written submission which has come in from Solutions be circulated, please?

Asides.

Mr. CHAIRMAN: Members, you have in your bundle about eight articles published by Dr. Philmore Alleyne, Senior Member of the Cave Hill Faculty. I do not know if colleagues would object to hearing him.

Asides.

Mr. CHAIRMAN: You do? He went to school with you?

Asides.

Mr. CHAIRMAN: Well, we have his written documents, we do not need to invite him then. I am not sure how that gets in.

Asides.

Senator Ms. M. C. TAITT: Mr. Chairman, I happen to know of Dr. Alleyne's brain from working with him on the Fair Trading Commission, so that if he is available I do think that we would benefit from his submissions, notwithstanding his written submissions. He has a brilliant brain.

Mr. CHAIRMAN: Well, these are not written submissions, these are articles sent to me and I thought that it would benefit the Committee by circulating them.

Asides.

Mr. CHAIRMAN: I certainly do not have it but if IGB (Integrity Group Barbados) has it....?

Asides.

Mr. CHAIRMAN: Colleagues, the only people who have to defend this Bill are the Members of the Government side, but there is no whip here and I am expecting that you will speak candidly, so I am just letting you know. Please take the opportunity to review the Bill in as much detail as you can. Nobody is going to be asking us questions but some of us at least need to be able to speak on it.

Asides.

Mr. CHAIRMAN: Should we reach out to Dr. Alleyne then and invite him, if he is willing to come? Senator Cummins, you know him. Maybe you can facilitate the Clerk. The Clerk would still write. Unless

there is any other business. I would like to bring this meeting to a halt. Refreshments are downstairs. I went earlier and I happened to find them, so that you are invited to participate in the small repast in the Dining Room.

Asides.

Mr. CHAIRMAN: Do we have a Motion for the adjournment?

Hon. Miss C.Y. FORDE: I beg to move that the Meeting be adjourned until Monday, August 27 at 1:30 p.m.

Senator Miss L.R. CUMMINS: I beg to second that Motion.

The Motion that the Meeting be adjourned until Monday, August 27, 2018 at 1:30 p.m., was agreed to and **Mr. CHAIRMAN** adjourned the Meeting accordingly.

**SECOND MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

MONDAY, AUGUST 27, 2018

First SESSION 2018-2023

PRESENT

- Hon. D.D. MARSHALL, Q.C., M.P. (Chairman)**
- Bishop the Hon. J.J.S. ATHERLEY, M.P.** Leader of the Opposition)
- Hon. W.A. ABRAHAMS, M.P.**
- Hon. C. McD. GRIFFITH, M.P.**
- Hon. Miss C.Y. FORDE, M.P.**
- Hon. C.E. JORDAN, M.P.**
- Mr. R.A. THORNE, Q.C., M.P.**
- Senator Miss L.R. CUMMINS**
- Senator Ms. M.C. TAITT, Q.C.**
- Senator C.A. FRANKLYN**

IN ATTENDANCE:

- Mr. PEDRO EASTMOND** (Clerk of Parliament)
- Mr. NIGEL JONES** (Deputy Clerk of Parliament)
- Ms. SUZANNE HAMBLIN** (Assistant to the Clerk - Joint Select Committees)
- Ms. NICOLE THOMPSON** (Special Advisor to the Attorney-General)

Mr. CHAIRMAN: Good afternoon, colleagues in the House of Assembly and colleagues in the Other Place, members and staff of Parliament, members in the Gallery and the Press. This, the Second Meeting of the Joint Select Committee on the Integrity in Public Life Bill, 2018, is now convened.

MINUTES

Mr. CHAIRMAN: The Minutes from the first meeting of August 21, 2018, have been circulated and I am thinking that they have been read. Can we have a Motion?

Senator C.A. FRANKLYN: I move that the Minutes be taken as read.

Senator Miss. L.R. CUMMINS: I beg to second that Motion, Mr. Chairman. The Minutes were taken as read and approved, and there were no matters arising therefrom.

Mr. CHAIRMAN: I would like to move swiftly into the proceedings today, but I would like to begin with just a few remarks. I have already welcomed you to this meeting. Let me say that I am very happy that this meeting of this Joint Select Committee is being streamed live and on Social Media. It is important that

the public has every opportunity to engage in this kind of process. The Integrity in Public Life Bill is one that is a cornerstone of this Administration, and we feel that every opportunity should be given to the public to participate in this kind of parliamentary process. To date, we have had 14 written submissions and seven individuals have indicated their wish to make oral presentations before the Committee. The life of this Committee is three months, and therefore it means we will have to work with some dispatch.

I think everyone knows what we are talking about when we speak about corruption. It takes many forms but for the purposes of our Integrity in Public Life Bill, corruption has been defined by Transparency International as the use of public office for private gain. I think that everyone would readily agree that this has been a hot-button subject for all of Barbados in recent months throughout the last Election and, certainly, since the Barbados Labour Party has taken over the Administration; and recent events well known to Barbadians have served to underscore the significance of our Government grappling with the issue of corruption in the earliest and strongest possible way. We look forward to public participation. We still have more Barbadians who are interested, and we encourage you to come forward in your numbers. I would like to say, but bearing in mind that our life is only three months it would present a difficulty for us to hear everyone. Please continue to submit your written memoranda so that we can consider them as we look at the Bill. This is not a Commission of Inquiry of any kind: this is a Select Committee drawn from Members of both Houses of Parliament, and our purpose is set out in the Terms of Reference. Quite simply, it is to look at the Bill, as is drafted, to see if it will achieve the purposes which are expected of it.

We are honoured to have one of the region's finest jurists and one of the finest legal minds who has agreed to address this Committee. I speak of none other than Sir David Simmons. Sir David Simmons needs no introduction but he eagerly accepted our invitation to address this Committee on matters relating to integrity in public life and on matters relating to his own work in a similar environment and with similar legislation in the Turks and Caicos Islands. Sir David, I welcome you to this Committee. The microphone is yours.

Sir DAVID: Thank you, Honourable Attorney

General, Members of the Committee, Senators, Members of Parliament and Clerks at the Table. Good afternoon to you.

Asides.

Sir DAVID: Sir, did you mention that for the last eight years I have had responsibility in the Turks and Caicos Islands as Chairman of the Integrity Commission?

Mr. CHAIRMAN: Yes, Sir.

Sir DAVID: Sir, then let me thank you for inviting me to address this Joint Select Committee. I hope that the experience which I have had in the Turks and Caicos Islands will be of some assistance to the Committee. It began in April 2010 just after I officially retired as Chief Justice of Barbados. I was invited by the Governor of the Turks and Caicos Islands, a gentleman whom I did not know, to come and establish the Integrity Commission of the Turks and Caicos Islands. All they had was legislation similar to the Bill that is before the Select Committee now. Six of us were appointed Commissioners, and the Turks and Caicos Islands were in a very parlous state financially, so we were established with very little funding and no human resources. It was a massive task. There was a gentleman from England sent out by the Foreign and Commonwealth Office, Mr. Keith Sargeant, who assisted the Commissioners and the one secretary we had in establishing this Commission. We took it from scratch as is going to happen here in Barbados once this legislation is passed.

The Commission has grown over the years to the point where in the first week of June this year, it was held at a Commonwealth Secretariat-organised conference in the Turks and Caicos for institutions similar to the Integrity Commission as the template for others to follow. Indeed, you may be aware, Sir, that about September-October last year the new Prime Minister of the Bahamas announced – it was carried regionally – that the Bahamas was going to establish an Integrity Commission and follow the legislation of the Turks and Caicos Islands. Of course, there are other Integrity Commissions in the region. Trinidad has had one for a long set of years, Jamaica has had one, Dominica and so on.

The time is surely ripe for Barbados to follow suit. If only for two reasons that should touch and concern us all in April this year. As a global scourge, corruption is attracting the attention of world leaders and the international financial institutions. The Summit of Americas as you all know was held in Peru in April this year and the hot topic was how Governments can combat corruption at the highest level throughout the Americas, and that would include us. In the same month of April this year, the International Monetary Fund, that we are dealing with now, promulgated a framework for enhanced engagement with countries on governance and corruption issues and the objective, according to the release from the IMF, is to ensure that issues of corruption are dealt with, and I quote: "...systematically, effectively, candidly and in a manner that reflects uniformity of treatment".

I think that we can all expect that when the IMF conducts their usual Article IV review of countries in future it will probably comment on actual or perceived corruption within a particular country so it behooves us to start to put our house in order to align ourselves with the rest of the world and best practices that are being developed to enhance good governance.

I suppose, historically, it would appear that there has been apathy towards corruption in the region and the reasons may be located in a number of phenomena such as fear of victimisation. In our small societies there exists a real fear of victimisation which is high because of an absence of whistleblower legislation.

Secondly, of course, there have been few prosecutions for corruption and people are seen to get away with it and that itself leads to apathy among the population so people, because of the indifference to corruption, feel powerless to do anything about it.

Thirdly, there is clearly a lack of investigative journalism among the newspapers in the region and before we are too quick to criticise them, I think that we should recognise that this may be the result of a lack of financial resources among the media or it may itself reside in a fear of victimisation among the journalists; but to compound the problems for journalists is the fact that few countries, Jamaica certainly exempted, but few countries have freedom of information legislation and I suppose Governments delight in denying their public the right to access to information held by the Government when in fact very little of Government information is so secret that the public cannot know about it.

Finally, perhaps, there has been the role of the private sector in contributing to apathy towards corruption. Corruption in the public sector is a direct consequence of willing, greedy and corrupt persons in the private sector. There is big money in Government contracts, everyone knows that and where election campaign financing is non-existent, legislation for election campaigning is non-existent and public procurement legislation is toothless, I do not think it is fanciful to suggest that financiers of election campaigns of Parties expect that if the donees of their funds are successful, they will have access to lucrative Government contracts. These attitudes have developed over such a long time that they are almost part of the culture of life in this region.

I wish to explain to the Committee that I think the Turks and Caicos Islands provides an interesting and apposite case-study about the consequences of corruption and how you can attempt to redress that scourge. The Turks and Caicos Islands, as some of you know, since 1976 have had several Commissions of Inquiry with a very high powered chairperson such as Sir Louis Blom-Cooper and the most recent of course was Lord Justice (Robin) Auld. He was a one-man Commission of Inquiry that investigated and reported in 2008/2009.

But I think that it is important to look at the economy of the Turks and Caicos Islands. Between

2000 and 2008, they, Turks and Caicos Islands, experienced economic growth which was said to be among the highest in the world according the UK National Audit Office and there was a lot of overseas investment and one of the islands, Providenciales was the main beneficiary of that investment and it is transformed as a result of the investment; but that development came at a cost to the people of the Turks and Caicos Islands because, what were essentially Crown lands were used by the members of the Government for sale to developers, particularly Europeans and for which members of the Government got handsome kick-backs and without going into the details which are not really relevant for this Inquiry, let me just say that Lord Justice Auld, in his report, made a stinging indictment of the quality of governance in the Turks and Caicos Islands, from the Premier back down and having done the Commission of Inquiry, which was able to identify a large number of dubious transactions, let me put it no higher than that, involving Ministers, the Premier and attorneys-at-law, Sir Auld was careful not to make specific findings of corruption; instead he used language that was so couched as to leave it open to the imagination, but at the same time, to create a platform for investigation. He would use words, for example, like "this particular transaction requires further investigation to determine whether there was, in fact, corruption".

The British Government took that report, created a special investigation team, led by Helen Garlick, Senator Taitt and the Honourable Ralph Thorne may remember Helen Garlick being here once. She and her husband had addressed the Bar many years ago, but she put together the team with Scotland Yard personnel and they went through each area that Sir Robin Auld pointed to and eventually charged a large number of public officials from the Premier, as I said, to lawyers even in private practice and they are before the Court still. A case has been going on for a few years now, very well.

In the meantime, Sir Robin had identified a few developers who had influenced members of the Government corruptly and because the Turks and Caicos Islands – this is now about 2012 – did not have the financial capability to continue high level prosecutions and to carry the costs of further prosecutions, deals were made with some of these developers and they paid back the Government, in one case, US\$12½ million and that was in exchange for not being prosecuted, so that the Government got money. What has happened is that whereas at one time, around 2008-2009 the economy seemed to have been booming, so much was sucked out of the economy by way of corruption that 2012, 2013 and so on, things were very, very bad and our Commission started work – and I will tell you some of the things we did and I hope to see happen here – and gradually with a different environment for the functioning of Government there has been a resurgence in the economy.

Let me give you an idea. The last three years have seen not deficits as were the norm between 2010

and 2015 but now surpluses. We are talking about 10 islands with about 35 000 people so we are not talking big money but it is an important point of principle for a Government to move from a situation of persistent deficits to one where in the last three years, each year we are reporting surpluses, \$35 million, \$60 million, \$38 million, that kind of thing and no study has been done and it would be quite improper for me to assume that the Integrity Commission has had a direct consequence in the change of economic and fiscal fortunes in the Turks and Caicos Islands. What I can say is that the public is aware of us, that the Commission has been working throughout all of the islands carrying a message to the schools and up; if you go on our website you would see. There is a competition going on, I think it is still going on now, among schools, about integrity and corruption and so on. We have started in the schools and when the Commission was able to get financial resources and human resources we started to organise it. Clause 4 of the Bill sets out the functions of the Commission and just running through them quickly, the first one is to keep on record all declaration statements of registerable interests and reports of gifts forwarded by persons in public life. We are, first of all, a repository for the safe keeping of declarations and statements of registerable interests.

Whenever this Commission is established that has to be a function that is populated, you have to find one or two persons, data entry people and so on to do that. Secondly, to examine declaration statements of registerable interests and reports of gifts, et cetera. This is the compliance aspect of the Commission's functions and this is where now you have to ensure that you have on your staff, a minimum of two, possibly three accountants because when a declaration is filed those members of staff have to go through that declaration and see whether it makes sense and if they need to pursue aspects of the declaration by checking in the Land Registry or the Corporate Affairs Registry or wherever. I am not going to go into the modalities of investigation but the compliance section, it is not just that you have filed, filing is one thing but it is the content of what you have filed that is important because you may be, as I said, be carrying the Commission on a wild and misleading ride. Thirdly, to make inquiries and carry out investigations in order to verify or determine the accuracy of a declaration you may require financial analysts to assist with that. Fourthly, to receive inquiries into and investigate any complaint or report of an alleged contravention of the Act or the Code of Conduct and that is the investigatory function of the Commission. You need three or four top investigators preferably, who have skills in the investigation of white collared crime, who could investigate numbers. There will also need to be general investigators because members of the public make complaints to the Commission as is required in writing and those complaints have to be investigated. Now, I wish to suggest to the Committee that you want an entity separate and distinct from the Police Force. The

Police Force will not have the time, or the manpower to do the kind of investigation that is required for an Integrity Commission.

We have the Royal Turks and Caicos Police Force but the Commission itself recruits through a very transparent and elaborate process. When we want staff it is put on the website, put on several different websites, but the quality of persons that we have got are retired officers who served in the Serious Organised Crime Agency (SOCA) of Scotland Yard. They are very high-powered people. The problem, I will have to confess, is that they do not stay long, they come for two years, then they go, the Turks and Caicos is a small community but that is the quality of persons who have worked in financial crime investigation in London, Scotland, those are the kinds of persons that we have had working with us. They investigate whether there is crime or indeed whether there are breaches of the Code of Conduct.

I see the Bill makes provision for the development of a Code of Conduct. I am aware that in the Public Service Act, 2007, there is a Code of Conduct, I believe for public officers. We have one, this is what it looks like, this is the one for the Turks and Caicos. I am not enamoured by it, a lot of it was done by the British Government and set down in a hurry to meet the election of 2012 but it is a guide. I am sure we in Barbados could develop one that is far better than that, but you have to have a Code of Conduct for Ministers and Members of Parliament. I do not know if they still do it, when I first went to the Cabinet in 1985, the Cabinet Secretary, the first day I went, gave me I think three pages of paper with the dos and don'ts that you did not do or that you did as a Cabinet Minister. I do not know if they still have it, if they still give new Ministers, but that was a little code that we had at the time. I think they repeated it in 1986, I cannot remember, but having given me one once or twice they would not have given me again but I do not know if the new Members of Parliament get it, but it should be so. If you have not ever seen it you should ask, it has to be on some file up there. It is useful but it is not full.

Sir, I would wish to recommend, however, that the functions itemised at 4, (1) a-h can perhaps be enlarged by one more. The Bill does not make any specific statement about public education, but, I would wish to offer or to proffer the suggestion that we should include by way of amendment an additional paragraph to put it beyond doubt that one of the core functions of the Commission will be to promote and advance the Objects of this Bill by means of public education. Do not just leave it to chance, it was not in the TCI legislation, we did it by administrative action – brought on a person to be the Public Education Officer and created a department, but I would prefer to see it as a specific responsibility of the Commission set out in law.

I understand that some members of the public were concerned that Clause 9 said that the Commission may designate a person employed under Section 8(1) as an Investigative Officer and issue a warrant, and somebody thought that the Commission could not

function with one investigative officer and that is quite true. But what the critic ought to remember is that in the Interpretation Act, the singular includes the plural, so this only means that you could employ investigative officers. The fact that it says "a" does not limit you to one person. If you want to change it to put it beyond doubt, you could say "may designate such persons as investigative officers", but really it is a trite point of law.

I am going to make a few more comments, Sir, about the Bill and then perhaps it will be more useful if Members of the Committee ask me specific questions and I can answer them. Now what is being done through this Bill will constitute a seen change in the culture of public affairs in Barbados. It will require Members of Parliament, Ministers, Members of the Senate, Magistrates, Permanent Secretaries – the list that is set out in the Schedule – every two years to spend a little time, probably a day, getting together some information, and filling out the form. Since this has never been done before, there is going to be an instinctive reaction that somehow Government is trying to pry into people's personal affairs and intruding.

Let me say, first of all, that that is why you need the public education programme, properly funded and resourced, to explain to people why this is necessary and then to go beyond that and to give the assurance that the provisions in this Bill, relating to secrecy and confidentiality, are meant to bolster confidence in the system.

From the time you file your declaration in the Turks, the compliance staff seal it, nobody else. It is scanned onto a server and the software on that server is encrypted. The only people who have access to that server are the compliance officers, not the Director, not the Chairman or none of us as Commissioners, and there is a penalty. Once you join the staff, in fact starting with the Commissioners, all of us have to take oaths to secrecy and we are liable to prosecution for breach, and we have to, as they say, make specified persons in public life who are listed in the Schedule feel confident that the disclosure of their financial and other information will be kept secret. We only as commissioners see a declaration where there is an inquiry and the staff have not been satisfied with the answers to questions and we have an inquiry, and we have had several inquiries, and that is the first time we see it and of course we give back the papers at the end of a meeting and that is it.

I think Members appreciate that the Bill draws a distinction between the reporting requirements of people in public life and the reporting requirements for members and staff of the Commission. We cannot report to ourselves as Commissioners so we report to the Governor in the Turks and Caicos Islands. We fill out our forms and give them to him, other people report to the Commissioner and this structure is set out in the Bill.

Now, Part V of the Bill deals with the registration of interest and it only means that, where as a person in public life - in fact it is limited to Members

of the House of Assembly and Members of the Senate - files with the Commission a statement of registrable interests - and it tells you in Section 38 (1) the contents of the registrable interests, what it is aimed at - it wants to know if you have directorship10s in a company and if it is so, you just state the name of the company, Director of X, Y, Z Limited, because it does not require you when you register your interest to give the amounts of anything. You do not have to say I have \$20 000 in mutual funds or \$50 000 in the Barbados Public Workers' Credit Union or anything like that, none, no details.

At Subsection 2, [it states] nothing in this section shall be taken to require disclosure of the actual amount or extent of any financial benefit, contribution or interests. If you have a contract with the Government you mention that so that that is declared just as if you are a director of a company and you are involved in a contract with the company that would require you to disclose the fact of that contract at a meeting of the Board, and the various interests are set out there. Again, the Compliance Unit checks the register and your declarations. I must say that in the Turks we have had 100 per cent cooperation from the Members of Parliament up there, everybody registers their interests, and indeed every parliamentarian in the Turks files general declarations as required. In fact, while we anticipated that there would have been some resistance after we were set up because of what you were seeking to have disclosed, financial matters and so on, it has turned out to be a most heartening experience. The latest one is not as good as before but I have the latest figures here, the intake, for June the 30th 2018, There are 242 persons who should have filed declarations. As at the 30th of July, 194 had filed out of 242, that is 80 per cent, and the 48 who had not filed, there are excuses for about 20 of them having to do with being appointed to Boards midstream and so on or they were not there for two years, a year or whatever. Five of them currently live abroad and they requested an extension of time and one was very ill and she asked for a 90-day extension, but 80 per cent is the lowest that we have had, but as I say I am sure that would get back up to near 90 by the time we deal with those who have had special circumstances that militated against their filing on time.

One of the features of this legislation is Part VII, Clause 49 and following. So far as persons in public office are concerned, it has always been a crime at common law from about 1783 in the case of *Rex vs Bembridge* to misconduct yourself in public office. You do not have to wait for legislation now, This creates a separate set of legislation but the common law always had the common law misdemeanour so you could punish somebody who misconducted themselves in public life for a crime in 2016, 2017, that is at common law. This legislation builds and adds to the common law. It creates a number of statutory offences by conduct which is classifiable as corrupt, including conflict of interest situations, and the lawyers here understand when a conflict of interest situation arises. It

is where you have a public duty to perform and you allow your private interest to conflict with that public duty. So you have a public duty accepting that Ministerial office requires you to give up any private practice you had as a lawyer, or a doctor and devote your full time selflessly to ministerial office. When you do that and also privately on the side run another business and you are down there at that business for three/four hours a day your private interest in that business is now conflicting with your public duty, your public ministerial duty. That cannot happen in this legislation because you may be caught by Section 51(D) – knowingly is one offence, recklessly is another, of course, allowing your private interest to conflict with your public duties, or to improperly influence his conduct in the exercise of his functions as a public official. I will give an example from a real case from the Turks and Caicos. We prosecuted the Deputy Commissioner of Police, a Turks Islander. There was a murder some years before, his son was suspected of being involved in the murder, investigations started, he was instructed by the Commissioner [of Police] not to have anything to do with the investigation, because his son was involved. He still interfered and we sent the matter to the Office of the Director of Public Prosecutions. The Office of the Director of Public Prosecutions put him before the court. They had a jury and in a small society the jury from that society. Although he said that he was warned and he was told by the Commissioner [of Police] not to involve himself, he said, "But it was my son so I got involved", and they let him go. But in that small society we also have legislation that has abolished trial by jury in certain cases, so that the Premier, Ministers and attorneys who were involved in all the alleged fraudulent deals made, go before one judge, no jury.

I believe it has been an issue ventilated in the public domain about the level of the fines provided in Section 54(1). I do not believe that these represent the original draft but these fines are too low. The lawyers here will recall that when the then Government, the Democratic Labour Party Government in 1994 before the election enacted the – it was called the Drug Misuse and Prevention Act, Cap. 131 of the Laws [of Barbados] as I recall it, the penalties were stiffened for possession, trafficking and drugs and so on. That legislation contained, some penalties as high as \$500 000 and 20 years imprisonment or both and others \$250 000, so there has been occasion when we have legislated very, very heavy penalties. This is a matter of policy for the Members of this Committee and Parliament generally to determine what is an appropriate level but I would think that this (present penalty) is not a deterrent, either a specific deterrent for some of the players or a deterrent for members of the public generally who might be tempted to bribe somebody or commit one of these corrupt offences.

Now of course in small societies idle gossip and rumour and just naked nastiness and cursedness, what President Trump has classified as fake news, can do a lot of damage, and in the legislation it is provided

at Clause 59, that a person who maliciously makes a false allegation or provides false information – suggesting that somebody has acted in breach of the Act – is himself guilty of an offence and if it is before a jury \$20 000 or two years or both and before a magistrate it is \$10 000 or two years or both. That is meant to deter officious busybodies and others from filing vexatious or false reports.

One of the functions of the Commission is to hold inquiries into complaints, maybe an allegation of a conflict of interest, as we do from time to time in Turks and Caicos in kind of informal in terms of the procedure. We do not treat ourselves as high bound by the rules of evidence but we allow for representation of the public official by a friend of attorney-at-law, and you will find that in this Bill that adequate provision is made to ensure fairness, in other words, that no decision is to be made that is adverse to a public official unless he or she has had the opportunity to put his or her side of the story, an opportunity to be heard in accordance with the basic principles of natural justice.

Sir, turning to the Schedule I have a concern about Paragraph 4, Subparagraph 1 in the First Schedule under the heading, 'Appointment of Chairman'. I do not agree that the Governor General, acting in her discretion, should be allowed to appoint the Chairman of the Commission. This is too important a body that is to be headed by a person who "has held the office of Judge in a superior court of record in any part of the Commonwealth". If Paragraph 4 (1)(b) is correct, then Paragraph 4(1) cannot be correct. Paragraph 4(1)(b) says:

"The Commission shall consist of a person who holds or has held the office of Judge in a superior court of record in any part of the Commonwealth appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition."

I would prefer that to read, "*Upon the advice of the Prime Minister after consultation with the Leader of the Opposition*": just as you appoint a Chief Justice now. However, having provided for that consultation you say here in Paragraph 4(1):

"The Governor General shall, acting in his/her discretion, appoint a Member to be Chairman of the Commission"

That is confusing, Sir, so I would prefer if Paragraph 4(1) is deleted. I would recommend that – it is for the Committee to decide – and leave Paragraph 4 (1)(b) with a tweak of the language, to read, "*Appointed by the Governor General upon the advice of the Prime Minister after consultation with the Leader of the Opposition*". Let those two discuss this Judge and recommend to the Governor General, who then appoints, just as you do with the appointment of a judge.

Mr. CHAIRMAN: Sir David, are you proposing that this person should be the Chairman?

Sir DAVID: There can be no doubt that a legally qualified person.... You have limited it here to the office of a judge. On the other hand, this could be

further amended to provide for a judge or an attorney-at-law of not less than 20 years' standing. The Chairman has to be a legally qualified person. There can be no gainsaying that because the work of the Commission, in particular in the area of inquiries, requires someone who understands about evidence, who is able to make determinations and guide the Commission as to findings of fact, and deal with legal issues that will arise. Whenever I do an inquiry, there are high-powered lawyers taking technical points, and there are only two lawyers on the Commission: Myself and Mr. Martin Green, who is an excellent lawyer. On occasions when he has not been there, I may hear an inquiry with the other lay Members, and it is absolutely critical that the Chairman must be a legally qualified person.

Honourable Attorney General, the final point I wish to make by way of my introductory remarks, is that this legislation must be part of a package. It cannot exist on its own, it cannot adequately do the job. We agree that there must be a Code of Conduct developed which will provide for sanctions for breach of the Code. In the Turks and Caicos, there is a provision in their Constitution which we on the Commission have been fighting for the last eight years without any success, because the British Government just refuses to amend the Constitution. Where a Minister in the Turks and Caicos is found guilty in breach of the Code, he must relinquish ministerial office. It does not specify for how long. I suppose, technically, you can find him guilty and say, according to the order of the Commission, "*He shall cease to be a Minister for the next six months*". Equally, you can say "*for the balance of the parliamentary term*". We have made representation to the British Government that you need gradations of sanctions. You need to be able to provide for perhaps a reprimand, suspension or something like that, but it is almost like a judge who is found by a tribunal to have been guilty of misconduct. However small, however egregious, it does not matter: he must be removed from office.

The Privy Council commented negatively on that in relation to the Auditor General of Grenada, whose name I cannot remember now, but the case is there in the West Indian Reports. Lord Mance, in particular, was concerned that the penalty for misconduct in office by a judge is just removal and nothing more. That does not sit comfortably with me and I do not suppose it sits comfortably with most people. Fortunately, you are developing a Code outside of the Constitution, unlike those in the Turks and Caicos. The sanction for breach of this Code of Conduct which I just held up is removal from ministerial office.

With respect, Honourable Attorney General, you need a Code of Conduct but more particularly would like to suggest that you need legislation to regulate campaign financing of political parties and you need a freedom of information Act. I think that those two things plus the code of conduct and this legislation as a suite of legislation will ensure that Barbados has taken proper steps toward providing minimum

standards for good governance and the conduct of persons in public life.

We have had experience in Turks and Caicos Islands with political campaign financing legislation. I think that we are the only one in the region, it was rushed in 2012 by the British Government, they had taken back responsibility for the Constitution from the local people because of the egregious behaviour of Misick and his people, and they wanted to hand back responsibility via an election, so elections was to be held in November 2012, and we received legislation from the foreign and Commonwealth office in August to have it implemented to work for the election in November. It was foisted, but there are a dependent territory so they had to carry out the directive. We got it done by bringing persons who had worked that kind of legislation in England to assist us and engaging the political parties and in fact, all the candidates as to the requirements for returns as to how much you spent every week and so on.

Now, that legislation has settled down and for the 2016 elections, we did not have any problems but what is noticeable, has been the vast difference in the quantum of money used for advertising and for campaigning. Lord Justice Auld's Report speaks of millions of dollars, and their dollar is the US dollar by the way, speaks of millions of dollars being used in campaigns and of Ministers receiving millions of dollars and classifying them as loans, but however that maybe, let me just give you some figures because I think that the people in the Turks and Caicos Islands should be proud of themselves and what they have done.

With the 2012 election, the three parties that contested those elections after the legislation was brought controlling expenditure spent \$578 303. Advertising and publicity materials accounted for \$236 952 or approximately 41 per cent of total expenditure and in terms of the Parties, the PDM spent \$135 000. I am giving you round figures, the PNP spent \$332 00 and the PPP spent \$110 000. I know these sound like small numbers to some of you, but even if you spent \$1 million, if each Party spent \$1 million, there must be control. In 2016, they spent a lot more. Whereas the PDM spent \$135 000 in 2012, in 2016 they spent \$367 000. They got donations of \$297 000 and the PNP spent \$416 800 and they got donations of \$268 000.

One of the phenomenal things that has happened is that people actually called the Integrity Commission in Turks and Caicos Islands and asked to come and see you and say well, we want you to know and we have brought along the cheque that we are going to give the PDM \$25 000, or whoever \$10 000. They actually come and show you and get your blessing for it. There are limits of course because you cannot go above \$30 000 but whatever happens, whatever are the limits that are imposed, as I have said, those are matters of policy, not for me, that is for the people involved in politics, the Government and the Opposition to determine what is allowed, but we have to try and control campaign financing otherwise surely we

understand that the more people or groups or companies, may be even conglomerates contribute to a political Party the more they are going to expect to receive after the elections and that contribution and expectation will constitute the source for corruption.

Mr. Chairman, I hope I have not overstayed my welcome but I have been going for an hour and ten minutes and I am now available to answer whatever questions Honourable Members and members of the Senate have for me.

Mr. CHAIRMAN: Let me thank you for that wide-ranging and thorough presentation on your experience in the Turks and Caicos Islands. I am confident that your experiences will help to, and have already helped to contribute towards making this Bill significantly better than it is in its current form. I shall now open the Floor to members of the Committee so that we can engage with you on a one on one basis and building on your experiences.

Senator C.A. FRANKLYN: Mr. Chairman, I have listened very carefully and I have agreed with what you said, I only noted down the things that I did not agree with, so it is not going to be many.

Sir DAVID: Are you speaking as a member of the Opposition?

Asides

Senator C.A. FRANKLYN: Not right now. You have mentioned that the police force should not provide the investigation for this thing. I have a difficulty with that and I would like you to explain why because right now we are an independent country and if we have the resources in Barbados to use, the Commissioner of Police can designate persons to be the investigators for the Commission in the same way that in the old days before you had an Immigration Department the Commissioner of Police used to designate officers to be Immigration Officers. Every policeman was not an Immigration Officer and I was thinking along those lines when I read the act that we can have something similar.

Sir DAVID: That is provided they become employees of the Commission. We have had police officers move from the Royal Barbados Police Force to – I am thinking of Mr. Guyson Mayers – when we set up that I was the Attorney General at the time, a Financial Investigations Unit, I think we called it, Mr. Guyson Mayers came over from the Police Force and headed the FIU. He was not subject to the direction of the Commissioner. If he had information, of course, he would route it through the Commissioner and the DPP would review the prosecution, but I would prefer if ... I do not mind where you get the investigators from. If you get them from the Police Force, of course, you are denuding the Police Force of those persons. For this, in Barbados you will need to start with about five investigators because, I understand there is material already there in the Public Accounts Committee Report. Suppose that was to be investigated, you will need about five investigators.

Sir DAVID: Yes, Mr. Franklyn.

Senator C.A. FRANKLYN: The next thing I am concerned about is Section 39 – or Clause 39 as it is a Bill right now – the register of interest and subparagraph 2 we have that this register can be made available to members of the public. I wonder why?

Sir DAVID: So that the public can see that you are the Director of X, Y or Z company and that you have shares in MASSY.

Senator C.A. FRANKLYN: But for what purpose? We do not have Freedom of Information legislation. If you want to have that, then so be it.

Sir DAVID: I said that this has to be ...

Senator C.A. FRANKLYN: No, no, but there was a comment at the side saying "freedom of information". I am saying we do not have it. If we are going to do that, let us do that altogether, let us get everything instead of these piecemeal measures that ... anyhow, I want to move on. Section 59 ...

Sir DAVID: Do you really think that the fact that you are a director of a company should not be known? It is on the Corporate Affairs database, the directors of companies are there so if you have to state in a register that I am a director, I was a director or whatever, what is so ...

Senator C.A. FRANKLYN: No, but you had said earlier that this information is not public.

Sir DAVID: Did I say it was not public? No, it is public. Not the declaration you know, these are different things. The declaration of assets is a different thing from a Register of Interests. A Register of Interests is what it says it is, a register where you indicate, I am a director of this or I have a contract with the Government to repair transmission or I am a shareholder in whatever company, I do not have any trust, I do not have any beneficial interests in land, I do not have any fund to which I contribute, yes, but I am a member of the Unity Trade Union, particulars of any political trade or professional association ...

Senator C.A. FRANKLYN: We need more members in Unity.

Sir DAVID: ... Particulars relating to the sources of income and all you state there is that my income arises from the fact that I am a Member of Parliament and I am paid through Parliament. That is it. You do not say how much you are paid. It says you do not disclose the amount. If your income is as a pensioner, you say my income is as a result of pensions, or whatnot. That is it, it is the source, not the amount so this is separate and you go into the Office of the Integrity Commission in Turks and Caicos Islands and you ask to see the register and they take it out and show you what the Members of Parliament are involved in. This is to make sure that you are not involved in something private or in secret private business which could possibly conflict with your duties as an MP or as a Member of the Senate.

Senator C.A. FRANKLYN: Thank you. The next thing you mentioned that captured me was Section 59 or Clause 59 where if you make a false report or provide false information, there is nothing in here that says that if you reasonably believe that information was

good because sometimes people may believe something and go and report it. Would this not deter people now because you may not know if it is absolutely true or not, or let us say the person was found not guilty even though the information might be accurate but if that happens you would say look now, he has made a false report against me. I have been found not guilty. What happens to that person under this legislation?

Sir DAVID: The person who makes the false statement?

Senator C.A. FRANKLYN: It may not even be false, it is just that it could not be proven in court.

Sir DAVID: Do you see a key word there? I know you pay a lot of attention to your legal language. The key word in this is "maliciously". That word imports the *mens rea* in offence. It does not necessarily mean with malice. Maliciously could be that you did it, yes, out of spite of envy, the usual connotation that one would attribute to malice. On the other hand, it may mean unlawfully or without good reason. The courts would have to construe that word "maliciously".

Senator C.A. FRANKLYN: That is what I was trying to get at because I wanted a definition for the interpretation because one judge interprets one way, another judge interprets another way so I do not know. You see I am not the legal person. I am trying to find out what would happen here because I might have made a complaint that some person made a ...

Sir DAVID: No, I think there is plenty case law in the criminal law as to how Courts have construed the word maliciously and basically it imports a mental element depending on the particular circumstance of the conduct.

Senator W.A. ABRAHAMIS: Before you continue, Senator, I just wish to clarify something as well. The public should not be afraid to come forward with information. The fact that somebody is not found guilty as a result of the information you have provided does not mean you necessarily open yourself up to be charged. You could provide honest, good faith information and the person still not be found guilty. Once again it goes back to the word "maliciously". You only have to worry if you go into there with ... Bajans know what malicious is. If you go in there with bad faith and provide false information. If you provide honest information, or honestly held information in good faith, you have nothing to worry about.

Senator C.A. FRANKLYN: Sir, the next thing that got my attention was the appointment of the Chairman. You recommended that it should be done by the Honourable Prime Minister, in consultation with the Leader of the Opposition.

Senator Miss L.R. CUMMINS: No, that is not what he said.

Senator C.A. FRANKLYN: No, the Governor-General on the advice of the ... I was just trying to be short, but it is the Honourable Prime Minister who will discuss with the Leader of the Opposition or consult with the Leader of the Opposition and then make the recommendation to the Governor-General. We know that does not work.

Sir DAVID: I do not agree with that at all.

Senator C.A. FRANKLYN: We have had instances where the Honourable Prime Minister told some person: "Oh, we want so-and-so to be a judge" and the Opposition said "indeed not" and they said "well, we want the man" and we know what happens.

Sir DAVID: Well, that happened in two cases.

Senator C.A. FRANKLYN: I know of them, that is why I can talk to them.

Sir DAVID: One was... the Leader of the Opposition took a different position on paper from what he said orally and purported not to agree with my appointment. There was another one during Mr. Barrow's time the recommendation of a particular person was made. The then Leader of the Opposition as he then was, Henry Forde, when he was consulted he replied in writing. We do not have the habit in Barbados of consulting orally, our consultations between Prime Minister and Leader of the Opposition is in writing, our consultation has always been in writing. But in the case of that judge it was pointed out that he was being promoted ahead of persons who were senior to him and Mr. Barrow, nonetheless, went ahead with his choice and recommended that person for appointment. The *sequelae* were not pleasant.

Senator C.A. FRANKLYN: The best practice, so far, is the appointment of the Ombudsman. It comes to Parliament, the person is recommended and I believe that should be the way we go with this, rather than with these – I cannot call it 'backroom' because the Honourable Prime Minister and Leader of the Opposition do not go into any backroom. I mean we want more transparency and I believe that it should be done similar to the appointment of the Ombudsman – it comes to Parliament, Parliament agrees or disagrees. I have some more but I am talking too much now, I am going to let somebody else...

Sir DAVID: I have no objection in principle to that proposal but that will be a matter for the Committee.

Mr. CHAIRMAN: The Leader of the Opposition.

Bishop J.J.S. ATHERLEY: Thank you, Mr. Chairman, Sir David, thank you so much for your presentation here this afternoon. I think the work of the Committee is off to a good start with yours being the first presentation. I associate that with the fact that you are a man of proven integrity, tremendous scholarship, *et cetera*. I have five questions which I will just go and perhaps I will get a chance later or whatever: the Whistleblower legislation which is suggested as being very critical to the effectiveness of integrity in public life legislation. Are you satisfied, having looked at this Bill, that this is adequate? That is the first question. The second question is the **Section at 25-26, blind trust**. The way it is operated here at Sections 25(7) and 26, where there is no obligation for disclosure in two cases – at 25(7), where a specific person in public life dies, there shall be no obligation on the administrators of his estate to file a declaration which the specified person in public life would have been required to file had he

lived.

Sir DAVID: Because they would not necessarily know. What he knew died with him.

Bishop the Hon. J.J.S. ATHERLEY: I am just asking if you are satisfied that there is no weakness in this in the way it is worded. And at 26 where a specified person in public life holds any money or any property in trust for another being not being his spouse or child or other person in public life he shall so state in his declaration, but shall not be required to disclose the terms of the trust; so I am just asking about the adequacy of the provisions here on blind trust and whistleblowing, and if you are satisfied that they are strong enough.

Sir DAVID: First of all, on whistleblowing, the provisions here towards the end at 68 to about 72. I think...

Hon. W.A. ABRAHAM: Sir David, is your microphone on?

Sir DAVID: It is on, probably I was making myself a little too comfortable.

Mr. CHAIRMAN: Yes, Sir David, those are the sections?

Sir DAVID: Yes, 68 to 77. The difficulty with whistleblowing legislation, if you look internationally, the best sources that I have come across when I had to look at them, were the United States of America which has specific whistleblowing legislation, so-called, at the Federal and at the State levels, and then in England they have a phrase, they do not call it "whistleblowing" like the United States of America, they call it "protected disclosures" or "legislation protection from disclosure".

Mr. CHAIRMAN: It is actually the Public Interest Disclosure Act.

Sir DAVID: Sorry?

Mr. CHAIRMAN: The Public Interest Disclosure Act.

Sir DAVID: What is that?

Mr. CHAIRMAN: In England.

Sir DAVID: But there is also the Protected Disclosures Act...

Mr. CHAIRMAN: In other jurisdictions, in New Zealand.

Sir DAVID: No, in England too. It deals with the employees of the national health services and so on, it is very limited. Some of those we have captured in the Turks and Caicos legislation and here in Barbados. I think that these are adequate. Over time we will see if there are any weaknesses and may need further amendments, but I think the essentials are here, and one of the best provisions is of course Section 76. If you an employee and you give information about a public official and there is what the section calls a "detriment", then you are guilty of an offence and liable for imprisonment or penalty. An employer or any person in authority over a public official who subjects the official to a detriment by reason of the fact that he blew the whistle, he is liable. Similarly, in respects of contracts, it is entirely possible that an employee will sign a contract of employment with the employer, and we know that it is usual for most employer/employee

contracts at a certain level to contain a confidentiality clause, and, in fact, they go further and contain a clause that restricts you from trading or working in the same line for a specified time and within a specified geographical area, so you could find that as an employer that you signed a contract which says that when you leave this employment you cannot engage in similar employment for five years and within a radius of ten miles from where you were working before, what we call in contract a restraint of trade. This Section 77 says that if you put in an employee's contract that he cannot make a disclosure about something that is corrupt, that Clause is void in that contract. In the place of an agreement between a person and his employer, whether or not part of the contract of employment included an agreement to refrain from instituting proceedings for a breach of contract.

Bishop the Hon. J.J.S. ATHERLEY: Just one aspect for clarification really. From my reading, a lot of emphasis was put on the matter not only of the protection but compensation for persons who blew the whistle to the extent that persons benefited from having blown the whistle on people and they benefited out of the proceeds of the crime associated with that which they had exposed. Am I wrong?

Asides.

Bishop the Hon. J.J.S. ATHERLEY: No, I am saying that one of the areas with concern with reference to whistleblowing was the matter of the use of remuneration, compensation, for those who blew the whistle in cases where proceeds of crime were used to compensate them for coming forward.

Mr. CHAIRMAN: Solutions Barbados, in their written submission, actually proposes that.

Bishop the Hon. J.J.S. ATHERLEY: I am not referring to Solutions Barbados, Mr. Chairman.

Mr. CHAIRMAN: You have a carrot and stick approach, it could be an incentive to encourage people to come forward.

Sir DAVID: In some jurisdictions, police forces have a fund that is kept secret and it is administered by the senior police officers as inducements to get information. I put it no higher than that.

Mr. CHAIRMAN: In terms of our order of proceedings, Senator Cummins, followed by the Honourable Ralph Thorne, followed by the Honourable Charles Griffith.

Senator Miss L.R. CUMMINS: Thank you very much Chair. Thank you for an exceptional presentation today Sir David. I think over the last couple years you have spent quite a bit of time talking publicly on this subject and of course we have been following your work in the Turks and Caicos Islands and we are quite pleased to have you here making this presentation here today.

I wanted to go back to your earlier reference to Section 4 under "Functions of the Commission" where you included an element on public education, and I wanted to ask a question specific to the experience of Turks and Caicos. When you look at the reports that

have been done by the Organisation of Economic Cooperation and Development particularly on the European Union and on Transparency International, for example, those kinds of entities, they talk very extensively about the importance of public education and a balance between pro-integrity and anti-corruption measures, how would you recommend that these issues be treated to in the context of the Section that you just included this under? Thank you.

Sir DAVID: As I indicated during my opening we thought that it was essential to start in the schools with the children. The public education officers go into the schools and put on whatever projects, there are a variety of different things, and we have competitions among the schools, essays, they do little plays on corruption and all kinds of things which is left to the ingenuity of the public relations department. My concern was not to tell you what to do, but to insist that we must have public buy-in of this at all levels. You are going to have to have special seminars for the specified persons in public life when the documents come out, I am talking about the Code of Conduct and the legislation in particular and then you have to ensure that lower down, that would come later on, in the hierarchy of public officials, people are also aware who are not necessarily going to file at the first or second intake but when people retire they will move up and ultimately they would become persons in public life, and as I say you have to do it in the schools and among the youth groups and so on. There are several target areas and I am sure that a staff of three or four would be fully employed getting the message out.

Senator Miss L.R. CUMMINS: So as a follow up to that question in your very detailed answer, the UN Convention Against Corruption and then the National Integrity Systems assessment mechanisms implemented by Transparency International cover quite a number of those things but there are a few groups that you mentioned there, for example, that are not currently incorporated in this legislation so when there is an assessment of the level of corruption and perceived corruption in a given jurisdiction there are some things that are not covered. You mentioned the role of the media, they have also included other sections related to external scrutiny, civil society, and of course the reference to political parties but also the business community. How are those things treated to in the respective legislation, either singular legislation or multiple pieces of legislation?

Sir DAVID: They are not legislated at all. What you do is to create your public education department that then targets the private sector. Perhaps, I was a little too loose there in my language because there is a provision in here about bribery but we do not have a separate bribery ordinance, there is just a section - I do not think it is more than one section on bribery - but to the extent that bribery takes place as a general rule between somebody in the private sector and somebody in the public sector, you should be having a seminar for the Employers Confederation or the BCCI, the Barbados Chambers of Commerce, those sort of

people on this legislation. I would expect that after this is passed that those kinds of organisations would be targeted for special seminars but you have not legislated for it. You cannot limit yourself by putting two or three in here and then you find that there are several other non-governmental organisations that perhaps you need to target, so the programme is one where the modalities of dissemination of the information are relative to the legislation should be developed by the staff of the Commission and then disseminated.

Mr. R.A. THORNE: Thank you, Chair. Sir David, I think you know that this is for me a personal pleasure. I wanted to draw attention to Section 35(5) which prescribes inquiry into the life of the public figure after two years or when he has been out of office two years...

Sir DAVID: You said 35(5). I do not have it.

Mr. R.A. THORNE: 32 (5). I beg your pardon. I am so sorry...that after the person has ceased to be in public life no inquiry may be made two years post the event of his departure from office. I wanted to go beyond that and to ask your position on the Declaration itself. Is there a case for the declaration of assets, most critically, being made extinct, being extinguished from the record after that person leaves public office. Say a chap has left seven/ten years later and there is some document somewhere of his assets at the time. Is that fair to him or to her, or when he or she leaves public office should that record become extinct?

Hon. W.A. ABRAHAMS: If the limitation passes, you mean?

Mr. R.A. THORNE: Should it become extinct? I know I am bowling this bouncer during the course of the match without any forewarning, but if we can give it some thought, should we be giving thought to this? Do we remain consistent with the two years mentioned in the legislation? Do we say five years? Do we say seven years? Do we say 10 years? And thinking about it, is it fair to a person to have that record on him or her some 10 years after that person has left that public office, some 10 years after that person has become a private citizen and there is still some lingering record?

Sir DAVID: Well, when you use the word "record" you are making it sound as though it is something criminal. Let me give you an example: I retired from, as you probably know, this Commission and the Judicial Legal Services Commission in February in the Turks and Caicos [Islands]. They could not find anybody to succeed me and so they asked me to continue. As I said, I was going at the end of May, during which time we found a judge from the Cayman [Islands] who would take over from me but he got ill and cannot take up the position yet, so they have asked me to continue, so I am still holding on now officially till the end of August but I suspect that they are going to ask me to continue even into September and possibly October.

Since I retired – I said February – I retired 31st May, I prepared and filled up my Declaration because my Exit Declaration was in May and I gave it to the

Governor. There is nothing in that that they could come up two years, five years later on that I would be ashamed of, so I am not sure what your concern is. There is 32(5), which as I understand just said, look, you have ceased to be an Member of Parliament on 25th May, 2018, and after two years, 24th May, 2020, nobody can ask you anything about, it is statute barred after that. You want now the actual Declaration that the person filed?

Mr. R.A. THORNE: Yes. Is there a case for that Declaration being extinguished? The reasoning is that a person has become a private citizen again and a private citizen is entitled to have his business private, so that as I said, if he has left office five years...

Sir DAVID: But the business was relevant at the time.

Mr. R.A. THORNE: At the time.

Sir DAVID: At the time it was public, when he held public office.

Mr. R.A. THORNE: It was.

Sir DAVID: And he had a duty to file?

Mr. R.A. THORNE: Yes, but he has become a private citizen again, his assets – there may have been accretion to his assets or diminution, no one knows but that record pertains to him, that was the state of him at the time.

Sir DAVID: Assets, liabilities, assets become liabilities. And now he has a spouse and his children under 18...

Mr. R.A. THORNE: At the time he held public office. When he becomes a private citizen again, is there a need for the public to have access to his...?

Sir DAVID: The public does not have access...

Mr. R.A. THORNE: Sorry, not the public, an official, to have access to his records after he has become a private citizen again?

Hon. W.A. ABRAHAMS: Let me help you.

Sir DAVID: I do not think there is much in it but if somebody wanted to draft a Clause 7 or a Clause 5(1) – these are subsections – but an additional clause to say that when a person has ceased being in public life, that his Declaration should be returned to him or something like that... I do not know. You can look at that. I have not given it a lot of thought. I have not considered it before but let me say this, one of the things that we should be aiming at in Barbados when we set up this is to provide for the filing online because the time will come... There is obvious danger, of course, in – I do not know how many people will be affected by this, a good few hundred -- 700 or 800 people probably – and the Commission having physical possession and control of... the form would be quite thick, you could imagine the storage problems after a few years. That is why I recommend that it be done online. But if you want to say that the person shall be entitled to have his last Declaration returned to him if he chooses, you could do that.

Hon. W.A. ABRAHAMS: Sir David, just by way of explaining because I am conscious as well of the fact that the public is listening in, I think further to expand Mr. Thorne's point is there really is no reason

for the Commission to hold those Declarations after they have no evidential value. If the limitation period is two years after you leave public office, and that time has passed, then the Commission cannot rely on it anyway, so they might as well destroy it.

Sir DAVID: That is a good point.

Hon. W.A. ABRAHAMS: Just before you move off of that, Sir David, under the same section we have had a number of comments... I have been seeing some comments online and people have approached me with respect to the short time frame for the limitation, so what this section 32(5) here says is that an inquiry shall not be commenced after two years from the date from which the person ceased to be in public life. What is your feeling with respect to that?

Sir DAVID: That is the Commission commencing an inquiry?

Hon. W.A. ABRAHAMS: Yes, the Commission commencing an inquiry.

Sir DAVID: Yes.

Hon. W.A. ABRAHAMS: What is your feeling on the length of time there? I personally think it is a little bit short and it should perhaps be five, which is a normal Parliamentary term.

Sir DAVID: I would have no objection to that. These things are so much a matter of value judgement very often, five is fine. I think the Leader of the Opposition never had an answer to his question about Blind Trust. This is something that is recognised all over the world. It is a mechanism that is, it perhaps is not the best, because philosophically you are asking for transparency and full disclosure but at the same time you are saying that you can hide, if you like, some of your assets. The law has not been able to find any compromise to deal with that conundrum other than the Blind Trust, and Subsection 5 explains what a Blind Trust is. It is created when a person in public life – not any average person – enters into an agreement with a qualified trust company whereby any or all of your assets and those of your spouse and children are conveyed to the trust company for the company to manage, administer and control in its absolute discretion without having to come back to you and ask, for instance, “What am I to do with this? What am I to do with that piece of land which you have at Consett Bay and the boat and so on?” Let us say you drop out as the person in public life and hand over your assets for management by this independent trust company, it is just to remove the temptation of having to do public duty and at the same time use your own private wealth or assets in a way that may conflict between – as I explained earlier – your duty and your private interest. To ensure that you do not get into those problems, just give off your assets in a Blind Trust. At the end of your time, you call back the Trust.

Mr. CHAIRMAN: The Honourable Charles Griffith.

Hon. C.McD. GRIFFITH: Sir David, my concern is Section 45 (1) through (5), where you are asked to declare gifts that are in excess of \$1 000 and then the Commission shall determine if it is a personal

or official gift. I am also querying if Section 45 (4) and (5) are not contradicting each other.

Sir DAVID: The first thing is that the gift must have a specific value. If it is worth more than \$1 000, it has to be declared. We see from time to time, and it happened to me once when I was in public life, that you get a gift. I was once given a plaque and a policeman’s hat by a group of police officers from the United States who came down here for a conference one summer. I had to open it or address it, and they gave me this gift. Question: Is that mine or is that really the Barbados Government’s? Is it a personal gift? We are accustomed to seeing this, but suppose a ship, a new line, comes in for the first time at the Port and the captain gives the Minister some gift and the Minister gives him something from Barbados, for example, from Medford Mahogany. Is the gift which the Minister got personal or is that for the Ministry for him to take it back and put it in the Ministry if it is a painting or something?

Mr. R.A. THORNE: You would have to look at the intention of the donor.

Sir DAVID: You would never know that, because the captain comes in on the boat, gives you the gift, you have a couple of drinks, he sails out at six o’ clock and you do not see him again in life. There are persons in the private sector who would offer gifts to people in public life. Some may be legitimate like those I mentioned or the gift might be in anticipation of a favour. I think we have only had one of those in the Turks and Caicos, where we were asked to determine whether it was personal or public or official, and we said it was a private gift and the person could keep it.

Mr. CHAIRMAN: The last two questions for Sir David, and then we have our next presentation, Ladies first.

Senator Ms. M.C. TAITT: Sir David, would it not be easier to define personal gift and official gift to reduce the likelihood of having to come for assistance from the Commission, so that you at least have guidelines?

Sir DAVID: Yes, guidelines as to what is what. Excellent point, I like that.

Senator C.A. FRANKLYN: Sir David, I am not speaking for myself when I ask you this, mind you. You are asked to report on the assets of yourself, your spouse and any children. That is why I am saying I am not speaking for myself, but suppose the spouse and you are not getting along too well and she says, “I am not getting into that with you”? What would happen in a situation like that? If you leave public office and you are divorced, what would happen?

Asides.

Sir DAVID: We have had a number of those cases in the Turks and Caicos. I must tell you, where the parties have alleged that during the period for which they should be reporting they broke up: one left and went to the United States or to England or whatever. It does pose a problem.

Asides.

Senator C.A. FRANKLYN: The last thing I

want to ask you, Sir, is whether Senators, not Parliamentary Secretaries or Ministers – I am talking about other Senators – have to declare our assets as well. What influence can a Senator have over anything?

Asides.

Senator C.A. FRANKLYN: I am asking because we cannot influence contracts, we cannot do anything; Independent Senators moreso than anybody else. Are you going to bribe an Independent Senator? To do what? To get a Government contract? Why are they being asked to declare their assets as well?

Sir DAVID: To come in here and take a position and criticise or, as we would say in the vernacular, to “sandpaper or lambast” somebody or a company, and somebody pays you \$10 000 to come and spend half-an-hour.

Asides.

Senator Ms. M.C. TAITT: Sir David, ultimately following on from Senator Franklyn’s point, notwithstanding your example, when it comes to the vote, unless it is a situation where you need a two-thirds majority it is not going to affect the outcome in terms of getting passed whatever is before the Senate.

Sir DAVID: Even if you are not a Member of the Government Senatorial team, can you be dogmatic that what you say will not have influence? I do not think so. We have seen – you made some points recently – Independent Senators who have made strong points and got legislation sent back down below.

Asides

Sir DAVID: You all must not sell yourselves short.

Senator Ms. M.C. TAITT: Thank you, Sir David. One last query: I notice on Page 15 of the Bill the definition of “spouse” where Subsection B makes reference to “a person who is living with the specified person in public life in the circumstances of husband and wife for a continuous period of one year during the period covered by the person’s declaration”?

One year, Sir David, do you think. I mean common law definition is five years.

Sir DAVID: Well, I was going to say that perhaps you should go back to the common law definition.

Senator Ms. M.C. TAITT: I believe so because one year is a little short.

Sir DAVID: Not the common law definition. The Family Law definition for a union other than marriage.

Senator Ms. M.C. TAITT: Yes, Sir.

Sir DAVID: The year is too short. It does not prove anything.

Mr. CHAIRMAN: Sir David on behalf of the Committee and in fact on behalf of the entire listening and viewing public of Barbados, let me thank you for a sterling presentation to this Committee. I had not anticipated that you would have regaled us for so long in the afternoon but certainly everything that you have said has been met with rapt attention by all of the members of the Committee. I do not know if the occasion will arise for us to have you back before us

but I do hope that you will consider yourself a resource person who will be available to us should we need to call on you again before the length of this Committee is ended. Thank you very much and I would like in the usual parliamentary way to applaud you for your presentation.

Sir DAVID: Thank you all very much for having me. I am sorry that I overstayed my welcome but I thought it was an interesting exercise. This is new and important legislation that the public has a right to know about and to the extent that I can be of assistance and help inform public opinion, I make myself available.

Mr. CHAIRMAN: Thank you for that kind assurance. Sir David, you can feel free to stay with us. We have one other presentation by Dr. Philmore Alleyne. Dr. Alleyne is, I think, an accountant by profession and the head of the Management Study Department at the University of the West Indies. What is not perhaps so well known is that he has published many, many articles, required reading, on the matter of integrity legislation and governance and I therefore, would like to invite Dr. Alleyne to join us and to make his presentation. Sir David if you are going to stay, I would to extend to you the benefit of staying at the Senate table.

Mr. CHAIRMAN: Dr. Alleyne, the floor is yours. You are welcomed.

Dr. P. ALLEYNE: Good afternoon one and all, the esteemed company, it is a pleasure to have been invited to make a presentation on this important piece of legislation and really I feel like in terms of when you are playing for the West Indies and having come after Gordon Greenidge, it is a big bill to fill.

Mr. Chairman, I know that it was long but it was very interesting and it serves as a sort of launch pad in terms of what I will be speaking on. I first have to say for the benefit of those who may not know what I am. The Chairman mentioned some of my stuff that I have done, but I come based on several things. I am still an accountant in practice, teaching at the university in governance and ethics and as Senator Taitt has chided me recently, I have not blown my trumpet loud enough in terms of my own academic work in this area. I have done a lot of stuff dealing with corruption and some of what was on the table earlier dealing with whistleblowing because that has been my PhD done in the United Kingdom. I have also worked on a number of public sector projects as an audit specialist having been trained by both the IADB and the World Bank and certainly as a part of the context you would recognise that these financial lending institutions have been certainly pushing the agenda that corruption tends to retard growth in developing countries.

My presentation will deal with a few issues first, contextual information when you look at where Barbados is at the moment. It has gone through a number of crises over the years, we have had recently Standards & Poor’s and Moody’s technically downgrading us. We are certainly in a bind and certainly there is a need for this integrity legislation.

I, too wish to acknowledge the Government's bold attempt to try to get this legislation in place. I am so moved too and proud to have Sir David at my left because I remember some time last year there was an exchange when he and Ken Gordon made a presentation and in that one I thought he had batted well in terms of trying to defend this aspect. It is something that needs to be done.

I just like to start first wearing my university hat, trying to educate the ones around because sometimes there are a lot of things that are not clear and people just use things loosely. I look at corruption in its simplest form as defined as the abuse of power for private benefit. The Oxford dictionary adopts a more moral and ethical standpoint by defining it as dishonest or illegal behaviour from those in authority. Transparency International has given a decent score somewhere around sixty one but the fact that Sir David has raised earlier what corruption can do, it can really destroy a society. We do not have any real, empirical research on the quantum of the loss that corruption does but it also destroys trust in institutions and in leaders. We have had some corporate collapses, CLICO for one, was a big one that has happened and then you start to realise that corruption itself can have a debilitating effect on society.

I wish to now share for all and sundry some of my own research recently, well actually in 2017 and this was financed by First Caribbean Bank as a Memorandum of Understanding with the University of the West Indies. These are key findings that I want everyone to be aware of that respondents believe that there is political interference in business, some 89 per cent, and they also believe that there is political interference in the judiciary that is extremely high. There is also a belief that there is pervasive corruption and fraud in business and Government. There is also a belief that Government is perceived as not being accountable and transparent and fourthly and more importantly is that Government is perceived as not being serious about tackling corruption so you understand that we are dealing with some negative perceptions here. I am also reminded of what is also playing out in the international arena of a former politician and this clearly demonstrates the need to have the Integrity in Public Life Bill because nobody is a winner. Barbados is suffering as a consequence of this going through, as much as we talk about it.

I would like to look at various aspects of the Integrity Bill and would like to let all and sundry know. I am not a lawyer nor do I claim to be one but I will deal with some of the things that certainly would need to have to be looked at. I think it is a bold attempt. The legislation, as Sir David, said is quite similar to what is going on all around, the fact is its operationalisation. That is the issue that you need to do. I am heartened that this esteemed Committee has sought wide stakeholder discussions on this Bill and this is based on stakeholder theory because you get a full ventilation of all the issues but I would encourage you further to follow up, as Sir David said, with organisations that

have an interest in this and more importantly we too often – no criticism to you esteemed Committee – that we sit in cloistered halls and make decisions without the inclusion of all the persons who will likely be affected with it. To this end, I would expect that the Committee will go into the communities and certainly hold some, what we would call Town Hall meetings, and have the feedback from the masses because there is a general distrust about the public sector.

Staffing the Integrity Commission: When I went through the Bill, I believe a major concern will arise over how the Integrity Commission is staffed. Too often observers are more apt to jump to conclusions that the Commission is filled with political appointees. I believe the Commission should be staffed with independent members who are free from political ties and this should insulate the Commission against political interference. I believe the use has a good model where when you put people forward then they are interrogated in a way so as to make them acceptable to ...

Hon. W. A. ABRAHAMS: Excuse me. One second please. Just as a clarification. Do you mean the staff of the Commission or the Commission itself?

Dr. P. ALLEYNE: The Commission itself. I am sorry about that, so that we have that stakeholder consultation. I am carrying it a little further from the discussion in the earlier submission. There is a perception that if the Prime Minister or the Governor-General or whomever, there is always going to be this belief that there is something trying to sneak through. Do you understand? As soon as you have perceptions they tend to shape other person's reality. I would not want it to be pushed that the appointment be pushed on the people. We need acceptance from stakeholders and I am guided also on what Sir David raised with his successes that he had in the Turks and Caicos Islands. One of the things, if you really observe it, was that he was an outsider. Certainly that may have accounted for some of the successes gained there. I am not saying that you want to bring in outsiders but the position is the Commission itself must be free and fair from any political interference. Also a change needs to be made in the culture in the public sector. Sir David raised the issues about the code of ethics. There needs to be some specific code that sets a zero tolerance to unethical behaviour. There has to be what we call in accounting toning from the top, from the leadership. The leadership itself must set examples and certainly as Sir David raised you would expect there will be penalties for any transgressions from the leadership right down to the bottom and I believe we need to send that message right through. Also the removal of conflicts of interests. A major concern of many observers of the behaviour of public officials is the awarding of contracts and Boards of state-owned enterprises lacking independence, for example, there is a belief – and this is coming from my research – that contracts are awarded to friends and supporters. How do you deal with that? The issue also becomes more critical when individuals in influential positions take up lucrative contracts soon

after they leave office. In the accounting or auditing profession we say that there should be what we call a "cooling off period" before you take up that position because obviously the individual who was there at the time in an influential position may be able now to influence it in such a way that he or she benefits. I would imagine that this cooling off period be implemented as well as looking a Board practices within SOEs because this is where most of the charges of corruption or wrongdoing seem to prevail.

The declaration of assets and liabilities. This is a very controversial point and I listened to the various questions raised. It is a case of you are "damned if you do and damned if you don't". When you see people in public life who – and I am just using this saying – had little and then later on you see them with so much, the question is raised, "where did they get this from?" I recognise it can probe into the lives on individuals and can act as a disincentive to do work in the public's interests. I also agree and Sir David raised it, he mentioned that there is confidentiality but I am a practical person because confidentiality in Barbados is seemingly a foreign thing. For example, I am sure in the hospital, sometimes a lot of people go and support the nurses and doctors, no disrespect to the current staff, have gone and got medical aid but as soon as they leave the information just comes out and I am certain we need to ensure that those persons who serve in public office are well protected as far as those declarations are concerned. It is not enough to just say well it will be. It could be sealed in some way to try to protect those disclosure but confidentiality needs to be the key to this.

The investigation of reports: I read the various sections but it must also be treated carefully. Based on the principle that an individual is innocent until proven guilty, the matter needs to be treated carefully and quickly to protect all concerned. An issue that seems to bother society is the fact that justice takes too long and you have these matters hanging over the heads of individuals and then there is so much rumour and innuendoes going on that at the end of it, regardless of whether the person is innocent or not the issue still in the public's domain they have been tried and executed, if you could call it that.

Reporting on the work of the Commission: I am one who believes that there needs to be a lot of transparency and accountability as far as how the Public Sector is run. What I find is that too often you do not have enough information put in the public domain and in addition the communication mechanisms within the Public Sector leaves a lot to be desired. How will the work of the Commission be disclosed? My personal beef coming out of most of my research is that sometimes you can have Board Minutes and different disclosures but you do not see anything. Take for example, the State-owned enterprises, many of them have not had their financial statements up to date, so how is this going to impact it? How are we going to be disclosing all these things that happened, so that something needs to be done about disclosing decisions and the challenges that they encounter, and I believe

that the Commission can start to move towards that.

The other thing is the institutional support and resources: I am a firm believer that contented cows give better milk. In a case like this you have to provide adequate resources and pay these well. I believe in paying persons to get the work done. It would need to have.... I mean, you may not have the funds now but certainly a case must be made that these individuals, that it is well-staffed, you have proper support mechanisms to get the work done, well-qualified individuals and it cannot be a part-time activity coming from the Commission. As Sir David mentioned, they are a small country, the Turks and Caicos, and still there was a lot of stuff, so think about Barbados with a much bigger population.

The other thing is the whistleblowing protection: Now, I leave this one for discussion here as I crave your indulgence as I start to explain some of the stuff which is a key aspect of my own research. Now, the legislation as it is with respect to whistleblowing makes no distinction really between the channels of whistleblowing: in whistleblowing there is internal and then there is external, and as well as they are anonymous channels. The issue that happened is that people fear victimisation. We call it personal cost, retaliation, sometimes – and I am so guided by an example when I was presenting a Paper in Malaysia and this guy came to me and shared a story where he said that in India there was an individual who got information on the building of the roads, that there was some corruption. He took up the phone and called the minister and said: "Do not tell who it is or whatever but this is what is going on". The minister went into a Cabinet Meeting and let his name slip. Two days later he was found murdered. Personal cost is a very important consideration as far as reporting.

If you go to most of the social gatherings or for want of a better word, the watering holes around Barbados, you would hear the rumours rampant about what is really going on. That is not the issue, the issue is why I should come forward. One person asked, should you incentivise the whistleblowing by having some fund like what happens in the United States of America where they have some funds provided to help, but you need to make sure that the whistleblowing legislation has been put in in such a way that it encourages and gives the whistleblower the protection to come in. You have to be very careful also too about informing, informing has a malevolent intent: a whistleblower is one who is trying to change – to root out the corruption but nowhere in the legislation do I see anything about anonymous tips when they have hotlines. Will there be a hotline? Most people prefer to hide and report, rather than coming forward and being able to be identified. These are questions or considerations that you need to be very clear about. I am not sure what operates in Sir David's experiences but asking me to write and say who I am or whatever about that the Honourable Chair is corrupt is going to be very – is going to be a stretch to do. If you ask me to email or maybe write to, so that you start to investigate, I think that maybe the way to do

it.

Now, I found in some of my research on whistleblowing that the key things are that there is a general reluctance to whistleblowing because society is small. There is a high personal cost which lowers the likelihood of whistleblowing because most individuals feel that retaliation, ostracism, reprisals, threats, some have even said that they have been harassed to drop what they were doing, in terms of reporting. And some have also been faced in this country with threats of dismissals in terms of reporting. Some have said to me: "Boy, if I had to do this again, I would not. I was forced to leave." So what do you do in the private sector to try to get this one clear?

Also too, you have to remember, and I liked what Sir David shared, in terms of the culture and the Code of Conduct, if you have a disgruntled workforce that is observing unethical practices going on, as one person said in a piece of research that I had done about two years ago, they said: "As long as they are not carrying away me, I do not care." Do you understand, and it is understandable. Are you with me? Apathy, a beautiful thing. So it is really changing the culture.

The other thing is that there is a lack – there is a belief – and I am just putting these things on the table for the Commission to have some consideration in terms of, as Sir David said, to look at this as just a suite, you have to have regulations and different things as you try to bring everything together, it cannot be done on an – Sir David put it nicely – it is almost like an iterative process as you get this thing go through.

There is a lack of confidential and trusted reporting mechanisms in most of the organisations, including the Public Sector. There is a belief, as a couple of people said in this piece of research in 2017, you do not know how far this thing [has] gone. These are things that you need to get clear.

Now, just finally as my time is nearly up, I would say to the Committee that you have to go and start to change the culture so that the training and education that Sir David raised that is something that has to be paramount. The idea is [that] some people believe – and I did my own little testing over the weekend in preparation for here, that this is a just another talk shop. That is the belief. I am not saying that it is so, I beg you. You need now to push to the next level, okay. Also, the aspect of which the Leader of the Opposition raised about whistleblowing is having the protection and the incentive to report. Too often reports come in, and as two individuals said in a study earlier, people just say leave it here with me, I will deal with it and nothing happens, so that then creates distrust.

I say in closing though that corruption is viewed as a global problem and we need to work together to prevent it before it becomes the norm and reaches epidemic levels and ensure that life in our community, at work and in our country is free of corruption. The Integrity in Public Life Bill, as I say here now, is a start in the right direction. What I will say is to try to get it working and have as much

consultations as possible. You do not want to rush it. I am not saying to stall it but make sure that you get certain things in place and then you can have as many amendments as possible in terms of trying to get it finalised.

At the moment, I am doing some other research with a team in terms of looking at governance of Boards of Directors in State-owned enterprises, and I hope that my submission here does not clam up people now at this point, but certainly we at the University are trying to ensure that we make our own contribution in trying to create that change. Certainly, I stand from my own research and so on to be able to assist the Committee in its current work or in any future work as we go on from there. Thank you.

Mr. CHAIRMAN: Thank you very much, Dr. Alleyne, a fitting follow-up to Sir David Simmons'. In fact, I would like to suggest that yours, though not as lengthy, stands exactly alongside his, and thank you very much for your contribution. The Floor is now open. Senator Taitt, would you like to start?

Senator Ms. M.C. TAITT: Thank you, Mr. Chairman. Dr. Alleyne, you started your submission this afternoon by making the broad statement that the Commission should be free from political interference. I believe I would have gotten you clearly, so my question to you is: Based on the First Schedule which speaks to the persons that would be appointed to the Commission... Now, let me just say that political interference could take many forms but for my clarity I am just seeking to hear you on the fact that a number of the persons who must be appointed to the Commission would be appointed by the Governor-General after consultation or, if we use Sir David's words, on the advice of the Prime Minister and consultation with the Leader of the Opposition; so as it currently stands, it is after consultation with the Prime Minister and the Leader of the Opposition for a number of the positions, so I would like to hear from you. Actually, one of the positions is a person appointed by the Governor-General on the advice of the Prime Minister, that is Section 1 (e), and then there is Section 1 (f) that speaks solely to the appointment by the Governor-General on the advice of the Leader of the Opposition.

The attorney-at-law with at least ten years is... No, I do not want to use that one. The person who holds or who has held an office of a judge, that appointment is by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition, and the member of the clergy is an appointment by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition – you are the Leader of the Opposition anyway – so I would like to hear you on that in the context of your statement that the Commission should be free from political interference. As I said, there are different forms of political interference. I am not in any way suggesting that the Prime Minister or the Leader of the Opposition should be considered in the broad heading of political interference but in terms of the perception of the public at large as to what this

Commission consists of and the persons who are appointed to the Commission, that perception then leads to a willingness or an unwillingness to buy into it vis-à-vis the declaration and the registering of assets. I would like to hear you on that and how the Committee could help with the public education as suggested by Sir David to determine if we are going to get real buy-in or if it is going to be foisted on persons, as I think Sir David used that word too.

Dr. P. ALLEYNE: Senator Taitt, we are trying not to be too cumbersome. The issue here is there are perceptions out there, we have to be real and practical at this point, and if someone is put there that person could only be acting in my own interest. What I am proposing or suggesting is that maybe a better way is that if the Prime Minister or the Governor-General under the advice, based on what Sir David is suggesting, put aside that it is going to be Philmore Alleyne, I believe there should be enough discussion and stakeholder feedback back and forth so as to understand and ensure that look, we are happy at the end, with this individual. I am so moved or guided because of the way how in the United States of America sometimes you have someone who is going to be a supreme court judge and then that person is asked by different interest groups about different things, they question their position on different stuff, and at the end that vetting leaves you with a... I mean in any event the Prime Minister can still make the decision, however, that person is held up for public scrutiny and that is what I believe should be a better approach to trying to get this thing done because at least the Prime Minister would be able to say yes we went through all of that and I think we have gotten satisfaction that this is the right person or persons to sit on the Committee, and that to me would really ensure then that there is acceptance to the whole thing.

Senator Ms. M.C. TAITT: Thank you Dr. Alleyne, I have another question for you. You spoke much about the issue of confidentiality and the lack thereof in our society particularly since we are a small country. You said a lot, something needs to be done, those were your words. My question is: Based on your research in Barbados and throughout the region and I dare say the world, how have you found that confidentiality has been handled to the extent that it assisted the legislation to be received by the public?

Dr. P. ALLEYNE: What I have found is that - and it is not only here in Barbados, let me just put it this way, it is throughout the region - there is a distrust in terms of sharing. I am sure Sir David with his own experiences recognised that people will ask questions and start thereof, what you are going to do with this information, am I sure that this is not going to come back and bite me, can I be sure? As Senator Franklyn said sometimes there are disclosures that you make in the interest of time and you really realise later that it might have been the wrong disclosure too, you understand.

The idea is that we need to start to move forward by creating mechanisms where the information

is sealed. Sir David mentioned about the on-line case but we have to be very careful to ensure that there is no hacking. I mean right now people try to hack into different things, and ensure that those safeguards are placed. He said that they are sealed, which is a good thing to do and what the Honourable Senator Thorne said at the time is that there has to be some consideration too for removing that information when you are no longer in public life. If you are not in public life anymore why do I need your Declaration or as Sir David said, you are making your exit Declaration, let us close it off, after that I do not need my information anymore out there hanging around, it is of no value to anyone. Except if after five years you come back again. So those are things so that you need to have safeguards in place for... these Declarations of Assets. The fear, as I said, from the research coming through Jamaica is the same thing, I have been sharing with a colleague, they have now, where they use the terms through the Contractor General, they call it informing. There is a distinction between whistleblowing and informing but what happens is that the belief is that some of this information in Jamaica finds its way out into different domain, so that I think what we as a country now have to do is to ensure that we provide all the necessary safeguards, that it is like Fort Knox, to get this information, so that systems and procedures have to be put in place.

Senator Ms. M.C. TAITT: Thank you.

Mr. CHAIRMAN: Mr. Abrahams.

Hon. W.A. ABRAHAMS: Dr. Alleyne, I heard your initial comments and then your further comments just now with respect to your concerns about the confidentiality of the Declarations, because nothing in Barbados is confidential. What would you suggest? I mean, the initial draft attempted to put some penalties in place and address some of those concerns. I am curious to hear from you what would you suggest to address your concerns that are not already in the legislation?

Dr. P. ALLEYNE: As I said, with the legislation there is not a problem, it is the operationalizing of it. The issue is that you have to make sure that you - whether it is through regulation or whatever, and as Sir David said, you cannot put every iota in the legislation - but certainly putting certain mechanisms in place that there is some trust, I can guarantee there is some confidence in what it is going through - hiring confidential staff in here; putting stiffer penalties if need be, in terms of my information because I am not going to feel good that one day I am doing all these Declarations and then soon I see it on social media. Do you understand? I am so ... with some of the stuff that I see on social media that I thought was confidential. Do you understand? You see copies or pictures of invoices and all sorts of stuff, I said that there is nothing private anymore. Do you understand? All I am just saying is that we need to have mechanisms put in place to ensure that those persons who declare feel confident that their information will not be in the public domain. Okay?

Hon. W.A. ABRAHAMS: I do not want to

put you on the spot right now but I am very, very interested in the further development of this, so what I will ask for you to do is [that] when you go away, [please] address your mind to it and try to satisfy you with respect to those mechanisms and then contact you back through email or through the Clerk that we could then try to give them consideration or manifest them either in this or supporting legislation, because I hear what you are saying and you are not the first person to say it, so it is a common representation out there but for us to properly address it and to allay the concerns of the public, then perhaps if we get some feedback from the public as to what they want to see, that would give them comfort, then we could properly deal with it. As I said, I do not want to put you on the spot now but I would be really interested if you could address your mind to that and come back to us that we could take it into consideration.

Dr. P. ALLEYNE: I will do that. Thank you.

Senator Ms. M.C. TAITT: Mr. Chairman, if I could just add to the Honourable Minister Abrahams' point, I would also be interested in seeing, because of your wide-ranging research, what has worked and not worked in the areas that you have researched, the countries that you have researched.

Dr. P. ALLEYNE: I have no problem doing that.

Senator Ms. M.C. TAITT: Because it might be that something works in a bigger country that would not work here, and vice-versa, so that I am interested to see the scope of it as it relates to the safeguards and mechanisms that you have referred to in responding to both myself and Minister Abrahams. Thank you very much.

Mr. CHAIRMAN: Senator Cummins.

Senator Miss L.R. CUMMINS: Thank you, Mr. Chairman. Thank you so much, Dr. Alleyne, for taking the time and I am certainly pleased to see the University of the West Indies sitting at the table and that is a personal pleasure for me. I have a question for you and it is based on the extensive nature of your research and your experience in other jurisdictions, in particular you made reference here to Jamaica. I want you to call your attention to your experience in the CARICOM region. Now, as you know throughout the draft Bill the issue of procurement is mentioned repeatedly and that is a significant issue and CARICOM as we speak, including Barbados, is discussing a Draft Regional Procurement Bill. What is your views on how best we could put those kinds of issues into this Bill and treat to those issues as they come up within the context of regional procurement in CARICOM?

Dr. P. ALLEYNE: It is a commendable idea to have those issues incorporated into the legislation. The issue with respect and Jamaica is a classic example of all the issues and the heartache that they themselves have had and in some cases.... As one of my colleagues, we have just published some stuff there on corruptions and scandals. What they found is that.... I think it comes right down not only to the legislation, because you will probably replicate what has been done in terms of

drafting up maybe like the Jamaican example, but the problem is that it is a cultural problem, that you are trying with all this legislation and so on, to find that in a case where they have like ...often contracts and all of that stuff.... You know, people do as they feel like and how they feel like, regardless as to whether or not the legislation is there and sometimes because things drag and drag and some people try to drag it out, what happens is that it takes long to get things done and then until the next Government comes in, and that has been the experience out there.

There is a belief that the Contractor-General will always have no teeth, you understand, so that it would be commendable.... As I said even here with respect to contracts and so on, most of the corruption mostly stem from having contracts being offered. Right now there is no criterion saying, for example, okay, we heard about "X" who has just gotten this contract, where are the criteria for the granting of the contract? You do not even have privileged information and say let us see State-owned enterprises or the various public sector is stating that look, here is our reason for giving this contract to "X", but as soon as you see people move with their trappings of wealth and their big cars or whatever, the public themselves then start to gossip and what Sir David is really saying, and I endorse everything he said, is that we have to have transparency and accountability here to bring back trust to everything that you do.

Senator Miss L. R. CUMMINS: Okay, if I can just follow on from that, Dr. Alleyne, in 2011 and then I think four years later in another regional integration space there is a considerable body of research that emerged from the communication of fighting corruption in the European Union and they looked at the perception of corruption in different countries. You therefore had individual national domestic legislation in place which people were responding to, and then based on the unique culture in each country there were differing levels of perception of the need for persons to engage in corruption by way of procuring contracts and those kinds of things. It differed across the region. Some countries were higher, some countries were lower, and so I am asking you specifically as it relates to your extensive research in the region: In the context of a regional draft CARICOM Procurement Bill, given those differing levels of perception of corruption in different countries and a legislative basis that is different equally across countries, what would be your recommendations for Barbados to ensure that we are among those countries where (1) legislatively we are solid, and (2) we take effective measures to change the culture so that the perception of corruption of Barbados – when it does get measured at some point probably by a researcher like yourself – is among the lowest in the region?

Dr. P. ALLEYNE: One of the things is that you can have the legislation with all of the different procedures, but I always say that it comes down to people. It is the people's mindset. One of the things is putting stiff penalties in place for people who breach

these things. I have seen the information with the European Union and the Organisation for Economic Cooperation and Development (OECD) and I have done some work with the Serious Fraud Office in the United Kingdom, and these are the same issues which you are raising. One of the things they have added to it is a set of penalties for breaches, because you cannot legislate for everything. We know you are not supposed to do it, so you should disclose your conflicts of interest and put all of that in there so as to ensure that people who are making the decisions and have a conflict recuse themselves from the decision-making process, but what happens when a guy says, "I do not care" or has a mindset that says, "I will try to do what I can do."

What I am saying here is that we are dealing with a different animal and one that you cannot put into legislation and cover everything. All you do is use what we call moral suasion in terms of getting certain things, but the penalties for breaches have to be at such a level. As Sir David said, we have had a little history of having some fairly tidy sums, because the best place to hit is in the pocket or decide whether it is going to be some jail time. It is an important part so following up with the Bill in terms of getting all of those things is not a problem. I say it is penalties and certainly the Code of Conduct which has to be done in terms of those things.

Mr. CHAIRMAN: Given the hour, I will accommodate an intervention from the Leader of the Opposition and then from the Honourable Ralph Thorne, and then we will conclude our business for the day.

Bishop the Hon. J.J.S. ATHERLEY: Thank you, Mr. Chairman. One quick question to bring us back from Jamaica and the European Union. I asked this question in the Lower House and I did not get a response, and I ask it again because surely there must be some good reason. If it is proper and appropriate, perhaps I can have Sir David in on it as well. I did not want to delay you earlier, Sir. In the Second Schedule, it specifies persons in public life and there is a stark omission of judges. I asked about that, and there must be some good reason why they are not included.

Dr. P. ALLEYNE: This one I will let Sir David answer but I would say this: Some time ago I was reading about the Trinidad experience regarding the covered persons, and I think it was Senator (Brigid Annisette George, if memory serves me correctly, who started to take issue with those persons who are the specified persons and gave a list of all the individuals who might be covered. I am not sure why the judges are omitted. I do not know if they hold to a higher moral authority, or is it that they were implicit in the drafting? I do not know, but certainly based on my research here, we have to be very careful with some of this stuff. I remember when – just hold your point, Sir David – someone raised the question as to why a person in the Senate should be included. We say in auditing that there are two types of independence: Independence in appearance and independence in fact. Independence in fact would suggest that you maintain an unbiased viewpoint during the course of your work. We believe

you can do that because you will argue that you can be unbiased, but independence in appearance is how other observers perceive it, and that becomes critical. When other persons believe that you are not, then there is going to be a problem. Sir David, if you help me out with this one out of this hole?

Sir DAVID: I suspect that the reason resides in the Constitution. The judges' terms and conditions cannot, under the Constitution, be altered to their disadvantage. It would be arguable, and I can see a case being presented, not before the same judges but perhaps before a different judge, that what you are seeking to achieve in this is now an imposition, a requirement which they did not have when they were appointed. To try and ask them now to comply with this legislation may be construed – do not forget it would have to be proven on the balance of probabilities – as an alteration in the Terms and Conditions of the judges to their disadvantage.

Bishop the Hon. J.J.S. ATHERLEY: Would that apply to the appointment of judges going forward?

Sir DAVID: No. If you put it in, you would have to say, "All judges appointed after" the appointed day set down in this, which is the date of proclamation. No, it would not apply to new judges but the current Bench would, I think, be entitled to argue that this is an alteration in their terms.

Bishop the Hon. J.J.S. ATHERLEY: Thank you.

Sir DAVID: It is not gospel but I would say that is probably why.

Bishop the Hon. J.J.S. ATHERLEY: Okay.

Mr. CHAIRMAN: We will allow Senator Franklyn a follow-up to buttress the comment of the Leader of the Opposition, and thereafter the Honourable Ralph Thorne.

Senator C.A. FRANKLYN: Sir, I have a difficulty with that explanation simply because the Constitution of Barbados at Section 94 provides for disciplinary measures for magistrates, permanent secretaries and people of related grade. They are already taken care of in the Constitution. There is a Public Service Commission. I see at Section 50, it says: "*This part shall apply without prejudice to the powers conferred upon the appropriate disciplinary authority by the Constitution or other enactment.*"

That is like double jeopardy. You are going to hit them with the Integrity Commission and then you are going to hit them with the Public Service Commission. My argument is that this legislation should not really be dealing with permanent secretaries, magistrates and people of related grade, because they are already taken care of in superior legislation. This Bill here does not amend the Constitution.

Sir DAVID: Under which legislation are you referring to? The Public Service Act?

Senator C.A. FRANKLYN: No, it is the Constitution, Section 94. I said subject to this Constitution, power to exercise disciplinary control over public officers is vested in the Public Service Commission.

Sir DAVID SIMMONS: There is nothing in the Constitution or in the operations of the Services Commission that requires any public officer at any level to make disclosure about his assets, income, liabilities. That is what this does you know.

Senator C.A. FRANKLYN: I am talking about disciplinary powers under Section 50.

Sir DAVID: Section 49 makes it clear... I am familiar with it. I have a lot in my head. All that Senator Franklyn is saying is that the Services Commissions, constituted by the Constitution, provides for their authority to promote *inter alia* and discipline the persons who are subject to their authority, so the Police Service Commission can discipline a policeman, the Public Service Commission can discipline a public officer but in what way is that discipline that they tend to impose at the same level as the specific crimes that are now provided for in Section 51. Here, this Section 51 creates from A to K, a new set of offences which no Service Commission tries. No Service Commission has tried conflict of interest and imposes a penalty, it cannot.

Senator C.A. FRANKLYN: Yes, it does, under the Civil Service Act.

Sir DAVID: Or jail. Which Service Commission ever sent anybody to jail?

Senator C.A. FRANKLYN: It does not send anybody to jail but what I am saying is that this particular Section is headed, and even though you are going to tell me that the headings are not part of the statute itself, it says: Powers of Appropriate Disciplinary Authority Preserves. It says: "*This part shall apply without prejudice to the powers conferred upon the appropriate disciplinary authority by the Constitution or other enactments.*" This is speaking to the powers that the other disciplinary authorities have in relation to discipline and that is why I asked about it.

Sir DAVID: It is saying that they have those powers in relation to discipline and they remain with them. These powers in this part, not that one Section, the whole of Part 7, which embodies Clause 51, the power relating to soliciting conflict of interest, improperly using your position to benefit third parties and so on, all of these new offences...

Senator C.A. FRANKLYN: They are not new for public servants, that is the point I am making.

Sir DAVID: Where are they set out?

Senator C.A. FRANKLYN: In the code of discipline for the public service, almost all of these things are here. As a matter of fact, what I wanted to say to Dr. Alleyne but I did not have a lot of time is that there is whistleblower in the public service legislation. Mind you, the first public officer I know that blew the whistle, he got demoted. What I am trying to point out is that these offences are all spelt out and in the Public Service Act, they are so wide, they are even wider than these.

Mr. CHAIRMAN: Thank you, Mr. Thorne.

Hon. R.A. THORNE: One of the things that caused some little worry, disturbance even was when you indicated that some members of the public felt that

this would be a talk shop. I must confess to you that disturbed me. Now I believe the Chairman would allow me to say to you that this is definitely not a talk shop. Your very presence here would indicate it is not. This is a Committee of Parliament which represents diverse political interests. It is taken as seriously as that. Those people who believe that, what they do not know is that you yourself submitted a quite an impressive volume of literature. All of your articles are here and we have read them, or we are about to read them. Your suggestions, your submissions, the submissions of Sir David, the submissions yet to come, the public can have our assurance that those submissions will influence the final draft of this legislation. This is not an academic exercise, it is not a talk shop. We have come to this exercise because we want the public to patience in the outcome, in the final product that this legislation will become. I know you do not feel that way but you said you subjected the exercise to some test. I think that before you leave that the public needs to have that assurance, that all of the submissions will come to the Committee. In fact, you may have noticed that while suggestions were being made by Sir David in particular and you as well, the Chairman was himself writing, he was making notes because rest assured that all is submitted before this Committee can be amended to the legislation. The legislation is not final, it is far from final. Look, this event here is rare in the parliamentary history of this country, certainly the recent parliamentary history of this country. When I was downstairs, the journalists asked me if it had ever happened before, I said, frankly, I do not know... it has happened before but it is rare.

Sir DAVID: I brought the Public Assurance Act in 1996.

Hon R.A. THORNE: Well, it is rare. It is a rare occurrence and obviously you felt welcomed coming here and I think that you felt comfortable coming here. The assurance must be given to the public that this exercise will influence the outcome of the legislation.

Dr. P. ALLEYNE: Well, that is very encouraging.

Senator Miss L. R. CUMMINS: Before you jump in Dr. Alleyne, I just want to take the opportunity to add on to the Honourable Member from the Other Place that through Parliament and through the Chair of this Committee all of the stakeholders to whom you referred earlier in your submission have been written to formally in communication and invited to (1) give their submission and (2) have an opportunity if they so desire to sit right where you are sitting and make an oral presentation and that has been an invitation extended to every stakeholder and every representative body. Some of them have taken up the opportunity so far, others have not done so but we are confident that they will and so we here, certainly are not engage in either an exercise in political cosmetology, to use a term that I have heard recently and neither are we engaged in a talk shop but must importantly what we are doing here now is treating to an important piece of legislation which is

in draft, engaging with the public to have their input so that the challenges that they feel need to be treated with in the legislation are done so and that in so doing we engage with them. We are live, and everything you have said here has been broadcast in real time on Facebook live and on social media and on traditional media and we will do so over the course of the lifespan of this Committee as a commitment, as a signal of our commitment to ensuring that the public trust is regained not just by our actions or our words but by the outcome of these proceedings.

Dr. P. ALLEYNE: That is why is said at the beginning that I commend you all for taking this bold attempt but we now need to bring it to fruition.

Mr. CHAIRMAN: Thank you very much, Dr. Alleyne. I do not want to belabour the point but let me just remind you. We did say at the outset that there are 14 people or entities that have already submitted written submissions, seven of them have indicated that they intended to do oral submissions and we fully expect that others will come. This includes the Institute of Chartered Accountants of Barbados, the United Nations Office on Drugs and Crime in Barbados, MESA, the Office of the Ombudsman is also interested in making a presentation, the Democratic Labour Party (DLP) has also indicated that they, in fact, they have submitted a written statement and intend to come and submit an oral; and other political parties as well. We also have the Financial Intelligence Unit which is a specialised agency of Government that is keen enough to make a representation to us.

ADJOURNMENT

Mr. CHAIRMAN: Ladies and gentlemen, and our listening and viewing public, let me thank you for helping us to get the work of this Committee off to a fine start. I am proposing that we should next meet on Friday, 7th September, 2018 at 1:30 p.m. I know it may not be convenient for all of us but being mindful of the timeline and the numbers of people who are going to be making contributions we feel it is important to press on so long as we can get a quorum, so I would like to propose that we adjourn to continue our business on 7th September. Do we have a motion?

So moved and seconded.

Mr. CHAIRMAN: Dr. Alleyne there is a motion that we should also accord you with the highest accolade in the parliamentary tradition.

Dr. P. ALLEYNE: I always wanted to be in here.

Laughter.

Mr. CHAIRMAN: Minister Forde, did you want the floor.

Hon. Miss C.Y. FORDE: No.

Mr. CHAIRMAN: That is what I thought. Thank you very much. This meeting of the Select Committee stands adjourned until Friday, 7th September, 2018 at 1:30 in the afternoon.

**THIRD MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

FRIDAY, SEPTEMBER 07, 2018

First SESSION 2018-2023

PRESENT:

- Hon. D. D. MARSHALL, Q.C., M.P. (Chairman)**
- Bishop J.J.S. ATHERLEY, M.P.
(Leader of the Opposition)**
- Hon. W. A. ABRAHAMS, M.P.**
- Hon. C. E. JORDAN, M.P.**
- Hon. Miss C.Y. FORDE, M.P.**
- Hon. C. McD. GRIFFITH, M.P.**
- Mr. R.A. THORNE, Q.C., M.P.**
- Senator the Hon. Dr. J. X. WALCOTT**
- Senator Miss L. R. CUMMINS**
- Senator Ms. M. C. TAITT, Q.C.**
- Senator C. A. FRANKLYN**

IN ATTENDANCE:

- Mr. NIGEL JONES (Deputy Clerk of Parliament)**
- Ms. SUZANNE HAMBLIN (Assistant to the to the Committee)**
- Ms. NICOLE THOMPSON (Special Advisor to the Attorney-General)**
- Mrs. ROLANDA WILLIAMS (Chief Parliamentary Counsel Ag..)**

AGENDA

1. Minutes
2. Matters Arising
3. Presentation by the following:
 - (1) Solutions Barbados
 - (2) Kingdom Government of Barbados
 - (3) Institute of Chartered Accountants of Barbados
 - (4) Integrity Group Barbados
 - (5) Democratic Labour Party
 - (6) New Barbados Kingdom Alliance
 - (7) United Progressive Party
5. Any Other Business.

The meeting commenced at 1.30 p.m.

Mr. CHAIRMAN: The Chief Parliamentary Counsel, presenters, visitors in the gallery, distinguished ladies and gentlemen, this third meeting of the Joint Select Committee on the Integrity in Public Life Bill is called to order.

I propose that we have a motion that the Minutes be taken as read.

SENATOR C.A. FRANKLYN: I so move.

SENATOR Miss L. R. CUMMINS: I beg to second that.

Mr. CHAIRMAN: So moved by Senator Franklyn and seconded by Senator Cummins. Are there any matters arising? There being none, I would like to move swiftly into the presentations before this Committee today. We hope to receive as many of them as possible and we are expecting a total of about seven presentations to the Committee this evening. I would ask all presenters to please bear in mind that in all instances you have submitted a written submission. We are giving you the opportunity to expand on it. We will be generous enough with our time to allow you to even go through parts of it but please be assured that members of the Committee are fully able to read and digest what you have written so we will not be allowing you to read over what you have already submitted.

Solutions Barbados representatives were ushered in.

We will begin with Solutions Barbados. Solutions Barbados will be represented by Mr. Grenville Phillips and by Mr. Kenneth Lewis and I will ask the Marshal to show them to their seats. Please remember that proceedings of this Committee are being streamed live. Also, when you are speaking, please remember to press the button on your microphone. Mr. Phillips, I understand that you will be the one making the presentation.

Mr. G. PHILLIPS: That is correct.

Mr. CHAIRMAN: The Floor is yours.

Mr. G. PHILLIPS: Thank you. Well, the intention was to basically present to what we have written to you. We have just realised now that is not what you would like.

Mr. CHAIRMAN: Mr. Phillips, please present it but I do not want you to read it for us.

Mr. G. PHILLIPS: Yes, that was the plan so in that case if you have read it already I would not mind if we can discuss the items of it that you were in disagreement with. What I can do is that I can go through some and if you are in disagreement with them, I would not mind using my time discussing so that we could perhaps converge towards a common view.

Mr. CHAIRMAN: At this point the Committee is not minded to indicate agreement or disagreement. We have a number of presenters who we

all want to hear and we certainly would not want to fetter our positions by agreeing with you and then finding that after we hear the distinguished presentation from Ombudsman that we agree instead with him. I am giving you liberty. I think that we anticipate that each set of presentations would have in the region of 15 minutes, so use it as you see fit.

Mr. G. PHILLIPS: Okay, thank you. Thank you for giving us the opportunity. I believe that it is a mark of great political maturity to allow this. It is very important that legislation does what it is intended and prevents what is not intended but which maybe inadvertently allowed. To this end, the Bill was scrutinised to determine how vulnerable it was to having the Commission, the officers or tribunals being politicised, guilty persons being protected and going unpunished, innocent persons being targeted and persecuted, whistleblowers being discouraged from reporting evidence of corruption and persons being discouraged from serving in public life so the following recommendations are made with a view to eliminating or reducing these vulnerabilities and therefore for your convenience we reference both the sections and the page numbers.

On Section 4.1, which is page 14 of the Bill, it says:

"The Commission should record gifts not only forwarded as stated but forwarded and received by persons in public life".

Therefore, we recommend that it should read:

"Gifts forwarded and received by persons in public life".

Mr. CHAIRMAN: Mr. Phillips, if we could pause though, one of the very keen members of the Committee pointed out to me that the section says that the Commission will receive and keep record of all declarations, statements of registerable interest and reports so what is being received are in essence reports not the gifts themselves so I am not sure how you want to put the word "received" in there.

Mr. G. PHILLIPS: Ok, I will check and get back to you.

Mr. CHAIRMAN: Certainly, the Commission will not be receiving anybody's gifts.

Mr. G. PHILLIPS: No, not the gifts, reports of the gifts.

Mr. CHAIRMAN: But the reports are being forwarded to the Commission by the persons in public life.

Mr. G. PHILLIPS: We will check it and write back with clarification on that one. So in Section 4.2, the Commission should at all times be independent and not be under the direction and control of any person or political Party. Therefore, where it states *"the Commission may not be subject to the direction and control"*, we think it should read, *"the Commission shall not be subject to the direction and control"*.

In Section 8.2: *"Since the consultants hired by the Commission are unlikely to be selected through public tender a specified salary or fee cap should be specified to prevent overcharging. Therefore, where*

there is not public tendering, the rate should be the same paid to public workers in the Schedule of personnel emoluments. If not, then you allow tendering."

Section 9.1: *"Since the scope of the investigative officers' authority is very broad and deep and he or she must rely on his or her discretion, it is important that the qualifications of such a person be specified. To reduce the risk of abuse by another administration, it is recommended that he or she be a chartered professional at the grade of Fellow."*

Now, that is the expert level. Fellows of professional bodies are normally too invested in their professions and have complied with a code of ethics for over a decade, therefore, they are more likely act in a fair, independent and unbiased manner. Now, there are precedents for this. The Government of Barbados already specifies posts that require qualifications to the grade of Fellow of internationally recognised professional bodies, for example, the post of Actuary in the Exempt Insurance Act, Cap 308.8.

Section 10.3: *"The Commission is not restrained by the rules of the Evidence Act which were designed to protect us all."*

While it is reasonable that opinion evidence may be relied on during the investigation phase of the process, the Bill should clearly state that the Commission must not rely on any opinion evidence to determine someone's guilt.

Section 11.1 (b): This Section appears to entitle a summoned person to be compensated for expenses as if he had been summoned to attend the Supreme Court on a criminal trial. However, the person can only be paid whenever and however the Minister of Finance decides. That is in Section 11.2. The Commission can also decide to simply not allow the summoned person to claim any expenses whatsoever. That is in Section 11.3.

The common trend when persecuting political competitors is to attempt to bankrupt them which can automatically disqualify them from being candidates. To have a person continually attend hearing for weeks can accomplish this aim. This is why the Evidence Act entitles innocent summoned persons to be reimbursed for both their time and expenses. This is Natural Justice since a person cannot refuse to appear when summoned without consequences. The Evidence Act appears to be carefully designed to protect innocent persons from political abuse.

Section 11.1b should therefore entitle a person to time and expenses to be paid within three months of the Consolidated Fund as granted to the Commission staff in Section 33.5b. Therefore our recommendation is that Section 11.2 and 11.3 should be omitted from the Bill.

Section 11.4 If a person insults a member of the commission, he is liable to be fined \$10 000 and imprisoned for six months. A person who is subjected to obvious, unfair treatment, for as long as a politicised Commission decides, knowing that he will not be reimbursed for his time, is vulnerable to objecting

improperly. Further, a politicised commission can entrap and frustrate an innocent person. The penalty for insulting a member should therefore be reduced to \$500 which should be enough to bring the offender to his or her senses which should be the Commission's aim.

In Section 11.5: *"A person shall not be compelled to incriminate himself however according to Section 11.4 he is liable to be fined \$10 000 and imprisoned for six months if he does not turn over documents."* It should be clarified whether he can be compelled to turn over documents that can incriminate others who, in turn, will likely incriminate him. Also what prevents a person from answering every single question with the sentence, 'I cannot answer that question because it may incriminate me.'

Section 12.8: *"While the Commission may require matters to be verified and witnesses to be examined under oath for preliminary inquiries..."* the Commission must do these things when determining someone's guilt and the Bill should specify this.

Section 14D: *"The Commissioner of Police must provide constables to do whatever the Commission directs."* to give guidance to inexperienced constables who may be ordered to do something unlawful and think that they can simply give the excuse that they were simply following orders, it should read, 'perform such' and add 'lawful duties as the Commission shall direct' not just 'any duties'.

Section 12.2: *"An investigative officer shall after making an arrest deliver the person to the custody of a member of the Police Force."* However, to reduce the risk of rendition it should read *"an investigative officer shall immediately after making an arrest, deliver the person to the custody of a member of the Police Force"*.

Section 17.3: *"To address the seizure of computers and other information critical to the functioning of an accused person's legitimate business the accused person should be allowed to retain copies made under the supervision of the investigative officer."* Therefore a new item should be added, say Section 17.4 to suggest the following: *"Where the material to be seized is in the opinion of the owner critical to the operation of his business, he shall be allowed to retain copies made under the supervision of the investigative officer before it is seized."*

Section 19.2: To reduce the risk of unnecessary delays a time limit should be specified for which the Commission must refer a complaint to a panel and we suggest within one month.

Section 21.1(A): Trivial, frivolous, vexatious and bad faith are subjective assessments that should not be provided to the panel as an excuse to avoid pursuing and investigation. A person complaining about seized documents may seem trivial to a lay panel but not to a contractor whose critical documents were seized and is liable for liquidated damages of \$50 000 per week on a construction project.

Section 21.1(B): A lay panel may decide that an investigation may be deemed not necessary since the seized documents may have been returned but what

about the quantifiable losses due to the contractor whose documents were seized and whose contract was now terminated as a consequence. If members of the panel are not knowledgeable in the field being disputed then the bar should be set low for an investigation to proceed - I mentioned the construction cases because most corruption worldwide is with construction projects.

Section 32.5: *"Once a person has retired from public life for two years then he cannot be investigated..."* This is a glaring loophole for persons who have already retired. Also persons can easily walk over this low hurdle by directing that bribes be paid to them two years after their retirement. It can take over a decade for evidence of corruption to be uncovered by responsible junior staff. If a time is to be specified then the minimum should be the longer of 10 years after the person ceases to be in public life or five years after the date that the Commission became operational.

Section 33.1: The Governor-General should appoint a minimum of two persons to the tribunal rather than the stated one person and they should be fellows of professional institutions for the reason previously stated in our recommendations to Section 9.1.

Section 33.3: Again the same recommendation. If a limit is to be specified it should be the longer of 10 years after the person ceases to be in public life or five years after the date that the Commission became operational.

Section 33.5(B): Innocent persons should be reimbursed for both time and expenses, not just expenses, and these are by the Commission.

Section 35.2: The \$20 000 fine is too easily affordable for those who intend to pay someone to reveal declaration records. It should be at least \$200 000.

Section 36.3: There was simply a question: What happens if a person simply refuses to pay the fine. Perhaps there should be an imprisonment provision for such blatant refusals.

Section 43.1: The \$15 000 fine and one year imprisonment is too lenient to be an effective deterrent. With such affordable consequences a person can simply take the chance of not disclosing information knowing that he can easily afford the fine. A minimum fine of \$150 000 and/or a three-year prison sentence is an effective deterrent.

Section 45.4: Since relatives and friends can also offer bribes this Clause, and I have written there Section 54.4 but it really should read, Section 45.4. See if you can change that on yours. Section 45.4 should be omitted. Every substantial gift should be reported like in Section 46.1.

Section 48: This loophole allows for persons who have already retired should be closed by specifying a period of the longer of 10 years after the person ceases to be in public life or five years after the date that the Commission became operational.

Section 54: There is now some sort of collusion with corruption therefore every participant should benefit from the same deterrent by facing the

same penalty accessories and that deterrent should be the fine of \$500 000 and this is relevant then to Section 54.1(A), 54.1(B), 54.2(A), 54.2(B), 54.3(A) and 54.3(B).

Section 56.A: This loophole allows the person charged with corruption to be found innocent if he can claim that he had no knowledge of the circumstances giving rise to the act of corruption therefore a person can simply reverse or engineer the corruption activity to be able to claim that he had no knowledge, not of the corruption act, but of the circumstances giving rise to the act. This Clause places too much uncertainty and doubt before the adjudicator therefore, it should not be a specified defence to bind the adjudicator.

Section 59: "Maliciously" is too subjective an offence since anything can be misinterpreted as malicious. A better description of an offence that can be better measured is "knowingly" and it was used in similar circumstances in Section 36.1(E).

Section 60.1: To reduce the risk of whistle-blower victimisation especially when there is no monetary reward, anonymous reporting should be allowed. It should be noted that anonymous reporting and financial incentives are proven ingredients of an effective whistle-blower programme which the Bill does not contain. In the United States of America (USA) they are highly successful securities exchange commission's programmes that allow whistle-blowers to report anonymously and rewards them with up to 30 per cent of the amounts recovered. Anonymous reporting and financial incentives should be a part of the whistle-blower programme.

Section 63: To prevent unnecessary delays a three-month time limit for the prosecutor to act should be specified.

Section 65.4: Again this loophole for persons who have already retired should be closed by specifying the period of the longer of 10 years after the person ceases to be in public life or five years after the date that the Commission became operational.

Section 76.1: This affordable \$15 000 fine is not an effective deterrent for this offence. A minimum of \$150 000 fine is an effective deterrent.

Section 77.2: This section contains a grammatical error. It should read: "*contract of employment includes an agreement*".

Section 79.2: The penalty should be the same as recommended for Section 25.2, namely, a \$200 000 fine and/or three years imprisonment.

Section 79.3: Both the receivers and givers of confidential information should face the same deterrent sentence of a \$200 000 fine and/or three years imprisonment.

Section 81: *The person should be liable for consequences of actions done in bad faith.* The Bill should specify that, for example, if the investigating officer would not allow an accused person to retain copies of his or her commercial documents resulting in quantifiable damage to his or her business, then the investigative officer should be liable.

In the First Schedule, Section 1(a), the

Chartered Accountant Commission member should be at the grade of Fellow for the reasons already explained in our comments to Section 9(1). With regard to Section 1b, to reduce the vulnerability of selecting someone who is not sufficiently invested in their profession to act in a fair and independent manner, the Clergyman Commission member should have a minimum of 10 years of pastoral responsibility. Therefore, he or she would likely have ministered to persons who support both established parties. To further reduce the vulnerability of a partisan appointment, the person should be recommended by the Barbados Evangelical Association or a similar representative body that would not want their reputation tarnished by recommending a known partisan priest.

In relation to Section 1(e) and 1(f), to reduce the risk of unfair and biased decisions, the Governor General should appoint a chartered professional at the grade of fellow for the reasons already explained in our response to Section 9(1). With consideration of Section 2(b), any person appointed by a Minister should be disqualified from membership of the Commission since they are likely to remain loyal to the one who appointed them. Regarding Section 2(c), a person who is a Minister should be disqualified from membership of the Commission since there is the obvious appearance of bias and politicization of the Commission.

This ends our submission and we thank you very much for allowing us this opportunity.

Mr. CHAIRMAN: Thank you Mr. Phillips. I understand that both you and Mr. Lewis will be available for questioning for the panel. Bishop Atherley now has the floor.

Bishop J. J. S. ATHERLEY: Mr. Phillips, good afternoon and thank you for your submission today and continued interest in matters of national concern. In an earlier manifestation of your organization's concerns, you made a reference to Section 6(2) of the Bill, however, this does not appear in the document we received today. Do you still have an issue with Section 6(2) which speaks to the Commission being treated as a law enforcement agency for the purposes of receiving disclosure of information which are relevant to its functions from any law enforcement agency, including a foreign law enforcement agency?

Mr. G. PHILLIPS: Section 6(2) was mentioned simply to identify that the Commission is an extremely powerful Commission; they have an opportunity to do great good but if it is politicized can do significant harm. If the suggestions we have put forward are addressed, even if not agreed, but at least discussed. It was simply put there so that we all know this is an extremely important Commission that can do great harm.

Bishop J. J. S. ATHERLEY: My reading of what you submitted earlier suggested that you felt that the Commission as framed in the Bill is likely to be a politicized entity, and given the powers under Section 6 (2), your concerns would be that whoever controls the Commission can clear their guilty friends and punish

their perceived enemies with impunity. Have your fears been allayed? How would you go about addressing those concerns if they have not been thus far allayed?

Mr. G. PHILLIPS: We sought to address those concerns with our submission. The Bill as written can easily allow guilty friends to go unpunished and innocent persons to be persecuted, as written right now. That is why we submitted these recommendations to 46 of the Sections that would allow the Commission not to be so easily politicized. At the moment it can be politicized extremely easily. I expect to be one of the first to be prosecuted because I am not under the protective umbrella of either established party.

Mr. CHAIRMAN: While the other members of the panel gather their thoughts, I want to engage you on your comment on Clause 32 (5) which is more or less repeated at Clause 48 and at 65 (4), all of these Clauses as currently drafted indicate that the intention of Parliament would be to have a limited a period of time after a person leaves public life upon which occurrence the ability to further investigate them comes to an end. At 32 (5) which states that an inquiry shall not be commenced after two years from the date on which the person cease to be in public life. It is your view that this period is too short and should be extended.

Mr. G. PHILLIPS: Yes, for two reasons, the first being someone could simply direct the person that is going to pay them a bribe, to do so two years after they retire. Two years is a short time, at least for us who are over 50 years of age. Secondly, it can take about 10 years for junior staff of a firm who is responsible, to be promoted to an associate or director, and then uncover the corrupt activities. Due to this, because it takes about 10 years to discover corruption activities. Ten years is a better time rather than two years. Ten years should be adequate.

Mr. CHAIRMAN: I understand your perspective but hone in on Clause 32. This Clause deals with the Commission examining declarations that are made by persons in public life. This is the whole intent of Clause 32, that is, when persons in public life file declarations that the Commission would have the right to examine those declarations and to look into whether what is so declared is truthful and accurate. I think we would all agree that one of the challenges that Barbados faces is that the public service and allied agencies are all known for working relatively slowly, and I wonder if there is not a case to be made for keeping this period of time short so as to ensure that public servants do not believe they can delay an inquiry into a declaration for two years.

Mr. G. PHILLIPS: So specifying a short period of time if it was done for the intention of getting persons to speed up an investigation that is commendable. However, the reality is that it is also a loophole, and it is a glaring loophole so that if someone wanted to receive a bribe they could tell the person alright let me retire this year and you can pay me my bribe within two years. Someone is unlikely to say you can pay me my bribe in ten years because they may die

but to say you can pay me my bribe in two years is likely especially as construction projects go on for about two/three years and sometimes five years for a large one. I know this because I work on large construction projects.

Senator C. A. FRANKLYN: Excuse me but I have a little difficulty understanding that. Do you really feel that an officer who is going to be bribed by someone is going to say to that person you can pay me my bribe in two years? If I get my job done, do you think... there is no contract so you cannot sue him. The fellow does not have to pay you. Do you really feel that somebody... you would want your money now.

Mr. G. PHILLIPS: The corruption cases around the world are available online, you can actually read the transcripts. You would be shocked about what goes on.

Senator C. A. FRANKLYN: No, that is not what I asked you. I asked you if you really feel... there is nothing binding a person who has offered to give a bribe. There is nothing binding those two parties. You cannot go and tell the police he promised to pay you a bribe and he has not given you your money or whatever else, you cannot do that, so I do not understand what you are saying. It does not make sense to me. It might make sense to other people but certainly it makes no sense to me. If you do not take your money upfront there is no guarantee that the fellow is going to say, well, I am going to pay you that money in two year's time. I am not going to pay you.

Mr. G. PHILLIPS: Who knows why people take bribes.

Senator C. A. FRANKLYN: What I am trying to ask you is...

Mr. G. PHILLIPS: I am not in the mind of the briber or the bribee. I am just saying what normally happens.

Senator C. A. FRANKLYN: What I am asking you is, if you think it is realistic that a person would postpone taking some money from somebody down the road and say well I want it in ten years or two years or three years? You do what you have to do. You are either doing or forbearing to do something that you have a duty to do, and you are going to pay the person for not doing his duty or for doing the duty to favour you down the road. When the favour is done you do not have to pay him anything because he cannot report you. You cannot go and say well, look, he did not pay me my bribe.

Mr. G. PHILLIPS: Yes, so we can rationalise it that way. I am not an expert in doing wrong things. I try always to do the right thing so I have no experience in this matter. All I can go by are the transcripts.

Senator C. A. FRANKLYN: Just explain; some commonsense...

Mr. G. PHILLIPS: Yes, but why do people take bribes in the first place knowing that they may get found out and then there is the embarrassment to their family and friends. Why do they do it? I do not know but they take the risk. They assess the risk and decide

they are willing to take the risk and they take bribes. I do not know why they do it, but I will not do it.

Senator C. A. FRANKLYN: You do not postpone the bribe, you take it. That is the point I am trying to make.

Mr. G. PHILLIPS: Yes, but they do it as well, so if that is what they do, that is what they do.

Now, we have not had a bribery case. I do not think, brought in Barbados so there is no transcript in Barbados to look at but you have them all over the world especially all over Africa and you could go and take a look. They brought them in England and you could go and take a look at the transcripts. It is crazy stuff.

Mr. CHAIRMAN: I take it that no other Members of the Committee wish to ask any questions. Do you have a very short closing statement?

Mr. G. PHILLIPS: Yes, I cannot thank you enough for this opportunity and for showing the maturity of this Administration so I am really encouraged and I hope that this sort of thing continues. I really appreciate it.

Mr. CHAIRMAN: Thank you very much Mr. Phillips and Mr. Lewis, your contribution is much appreciated. It occurs to me though that the disadvantage that members in the Gallery have is that they do not have the benefit of the presentations that have been made and at an appropriate time I will ask the Committee if there is a view that the submitted presentations can be made public on the website so that you could have seen what Mr. Phillips was going to present and have an idea of the nature of the discourse. I will try to think also if there is some mechanism for members of the Gallery to make available to the Clerk-at-the-table any questions that you might wish us to posit to the individuals but we can formulate that hopefully within the next couple of minutes if possible. Mr. Phillips and Mr. Lewis, thank you. We now invite the Kingdom Government of Barbados represented by Mr. Steve Hunte, Mr. Phillips, you are taking your leave but you do not need to.

Kingdom Government of Barbados was ushered in.

Asides

Mr. CHAIRMAN: You have big construction contracts to go and work on, we understand. Have a good day Sir, Mr. Hunte, you are solo. I will give you 15 minutes to make your presentation and to answer any questions.

Mr. S. HUNTE: Good evening to you. I want to thank the Government of Barbados for engaging the public in such a discussion like this to deal with the governmental affairs of the running of the country of Barbados in drafting such a Bill based on the integrity legislation in public life. My presentation today, I submitted to an oral presentation, is based on the governance of Barbados when it comes to corruption as the Bill states and I am here to represent the people of Barbados in being a voice and an advocate for the people of Barbados when it comes to good

governance in Barbados. According to our Constitution, we expect peace, order and good governance, and under a civil democracy this is what the Government expects from the people and what the people expect from their Government. Right now to deal with this Integrity in Public Life Bill, the meaning of the word integrity comes from the word integer in mathematical terms, just call the whole, so we must look at the Integrity in Public Life Bill in a holistic way to go forward, and I will say that this is a step that is in a good direction to protect our social, political, educational and economic development as a Small Island Developing State here in the Caribbean.

Mr. S. HUNTE: We must understand that corruption in Government has its history. I have never read a historical book where there is any type of political and economic integrity; it is always about political and economic corruption, and to deal with such a topic like this Integrity in Public Life Bill pertaining to all the aspects that are included in Government contracts, Government dealing with business and running Government business and dealing with the entire system of economics because it is the main thing that really caused development in a country, the politics and economics of that nation that is being done by the people who are put in place to do that, and over the years ... we have read in history, we have found out that politics is the art and science of Government and economics is the science of production and the distribution of money, goods and services but we have come to the place in the last Administration where we have been deprived and put in a disgraceful position in the last Administration and that is why we are here today, I believe, because six years ago this Bill was tabled but I recognise that it had not gotten the legs to leave the Parliament to become a legal document in the public street, but now this is 2018, six years after that and we are going to try to make this Bill a legislative Bill so that we can have some term of protection because I recognise to pass a Bill on morality is an imposition of a Government but for you to have morality it is a supposition so we are plagued with two things, an imposition, which is by legislative power, and a supposition which is of your own power and in this matter of integrity you must have integrity in your private and personal life and in your public and professional life to be a good example of a good citizen in this country of Barbados, so my presentation today is from my heart having a voice for the people of Barbados in respect to our leadership in the position of political and economic power.

Mr. S. HUNTE: I understand that Government is the head. We depend on Government for decision-making and we depend on Government for policies which are rooted in law that we may govern our affairs and our social life and that is why I was honoured to receive this official invitation from the Government of Barbados under this present Administration and I felt good that I can speak at a level like this to the people of Barbados and to address this Commission. Part of my recommendation for this

Commission is what I put together. I have read the Bill. I have been studying the Bill but there are certain things that I got an answer to in the previous meeting, that was on 27th August. I got some of my answers there when it was first commenced, when I first partook in its presence. And now I have a couple of questions to the Commission pertaining to who should be the members on this Commission. Will these members be either Standing or Sitting members in Government. Or there shall be an entire select body of independent individuals to deal with this Commission as we go forward in passing and facilitating this Bill.

Mr. S. HUNTE: Another part of my point is dealing with the punishment that is being exercised by the Bill when it comes to fines, punitive measures and monetary sentences based on the offence that is taking place by whomever in public office. And we have to look at this as a serious situation in the governance of Barbados. We know we have a level of tolerance in corruption in Barbados that is tolerated by many and few, but this is a time in our history of political governance where we have found ourselves deprived of integrity, deprived of morality, because when law and morality have a conflict it left the citizens to have such an alternative cruel decision to make, whether they will maintain their moral behaviour or have disrespect to the law when it comes to governance.

Hon. W. A. ABRAHAMS: Mr. Hunte, I do not actually want to interrupt you but just so it would help us. If you could perhaps direct or focus a little bit more on the Bill and any input into the Bill, any suggestions you have to make the Bill more effective, any concerns you have about the Bill. Those sorts of things would actually help significantly. I do not want to stop you but if you could just focus in that direction it would be a bit more useful for us.

Mr. S. HUNTE: Okay. Thank you. Well, I have a lot of concerns put into this Bill, in the main it is the Integrity Bill. I want to make sure that the rule of law is the detection and protection of the people, according to its opening statement. It must promote all integrity by rule of law, if we choose that legislative means, and it must be where we detect and investigate this Bill, when we are seen in public life, because we have to understand what we are going after. I am not a legal mind, I am not an academic mind but I am one who is direct. Is this Bill going to become, as someone said, a talk shop or is it just a futile exercise pertaining to this Bill? And that is my concern. I want to see results with this Bill, you the people have formed such a Commission with the legal power and authority that you have, my concern is to see results and a Bill like this to regulate proper governance in Barbados. And I will understand that it is not easy to run a Government and a people, decisions have to be made but they should be made in good faith, so I want the honesty of the leaders of the country, based on the Integrity Bill and make sure that this Bill is sharp enough on both sides and have a hook like a cane bill, so that we can hook and catch those who have committed an offence under this Act. That is my heart, I am seeking from my heart and

that is why I can always believe that we must go forward and it seems that the Constitution and the rule of law is what we must adhere to and pay attention to, so I would like to direct the Commission on the real process on the rule of law in this Bill.

Mr. S. HUNTE: This Bill has the power of the rule of law. This is not what we may come of our own minds, this is covered by the rule of law and the power of law, so we must let the law be the law and let this Bill be a tool to protect us the citizens of Barbados and even yourself from the very results of disobeying the law or even breaking or causing an offence in this document. So I want to speak from my heart continually as I believe that I love my nation of Barbados, so to you as a people and as I said intellectual and legal minds, I do not really want to detail a lot from this book because this Act here as already been drafted and crafted and constructed in your hearts and in your minds, there is little I can say to you that can really amend or change anything much in this document because this has been constructed in your minds already, so I will understand that this is indeed a document as put forth by legal and economic intellectual minds to which you will have the final say on this document and we will have to follow the procedures of this document in the end, so [that] my concern is that we can go forward and we can maintain the civil governance under civil rights of democracy, and one of my concerns [is that] I want to see persons charge when they violate the CRD. The civil rights of democracy, some persons have to be charged, reprimanded, confined and fined and I consider that the fact of deterrent...

This is one of the points that I am going to deal with now, using the deterrent against corruption, I think we need to change that word. This is my perspective. We cannot continue to use a deterrent, we got to try to use a detergent, a cleansing agent and I would recommend we use a detergent, a cleansing agent to clean this country from any type of corruption because it seems that deterrence does not work, you have to use a detergent, a cleaning agent. Let us use some industrial cleaning within the Government of Barbados for we have been tolerating this thing for too long and I want the people of Barbados to understand that Barbados is all that we have as a nation. If we cannot sell what we have and leave Barbados, Barbados is all that we have and we must protect that, as a Government and as a people and as we go forward in the governance of Barbados.

This document I have studied it, it is good in its written text but we have to see the manifestation and the operation of a document like this, that the people of Barbados can have hope and believe that the writers and framers of law of Barbados have integrity and morality to which without those things you would in conflict at all times with the law that governs us on a daily basis, so I am going to thank the people of Barbados, I am going to thank this Commission as it goes forward and I would like to recommend that part of my documents I have are roomed in my mind is that no person Sitting

or Standing member shall be a part of this Commission. That is part of my recommendation. This should be something like a separate body, selected that you who drafted this document give them the power to exercise this Commission, to go after.... because remember the document is based "in public life" so this is my recommendation, have a private body full of intellectual minds and legal minds to be commissioned and given the powers that are necessary to carry out this Commission in the investigations of corruption in Barbados, even in the region, that we can work together and get Barbados on the right track going forward.

Hon. W. A. ABRAHAMS: Mr. Hunte, I want to thank you for your contribution. If I can just address some of the things that you asked. Very quickly, we have had discussion as to whether the Bill is going to be a talk shop. It is not intended that this Bill is going to be a talk shop. The reason we are here and going through this process is so that all people who feel that the Bill is not as effective as it should be, or they want to suggest more teeth, or they have constructive suggestions that we can take on board, we will take on board because when the Act is eventually passed we expect that this Act is going to govern and control those [people] in public life.

The other thing that you questioned, you had a concern as to whether any members of the Commission will be Sitting Members of Parliament or in Government. No. The First Schedule sets out who can be members of the Commission. And for people who may not have been here last week or viewed online last week, I will just assist you.

"The members of the Commission shall consist of-

- (a) *A chartered or certified accountant of seven (7) years standing, appointed by the Governor-General.*
- (b) *A person who holds or has held the office of a judge in a superior court of record in any part of the commonwealth, appointed by the Governor-General (and this is after consultation with the Honourable Prime Minister and Leader of the Opposition.)*
- (c) *An attorney-at-law of - (it was initially 10 years' standing but I think we have been pretty unanimous in the last Sitting that we are going to ask that that be 20 years' standing).*
- (d) *A member of the clergy appointed by the Governor-General after consultation with the Honourable Prime Minister and Leader of the Opposition.*
- (e) *A person appointed by the Governor-General on the advice of the Honourable Prime Minister and a person appointed by the Governor-General on the advice by the Leader of the Opposition."*

There are no Sitting Members of Parliament or members of the Government on the Commission, but it might actually help if I actually read who is disqualified from holding membership on the Commission.

"A person shall not be qualified to be appointed as a Member of the Commission where that person

- (a) *is a Member of the House of Assembly or the Senate*
- (b) *has at any time during the period of three years preceding the appointment being a public officer*
- (c) *has at any time during the period of five years preceding the appointment held office in any political party, or*
- (d) *would otherwise be disqualified in accordance with Section 38 or 44 of the Constitution of Barbados [to be a Member of the House of Assembly or the Senate]."*

I think that should completely address that concern which you had. The other thing I want to clarify is that you had stated this Bill was laid six years ago and was only now coming on. This is a brand new piece of legislation. The former Government had purported to lay another piece of legislation. It was passed but not proclaimed, so this is a brand new 2018 piece of legislation that we are seeking to deal with, and we are welcoming the input of the public and all sectors of Barbados. This is to make sure that when it eventually comes it is fully debated and finally passed, it will be a Bill by consensus effectively: not just consensus of the House but of Barbados. I hope I have addressed your concerns.

Mr. S. HUNTE: Thank you very much.

Mr. CHAIRMAN: Do any Members of the Committee wish to engage Mr. Hunte further? There being none, Mr. Hunte, let me thank you very much for your very erudite presentation, and we look forward to your continued interest in the work of this Committee.

Mr. S. HUNTE: Thank you.

Mr. CHAIRMAN: Thank you, Sir. Feel free to stay with us. As an administrative matter, we have done a very quick caucus and it is the will of the Committee that all of the submissions be put online. Mr. Clerk, if you can put that in place with all possible dispatch. It is also the will of the Committee that members in the Gallery should not just decorate the precincts of Parliament but that if they do wish, they can pass a written question to one of the Marshals and we would be willing to offer it up to any of the people making presentations today.

Asides.

Institute of Chartered Accountants of Barbados (ICAB). Representatives were ushered in.

Mr. CHAIRMAN: If you need note paper, you can get that from the Marshals as well. Our next presentation will come from the Institute of Chartered Accountants of Barbados (ICAB). Its representatives

are Mr. Andrew Brathwaite and Mr. Reginald Farley. I have no indication as to which one or whether both of them will make presentations, but I think whoever speaks first will be acknowledged as the person who will be presenting, and I anticipate that both would be available to take any questions from Members of the Committee or from the Gallery. Gentlemen, the Floor is yours, and you are reminded that we have your written presentation as well.

Mr. A. BRATHWAITE: Thank you, Mr. Chairman. I will be the one making the presentation on behalf of the Institute in my capacity as President. Were you properly introduced? I do not recall.

Asides.

Mr. CHAIRMAN: I believe everybody knows who Mr. Farley is, so by default I suspect that everyone knows that you are Mr. Brathwaite.

Mr. A. BRATHWAITE: Everybody knows it, and my name is Andrew Brathwaite. On behalf of the Council and Members of the ICAB, let me start by expressing our gratitude to the Joint Select Committee for accepting our written submission and inviting us to make this oral presentation to expand on a number of our comments and add some colour. ICAB is a proud member of the International Federation of Accountants (IFAC), which is the global umbrella organisation for professional accountancy organisations. In recent years IFAC has drawn attention to an increasing public expectation that the profession should play a bigger role in enhancing governance and addressing fraud, corruption, money laundering and other unethical practices. The fight against fraud and corruption has therefore been identified as one of the organisation's core speaking-out themes and ICAB has followed suit.

ICAB supports the view that the time is long overdue for integrity legislation to be introduced in Barbados, and we commend Government for its speed in laying the Integrity in Public Life Bill in Parliament and for convening this Select Committee to examine the Bill and accept public comments. It should in fact be a matter of some national embarrassment that of 140 countries which are signatory to the 2003 United Nations Convention against Corruption, only Barbados and Syria have not yet ratified the Convention by enacting the required legislation. It is worth pointing out as well, as was explained before, that while Barbados already has a comprehensive Prevention of Corruption Act based on the UN Convention and which was passed by both Houses of Parliament in 2012, unfortunately this legislation was never proclaimed. The current Bill improves in the 2012 Act in some respects, but a number of critical areas have been omitted and we believe it is vital that these be addressed in due course.

Mr. Chairman, let me start with the subject of declarations of financial affairs, which must be filed every two years with the Integrity Commission which is to be established under the legislation. These declarations are to be filed by specified persons in public life and are a necessary feature. However, we would caution the Committee and the Commission that

these declarations have been problematic in other Caribbean jurisdictions. In Jamaica, for example, of 224 000 declarations due for filing for the years 2003-2015, 85 000 or 35 per cent remained outstanding in 2016. During 2015, however, only 93 delinquent public servants were reported to the Director of Public Prosecutions for court action, and only 47 were brought before the court. Similarly in Trinidad, at the end of 2016 the Commission had a backlog of 2 700 declarations to be examined and certified. Since the Commission only certified 1 700 declarations during 2016, it will clearly be challenging to clear the backlog while still examining and certifying current filings. During 2016, the Trinidad Commission published the names of 663 persons in public life who failed to file declarations during the period 2003-2014, accounting for 1 361 declarations. By the end of 2016, 130 of that number had filed 322 declarations after their names had been published; a quarter of the outstanding declarations. These statistics are based on the most recently available annual reports of the Commissions in Trinidad and Jamaica, as published on their websites.

Sir, the number of required filings in Barbados is likely to be significantly lower than in Trinidad and Jamaica, and ICAB is comfortable that the requirement to file the declarations every two years instead of annually will alleviate some of the challenges experienced in Trinidad and Jamaica without materially reducing the effectiveness of the measure. We are pleased as well that the legislation provides for publication in the Official Gazette and in a daily newspaper of the names of specified persons in public life who have failed to file declarations or furnish such particulars as requested. However, we propose a few additional matters for the Committee's consideration:

1. The form of the Declaration of Financial Affairs should be published for public comment before the Joint Select Committee concludes its work. The 2012 Act does have the form of the Declaration, and similarly the Turks and Caicos ordinance on which this legislation is based includes the form of the Declaration.
2. A detailed list of the specified persons in public life captured by the Second Schedule to the Bill should be published well in advance of its enactment to remove any uncertainty about who is required to file. In Trinidad, the Integrity Commission and the Attorney General were forced to seek guidance from the court on some matters of interpretation about who exactly was required to file, and in that 2005 Judgement from the court they also made a ruling the judges and magistrates were exempt from the requirement to file declarations and from the provisions of the relevant legislation.

Mr. A. Brathwaite: In Trinidad, the provisions are actually embedded in the Constitution and the court found that there was a conflict between those provisions and other requirements in the Constitution that apply to judges and magistrates.

3. The requirement in Clause 29 for the accuracy of the declaration to be verified or determined should be carefully considered and refined to give a more precise indication of the extent of the verification which is to be performed. Clause 31(5) which requires the Commission to provide a Certificate of Compliance upon being satisfied that a declaration has been "fully made" may also be problematic given the challenges in verifying possible omissions.

4. The Commission should be given the discretion to determine using a risk-based approach which declaration to examine in detail and when to do so.

5. Following the six month extension which the Commission may grant under Clause 25 (3), it should be empowered to make an ex-parte application to the High Court for an order directing any specified person in public life who is still delinquent in filing to comply with the legislation on automatic penalty of a specific fine or jail sentence.

This is actually a provision in the Trinidad legislation which was introduced after the Commission lobbied to that effect.

To be clear, we are not persuaded that the detailed examination and verification of declaration of financial affairs will be a productive use of the resources of the Integrity Commission. We are, however, open to any empirical evidence to the contrary and we strongly advise the Commission, once it has been set up, to consult with other integrity Commissions in the region and beyond and seek out best practice in this area at the earliest opportunity.

There are a number of other key areas where we think the legislation could be strengthened. We believe that the Auditor-General should be included as an ex-officio member of the Integrity Commission to facilitate the Commission's function under Clauses 4.1 (f) and (g) to examine and advise on practices and procedures of public bodies. This is actually the practice in Jamaica and would enable sharing of information between the two offices and more timely follow-up of irregularities and concerns discovered by the Auditor-General during the course of his work. Fortunately, the Bill already makes provision for agreements and exchange of information with law enforcement agencies including the local and foreign financial intelligence units. Our view is that this would allow for more targeted investigation of potential corruption as compared to the broader approach of examining declarations.

The Commission should also be given the expressed power to establish a Hot Line to receive anonymous tips from the public including from public sector employees. According to the Association of Certified Fraud Examiners of the corruption cases reported by their members for 2017, 50 per cent were

discovered by tips and the association has consistently reported over the years that tips are the most common method by which fraud and corruption are detected. While we are happy that Bill includes provisions for the protection of whistleblowers, we believe that individuals with information about possible corruption will likely be reluctant to identify themselves and appear before the Commission or in a court of law to offer evidence.

We recommend, furthermore, that the provisions of the Integrity in Public Life Bill be compared to the requirement and recommendations of the 2003 UN Convention Against Corruption as there are a number of gaps that need to be addressed. For instance, based on the Convention and best practice in other jurisdictions, consideration should be given to the Contractor General or similar legislation dealing with public procurement and divestment of public property as these have proven to be fertile areas of corruption, campaign finance legislation, freedom of information legislation for which a Bill was in circulation in 2008 but never laid in Parliament and measures to discourage and penalise corruption involving the private sector. These are all critical elements of an effective, anti-corruption regime some of which, in fact, are included in the 2012 Prevention of Corruption Act. We would also, at this time, remind the Committee that International Anti-corruption Day, sponsored by the United Nations Office on Drugs and Crime is marked each year on December 9th. We intend to write very shortly Chair, in your capacity as Attorney-General to urge that this be officially recognised in Barbados.

Finally, we would like to express our gratitude to the drafters of the legislation for making provision in the First Schedule of one member of the Integrity Commission to be appointed by the Governor-General after consultation with "anybody which in his opinion represent chartered or certified accountants in Barbados". We hope though that it would not be considered improper of us to suggest that this language be amended to make specific reference to the Institute of Chartered Accountants of Barbados as the body designated by statute to regulate and represent the interest of chartered accountants in this country as has been done in the case of the Barbados Bar Association. I only said that because I saw the smiles. I use the pronoun his in relation to the Governor-General only because that is the language in the Bill itself and not to draw attention to the fact that the gentlemen currently acting in post is a member of the institute of whom we are extremely proud and was in fact our very first president.

I thank you for your attention and my colleague and I would be happy to discuss our submission and answer any questions.

Mr. CHAIRMAN: Thank you very much, Mr. Brathwaite. The gentlemen are now available to be engaged by the Committee.

Senator Miss L. R. CUMMINS: Thank you very much to the representatives of ICAB, Mr. Brathwaite and Mr. Farley, for a comprehensive written

submission which we had the time to go through in some detail and for the oral presentation which further augmented the solid recommendations which are contained in your written submissions. I think that you have added value to the discussion by linking it to the umbrella international context within which many of these measures are contemplated. Indeed, we are talking not only about the United Nations Convention on Corruption but of course here in the Americas, the Inter-American Convention on Corruption where we remain the only country in the hemisphere not to have ratified that instrument.

Senator Miss L. R. CUMMINS: I have a couple of questions specific to your comments and recommendations on matters which are not yet covered in the legislation. I wanted to speak to it more widely within the context of other complimentary items of legislation which may need to augment the provision that are currently being contemplated here. You say for instance that the UN Convention speaks to four things, four of those things which were indeed referenced in the previous anti-corruption legislation which was passed and not proclaimed, but are not contained within this legislation. They speak first of all to a system of procurement based on transparency. What would be those specific recommendations that you would want to have incorporated into this Bill with regard to procurement and if not necessarily in this bill, if there are amendments that need to be made to other items of legislation.

Senator Miss L. R. CUMMINS: The same thing applies also to the measures to enhance transparency and the funding of political campaigns and candidates, that is another component which is not contemplated in this current bill but was in the previous legislation. What would be your recommendations and then of course, the relationship to the private sector. The final point which you have made in this section relates to the sharing of your data. We are talking here essentially about open data, freedom of information legislation and those kinds of things. Are there specific recommendations that you want to make at this time of those items? Thank you very much, Mr. Chairman.

Mr. A. BRATHWAITE: Thank you. The specific recommendations that we are making broadly is that a comparison be done of the requirements of the UN Convention because the Articles in the Convention itself are very comprehensive as to what is expected that you would see in the legislation or recommended that you would see in the legislation. We are not necessarily suggesting that those provisions be included in this particular legislation but they need to be addressed in some form or fashion so, for example, across the region we have examples of contractor general legislation. Jamaica, in particular, has had a lot of experience with this and arguably a lot of success with this and they have certainly identified areas where the Contractor General legislation needs to be enhanced. In fact, in 2017, Jamaica passed new integrity legislation that combines the Integrity Commission with the Office of the Contractor General

and another parliamentary body that was dealing with corruption, so they have pulled everything into a single body and given them expanded powers including the powers to prosecute where they is suspected corruption. The UN Convention also is accompanied by detailed implementation guidance, so again we have not come necessarily with specifics as to what that guidance requires but just to say there is very detailed guidance on the provisions that are best practice to be including in a relevant legislation.

Bishop J. J. S. ATHERLEY: Mr. Brathwaite, thank you. Good afternoon. With reference to Section 29 of the Bill, the Commission or the Governor-General as the case may be shall receive, examine and retain all declarations and documents. Your organisation is suggesting that some discretion should be given. The Commission may determine which declarations it would choose to examine and when to do so using a risk based approach. If you go that route, in your view, exposing the Commission to the jeopardy of being accused of discriminatory behaviour based on some partisan or other consideration.

Mr. A. BRATHWAITE: Thank you. Yes, that is a possibility and when we surveyed our members on that particular question, some of them did point out exactly that. The overriding concern though is (1) whether the Commission would be able to adequately handle the volume of declarations and (2) whether there is reasonable value in having the Commission attempt to do detailed examinations and verifications of file declarations. That is partly on the assumption that persons involved in corruption are more likely not to disclose ill-gotten gains than to disclose them in the declaration and risk detection upon examination and we do not have the empirical evidence to support that but we are suggesting that one of the first things the Commission should do is investigate the efficacy of doing these detailed examinations of the declarations.

Mr. CHAIRMAN: I should give the Floor to Minister Jordan but before I do that, Minister Jordan, I just wondered though whether I had taken into account the potential numbers of individuals who might be captured in our second schedule. Just taking the ones of the House of Assembly that is 30 at the moment and members of the Senate that is 21, members of the Cabinet are drawn from the Upper and Lower House so that does not really count. Permanent Secretaries and heads of departments, I really cannot imagine that we will be dealing with more than perhaps 250 people who would have to file declarations. That number may go up or down but certainly in the context of Trinidad and Jamaica for Jamaica to have 85 000 declarations outstanding, and I am sure that is accumulative but I am just thinking that there might be a significant difference in numbers between the amount of declarations that need to be examined and it might be better to err on the side of doing all if the number is manageable, but I will hand the Floor to Minister Jordan.

Hon. C. E. JORDAN: Thank you, Mr. Chairman. Mr. Brathwaite I would add my appreciation to you and ICAB for the submission. I just had one

small question. You had mentioned, including the Auditor General as a member of the Commission and two questions came to my mind, one had to do with his role as a public officer and the likelihood, well "he" being whoever it is in terms of gender, but that person being likely an expert witness - to use that phrase - in some investigation. Would that person being a member of the Commission comprise the role that we expect an Auditor General to execute, for example, in our current set up before a Committee of Public Accounts? That is question as to your rationale and did you take that possibility into consideration?

Mr. A. BRATWAITE: Thank you. It is a good question. What I would say though is that the practice of having the Auditor General as a member of the Commission is already done in Jamaica. Jamaica has done it for many years and as I mentioned before, Jamaica has now formed a new anticorruption body and they have continued to include the Auditor General as a body, but I would think we could easily speak to the Jamaica Commission or persons in Jamaica who may have more detailed information and get an idea of what the complications are that might arise and how they might arise but the fact that Jamaica has continued to do it under their new set up suggestions that it has not been overly problematic.

Mr. A. BRATHWAITE: With your leave, Mr. Chairman, if I can just revert to Bishop Atherley's question, the matter of resource allocation was one of the matters we had discussed in relation to giving the Commission the discretion to use a risk-based approach concerning its examination because we have the situation where for many years now, the Auditor General, for example, has not had the number of posts filled to be able to do the audits he requires and if you have approximately 250 of these filings every two years, then depending on what level of examination, verification you are seeking to do that dictates a level of resources which, quite frankly, may not necessarily be affordable. This is not a matter for the legislation but more for the functioning of the Commission, we also discussed the matter of the manner of filing, just what is declared, how it is declared, including the matter of electronic filings because electronic filings using interactive technology allows for some of that preliminary processing to be done electronically. It was all done on paper or just in static electronic format, then it requires people to enter it into a system and to do other forms of processing so that we should, well not the not the legislators but the Commission in terms of its operations. You should use relevant available technology to make the analysis of the information presented easy. We have also suggested in our written submission that the relevant, available technology to make the analysis of the information presented easy. We have also suggested in our written submission that simplifying how the information is presented makes for willing filers. Realistically, filing anything is a burden to the extent that we can keep it simple encourages compliance, and that we can use electronic mechanisms that can help.

Another point on electronic filing is that, one of the important aspects of the analysis done by Commissions looking into corruption is time series analysis. You are not just analyzing this year's filing, one is looking at previous years and that becomes a lot easier with appropriate, underlying electronics. Therefore, as part of the matter for the Commission we strongly recommend the use of appropriate interactive technology, as well as the provision of adequate human resources. Finally, we also discussed one of the recommendations related to the investigator. In these matters when we think of investigators, we tend to think about criminal or legal types to investigate on that basis. Truly, the resources of this commission, in addition legal, we will need to have adequate accounting, finance personnel to truly understand exactly what is presented and to do proper analysis. These are matters we did not address because those are more for the functioning of the Commission post the passage and proclamation of the legislation. However, those were some of the input into the debate surrounding the matter raised by Bishop Atherley.

Mr. CHAIRMAN: Senator Franklyn has the floor.

Senator C. A. FRANKLYN: Thank you, Mr. Chairman. I wanted to ask a question about election campaign financing so I will do so after I make my comment. You suggested that the Auditor General should be a part of the Commission. I want you to suggest to us how that is going to be possible when the Auditor General is required to audit the Commission itself? You cannot ask an auditor to audit himself? How would you achieve this? If you look at Section 7 of the Act, the Auditor General must audit the Commission itself. How are we going to give effect to your suggestion?

Mr. A. BRATHWAITE: Agreed. Our suggestion is that the Bill be amended to provide for private auditors to audit the Commission. Actually, we included that as a recommendation when we commented on the 2010 Prevention of Corruption Bill which was passed. In essence, a private firm would have to audit the Commission, and there are already private firms auditing similar bodies.

Senator C. A. FRANKLYN: Thank you. I simply wanted to know because it had me a bit confused. You spoke to election campaign financing. What other measures would you suggest because to my mind our problem is not rules to regulate campaign financing, our problem is enforcement. For example, a candidate should not spend more than \$10 per elector. Therefore, if you have 6000 people in your constituency, you cannot spend more than \$60 000. Also, you have an instance where persons claim they gave monies to political parties to help the campaigns, however, the law states these people must declare it. Therefore, the candidate who receives that money and the person who gave the money must make a declaration. I have never seen one.

As a matter of fact, regarding the election of 2013 I went to the Registration Department where they

are stored and I paid for copies which are cheap, \$3 is the cost of one. I perused it and most of the information required by law is not there. I do not think it is the regulations you need, it is enforcement. The Electoral and Boundaries Commission collect the documents and whatever a candidate said he spent they record. I saw a candidate last election who did not have a mobile phone, but I doubt that. However, according to his declaration he did not have a mobile phone, an office, flyers or other advertising material, and that was allowed to pass. I do not think we are speaking to the legislation which we have, it is the enforcement of the legislation that is not happening. I am suggesting that we remove the regulatory power from the Electoral and Boundaries Commission, as opposed to keeping it in the hands of persons who are appointed by the politicians. For example, the Chief Electoral Officer will not become this officer unless approved by the Prime Minister. You have a duty which you may have to exercise against the same Prime Minister, but you are not liable to do it. I do not know if you would agree, but that duty should be removed from the public officers and given to the Commission. I think this may be more feasible and I wish to recommend it, but I wish to know if I have support.

Mr. A. BRATHWAITE: Thank you, we share some of your concerns and we agree that the effectiveness of the enforcement would be enhanced by bringing it under the scope or within the scope of the Commission. I believe that when Sir David Simmons was here he spoke at some length to the success they have seen in Turks and Caicos, where the regulation of campaign finance has been brought under the Turks and Caicos Integrity Commission. Apart from that, in terms of strengthening the current legislative framework, the Turks and Caicos legislation and UN Convention speak to financing of political parties and not just candidates in elections, so we think it would certainly enhance the campaign finance regime if we had additional regulations related to the funding of political parties and transparency in the funding of political parties. In the Turks and Caicos Islands there is a separate ordinance which deals specifically with this.

Mr. CHAIRMAN: Mr. Thorne now has the floor.

Mr. R. A. THORNE: Thank you, Mr. Chairman, Mr. Braithwaite, like my colleagues Minister Jordan and Senator Franklyn, I had also placed an asterisk next to the issue of Auditor General. I am disturbed by the proposal. He speaks as an accountant, I speak only as a lawyer and the term I would use is conflict of interest. The Auditor General is actually a Head of Department, therefore, he is himself subject to the scrutiny of the Commission in that capacity. So that, there could be a severe conflict of interest in relation to this proposal, so I encourage the ICAB to revisit that proposal. If you say the Auditor General, there is nothing to stop you from saying the Commissioner of Police who sits, critically, when it comes to the investigation of corruption. You can extend the list, but the list should not elevate persons above the scrutiny

that is intended over the entire public service. I would like to invite you to revisit that and also like to invite you to consider that even if you remove the Auditor General from auditing the Commission itself and put him on the Commission you have put him into a fairly rarefied area, so in a sense, can he investigate himself? If one of the officers in his department is problematic, where does he stand? That is why I used the term conflict of interest, so quite gently I would like to suggest that the association revisit that proposal and accept this not by way of criticism but merely observation.

Mr. R.A. THORNE: You have done a very succinct paper and that is commendable but some of the proposals are really operational as opposed to statutory. Not everything goes into a statute but I am sure that the Commission will accept... Like the hotline, for example, you would not put that in a statute but I am sure that when the Commission comes to life it will be encouraged to look at your paper and consider a lot of the meritorious proposals, and I do say they are meritorious, that have been made in terms of the day-to-day operations of the Commission. The main point is that I would want to resist the elevation of the Auditor General onto the Commission because he becomes exempted himself from investigation. Thank you very much.

Senator Miss L. R. CUMMINS: Thank you, Mr. Chairman, I want to go back to a point you made earlier and I want to contextualise it within the UN Convention on Corruption. You made a recommendation that there needed to be measures to prevent corruption involving the private sector and to provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures, so in the context of the Convention on Corruption it raises issues relating to things like the recovery of assets requiring financial institutions to verify the identity of customers and those kinds of things, so within the actual draft of the Bill, what would you recommend would be some of the asset recovery measures which do not currently exist in the draft as it stands here, from an accounting perspective obviously, from a financial institution perspective?

Mr. A. BRATHWAITE: Thank you, I do not know if I can speak to it from an accounting perspective and I certainly cannot respond in detail, but what I will say is that there is a section in the 2012 Prevention of Corruption Act that deals specifically with those measures so we would need simply to refer to those and those are based on the requirements in the Convention which, unfortunately, I do not have to hand. There are detailed provisions in the Convention and those have been replicated in the 2012 Act. You also spoke about the private sector so again those are captured in the 2012 Act which includes offences related to, for example, fraudulent financial reporting and imposes stiff penalties on chief executive officers of private sector enterprises that are found guilty of bribery or other corrupt acts.

Hon. W. A. ABRAHAMS: Mr. Braithwaite, I

want to thank you for what was an entirely thorough presentation. I do note that the oral presentation contained a little bit more than what was in the initial comments that you submitted to us so just for completeness, I do not know if you could submit those to the Committee so that we do not miss anything that you would have said. The other thing is that unlike Mr. Thorne I will not ask you to rethink or withdraw your suggestion, I will simply say we will note it and eventually the Commission will actually make the decision or make recommendations as to what goes into the legislation. All views will be considered because I am sure there might be some when the Commission sits to debate it among themselves who actually do support the Attorney-General, but I just want to thank you for what was an exceedingly thorough presentation. I also want to thank ICAB for taking the time to put it down. Your submissions, I believe, are going to help us significantly. Thank you.

Mr. CHAIRMAN: The Chief Parliamentary Counsel Acting, Mrs. Williams.

Mrs. R. WILLIAMS: Good afternoon. I just wanted to make a point of clarification in relation to the supporting legislation that was mentioned, public procurement, freedom of information, recovery of assets. From a legislative point of view, those things will not be placed within this Bill but they would be the subject of a separate Bill. For example, public procurement, CARICOM is presently dealing with a public procurement Bill and we have been working with them for a considerable period of time on a Bill and it is at an advanced stage, and similarly with the other supporting pieces of legislation which will go towards the entire legislative framework and regime.

Mr. CHAIRMAN: Thank you very much for that clarification. Senator Cummins.

Senator Miss L. R. CUMMINS: Thank you, Mr. Chairman. I think that is an important clarification. I think many of us from our perspectives are familiar with much of that work but for the purpose of the public watching online some of the elaboration is really important so when you follow the social media discussion a lot of these issues are being asked and so it is important from our perspective to raise the questions and get the answers so that the public has the answers as well, so your clarification is greatly appreciated.

Mr. A. BRATHWAITE: Just to say, Mr. Chairman, we fully support it and that is our perspective as well. What we sought to do is to frame our presentation within the context of an ecosystem for the prevention of corruption some of which will be in this Bill, but this Bill, even though it carries the grand title of Integrity in Public Life, cannot do it on its own and we are just making the point that while we are doing this let us remember to take a look at all of the other legislation, some that already exist and some which does not, to make sure that we can go through our checklist, match it against the UN Convention or other standards and make sure that we cover it all.

Mr. CHAIRMAN: Thank you very much, Mr. Brathwaite inasmuch as I am going to allow you to

wrap up, let me just put one question to you. Our Bill also has a name and shame provision, that is, if you do not file that we are prepared and will undoubtedly publish in the Official Gazette and the newspapers the names of people who are in default, and you are correct a similar thing happens in Trinidad and I believe Jamaica, I cannot say though that I have any anecdotal evidence as to whether that actually works. The only time Bajans respond about anything in the newspapers is when you are knocking down their house or when the banks say that you have money but you have not come for it in the last six years and I was wondering if there is any anecdotal evidence that that kind of approach has been able to encourage, if not compel, people in public life in those jurisdictions to publish.

The other thing, of course, is that I have a particular view as Attorney-General that we really should not be locking up people for everything they do, and I think coming over from what you said you seemed to be encouraging a situation where as long as you do not file you should be summarily sent as an overnight visitor to Her Majesty's Prison Dodds. I do not know if that is necessarily the approach that we want to get where we end up criminalising people, but you can address those in your final comments after which we will hear from Integrity Barbados.

Mr. CHAIRMAN: Oh, I have to give precedence to the Leader of the Opposition more or less.

Bishop J. J. S. ATHERLEY: I apologise for the late intervention, Mr. Chairman, but I really wanted to get in this question before Mr. Farley leaves his chair. Do we capture members of the diplomatic corps, consular officials and all of these people in this thing?

Asides.

Bishop J.J.S. ATHERLEY: Is the Diplomatic Corps captured in there?

Laughter.

Bishop J.J.S. ATHERLEY: You do not have to answer that.

Senator C. A. FRANKLYN: And so, Senators and the Opposition, we are low-risk too but we have a good file and poor me, I do not have anything to file.

Mr. CHAIRMAN: The members of the Diplomatic Corps are not treated as subject to many of our laws, so we will let that one pass, Mr. Brathwaite, your final comment.

Mr. A. BRATHWAITE: Thank you, Mr. Chairman, I will try and capture all of your questions but I am sure Mr. Farley would jump in if I miss anything. On the question about penalties and the appearance that we are suggesting there should be a rush to jail, people who do not file, that is not the case, we are simply saying that based on the experience of other jurisdictions, Trinidad, I believe, for example, started out without that provision in the legislation that allows them to publish the names – [I'm] speaking under correction. They then moved to that position. Unfortunately I only have the data up to 2016, where they had just started publishing the names of defaulters

so that you will see that it went back to 2003. By the end of 2016 which is the year when the names were published, 25 per cent of the defaulters had filed - the ones whose names were published, so [that] we will need to look at what happens after that, so what happened in 2017. Did it bring the number of defaulters down significantly following the publication? Part of the issue was that the Commission had no power where the filers were delinquent, to enforce any penalties, the matter had to be brought to court, so [that] what they asked for was the power to make an *ex parte* application so that the court could order the defaulters to file. The penalty for non-filing in that instance would then be at the discretion of the court, presumably.

Mr. A. BRATHWAITE: I wanted to say, as well, that I made references to the 2012 Prevention of Corruption Act and how that was based on the United Nations Convention, however, I was not attempting to say that that Act is perfect. There was a similar process when that Bill was published, so [that] there was a Joint Select Committee of both Houses of Parliament, ICAB on that occasion, as well, submitted recommendations for amendments and we also appeared before that Joint Select Committee. None of those amendments were made. Fortunately, some of the things that we recommended have been captured in this Bill but it is clear that the intention is that some of the things that were omitted will be included in other pieces of legislation, and we are entirely comfortable with that. So thank you very much Chair again for allowing us the opportunity to be here. The institute is available to the Commission to lend assistance in any manner that the Commission sees fit.

Mr. CHAIRMAN: Thank you, Mr. Brathwaite and Mr. Farley. On behalf of the Committee members and I would like to congratulate the Ambassador on his recent appointment. I take it that at some point in time soon - Sorry - High Commissioner. I imagine that ICAB will miss you.

Mr. A. BRATHWAITE: ICAB will certainly miss him.

Mr. CHAIRMAN: And many people will.
Asides.

Mr. CHAIRMAN: We want to thank you for joining us. You are invited to stay. We shall now welcome Integrity Group Barbados.

Integrity Group Barbados representatives were ushered into the Chamber.

Mr. CHAIRMAN: Thank you very much. Let me welcome Integrity Group Barbados. Let me especially welcome Beverley Lady Walrond. I am delighted that you would join us. You are more than a fitting substitute for Mr. Shaw. In fact, I am happy to see you than him. And with you, Lady Walrond is Ms. Alicia Archer and Mr. Devon Bruce. I am not aware as to who will make your presentation. Ms. Archer?

Ms. A. ARCHER: Yes, I will be the one making the presentation.

Mr. CHAIRMAN: You have the Floor.

Ms. A. ARCHER: Yes, thank you, Chairman

and Members of the Committee, ladies and gentlemen. Given the time constraints we do not propose to rehash the provisions as discussed in our written submissions which were submitted to the Committee on 23rd August, 2018. However, we wish to use this opportunity to essentially underline and italicize a number of key issues that we think bear heavily on the effectiveness of the legislation before us. In order of importance we consider those issues to be:

- (1) *The Whistleblower provisions;*
- (2) *The deterrent effect that the legislation needs to have, especially as it relates to the penalty provisions;*
- (3) *The composition of the Second Schedule; in other words, those who fall to be considered as persons in public life;*
- (4) *The absence of provisions governing the financing of political parties; and*
- (5) *The funding of the work of the Commission.*

If time allows, we also propose to speak briefly to the need for other pieces of legislation to bolster the fight against corruption. Now, to begin one gets the impression from the public discourse so far that corruption offences are being viewed as a breach of some sort of moral code or [that it is] akin to the offence of theft which relatively speaking, in the hierarchy of criminal offences fall somewhere in the middle. However, if we consider that with corruption offences the state is actually the victim and we consider those offences to be little better than treasonous, then with that mindset going forward we can accord to be exercise the level of seriousness that it merits. In that context the person who brings such treachery to light has to be the single-most important cog in the mechanism, the entire mechanism of the anti-corruption framework. If people are operating in the shadows and behind closed doors it is necessary for someone who is actually privy to the secret to bring it into the light. In Barbados we say that it takes two hands to clap, in other words, public officials do not corrupt themselves, they do not bribe themselves and therefore there must clearly be a private sector counterpart who is the left hand if the public official is the right hand. There is, therefore, no good reason that we have found for the limiting of the whistleblower provisions to public officials only. Frankly, given the convoluted nature of the procedure to get someone out of the public service, a private sector counterpart is far more at risk of victimisation and so on, than a public official. The provisions as currently drafted provide no external motivation, whether through reward or otherwise, for anyone to put their mortgage or their plane trips to Miami on the line in order to bring this information to light.

Ms. A. ARCHER: ... If there is no information, what is there to be investigated? If there is no investigation, what is there to be prosecuted? If there is no prosecution, there can be no deterrents. Therefore, people will feel free to continue doing as they like, secure in the knowledge that the legislation is

ineffective. In that vein, we submit that:

1. The whistle-blower provisions need to be extended to any and all persons, however they may come by the information, and not simply be limited to the very narrow class known as "public officials".
2. It needs to be emphasised that Section 68(3) should be completely excised from any iteration of this Act. For the record, Section 68, subsection 3 reads:

"A disclosure is not a protected disclosure where the public official commits an offence by making the disclosure or discloses privileged material or informational disclosed to him in the course of obtaining legal advice." Especially Paragraph (a) can be used as a weapon to wholly undermine whatever protections are afforded by the legislation by simply creating subsequent legislation indicating that it is now an offence to disclose X or Y."

3. What should be a very simple proposition we consider to have been made unnecessarily complicated. The provisions as drafted appear to present a barrier to the actual disclosure of the information that is necessary for the process. The average Barbadian tends to consult his or her friend in the supermarket or rum shop. They are not going to pay a lawyer to find out whether their "employer" is a person who is appointed under the hand of the Governor General or pursuant to some enactment. Even if you work for the Crown, how exactly do you identify who your employer is? The term "employer" is nowhere defined in the legislation. It is not outlined how one identifies said employer in the legislation, so that we are either left open to litigation, which we would really try to avoid, or it is left to interpretation. To facilitate disclosure by whistle-blowers or other concerned citizens, we think that simplicity needs to be key, so that the disclosure should really be made directly to the Commission and not to the multiplicity of persons outlined in several different Sections in the Act.
4. Even if they make it through all of the obstacles that are presented, what happens to these people and their families? Where large sums of money and status are at stake, these people are at risk. What needs to be expanded on in as clear a fashion as possible is the protection to be afforded to whistle-blowers and their families. Do we provide explicitly for in-camera evidence? Do we punish the victimisation or the intimidation of a whistle-blower's spouse

or children for the purpose of getting them to recant? Should the burden of proof not fall on the employer or the person in authority to establish that their attack was not motivated by disclosure as opposed to the Crown or the State having to prove that it was?

5. Consideration should also be given to other anti-corruption models, which provide incentives for disclosure: for example, a percentage of forfeited property on a successful prosecution, or plea bargaining for a reduction in sentence if you happen to be complicit.

Ms. A. ARCHER: This brings us to Issue No. 2, or the question of deterrents and penalties. The point in this case may be best made by way of an illustration. If on a \$300 million contract my "fee" for awarding that contract to X is \$10 million, is it not reasonable to assume that I may quite happily write a cheque to the Treasury for the \$15 000 fine or even the half-million-dollar fine, possibly even take a two-year State-sponsored all-inclusive vacation in the best parish in the island, and then come back out and spend my other \$9.5 million less legal fees? The penalties must make corruption unprofitable, if not we are wasting our time. We would submit that in this case – when we say this case we mean the real corruption offences and not failing to turn up to the hearings and so on – a formulaic approach might be better than a fixed penalty approach. Barbados is no stranger to a formulaic calculation for penalties. For instance, the penalties for drug offences can range up to twice the value of the drugs.

Mr. Chairman, we are also suggesting that a sentencing tribunal should have an entire suite of punishments at its disposal to tailor it to the particular circumstance. Immediate forfeiture of an ill-gotten gain as well as disqualification from holding certain positions such as those on statutory boards or public corporations need to be standard punishments. If you stand to lose more than you have actually gained, we would have already weeded out the opportunistic person. Then, coupled with proper whistle-blower protections, we would be left to focus on those who are hell-bent on doing what they feel like doing anyhow. This feeds into our third point that the Second Schedule needs to err on the side of being comprehensive, as opposed to, from the get-go, excluding large classes of persons who fall squarely within the definition of being politically exposed and who are prime candidates for corruption, whether now or in the future.

Where are the references to the Commissioner of Police and officers of senior rank? Where are the references to Customs officers and Immigration officers, who by virtue of the nature of their jobs are perfectly primed for corruption approaches? Where are the judges? Yes, there is the bandying about of the decision from the Trinidad and Tobago court, but that requires an examination and a comparison of our Constitution versus the Constitution of Trinidad and

Tobago. The decision itself needs to be examined minutely and not just say that because Trinidad's courts have ruled we therefore take it for granted. We have courts here, we have the Caribbean Court of Justice and we have any number of avenues to determine if in a Barbadian context judges should also be excluded. The Government also has a number of limited liability companies incorporated under the provisions of the Companies Act, which are different from statutory corporations. Those are not captured in the legislation as it is currently drafted. There are also a number of private corporations essentially where the Government has significant shareholding; those are also not covered by the legislation. Since those are not covered, the Boards and the executive officers of those institutions are not captured in the Second Schedule, and we would suggest that they should be.

Mr. Chairman, essentially what we are trying to do is facilitate discovery in order to root out corruption, so that the net needs to be as wide as possible in order that if you catch a small fish he may lead to a bigger fish as opposed to just focusing on the bigger fish which may be a little harder to unravel. This takes us to the question of political parties, which are essentially unincorporated associations set up for the express purpose of securing the election to office of a number of the persons listed in the Second Schedule. Those persons, certainly in a Barbadian context, in turn appoint other persons mentioned in the said Second Schedule, and usually from among the ranks of the same party. The question, therefore, is can I not simply make a donation to secure my contract directly to the party, as opposed to an individual who must file a declaration? The party can then build up its war chest, and eventually when the limitation periods, which we consider to be quite short – two years and so on – have passed, then we can distribute with impunity. The exclusion of political parties and the executives of those parties from the reporting requirements in Parts 4 and 5 of the Bill constitute a rather large loophole which allows for circumvention of the provisions.

Ms. A. ARCHER: The Integrity legislation and the regulation of Political Party financing go hand in glove. Listening to previous questions and comments from Senator Franklyn, he indicated that we have a problem with enforcement as opposed to a problem with legislative provision for political Party financing. The legislation that we currently have which is the Election Offences and Controversies Act, the Representation of the People Act deals specifically with the election period so that it does not cover my \$100 000 gift to a political Party after an election has passed, so that essentially, I have four years and some in which to make all the donations that I wish to make in order to secure whatever I wish to secure. I do not have to wait until an election is called to donate money to the Party so that we really effectively do not have legislative provision for political Party financing currently.

Finally, we also need to facilitate the ongoing work of the Commission itself, but it will always be inherently problematic where the monitory support is to

be voted on by Parliament; so that the chief people who are most at risk of being approached for the purposes of corruption are the people who are tasked with deciding on an ad-hoc basis how much money the Commission is supposed to get to carry out its function. I can simply starve you of resources, bog you down, have all the backlog and therefore continue to do what I wish to do with impunity so that we are not acting in a vacuum. We live in a world with 100 and odd countries and we examine their legislation and see that they are different funding models. Even close to home, the Caribbean Court of Justice is funded by a trust set up and obviously resources and so on will dictate whether that makes sense, but going forward, we would suggest that the concept of the financing of the Commission should be an ongoing exercise essentially, so that it should be the subject of a future amendment given that the time constraints of having to try to get this legislation passed does not necessarily provide currently for a time span where we can examine several other models and decide on a better one.

In closing, we wish to state that the Bill that is currently under discussion cannot be a stand-alone piece of legislation. It must, in the short term, be followed with freedom of information legislation, enforceable procurement legislation as well as an examination of our current defamation laws so that essentially, we would hope that when this Act is passed there is not a lag of another decade between that and the means to allow persons to unearth the information that allows this Act to function as it should. Those essentially conclude our oral submissions and we are happy to respond to any questions that the committee may have.

Mr. CHAIRMAN: Thank you very much, Mrs. Archer. The Floor is open to anyone who wants to engage.

Senator C.A. FRANKLYN: Mr. Chairman, thank you. I find it very difficult to engage you and disagree with anything that you had to say. You had a very comprehensive presentation. A lot of what you said is very desirable, but there is only one thing I want to touch on. You spoke about financing Political Parties outside of the election period. I want suggestions because I know you can do that and put the money down for a while and then eventually they have a lot of money. Usually, political Parties are starved until campaign time. I know because I used to be a member of political Party and you could not pay staff but at election time they are washed in cash but when this Bill become an Act, with this Act in place your suggestion could apply. What would be your suggestion to counter that?

Ms. A. ARCHER: Thank you for your compliments. On Page 8 of the written submissions, we listed as ancillary concerns ways or at least an initial suggestion as to how we could make political financing more transparent. Reference had been made to the United Kingdom Political Parties Elections and Referendums Act, 2000, which arose out of a ???Committee that had considered how to make

politics in general more transparent and to provide not only for monies spent during the elections but for the entire arena of political financing. That Act places certain responsibilities, for instance, on the equivalent of the General Secretary with the Party, the Treasurer and so on. It is very detailed so that if you have a look at that, I did not bring it with me, but if you have a look at that...

Senator C.A. FRANKLYN: What is it called?

Ms. A. ARCHER: The United Kingdom Political Parties Elections and Referendums Act, 2000 on Page 8 under Ancillary Concerns.

Hon. W.A. ABRAHAMS: Miss Archer, I sat here eagerly awaiting your presentation and to say for the purpose of full transparency, that I have known Mrs. Archer for a very, very long time and I am singularly impressed by her all the time. With respect to the limitation period, I think that we have pretty much accepted, based on the presentations last week and the discussions that we have had that what you call the limitation period of two years after is too short, but rest assured that unless something really untoward happens the eventual period that you will see is going to be significantly longer than that. I think we will be looking at a period of five years. Also I fully agree with you with respect to forfeiture. It makes sense that anything that you have gained illegally, you should lose and your penalty should be on top of that so you will get no complaints there.

Your suggestion to widen the net, to catch the small fish because the small fish leads to the big fish. I will tell you it poses a problem because when the legislation was initially being drafted and we had to consider the people who would be subject to the provision of the legislation the very concern was raised that if we extend it to all statutory boards and expand it to catch the small fish then we would actually likely run into a problem where no one wants to sit on Boards or no one wants to participate at a small level in public life so those are some of the concerns that informed the drafting and the selection of people. I take your point however and, as I have said, at the end of the day, the Committee will consider all the recommendations and where we can facilitate them, we will; but this was raised and actively discussed when the legislation was initially being drafted but I guess we can look at it again: still we have to decided exactly how small a fish we want to try to get because we may end up with no fish at all in the net.

The suite of procurement legislation and freedom of information legislation the Committee has stated from the last presentation and Sir David's address dealt with it as well and our position is that we accept that the supportive legislation has to come and it has to come quickly. So also it is small steps, let us just get pass this one; but this makes no sense without the supporting legislation to close the gaps and the loopholes and I am assured by the Attorney General that we are coming with all of the relevant supporting legislation in as quick a time as we can but equally how

that legislation is drafted and what it intends to address would necessarily as well be informed by the final provisions of this legislation. I just want to assure you that it is a work in progress and that is why we are doing exactly what it is we are doing now. That is why we are soliciting the comments and the concerns of. I would call you stakeholders, in this legislation to try to help us to get the most comprehensive piece of legislation we possibly can. I want to say, I, from the bottom of my heart, thank you for your presentations. You have given us a lot of food for thought and I trust you will leave yourself open and available to render further advice if the Committee should call upon you.

Lady WALROND: If I may, I was very interested in the ICAB presentation which I thought was a very good presentation. It made me think but when it comes to looking at the problem that Jamaica has had with the reporting, it needs to be pointed out that legislation says that it covers everyone in the public service over the princely sum of J\$3.5 million which works out in Barbadian currency to BDS\$55 000. It is that broad catchment area that I think has caused quite a lot of the problems that I have spoken about, about persons not putting in their reports that they should do so that I would not want to extrapolate necessarily from Jamaica on that score to Barbados because I think we in the second Schedule we have gone the other way. I think we are too narrow, much too narrow. We need really ...

Mr. CHAIRMAN: Lady Walrond, would you care to recommend other categories for consideration?

Lady WALROND: No, the ones that were recommended we have agreed on. There may be others who are in sensitive positions but as we said, the customs, for instance, comes to mind. I just wanted to add that.

We also have a concern about the fact that administrators of estates where persons have died seemed to have been given quite a free pass and we are not sure why because an administrator of any estate has a duty to gather in everything to also know what the debts are, to know what the assets are and so I would ask that be reconsidered.

Hon. W. A. ABRAHAMS: Just for clarity, are you speaking about the administrators of the estates of former public officials?

Lady WALROND: Yes, persons who have died.

Hon. W. A. ABRAHAMS: Okay, thanks.

Lady WALROND: Those are the other matters that I thought we would want to bring up. There are some members who have asked why is it that the composition of the Commission does not speak to using persons from civil society groups that are established, well picking someone from it. We have gone to the church but we have not gone to anybody from the social partners or so. There may be a good reason, but we have been asked that and we are putting that forward for consideration because we are unsure as to why those persons were not included or someone from a social civil society organisation that is well

recognised.

Mr. CHAIRMAN: Only to offer in respect of your last comment that some agencies of civil society are going to be of longstanding so the Barbados Bar Association, for example, but we had difficulty putting in Institute of Chartered Accountants of Barbados. Mr. Brathwaite, because ICAB may be dissolved and a successor organisation created. We said the clergy as opposed to the Evangelical Council and, in fact, we have been taken to task in this very room for using the word clergy and excluding other faith-based organisations so the difficulty with other civil society agencies is that they may last five years or they may even last 10 years but once you incorporate or embody it in the statute we will find ourselves having to do something that was done a few years back. We had to come to Parliament and change the word "druggist" to "pharmacist" so we may have to come to Parliament and change the name of one agency to take account of its successor. I think we try to be as broad as possible. Is it your recommendation though that we should broaden the membership of the committee or just that we should seek to have other representatives on the Committee?

Lady WALROND: The suggestion has been that persons or a person could be used or nominated or recommended and placed on the Commission but having heard that suggestion I went to the Jamaican legislation. It does have there that among the persons that can be recommended to be on the Commission, a person who represents a civil society group that appear to be well-established. I think that well-established part of it but we thought the Barbados Bar Association was very well-established, it may still be, but you made a comment a while ago which triggered something also in my mind. It has to do with the fact that there are some parts of this legislation that perhaps we ought not always to have to come back to a full Parliament to make changes. When you look at that 1929 Act, for instance, it could have been very useful even recently but the problem is that we have this habit here of not bringing fines and things of that order up. There are parts, for instance, of the Jamaican legislation. I am a great believer in looking around and seeing what has worked and what has not worked quite so well, which allows the Attorney General to come to Parliament and make changes in limited areas, but for instance, over a period of time you may very well find that the particular fine for something makes absolutely no sense and so instead of having to come all the way back to Parliament which, as a matter of fact in Barbados, we do not do very well, perhaps that ought to be looked at too.

Senator L. R. CUMMINS: Thank you very much Mr. Chairman, I have been told not overdo the gushing for the presentation. The Chair has said enough gushing has been done. Notwithstanding that admonition, I do want to commend the members of the IGB group for what I consider to be an extensively researched, well put together and very well presented submission to the Joint Select Committee. There has

been a considerable amount of work done by the group so far and I want to add to your work by making a request. There are a number of items of legislation which are relevant which we have been speaking about today which need to augment the provisions contained within this draft. You have mentioned quite a few of them. I would like to ask if it is possible for the IGB to continue its good work by making specific recommendations on some of the provisions that could be incorporated in the specific items of legislation which will be necessary to accompany this in order to give full effect to both the prevention, deterrents, capture and prosecution of persons involved in corrupt acts.

Ms. A. ARCHER: Inclusion in subsequent legislation?

Senator Ms. L. R. CUMMINS: No, just send us a written submission, thanks.

Ms. A. ARCHER: Okay.

Senator C. A. FRANKLYN: Lady Walrond, there are two things I wish to say, one is more important than the next. The membership of the Commission I believe is a bit restrictive and that it should not be so rigid. I am seeking whether you are in agreement with me or not. Let us say, you have a person from the legal profession, an accountant but one is dealing with a construction project that it is not the expertise of either of them. We should have a lawyer not necessarily being the Chairman but some who could advise the Commission on law, because the Chairman being a lawyer will be advising himself. This is always dangerous as far as I believe. If you agree with me it should not be restrictive but more persons from civil society of good standing, and then services may be hired that is needed rather than having restrictive lawyer, doctor, nurse or clergyman? You have people of proven high integrity and then they can hire the services that they need rather than having it so restricted.

Lady WALROND: Basically, that is how the Jamaican one is structured, but if you wish a lawyer to advise the Commission, then that is a matter of staffing.

Senator C. A. FRANKLYN: One may not know anything about building and a building contract could be before the Commission. The next issue is not substantive, but you mentioned in Jamaica that it costs about JA \$55 000 to capture you into the net. Mr. Chairman, the Senators would be very below the net so I think it is a good suggestion.

Lady WALROND: That is why there are so many people having to put in these Reports and they are not doing it. I am not sure that it is possible in a country that size, with a civil service that size, to try to capture everybody who earns from JA \$55 000 and up. I think it is a good idea to have a limit.

Mr. R. A. THORNE: Thank you, Mr. Chairman, I would like to associate with the sentiments of my colleagues as to the high quality of the presentation of IGB, and to say that this Committee, well certainly the presentation vindicates the exercise in public consultation, and to admit that the legislation as it has come to the public is grievously deficient in terms

of its exclusion of the companies incorporated under the Companies Act. Obviously, you recognized what we did not and I have no problem admitting that because no one is perfect. Your recommendation comes to the Committee and would obviously force or persuade us to amend the Second Schedule, particularly 5 and 6 regarding the three words, "established by statute". I think that is where your focus was?

Mr. Chairman, that deficiency would have left a number of corporations owned by Government excluded from the scrutiny of the Commission. A lot of corporations are owned by Government except that they are not established by statute, and this legislation presently contemplates only entities established by statute and those companies that are owned by Government either partially or wholly as Ms. Archer indicated, would have been excluded and certainly would have been possible avenues for the commission of infelicitous deeds. I think we owe you a debt of gratitude for pointing this out to us. It is quite perspicacious. It went pass us. Thank you very much for bring it to the Committee's attention.

Mr. CHAIRMAN: Do any other members wish to take the floor? There being none, let me thank you for a long and sedated presentation. Let me compliment your organization and hope that it remains a feature of civil society that becomes well established. I do not imagine that Lady Waldron was plugging for participation on the Commission but let me publicly recognize your outstanding work for which there is no financial reward, but certainly the entire Barbados stands to benefit from your eternal vigilance. We would like to think that whatever legislation has been put in place, that your organization will remain stewards and champions of proper governance in Barbados. I compliment and thank you and all officers present, along with those not present.

Ms. A. ARCHER: IGB would like thank you for all the gushing comments and we are happy to continue helping throughout the process. We will provide the information that Senator Cummins requested and anything else that you may require. Thank you for having us.

Mr. CHAIRMAN: We would now invite the Democratic Labour Party to make their presentation. The only named representative I have is Mr. Guyson Mayers but I do recognise the President of the Democratic Labour Party. Which of you will be making the presentation?

Democratic Labour Party representatives were ushered in.

Miss. V.G.A. DEPEIZA: Good afternoon Sir and to all of you, the presentation will be made by our General Secretary, Mr. Guyson Mayers.

Mr. CHAIRMAN: Mr. Mayers you have 15 minutes.

Mr. G. MAYERS: Mr. Chairman, let me say from the outset that the presentation you have from us is not what I am going to follow this afternoon. I indicated at the time it was submitted that it was a snapshot given

the two days' notice that we had to make a presentation. Therefore, my presentation this afternoon will look at areas that are wider than what was submitted to you.

Hon. W. A. ABRAHAMIS: Mr. Mayers, if you have another copy, I do not know if you can give it to us so that we can get it copied while you are presenting.

Mr. G. MAYERS: This Bill seeks to enter into new territory not because the efforts to control corruption are new. Our current anti-corruption legislation, the Prevention of Corruption Act, was passed in 1929 and it may still be a useful Act were it not for the penalty provisions in it. This Bill, however, seeks for the first time to establish an administrative infrastructure to manage the behaviour and the assets of specified persons in public life. This component is new.

Legislation of this nature cannot really be effectively discussed without accompanying regulations. There is a need for 'how to provisions' to accompany the broad legislation or the Bill that is proposed. It is important in any discussion therefore of this Integrity Commission, proposed by the Bill, for us to have an idea of how the Commission will carry out its work and therefore be able to comment on the likelihood of effectiveness. Further, the Bill, if passed into law without accompanying regulations, will sit on our books without activity for some time unless the regulations that permit the functionaries to operate are put in place. Note that Section 83 of the Bill provides that the Attorney-General must make regulations, and in light of this, it is recommended that regulations be prepared and form part of the further discussion of the Bill.

Mr. CHAIRMAN: The actual Clause says 'may make' regulations not 'must'.

Mr. G. MAYERS: Yes, "may", but effectively in the absence of regulations there will be a lack of ability to carry out certain functions of the Commission. Section 2, the definition section of the Bill, defines "prohibited interest" as an interest in a contract with the Government, the acquisition of which a Member of the House of Assembly or the Senate is prohibited under rules made pursuant to Section 84(2), but when you go to Section 84(2) we see that the Commission shall make rules outlining the circumstances in which the acquisition by a Member of the House of Assembly or the Senate [have] an interest in a contract with the Government is prohibited. In the absence of any idea of what would prohibit a Member of the House of Assembly or the Senate from having an interest in a contract, it may make discussions meaningless. Further, I doubt that there are many Members of the House of Assembly or the Senate who over time, and I speak subject to correction, I have no data, may have had an interest in Government contracts. It is more likely that some of the other persons identified in the Second Schedule may have an interest in Government contracts that is more likely to be the case than Members of the Senate or the House of Assembly. We should note however that we live in a capitalist country and there is nothing wrong, inherent

today, with a person who comes into Parliament or the Senate having financial interests in other productive enterprises before coming into either House or even acquiring such interests after. In my view, the main concern is that where there is such an interest there should be early declaration of that interest and transparency in any selection process. There is nothing inherently wrong with making money honestly, and I am not sure that being elected to Parliament should cause somebody not to be able to make a decent living once that is honestly done.

Mr. G MAYERS: Section 3 establishes the Integrity Commission but it does not establish the Integrity Commission as a body corporate to which Section 21 of the Interpretation Act would apply. In my view, were it so established it would enhance the independence of the Commission so that it would be able to sue and be sued in its own name, it would be able to enter into contracts in its own name and it would be able to regulate its own procedure as of right. Section 3(3) states that it may regulate its own procedure but that is subject to the provisions of that Act. Were it to be established as a corporate entity to which Section 21 of the Interpretation Act applies, this would not be a hindrance or a limitation. If the Commission were so established, look at Section 11 of the Act which provides (1) a person summoned to a sitting of the Commission is entitled to have his expenses paid but subsection (2) states that payment is dependent on whether the Minister of Finance decides that that person's expenses should be paid and subsection (3) states that the Commission may disallow the expenses altogether. This creates the potential for persons to be punished if their testimony is not pleasing to the Commission or the Minister of Finance. We therefore need to ensure that the Commission is transparent and inherently independent.

Hon. W. A. ABRAHAMS: Mr. Mayers, just to help us: Is there a suggestion that you wish to make in respect of that?

Ms V.G.A DePEIZA: He did make the suggestion, that is, that it should be a body corporate so that it is independent of any political interference. From the time you interject the "Minister of Finance" you are dealing with an entire political organisation that follows behind and a Cabinet as well which excludes all other political entities by its very definition.

Hon. W. A. ABRAHAMS: Okay.

Mr. G. MAYERS: The Commission is an administrative body, it is an investigative body, it is a law enforcement agency with police powers and it is a court with judicial or quasi-judicial authority. Here is an entity that resembles a police force, a prosecutor, a judge and a jury and is able to determine matters in its own cause. This is a multi-headed beast that may very well make legal certainty unclear and one must raise the question whether it offends against the Separation of Powers Doctrine. Section 8(2) of the proposed Bill provides that the remuneration and terms and conditions of employment of officers of the Commission may be determined and varied from time to time. A previous

Administration went to Parliament to ensure that the remuneration of public officers could not be varied downward. Is it proposed that the persons employed by the Commission will not benefit from the protection that that constitutional amendment provided. There is nothing in here that indicates that these officers' remuneration may not be varied downward.

Section 10(3) of the Act excludes the application of the Rules of Evidence. The Rules of Evidence were created to ensure fairness and the delivery of justice. Yes, the Rules of Evidence are sometimes relaxed in instances, for example, of a Commission of Inquiry where one is focused entirely on the gathering of facts, but an entity of this nature with the potential to criminally convict persons the Rules of Evidence become important and indispensable to the process that persons coming before the Commission may have to undergo. We invite you to reconsider the relaxation of that requirement in the proposed Bill. The Bill as it is currently structured encourages appealing evidence, let in hearsay evidence, and when you look at the importance of the reputation of persons who are held up to scrutiny, it is important that there is no unfairness in the process.

Section 28 provides for a specified person in public life to place assets in a Blind Trust. I have not seen this concept of a Blind Trust anywhere in our law prior to this Bill. The first glimpse of this is in subsection (5) of that section and it says that a Blind Trust is created when the specified person in public life enters into an agreement with a qualified trust company for the storage or management of his assets. Interestingly, this qualified trust company may be partly owned by the person whose assets are being placed into the trust. However, I do not think that the Blind Trust advances the prevention of corruption any. It does not address how the assets were acquired, so you can steal, you can take bribes, you can do whatever, and once you have accumulated the assets then this provision allows you to place those assets into a Blind Trust which may not be very blind after all. Rather than helping to prevent corruption it might very well conjure up the image of something that is structured to protect - corruptly obtained assets.

Sections 29 and 30 seem to bring the Governor-General into the arena where the Governor-General now has to conduct inquiries behind information already received. Of course, there is no mention of any additional resources given to the Governor-General that will conduct these inquiries. It is unusual for the Queen's representative to be given executive powers to sully her hands with inquiring into matters of this nature. I think we would do well to reconsider the import of those two sections.

Section 64 is interesting. It provides that a person may lodge a complaint with the Commission on hearing an allegation in public of a possible contravention of the Act. There is no *locus standi* requirement. There is no threshold of knowledge or information, it seems to suggest that it is sufficient for busybody who listens to a call-in programme and hears

something to go ahead and lodge a complaint with the Commission. This opens the Commission I think to abuse and will waste the Commission's time to a large extent.

The penalties contained in the Bill are not dissuasive. The maximum penalty anywhere in this Bill is \$20 000. [Let us] compare this with penalty provisions in other relevant existing legislation. Section 79 of this Bill seeks to ensure that information gathered is treated confidentially – [it is] very noble, [it is] a very good thing to do. It carries a penalty, though, of a breach of a fine of \$5 000 or two (2) months imprisonment. A similar offence in the Money Laundering and Financing of Terrorism (Prevention and Control) Act carries a penalty of \$100 000 or five (5) years imprisonment. A person convicted of money laundering on indictment is subject to a fine of \$2 million or imprisonment for 25 years, or both. I think this comparison starkly underlines the inadequacy of the penalty provision in this Bill, and the punishment that is attracted will not dissuade persons who are minded to engage in serious corruption. As a general observation, we must understand how entities established by the Bill will function and this requires regulation. We must find a better way than bringing the Governor-General into the arena of inquiries and we may need to understand how the penalties in this Bill are justifiably as low as they are.

Mr. Chairman, I had submitted earlier comments which as I indicated, I did not allude to in this presentation, but if the Committee is so minded, we are willing to merge those comments with this document and resubmit the entire presentation to the Commission as one document.

Mr. CHAIRMAN: Are there any dissents?

The question was put and was resolved in the affirmative without division.

Mr. CHAIRMAN: There being none, thank you. Is that the end of your presentation?

Mr. G. MAYERS: Yes, it is.

Mr. CHAIRMAN: I just want to clarify two things: (1), the involvement of the Governor-General in receiving declarations only relates to the members and the staff of the Commission itself. You would appreciate that they cannot file declarations in respect of their own assets with themselves and the only higher body for this purpose would be the Governor-General, and there are a number of things that the Governor-General does do administratively and you can rest assured that the Governor-General would be given such resources as are necessary for her to carry out this function.

The other matter and we have now heard it several times, in relation to the level of the fines, the level of the fines will not stay as are set out in the Bill. We welcome your contribution in that regard but on the very first day that this matter was debated, it was indicated to Parliament that the levels of fines will go up significantly, and certainly as Attorney-General and being responsible for the drafting of it, we will be looking to pitch them in the same region as the Anti-

money laundering legislation. Any questions for the representatives of the Democratic Labour Party?

Asides.

Miss V.G.A. DePEIZA: Mr. Chairman, before we move off that point, though, in section 29 the Governor General also is given the authority. As a matter of fact, it says "shall make inquiries", so it is not as simple as receiving the declarations but there is an investigative function given to the Governor General which, in our estimation, goes beyond her remit as our Head of State. That is the concern that we have.

Mr. CHAIRMAN: What is the Governor General's remit?

Miss V.G.A. DePEIZA: She is the Queen's representative in Barbados, and the Queen traditional does not descend into the arena, and that is the concern which we have as to whether or not she would doing a little bit more than the Queen actually does herself, being the Queen's representative.

Mr. CHAIRMAN: Noted.

Miss V.G.A. DePEIZA: Thank you.

Hon. W.A. ABRAHAMS: Just to allay your concern with respect to the Blind Trust. If you read the Section carefully, the Blind Trust does not allow people to take bribes, then deposit in a Blind Trust and continue to take bribes and then deposit in a Blind Trust again. Any time that you place your money into a Blind Trust with a reputable trust company, you have to declare the value of the Trust at the time the Trust is created, so it does not allow you to shield your income. If I put \$10 million in a Blind Trust, I have to declare that I have put \$10 million in a Blind Trust and I would still have to answer as to where that \$10 million came from. What the Blind Trust does is isolate the money.

Miss V.G.A. DePEIZA: There is a further consideration. In the 2012 Act there was a definition in Sector 2 which dealt with associates, which has been seriously decimated in the 2018 Bill. The 2018 Bill speaks only to family members whereas the 2012 Act spoke to partnerships and associates. You can even have a close family member who is not as close as your spouse or your child, but your brother could be extremely close to you and you could set up sufficient to bypass the provisions of this Bill if you do not have those categories that wide.

Hon. W.A. ABRAHAMS: Okay, then as you were planning to augment what we have in front of us, then I would suggest that you include all such suggestions and the Committee will consider them and draft accordingly. Thank you.

Mr. CHAIRMAN: Senator Taitt.

Senator Ms. M.C. TAITT: Thank you, Mr. Chairman, Mr. Mayers or Miss DePeiza, I would like to hear you on two things: What is your party's position on the confidentiality nature of this Bill as it relates to the persons who will be called upon to make the declarations? Secondly, what is your view on the Constitution of the Commission itself?

Miss V.G.A. DePEIZA: If I may take it in the other order: In relation to the Constitution of the Commission the primary concern is that everybody

seems to have the same function. That is to say, the investigative powers are globally mentioned and the trial is also globally mentioned. We have a judge, and I assume that the judge will be the person who will be presiding over the hearing, but is the judge also intimately involved in the investigative side of things? In terms of the composition of the Commission, what we would prefer is that there be some disparate division of the labour so that even though it is one Commission, there are not all wearing different hats at the same time. It helps with the separation of powers, it helps with transparency, it helps with not being seen to be easy to influence in the process. If one person or one Commissioner is wearing all these different hats, then there is the greater likelihood of justice not being seen to be done even if it is being done. It is not so much in terms of who sits on the Commission but what functions they carry out once they are there.

Asides.

Miss V.G.A. DePEIZA: In relation to confidentiality, the Committee has said that the Members are going to revisit fines, and this would be one area where you would need to have prohibitive provisions in terms of the disclosure of what is essentially private information. It is delving into the private lives of public people in a fairly intimate way. It does not only stop at them, but it extends to spouses and children, and the confidentiality provisions in terms of keeping the confidentiality need to be just as strong in terms of penalty as those persons who are committing other infractions. It could impact on their personal lives if certain information gets out, especially if it is in an investigation where the information is leaked.

Mr. G. MAYERS: I think, too, that this is where the importance of regulations come into vogue, so that the Commission may set out specifics which may not find their way into the Bill as currently drafted: that would govern the controlled storage and treatment of information received by the Commission. That information is not currently in the Bill. I do not expect it to be because I think it is better dealt with by regulations.

Miss V.G.A. DePEIZA: I think what also is a glaring omission for us is that the Code of Conduct has been hived off now. It was present in the 2012 Act and it now gets a mere mention in the 2018 Bill, and that Code of Conduct needs to have the strength of primary legislation and needs to be brought back into the body of the Act, mentioning the body specified in the Schedules. It is not that secondary legislation has any less power, but I think it is better placed within the body of the legislation itself as opposed to merely being mentioned and then moving on, because it also will speak to how confidentiality is treated in relation to how the Commissioners and their staff will operate.

Mr. CHAIRMAN: We will have Senator Taitt, then the Leader of the Opposition followed by Minister Jordan.

Senator Ms. M.C. TAITT: The 2012 Act you are speaking of was the one that was never proclaimed?

Miss V.G.A. DePEIZA: It was never

proclaimed.

Senator Ms. M.C. TAITT: Isn't that a thing?

Miss V.G.A. DePEIZA: Yes, it is.

Senator Ms. M.C. TAITT: With respect to the Constitution of the Commission, can I hear your views? I believe that the Prime Minister is entitled to appoint someone. Would somebody correct me?

Asides.

Senator Ms. M.C. TAITT: The Prime Minister has somebody on the Commission as does the Leader of the Opposition. Is that correct? Am I right?

Asides.

Senator Ms. M.C. TAITT: I remember we had Dr. Alleyne here earlier, and he spoke to being cautious and ensuring that we have a Commission which does not speak to political affiliation. Can I hear your views on whether you believe that a Prime Minister and a Leader of the Opposition, who are both political creatures, should have a seat on the Commission?

Miss V.G.A. DePEIZA: I think it makes more sense for political...

Senator Ms. M.C. TAITT: I do not mean to cross you, but bearing in mind that it is those persons in public life who are going to be the subject of this legislation, I perhaps should have ended off by saying that so in the context of the legislation, not in any way casting aspersion on any one in those various roles, Bishop, I just want to say hear from you as a political Party what is your position with a Commission which is supposed to be removed from political affiliation hopefully and who will be able to hopefully ensure confidentiality even though I heard ICAB talking about interactive electronic submissions, so I cannot wait to hear that means without being hacked but I would like to hear you on whether there should be anyone sitting or appointed to a Commission that is dealing with integrity in public life that should be a representative of a political creature and that not only means actually having someone sitting the Commission but advising anybody or consulting with anybody as it relates to the goings-on of the Commission.

Ms. V.G.A. DePEIZA: You have widened it significantly in that last statement so I will deal first with the narrow issue of representatives of political Parties being on the Commission. I think that in the context of the Bill, an Act which places responsibilities on political Parties, that is to say, there is an element of reporting which was in the 2012 Act which is not in this Bill. If it is a situation where there are obligations then I have no difficulty with political appointees on the Integrity Commission. It would bring some balance. What we would need to caution, I am thinking, now in terms of the configuration of Senate, if the membership of the Commission is heavily weighted in favour of any political entity then they could well be a taint in any of the deliberations that they have. I think that is a given and I believe that is why the legislation as drafted gives a greater number to the Governor-General in terms of appointments. However, I think that we have had in Barbados that practice, the appointment of judges

comes immediately to mind, where there is involvement of senior politicians and I suspect that is the reason why that path was followed.

To go on then to your wider issue in terms of the possibility of taint where a political operative wears another hat as a lawyer, as an accountant, can they be giving guidance. I think that Guyson's point in terms of being able still to make a living has to be taken on board but I believe that in both iterations, the Commission was given sufficient power to sanction if there is any way that the Commission comes to the view that someone is misusing the Commission. I think that it balances itself out. There are present on the Commission but if it is that you mash that crease that there will be sanctions that follow. Thank you very much.

Mr. CHAIRMAN: Bishop Atherley.

Bishop J.J.S. ATHERLEY: Thank you both.

Just want to hear you further on the comment. Section 57(3) set out what penalties shall be imposed by a court in the case of unaccounted for property or resources. Your position is that this seems to be a usurpation of the role of the judiciary and may in fact be unconstitutional. Just like to hear you further on that and perhaps, Mr. Chair, if I can hear one of the legal voices on the Commission.

Mr. G. MAYERS: This is simply a reflection on the view that the legislature cannot usurp the position of the judiciary in terms of imposing a sentence on anybody so that if you legislate what a penalty should be it is the legislature imposing the penalty and not the judiciary. This comes into vogue largely where they are mandatory sentencing that are imposed. It is the same principle that the legislature should be slow to tell the courts or any judicial entity what sentence should be imposed and that is where that comment is grounded. What is the other issue?

Mr. CHAIRMAN: Only to point out that the Interpretation Act, Mr. Mayers, does say that where a term of imprisonment is stipulated in a statute or where a fine in a statute it is to be interpreted as to encompass all terms of imprisonment or all fines that are lower than the stipulation, so if you say a person shall be liable to \$500,000.00, the court has the ability not to impose the \$500,000.00 but to impose \$300,000.00 or \$3.00 and that is what the interpretation says in relation to stipulations as to fines and to terms of imprisonment so unless you are suggesting that this statute is not to be governed by the terms of the Interpretation Act, I would like to suggest that particular expression of law is not accurate.

Mr. G. MAYERS: It is not being suggested but permit me when we resubmit to address that to you, Sir.

Hon. C. E. JORDAN: Thank you, Mr. Chairman, even though you forgot me and thanks Mr. Mayers and Miss Depeiza. Just for clarification I was listening to your presentation but I looked at the last line of the second submission and wondered if you were supporting legislation to govern Integrity in Public Life or if you were suggesting that maybe they were already

instruments or constructs in place that could manage Members of Parliament and I am assuming that by that you probably might be including senior public servants as well. Are you supporting the need for legislation to be in place or do you think that there is already something existing because your statement says ... I ask the question: Have we lost faith in the existing organs of the State so that we have to create an entity without parallel to manage Members of Parliament? I am just asking for some clarity on that, what is your position as a Party.

Mr. G. MAYERS: A deliberately provocative question, but it does not indicate that we are not supportive of a need for integrity legislation. In fact, the previous legislation, the 2012 Act was effective in trying to answer this question for me because it took into account things that I am particularly aware of that the international conventions demand of that seems to not be taking into account in this piece of legislation but this does not say that we should not have Integrity legislation. It begs the question, however, whether we have already effective assets that would address the major issues that arise with respect to corruption.

Miss V.G.A. DePEIZA: I will say though that I find it curious that the Bill does not in any way make reference to those international obligations that we have, the conventions, not even a passing reference and I wondered if it was because certain sections have been hived off which would be required by that legislation and that has not come as yet in relation to political parties and in relation to private bodies that get involved in public activities which the procurement legislation would address but we have been told that these other pieces of legislation are coming, but without the specific reference to the conventions: the Inter-American Conventions and the UN Conventions: it makes you wonder whether this legislation was even intended to meet those international obligations.

Mr. CHAIRMAN: I would only say in response that Barbados is a party to numerous conventions and we have passed numerous pieces of legislation that are compliant. There is no obligation to mention any particular convention certain the Constitution of Barbados which guarantees human rights does not make any mention to any of the previous conventions which Barbados would have been a party to by virtue of being a colony prior to 1966. I will also say to you that there is sufficient jurisprudence coming out of the CCJ now that tells us that our international conventions and for Mr. Brathwaite, I am able to confirm that Barbados did sign the Inter-American Convention against Corruption on the 5th of January this year. I am conscious of time and we have two other presentations to go.

Senator Ms. M.C. TAITT: Just one more question, May I proceed?

Mr. CHAIRMAN: Yes.

Senator Ms. M.C. TAITT: Miss DePeiza, is it that, based on your comments, are you saying that an absence of these various references causes the Bill to be flawed or deficient? Is that what you are saying?

Miss V.G.A DePEIZA: No.

Senator Ms. M.C. TAITT: Okay, thank you. Just seeking clarity.

Mr. CHAIRMAN: I am afraid we have to conclude the presentation now from the Democratic Labour Party (DLP). Let me thank you for that.

We will now have the Barbados Kingdom Alliance and then Miss Eastmond from the United Progressive Party (UPP). We are happy to keep working. Thank you very much. Mr. Mayers and Miss DePeiza. Please consider remaining with us if you wish.

Apostle Lynro Scantlebury and Prophetess Heather Scantlebury entered the Senate.

Mr. CHAIRMAN: Apostle and Mrs. Scantlebury, is that the appropriate nomenclature? Let me welcome you both, you have 15 minutes.

Apostle L. SCANTLEBURY: Good evening to everyone. My name is Apostle Lynroy Scantlebury and this is my wife, Prophetess Heather.

First of all, I want to say a very special thank you to the members of the Select Joint Committee for the invitation and the opportunity to be here with you this evening to share our submissions on the Integrity in Public Life Bill. I also want to add that I would like to applaud the efforts of this present Administration to expedite this process. I think this is something that was long in coming and it is also my opinion, very necessary for Barbados in terms of moving forward as a nation.

I took the opportunity to carefully assess the Integrity in Public Life Bill and as a ministerial leader my focus was more on the formulation and the proper functioning of the Commission and not so much on the element of corruption because we are very well aware that Barbados, as a nation, has experienced tremendous levels of corruption, not just in terms of our political arena but in many areas of life here. I looked very carefully at the area of the Commission regarding Integrity in Public Life nation building, the protection of our country's good name and then also the element of the integrity of the Commission itself. These areas I consider to be very important as we pay attention to alleviating the levels of concern regarding corruption in the island of Barbados.

I want to make this abundantly clear that as it relates to our public servants, we have here in Barbados a national pledge that makes it clear. It is a verbal contract but any individual assuming the role of Government and those who operate in our public service that they must maintain the highest levels of excellence and integrity as individuals. Let me remind you that the Pledge says:

"I pledge allegiance to my country Barbados and to its flag, to uphold and defend their honour, and by my living to do credit to my nation wherever I go."

Apostle L. SCANTLEBURY: I think it is very important for our public officials to understand

that they have a greater role than regular citizens to maintain these high levels of excellence and these high levels of integrity as we operate in our office. I think it is very important that as we look at this that we continue the importance of instilling in our public servants the ability and the importance of keeping agreements, oaths and making sure that they do what is necessary to continue our trend forward as a nation and become discerning and watchful for traps, especially with the new and present "getting rich through positions" schemes, misuse of power and return to the ideals of serving our people and our nation with integrity and with excellence.

In my opinion, in addressing this Integrity in Public Life Bill and we had just roughly about two days to actually get our submission in, so what we presented does not fully express those things that we really wanted to say at this time but we are willing to present to you an updated version of what we have already presented. If you will pay attention closely to it you would realise that we focused more on the Commission itself, on the structure of the Commission, on the purpose and vision of the Commission, and how the Commission actually carries out its responsibilities. I consider this to be very important because corruption itself is on another tangent and I believe that this Commission is being designed to deal with elements of corruption that may incur after the formulation of the Commission. We have paid very close attention especially to our structure and we gave our structure for the Commission and how we lay that out and that is exactly how, in my opinion, I would love to see this Commission organised and structured.

Second, in terms of the individuals within the Commission and them taking the oath of office, I think, it is going to be very important that we pay close attention to the types and quality of individuals that would be a part of this Commission because it does not make sense having this Bill on integrity and then those who are operating within the Commission are not, themselves, individuals of integrity. I think this is very, very important going forward. Barbados is at the point right now where it is basically reeling from a number of things that are happening here within our nation and also overseas that has greatly affected who we are and where we are in terms of our politics and in terms of where we stand on the global scale. I think the time has come right now for us to be very careful and very concerned that we do what is necessary to make sure that we put this country back where it is supposed to be. I actually want to make a couple of suggestions, adding to what we submitted. I want to go ahead and make these five suggestions. Before I say anything further, I know that we are pressed for time so I want to be as quick and concise as possible.

Apostle L. SCANTLEBURY: My first suggestion is for a member of the Commission to be present in Government decisions where large contracts are being awarded or discussed. Secondly, the Electoral and Boundaries Commission to come under the Commission in relation to the receiving of funds by

political parties and distribution of said monies. My third suggestion would be to address the conduct and misconduct of Members of Parliament. The fourth suggestion would be to bring companies owned by Government under the Commission. Fifthly, to revise the penalties as it regards those individuals who are brought before the Commission, and subsequently sentenced. These are my five areas that I want to look at. I will be resubmitting these in an updated draft of our submission. With all of this in mind, I want to add to the fact that as it relates to individuals, learning a person's assets and business association does not really expose the mindset or heart of the individual. Whatever we do people are going to find ways and means to find loopholes and cracks so that they can continue to do what they need to. This Commission in my opinion must stand as a deterrent against any individual who will try in their manner to continue the work of corruption, and also those who will try to influence those who serve us to become a part of their organisation or activity. I think it is vital to understand also that a Bill which in some way encourages our citizens to become private investigators themselves, and to offer them some kind of incentives such as monetary benefits and protection for information concerning the corruption of others, is an act of corruption in itself. What we must understand as I said in regards to our National Pledge is that we must begin to instill in our people, especially those who serve us...

Hon. W. A. ABRAHAMS: Apostle, if I may, can you repeat that point again?

Apostle L. SCANTLEBURY: In regards to the whistleblowers? I said, "A Bill which encourages in some way our citizens to become private investigators themselves, and to offer them some kind of incentives such as monetary benefits and protection for information concerning the corruption of others, is an act of corruption in itself." I want to make it abundantly clear that I am in support of any attempt to limit the level of corruption that is here in Barbados. I said in the beginning that I support this Administration for expediting this matter. I think it is long in coming. I want to make it abundantly clear to everyone that is here, we have a responsibility to maintain Barbados' good name not just for ourselves, but we need to do it for our children and grandchildren. What we have right now is something that a lot of individuals are not happy with if they are honest with themselves. We need to do something with the levels of corruption, people who are breaking the law and getting away with it. We need to do something with making Barbados wholesome again. I think it is incumbent on all us who are here to be very circumspect as we put forward this Bill to ensure that the proper functioning of the Bill and the manner in which we enact this Bill is actually going to do the job it is designed to do. If we do it, I believe we can have a better, brighter, more successful and prosperous Barbados.

Apostle L. SCANTLEBURY: My wife has asked me to define companies owned by Government. I want to make mention of areas like our seaport,

especially the Customs and Excise Department. Honestly, if it can work out this way, I would love to have the presence of someone from the Commission at certain ports of entry, especially the seaports or airport or places like Port Ferdinand, Port St. Charles and even possibly the Arawak Cement Plant. In my opinion, these are other ports of entry that are responsible for much of the corruption that is going on in Barbados. I want to make sure that if I am quoted, I am quoted fairly and openly. This Commission must be very serious in understanding that you cannot play games with individuals no matter what their economic standing is or their position is in Barbados. If you defame or break the National Pledge, one should be judged accordingly. I think, with the element of our penalties which I consider are very weak, these amounts can be easily paid by individuals who operate with large sums of cash. I think we need to put penalties that when mentioned, the penalty itself is a deterrent. These are only some of the things that we want to add to our presentation today. We are willing to do our part to aid the Commission to make sure that in Barbados the levels of corruption are greatly reduced and the level of governance regains its position and its operational procedure to make Barbados what it is destined become. Thank you very much.

Mr. CHAIRMAN: We have some questions?

Senator Ms. L.R. CUMMINS: Thank you very much Mr. Chairman and I wish to thank Apostle Scantlebury and his wife Prophetess Scantlebury for taking the time to join us her today and making the presentation. It would be remiss of me, and I know that they are about 300 workers in the Barbados Port who would be very unhappy with me if I did not seek to clarify that there are subsidiary agencies that function within the port, but they are not part of the port. When you mentioned some of the agencies that you are minded to have brought within the ambit of the legislation, let it be with a clear understanding that those are not necessarily Barbados Port agencies. They are separate agencies that function within the confines of the port.

Apostle L. SCANTLEBURY: I do recall there was some time in the past a decision to place cameras within those agencies that created a fire storm in Barbados. I understand where you are coming from, thank you.

Hon. W. A. ABRAHAMS: Apostle, if I may, it is interesting your perspective on the whistleblowers and incentive, regarding (a) for the whistleblowers and (b) for their protection. Almost everyone who has presented has actually asked for the whistleblower protection and separate whistleblower legislation. That is a common feature coming out through the presentations and input from wider Barbados. The incentivizing of whistleblowers is seen increasingly so internationally, as the only way to get the information, the lesser of the evils; so I would actually just like to hear your perspective on why you think that in itself is a form of corruption because it is not a novel perspective, so if you could develop that one, please?

Apostle L. SCANTLEBURY: We have to understand that information coming from individuals within the wider public is subject to scrutiny and we are looking at the fact that a lot of the information might not necessarily be accurate, so during the process how do you determine information from a whistle-blower that is accurate information versus malicious information. I think again the Commission in terms of its function, its operation, should have levels where even within the financial institutions, within large companies, in Barbados that individuals who would see some levels of infraction should be able to communicate openly or privately with the Commission. I do not really subscribe to the idea of any individual or every individual... You are hearing a piece of information, you have not done the necessary work to determine whether that information is accurate or correct and you call the Commission or you inform the Commission, and I really do not consider that to be a proper way of functioning.

Hon. W. A. ABRAHAMS: The draft itself provides for malicious complaints or frivolous complaints. The reality is that the work of the Commission or any investigatory body can only proceed on the basis of evidence so somebody at some point in time has to say this person did wrong, so I can maybe even see... because the jury is out and there are two sides of whether whistle-blowers should actually be paid for their information or be incentivised to expose infelicities, but I would like to hear your position in relation to the protection for whistle-blowers, because one of the big issues that we face as a country in getting people to come forward is the fear of victimisation: so if we do not have legislative protection for the people who have the evidence on which we can proceed, then how would you suggest that we actually get people to cooperate?

Apostle L. SCANTLEBURY: Well, here is my point about this. Again, all of the information that the Commission would receive from whistle-blowers would not be accurate, so do we protect individuals whose information is not accurate? At what point do we protect those individuals? From the moment we get information from them, does the protection begin? At what level do we protect those individuals based on the information that they are bringing to us and based on the individual or individuals that they are implicating because I think that at this point it is going to be necessary to have a level of where we decide this person will need protection, okay? I really do not see the need that the moment someone says okay, well, I have information on X, Y or Z individual... I think it is the Commission's responsibility to receive that information, begin some level of investigation on their own and then determine at what point this person needs protection.

Prophetess H. SCANTLEBURY: May I add something please? I think that one of the things we have to consider is that we do not want to put that level of responsibility on our citizens. We are in Barbados and things are rumoured and you hear things and I think

it is the Commission's responsibility that when things are rumoured they then provide the person that can investigate without people knowing, like an operative, and then they can report back to them with the kind of information because the Commission would have trained people. You hear rumours and then you can plant somebody there that can bring the relevant information you need rather than waste time, and you go forward. Instead of having whistle-blowers I think that when we hear rumours it is the Commission's responsibility to determine whether we are going to plant somebody there to see if what is going on is actually true.

Hon. W. A. ABRAHAMS: What I will say is that this has shown us that we perhaps need to explain the whole whistle-blower concept a bit more, but I can assure you that no one will be prosecuted or convicted based simply on the statement of reckless allegations of somebody else. Any information that comes to the Commission, whether it comes by way of a whistle-blower or whether it comes by way of the Commission's or by some other method, will be fully investigated. Before anybody is disadvantaged or convicted under this legislation, evidence will be presented and the person will have a chance to answer so it will not simply be a case of the Commission taking the malicious say so of everybody, so all evidence, all reports and everything will be evaluated and investigated and then the process will start, so I wish to assure you that this will not be a case of where your neighbour does not like you and they make a complaint or provide information against you and on the basis of that alone you are convicted. This will be full and fair in accordance with natural justice so that people will have a chance to defend themselves and present their own side and the findings will be based on fact. The Integrity Commission is expected to operate in the same way at the investigatory and the tribunal levels as a court and to the same high standards, so rest assured that full investigations will be done before anyone is disadvantaged under this legislation.

Apostle L. SCANTLEBURY: Well, that is one of the reasons why I may say that we determine at what levels whistle-blowers receive protection.

Mr. CHAIRMAN: Just one quick word before we must end your presentation. You said that you felt that the Commission should be notified of the entry of new companies coming into Barbados and background affiliations and so on.

Apostle L. SCANTLEBURY: Yes, Sir.

Mr. CHAIRMAN: While that is laudable you may not have a new company but an individual may incorporate a new company. Hundreds of companies are incorporated in Barbados every week, some with foreign shareholders and some with local shareholders, and this will require a level of due diligence which I wonder if you do not consider would be too costly a burden to bear. ICAB, [Institute of Chartered Accountants of Barbados] spoke earlier about risk-based analysis and risk-based investigations. Suppose a company comes into Barbados to sell snow-cones, their

likely interaction with Government is going to be limited and the volume of business that they are likely to do is going to be quite small so perhaps you would want to consider limiting the scope of this inquiry.

Apostle L. C. SCANTLEBURY: Possibly, but I added this with the idea in mind that some of these companies that are coming into Barbados with individuals who are either owners or shareholders may have been implicated in some level of corruption maybe in another country and I think that we need to take this into awareness when we are going to allow companies to come into Barbados with questionable characters either as at the helm or as shareholders.

Hon. W. A. ABRAHAMS: You had indicated that you wish to supplement what you sent in, so I look forward to the Committee receiving that as soon as possible so that we can factor your considerations into our deliberations.

Apostle L. SCANTLEBURY: Thank you very much, Sir.

Mr. CHAIRMAN: Thank you very much for your participation. I now invite the UPP by its President Lynette Eastmond to make her presentation. Apostle and Prophetess, please feel free to stay with us.

United Progressive Party Miss. L. Eastmond was ushered into the Senate Chamber.

Miss L. Eastmond: Good afternoon, Mr. Chairman, and the Members of the Joint Select Committee. I would like to take the opportunity to all of those individuals whom have not been able to see individually, I would like to congratulate globally for your various appointments and elevations in recent times. This initiative to put in place very quickly the Integrity legislation and to get comments from the public, I think is a very good one, it is a very good start. I will try not to repeat what others have gone into in great detail, except maybe to support some of the other interventions. But I would like to start by saying that I believe that those in leadership positions in Barbados really need to take on board the devastating effect which corruption has on a country and you know, a long time ago when Michael Porter wrote his book on competitiveness he said that: really countries choose poverty when they allow their practices to be corrupt, either that they become corrupt through inefficiency or the corruption itself creates a quagmire which makes it even more inefficient and then you have even more inefficiency and more corruption; and so it is very important for us and for those in leadership positions to make it very clear and to be themselves clear that it is not just a moral issue, it is an economic and social issue. The countries that you look at on the Human Development Index which tend to always rank in the top 10 are also those countries which pursue anti-corruption measures aggressively, so [that] whenever we talk about countries like Singapore and we talk about the Nordic Countries and we talk about New Zealand, we talk about their economic growth and development and we think it may just be an economic issue, putting good economic policies in place, it is also

because they have put strong measures in place to fight corruption, so it is really to the benefit of all of Barbados and all Barbadians to ensure that we do our best before it becomes worse, to deal with corruption; and the corruption which we now have in Barbados. I think that what we need to do is to really examine the type of corruption we have in Barbados and seek to address it through legislation. So this is why there are certain issues that will arise that are peculiar to us, so it is not simply following a model piece of legislation from somewhere else, even though that is helpful but we have to look to determine where the corrupt practices are more severe and to seek to address them.

Now as I said, I will try not to repeat what has been said before, but I would like to support those who have stated – those interventions that have supported the fact that we should have had a Code of Conduct to examine at this point in time. We also should have been able to see what exactly is meant by a “prohibited interest” in a contract, where a Member of the House of Assembly has such an interest. It is important that we know exactly the scope of that. Currently, we do not. It would also be a good thing for us in Barbados to get into the habit of presenting our draft regulations along with our Bills. Quite often we do not do that and certainly with this type of legislation, we think it would be important if the regulations had been presented as well. Sometimes there is more – there is a lot more substance in regulations than there might even be in the skeletal Bill. So what I will do is [to] identify the areas that we thought were important. One of the most important things of course is having integrity within the Commission and that it should not only be actual but it should appear that way. And it is for that reason that we are recommending that neither the Prime Minister nor the Leader of the Opposition should play a role in determining who sits on the Commission.

Miss L. Eastmond: Now, I know that within legislation across Barbados it is the practice that the Governor-General will consult with the Leader of the Opposition and the Honourable Prime Minister in many instances. We think it is inappropriate, especially in this piece of legislation, it will appear to the public as though we are really not serious when we are going to take the leaders of the two major entities that could be involved in corrupt practices. I have no difficulty with the Governor-General, as some people have said, descending into the arena. I think the Governor-General is there, I do not see any reason, if we have to call upon the Governor-General to consult with other persons in choosing those commissioners, and I believe that there should be enough people of integrity in Barbados that the Governor-General can consult with those persons.

As I said, I know it is the tradition but if I look, for example, at the Electoral and Boundaries Commission where it is also the tradition that there should be a representative from the Opposition, a representative from the Government, what happens is that decisions made by the Electoral and Boundaries Commission will be in the interest of politicians, and the interest of politicians do not always necessarily

coincide with the interest of the people; that is just a fact, politicians are a class of people together and sometimes what is in their interest really is not the interest of the people.

Hon. W. A. ABRAHAMS: I am sure you meant "our".

Miss. L. EASTMOND: "Our" what?

Hon. W. A. ABRAHAMS: You said "their". I said, I am sure you meant "our".

Miss. L. EASTMOND: Oh, okay. Thank you. So that is our view and we understand that it is not the tradition, so it may be a difficult thing to argue but we really think that Barbados really needs to get serious about disciplining itself and therefore that is our recommendation. Because of the various interest that individuals have in so many different projects across Barbados, our recommendation is that as far as possible these individuals should be retirees – as far as possible – so that they do not have that interest in much of what is going on in terms of awarding contracts, et cetera, but the most important thing for us is to ensure that the individuals, apart from everything else that was discussed, whether they are specialists, whether they are from non-governmental organisations or whatever else, the most important is that these people must be people of integrity, and I do believe we have a big enough pool in Barbados that we can find those people of integrity. In terms of the Commissioners themselves, we do believe that there should be protections for the Commissioners and that where individuals are found to be engaged in any activity that would make it difficult for the Commissioners to carry out their functions, that there should be significant penalties for that. It did cause me some concern, though, that there is a provision where there is quite a stiff penalty if you insult a Commissioner. I do not know that a Commissioner could be easily insulted. I do not believe that such a provision should be in there. I do not believe that the penalty should be that high. I think it is like \$10 000 or something like that for insulting a Commissioner, and it is just kind of odd that it is in there. Generally speaking, you would expect individuals to conduct themselves in a particular way when they are in a particular forum. I am more concerned with attacks on the Commissioner, threats to the Commissioner, but not insults. I mean an insult could be that I think your head is very big; I would find it very difficult to imagine that somebody would be penalised for that.

Miss L. Eastmond: Mr. Chairman, we go on to capturing the individuals in the net. We had a bit of a discussion about companies which are incorporated by entities which are Government-owned, and we also have entities in Barbados that might not be incorporated by Government but in which the Government has substantial interest in terms of shares. The Government may have equity in the entities even though they are not incorporated under any particular Ministry of particular piece of legislation or statutory corporation. There are those entities, which I think we should also take into consideration when we are looking at making sure that the net is wide enough. I know that you have tried to

define in the legislation how far we should go in terms of looking at individuals who are connected to the specified persons, so you look at spouses, children, and individuals living in circumstances of husband and wife. We know that there are individuals who live in circumstances which sometimes might even be closer than husband and wife, and it seems as though those individuals might not be captured in the legislation. It is certainly important that we capture all of those individuals as well. I would think, I know it might be difficult to define them, but I would suggest that instead using the term "circumstances of husband and wife" that perhaps you could use a term which really defines that closeness between the individuals. It would be a sad thing if a person just got away with it because they are neither a spouse, child nor living in circumstances of husband-and-wife. We think it is important that we address that particular issue.

Miss L. Eastmond: Sir, I would also like then to support another point. We are focusing high and we are focusing on heads of departments, but I would also like to support the interventions which suggested that there is a need to look at those people who are most susceptible to corruption. Quite often it is not the head of department, but there are individuals who interact with the public who are more susceptible to bribery and corruption. This is why I said initially that we have to look at the profile of corruption in Barbados and try to address it. I know that we do not want to go too broad and make the net so broad that we encompass everybody in Barbados, but I think it is internationally recognised that there certain agencies within Governments around the world – not just us – where the officials are more open to corruption and bribery precisely because of the positions which they are in. We think it is important that that we address those individuals.

Miss L. Eastmond: We also support the point about after a person has died, which is in Clause 25(7). Because a person has died, we do not believe that there is any reason the administrator should not file a declaration. We might actually be in a situation where, if an investigation is being conducted and people are engaging in corrupt practices, quite often they are not engaging in these practices alone. They are engaging in them with other parties, so simply because one person dies it should not mean that you would not have access to that information to pursue the other party. It is our recommendation that death should not prevent the administrator from doing what he or she would do if they were alive. There might be certain safeguards which you might have to put in place. For the administrator, you might wish that person more time or you might need to assist in some way because the administrator is not the person. I think those are things which we can address, but certainly our recommendation is that that privilege should not be there in Clause 25(7).

Hon. W.A. ABRAHAMS: Miss. Eastmond, with an eye on the clock, we note your excellent presentation, to be honest, and I like the format where

you set out your concerns and you also specified your recommendations. That is very useful. Can you take us to the specific points that are most burning for you?

Miss L. EASTMOND: Okay. How much more time do you want to give me?

Asides

Hon. W.A. ABRAHAMS: I guess 15 minutes starting now.

Miss. L. EASTMOND: Okay, that is a lot of time. Ensuring that the Governor General can carry out her functions. I think that is very important. Within the legislation you do put emphasis on seeking to ensure that the Commission has resources, but there is not very much about the Governor General now having additional resources in order to carry out her functions. As we are suggesting, the Governor General should take on that responsibility of appointment and filling vacancies, et cetera, in consultation with some other person but not the Leader of the Opposition and not the Prime Minister. The Governor General needs to have those resources, and we are making the point that they should do so.

Ensuring that the Commission has teeth is another concern. The Commission itself is given the power to send reports to the Director of Public Prosecutions (DPP) to have certain matters pursued through the courts, but we are a bit concerned that in doing so the Commission does not give up its interest in the matter. We are concerned that it should not just send the report to the DPP or to the Commissioner of Police and basically leave it in their hands. There must be some mechanism for the Commission to retain an interest in the particular matter. Otherwise, we might find ourselves in a position where whatever they pass on just gets caught up in the backlog which is there already for many years.

With respect to the Blind Trust, my understanding of this is that this should be used where an individual has assets. You do not want the individual to necessarily give up their assets because they are in public life, but with this Blind Trust – I understand Minister Abrahams did speak about that – the difficulty is that how it should work is not stated in the legislation really -- that is Minister Abrahams's understanding of how it should work. What is clear in the legislation is that there is a reduced reporting requirement because you set up a Blind Trust and therefore it seems to weaken the ability of the Commission to investigate so that is something that we would like to have examine more closely to ensure that the blind trust is not abused or it is not a mechanism to avoid disclosure. We would also like to ensure that where there is a limitation period, that if the period during which you can bring the person to justice has expired through the willful actions of the individual we would like to know that individual could still be pursued.

Then, I think that everybody agrees that the Commission needs to be provided with adequate resources and this is going to be one of the very important point in setting up the Commission because practically all of the agencies that have this

responsibility to investigate, even the Ombudsman which we set up years ago, and have not provided the resources that the Ombudsman could function in any meaningful way. We have an Auditor-General, yet the Auditor-General complains about not having resources so now we are going to set up an Integrity Commission and the trend to me, it would seem to be that the Commission is going to complain about not having resources as well. There have been a couple of interventions where individuals have talked about the Auditor-General and this is the reason why the Auditor-General comes to mind certainly for us, because the Auditor-General engages in a process where he is able to discover information and he is already engaged in that process. It would seem to me that there should be some nexus between the Auditor-General's Report, if not the Auditor-General because what we really want is the report, we do not necessarily need him expect that the Auditor-General could be called upon by the Commission itself. My concern is that all of that work that the Auditor-General does, we should not go over that again, that should be used by the Commission and if the Commission wants the Auditor-General to come to make a presentation, they should be able to do that but we have to look carefully at our resources.

Miss L. EASTMOND: The other point about resources have to do with us volunteering the idea of the Commission entering into exchange of information agreements with foreign agencies. I do not know if that is a requirement in some piece of legislation somewhere but if it is not, we should not volunteer it because that agreement to provide information to foreign agencies is often a burden on agencies in Barbados. I do not see that the Commission is going to provide any other information that what the Financial Intelligence Unit can already provide and request and what the Barbados Revenue Authority can already provide and request, so if this is a voluntary thing, I would suggest that we do not need to do this. We already have procedures in place to allow foreign agencies to have information.

With respect to whistleblowers, I support those interventions which suggest that there should greater protection for whistleblowers. Certainly, in looking at the legislation itself, if a person were to look at this piece of legislation that deals with whistleblowers, I do not believe that they would come forward. If you look at what is called a protective disclosure, it says that a disclosure is not a protective disclosure where the public official commits an offence by making the disclosure or discloses privilege material or information disclosed to him in the course of obtaining legal advice.

Now, if we are very practical about it, the individuals who might be whistleblowers they might not know technically or legally whether they should disclose a piece of information or not. The truth is after they read that somebody may say "Boy, you better keep quiet, next thing you know, they prosecute you". That is what will happen with this. I have looked at other pieces of legislation where if the person is acting in good faith, even if the disclosure is illegal, as you would say, there are still protected under the legislation.

I think that the thing that has to happen is that the person or the body that the individual makes the disclosure to, that is the body that needs to protect the innocent people out there who have done nothing, for example, from those people being subjected to somebody saying something about them that is not true, but I do not think you should make the individual uncomfortable about coming forward with the information because the truth is technically they may just not know.

Miss L. EASTMOND: In terms of incentives, we have a recommendation that there should be incentives so that is something that you could examine. I know a lot of people are not that happy about giving something an incentive for that. I would also like to speak about the outstanding initiatives and support individuals who have spoken about the fact that aspects of the Election Offense Act and the Representation of the People's Act, they are both breached by politicians every election and basically law enforcement turns a blind eye, or so it is alleged. In addition, there needs to be a freedom of information Act which other individuals have spoken about but very, very important in Barbados we need to have legislation where, if somebody benefits from wrongdoing you must be able to trace those assets and confiscate them, that is the issue. If you confiscate them, the issue about getting a million dollars, spending two years in jail and getting a fine of \$15 000.00 would not arise. There is an assumption that you engage in wrongdoing get a million dollars and you keep it. You should not be able to keep it and our recommendation therefore is that there must be very soon additional legislation whether it an amendment to the Proceeds of Crime Act, or whatever it is but we need to be able to trace those assets and confiscate them. I will end my presentation there.

Mr. CHAIRMAN: Thank you very much Miss Eastmond. Miss Eastmond and her team will be open to questions from the panel.

Senator Miss L. R. CUMMINS: Thank you, Miss Eastmond. We were going through your presentation which is, as have been others before you, well-researched, well presented and it raises important points which we find very useful. I want to go directly to one particularly point which you raised simply because it was point raised made in an earlier presentation as it relates to incentives and protection for whistleblowers on Page 7. You make the recommendation, in Recommendation No. 1, that the Governor-General or the Commission should be invested with the capacity to hear a preliminary submission before exposing the whistleblower to make a substantive report. I just wanted to raise that simply because there was the counter-proposal made earlier and I wanted you to be able to elaborate a little bit more on your rationale for making this provision...

Miss. L. EASTMOND: What was the counter proposal?

Senator Miss L. R. CUMMINS: There was a proposal that the Governor-General was being ascribed specific roles that should not be incorporated into this.

Miss. L. EASTMOND: Well that is why I said I believe the Governor-General is a resource that we have and I believe that we should use that resource. I have no difficulty whatsoever with the Governor-General being more involved in these matters, I really do not. I do not have a difficulty with it. There are lots of things that are tradition, but we cannot continue to hang on to the tradition. The Governor-General is a resource, the Governor-General was a Court of Appeal Judge and she has the capacity to do a number of things and I really think we need to engage the Governor-General with whatever safeguards may be necessary, but I have no difficulty with that.

Hon. W. A. ABRAHAMS: Ms. Eastmond, I thank you once again for an excellent presentation and, to be honest, might I be so bold as to suggest ... well I would not but let us just say it very easy to follow and the recommendations following behind each section made life very simple.

Miss. L. EASTMOND: We know of your charm, Minister Abrahams.

Hon. W. A. ABRAHAMS: My one question, Ms. Eastmond and you cut off before this point. You proposed that the declaration of assets be available for public scrutiny upon request. One of the main focuses of this legislation is the confidentiality of the information and to be honest, the bulk of the feedback that we are getting from people, especially people in public office or in statutory corporations or who may fall under the ambit of this legislation is to ensure that these declarations are protected and used only for the purpose as intended by the legislation. Take me to your thought behind publishing every declaration or having every declaration asset available for scrutiny because that goes entirely against what we are trying to achieve in the legislation.

Miss L. EASTMOND: I know the other side of the argument and the other side of the argument is that essentially, that is where everybody else in the world is going and there is no reason really why you should want to keep your assets a secret. The other thing is that the majority of people are not going to go to find out what is there. There are only a few people who will do that. You are not going to see the majority of Barbadians getting up early in the morning to go and see what assets you have or anybody else has. It more has to do with the trend in the world and in terms of the declaration of assets. I do not believe that it is so detailed ... I depends on the form but from I gathered from the legislation I do not believe that it is so detailed that people would know absolutely everything about you. That was mainly it that really that is the trend and the trend tends to become the international standard.

Hon. W. A. ABRAHAMS: Just for the purpose of those, I guess, who are watching and who may not be aware, there are two bits of information or two documents which detailed the interests of the persons in public, 1) the declaration - which is actually intended to be quite specific down to cash in the bank and 2) is a register of interest where you would say that you own shares in a company or that you own a house

but you do not have to put the dollar value on to it. That is just for clarification for those who may be watching and do not know. Mr. Jordan.

Hon. C. E. JORDAN: Thank you, Mr. Chairman. Miss Eastmond I just wanted to find out if you have any more detailed suggestions as it relates to the provision of funding. It is an issue that has been raised in a presentation before. You focused quite a bit on it in your own presentation. Models are you suggesting or do you have anything in mind specific to how it could be funded so that it can operate effectively.

Miss L. EASTMOND: Well, if we actually go the route of confiscating assets that could help to fund the Commission adequately, so I would suggest that could be one of the things that could be done and that the results that come out from out of the work of the Commission could actually be used to fund it, which is, not exactly the same. I think, but kind of a similar thing that you do with the utilities regulator. When they go before the utilities regulator they pay to do that and to engage them so maybe something similar could be done. Those proceeds should go to fund the Commission.

Hon. C. E. JORDAN: So you are really incentivising the Commission?

Ms. Lynette EASTMOND: Yes, and hopefully incentivising Government so that they do not have to worry about raising that money.

Mr. CHAIRMAN: Senator Cummins.

Senator Miss L. R. CUMMINS: I have a question, Miss Eastmond. On the question of sanctions we have spoken a lot about the other entities what really should be captured under this legislation but are not currently presented and the related legislation where, perhaps, they could be captured. I wanted to ask you a question, I think I wanted to ask it earlier to a couple of others but since you are here and you have given us great recommendations I am going to pose it to you. As it relates to private sector corruption and the role of the private sector and being able to capture those persons, you raised in your recommendations about sanctions what should be done in some instances in terms of fines and the legislation sets out what should happen in the case of public officials, but there is a standard and a trend emerging globally, as it relates to private sector entities that they be prohibited from participating in Government contracting, procurement processes for a period of time so in some instances you have entities like say, the Inter-American Development Bank. They are brand new as a private sector entity from participating in their contract and for a period of two years and noncompliance with their recommendation is a further period which would constitute five years. Are there specific recommendations that you would wish to make or you could make that would then strengthen either this legislation or like you have done in some instances, for the ancillary legislation that should go along with this body of work? Thank you.

Miss L. EASTMOND: Certainly that proposal that you put on the table, that recommendation about banning individuals from again tendering that would

certainly be useful because I really think that in terms of sanctions you do want effective sanctions and that would be effective. Of course, you have to be careful about individuals setting up different companies and then coming again to you under a different name.

Mr. CHAIRMAN: Are there any other questions for the guest? Thank you very much, representatives of the United Progressive Party (UPP). Like my colleagues, I too am grateful and impressed by your presentation and it will certainly inform our continued deliberations. We thank you very much for your encouragement.

Miss L. EASTMOND: What I would like to close by saying is really that the issue of corruptions has to become a national issue and that all parties must be engaged including the media that is why anti-corruption initiative succeed in countries where the population is actually embarrassed by the thought that there is corruption in their country. At this point and time in Barbados nobody is embarrassed. People just believe that is how Barbados works, so I think we have to do a lot to get people to that stage like people in New Zealand where you are actually embarrassed when there are instances of corruption that are discovered. Thank you.

Mr. CHAIRMAN: Members of the Committee this has been our final presentation for today. I have asked the Clerk whether we have had anymore individuals who have - we have many more written submission but not everyone has accepted the invitation to appear and make an oral submission so I would suggest that we adjourn today and we can set date and time of our next meeting during the course of the next few days. Certainly, I would want to extend the invitation to members of the public who still want to make written submissions or who may consider making oral submissions to do so. The opportunity is not closed, but if there are no more oral submissions to be made the Committee would then go into deliberations on the Bill which would not be streamed. Again, if there are any members of the public or civil society who want to appear and make contributions orally, they should communicate with the Clerk of Parliament so that we can get you penciled in for the next occasion. Senator M. C. TAITT now has the floor.

Senator Ms. M. C. TAITT: Thank you, Mr. Chairman. I hear what you are saying and I thank you. I want to share with the Members of the Committee that a number of persons have approached me who have indicated they have an interest in making submissions to the Committee but because they are at work when we are sitting it is not convenient, nor do they want to submit anything in writing. I do know if they Committee would have considered doing Town Hall meetings to accommodate persons after hours similarly like it was done for the Town and Country Planning legislation. They are number of persons who have indicated an interest. They have various concerns that they would like to share and have questions answered. However, it is that they are either intimidated by the Chamber, they cannot get time from work to join the

Chamber nor do they want to put it in writing. I felt that I should say that to the Committee and leave that to the Committee for their decision. However, I felt compelled to say that because I have been approached by a number of persons who are asking about Town Hall meetings.

Mr. CHAIRMAN: Leader of the Opposition you have the floor.

Bishop J.J.S. ATHERLEY: That is true. I had two instances of such. Alternatively, rather than Town Hall setting I would want to suggest perhaps a night session.

Mr. CHAIRMAN: Let me say that I think the Committee would benefit from the maximum possible interaction but there are some issues which need to be raised in the context of the suggestion that we have, that is, a Town Hall type meeting. This very issue has been raised at previous Select Committee meetings, but the prevailing view of those meetings and certainly it remains my view is that this a Committee of Parliament and there are certain privileges that extend to the proceedings. There are also certain obligations in relation to Hansard reporting which are required and I suspect that there will be some logistical difficulties in extending this kind of Committee session to a place outside. I am not saying that it is impossible. I am suggesting that it might take a considerable amount of time to put in place and we have a limited life, that is, three months. I have no difficulty having a meeting which could run a little later than usual, but I do not know that people should feel cowed by coming into the Chamber. Is it the will of the Committee that we can have a late evening meeting? So be it. We would just need to set the date and time for that and we could start at 4:30 or 5:00 p.m., and allow all those who have indicated to Senator Taitt that they are anxious to appear we should plan on that occasion for a five-hour meeting.

Senator Ms. M. C. TAITT: Mr. Chairman I had requested a Town Hall meeting and not the Senate, so I do not know if a late evening would satisfy my persons. It may satisfy the Bishop's persons.

Mr. CHAIRMAN: What is the difference between a Town Hall meeting and a late evening meeting in the Senate?

Senator Ms. M. C. TAITT: Mr. Chairman, they do not want to come to the Senate.

Mr. CHAIRMAN: This is a Select Committee of Parliament and I think we should Committee encourage the individuals to respect that this is a Sub-of Parliament and if they wish to appear and make a presentation, they should do so.

Hon. W. A. ABRAHAMS: Senator Taitt, you can encourage them to send their submissions via you.

Mr. CHAIRMAN: Let us adjourn and we shall try to set a date and time, and notify the Clerk accordingly. Do you have any other business?

Senator Ms. M. C. TAITT: I do, but I believe it should be off air. It will not be long.

Mr. CHAIRMAN: Could we then ask that the video streaming be stopped? When can have a one-minute break. Is it an administrative in relation to work

of the Committee? Then perhaps we can excuse the public at this time?

Senator Ms. M. C. TAITT: I am guided by Minister Jordan that we should excuse the public but I still have something to say.

Mr. CHAIRMAN: Mr. Marshall, can you invite our guests to some liquid refreshments in the Committee room?

Senator Ms. M. C. TAITT: It needs to go into the Hansard.

Mr. CHAIRMAN: The meeting has resumed.

Senator Ms. M. C. TAITT: Thank you, Mr. Chairman. For the publication of the Hansard for August 21, I would have raised it with Mr. Jones and Mr. Eastmond. There was a fundamental error with respect to something that I was reported to have said. Yes, I spoke to Mr. Jones. Mr. Jones brought the particular Hansard Reporter and they gave me an undertaking that they would fix it. This is not my issue. My issue is that the Hansard for August 27 once again it has fundamental flaws and what blew my mind is that on page 16 there is reference to an R St. C Toppin. If we are getting that type...I have to see the version before it is published. How are we making reference to R. St.C. Toppin? I believe the error was for Mr. Thorne. We cannot be doing that kind of thing with Hansard. We are relying on these people who are coming here. Hansard is supposed to be taking this information verbatim. We are expected, I believe, Mr. Chairman, to be able to refer to it when we are doing our deliberations to pick out who said what that we want to use, ruminant upon, disregard or discard.

Madam Chairman, you cannot be sending me something and you are putting Sir David full stop. You cannot send me work that do not even have the titles done. It is disrespectful as it relates to the Members. By the way, I am Ms., I am not M-I-S-S, and if you are going to give the Honourable Willfred Abrahams his LL.B, you need to give me my Q.C. and my M.B.A. and everything else. You need to be consistent in your reporting.

Senator Ms. M. C. TAITT: What I am objecting to, apart from the presentation and the standard, is the fact that you actually have named someone who was not here who does not sit on the Committee and so I am registering my concern now with the view of ensuring that this type of reporting would cease and desist as of 7th September because I actually do look at my Hansard, I actually do look at Minutes. I am one of those persons who is considered to be that type of nerd who actually looks at paperwork. I am objecting to the standard of Hansard. How can you have a R. St. C. Toppin when there is a Ralph Thorne? That is not good enough. Check page 16 of the Hansard and you would see, you have to be consistent. Senator Caswell Franklyn, sometimes is Senator Caswell A. Franklyn, whole names spelt out, sometimes he is Senator C. A. Franklyn, sometimes they are capital letters and sometimes they are common letters. What are you doing with respect to the Hansard? If there is no other reporting that should be without error, it would

have to be the Hansard. I am concerned, Mr. Chairman, and I wanted to go on record as registering my concern. R. St.C. Toppin was not typed once you know, it was typed more than once, so my question is: Is the information that is being recorded accurate as well? When we are looking at it to make reference to something that Ms. Archer said or Ms. Eastmond said, will that be accurate because none of us are making notes verbatim, Mr. Chairman? We should not have to, but when we can see that R. St.C., for sure R. Toppin, I am vexed. I am concerned. Much obliged. Mr. Chairman.

Mr. CHAIRMAN: Thank you. I do not think any of us need to add any particular fuel to that fire. I think Senator Taitt...

Asides.

Mr. CHAIRMAN: I believe that the Senator is absolutely correct, so Mr. Clerk you need to work that out. The meeting is adjourned.

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**FIFTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

WEDNESDAY, OCTOBER 10, 2018

First SESSION 2018-2023

PRESENT:

Hon. D. D. MARSHALL, (*Chairman*), QC., M.P.
Bishop J. J. S. ATHERLEY, JP., MP. (*Leader of the Opposition*)
Hon Miss C. Y. FORDE, J.P., M.P.,
Mr. R. A THORNE, Q.C., M.P.
Senator C. A. FRANKLYN, J.P.
Senator Miss L. R. CUMMINS
Senator Ms. M. C. TAITT, Q.C.

IN ATTENDANCE:

Mr. Pedro E. EASTMOND, Clerk of Parliament
Mr. Nigel R. JONES, Deputy Clerk of Parliament
Miss Suzanne HAMBLIN, (Assistant to the Clerk to the Committee)
Ms. Nicole THOMPSON, Special Advisor to the Attorney General
Mrs. Mechelle ELIE, Senior Draftsman, Office of the Chief Parliamentary Counsel

ABSENT WERE:

Hon Mr. C. McD. GRIFFITH, M.P.,
Hon. C. E. JORDAN, M.P.
Hon. W. A. ABRAHAM, M.P.
Senator Mr. the Hon. J. X. WALCOTT, J.P.,

PRESENTERS WERE:

Mr. R. Orlando MARVILLE, Former Diplomat and Senator
Mr. Mark Z. WILLIAMS, Concerned Citizen of Barbados
Mrs. Kaye WILLIAMS, Council Member and Convenor of the Law Reform and Legislation Committee, Barbados Bar Association.

Mr. CHAIRMAN: Good evening to Members and invited guests. We do not as yet have a quorum. Mr. Ralph Thorne is on the way but in the interest of moving things along and as much as we are not making any decision, we felt that we should begin to receive the submission and I therefore propose to proceed in the order in which individuals indicated that they wanted to appear before us and that would therefore be Mr. Marville, then Mr. Williams and then followed by the Barbados Bar Association.

The other matter relates to the request of the Bar that their photographer be permitted to take a photograph or two during the proceedings. I do not believe there is any difficulty with that.

Asides

Mr. CHAIRMAN: Then you would have to face the back. There being no dissenting voices we would agree to Mr. Giles taking a few photographs during the Committee's proceedings.

Without any further ado therefore, I would like to invite Mr. Marville, who is an esteemed Barbadian, a former diplomat and a distinguished former Senator who therefore sat in this Chamber, to make this presentation. By way of how we proceed, Mr. Marville we will give you up to 15 minutes to make your presentation and then the Committee if they feel necessary will engage you for clarification or your further thoughts or comments. Over to you.

Mr. R. O. MARVILLE: Thank you, Mr. Chairman. Good afternoon distinguished members of the Joint Select Committee.

I perhaps should say something about myself in terms of this particular operation and others. In fact, I spent the first years of my adult life as a teacher teaching in six different countries including Barbados and all the rest of my adult life, I spent in the service of Barbados. I was a diplomat for most of that time, I also worked in the Ministry of Education and I was a Senator. I also taught Law, Governance and Society at the University of the West Indies (UWI) for about a decade so I am not unfamiliar with the subject.

Suddenly, for some reason not known to me, former Prime Minister Thompson asked me to look at a suite of integrity legislation and we worked on this thing and came to some interesting conclusions but at his death, most things went into File 13. Integrity legislation was left hanging somewhere, the other aspects of this suite of legislation which I would hope to see are the question of a Contractor General. This was blocked by two Permanent Secretaries who said they were working on something and then, of course, nothing happened for 10 years.

The Freedom of Information which I think is one of the fundamentals of democracy that ended up, I think, among the CPP who decided that it would kill the secrecy of the Civil Service, which is what it was intended to do anyway, and that you could not have a

freedom of information but there are Freedom of Information Acts all over the region anyway.

Then there is the Defamation Act which was stopped by a minister. Although he accepted that it was the one law where you were guilty until proven innocent I have always thought that one should be able to offer an opinion on any public figure without fear of being criminalised. If I said that the minister responsible for moonlight is an idiot that should not be an offence, if you get my drift.

With respect to other things that I believe are important to the process, one is an Ombudsman. In Ombudsman I mean, the Ombudsman in the sense that there is such a person in the Scandinavian countries and in German who is not responsible to anybody other than the ordinary citizen, who cannot be removed from his post unless there is some malfeasance: he does something terrible. I think it is important to have a standalone whistle blower law and this must cover whistle blowers in the public and private sector. I also believe that private sector figure involved in corruption should also be charged unless that person is a whistle blower.

Getting to the actually Bill that is in front of us, by the way, I do not have with me copies of the other Bills but I notice that this one is the same one that I worked on initially. The suite of Bills was drafted by Professor Fiadjoe so they are available maybe, Sir, in your office or in the office of the Civil Servant. I think by now we are probably agreed that a simple integrity law will not work on its own. I believe Sir David Simmons made that point before but he was looking at only the addition of the Freedom of Information. I believe, I think the Contractor General is terribly important in this context because contracts are areas where there can be corruption unless there is proper coverage. The Contractor General Law in Jamaica works beautifully. I have no reason to believe that it would not work equally beautifully here.

There are some things in the present legislation which I would like to have a say on page 23, the fine or the ceiling for gifts is \$1 000. I think that is rather high for the simple reason that you do not have to reach \$1 000, you can go \$900 several times. I would prefer to see a low enough ceiling to make it extremely difficult to give gifts in return for favours. I would prefer to see about \$200 rather than \$1 000.

The list of persons covered in public life, what we began with is there in the document that is, the heads of Government services, Permanent Secretaries, Chief Executive Officers of Corporations, et cetera, but I think that is rather missing two huge chunks of possible corruption. I think that all Customs and Police Officers ought to be included in that list. Whereas it is extremely difficult for some minion in the Ministry of Education, let us say, to be corruption in any real sense because whatever he decides with have to be decided by the Permanent Secretary at least. In the Royal Barbados Police Force or in Customs, it is terribly easy for anybody at any level to be involved in corruption of a major scale.

There was also the issue of a Code of Conduct which I do not see in the present legislation. This was a Code of Conduct to be drafted by the ministers themselves so that it would not be totally unreasonable. I know that you have read the article I wrote on this and in the case of South Africa the Code of Conduct requires you to declare any gifts that you have. As I explained once, I sent an old friend of mine two bottles of Old Bajan Rum and a few days later in the newspaper it said "Mac is so much under pressure that his friends are sending him rum". I mean that is the sort of thing that I believe would be very healthy, the fact that people in the Press can comment on things like that, that they do comment on them, even if they do so in fun.

There was one other issue I would say in the question of the choice of a head of the eventual tribunal. I am less in favour of a combination of the Prime Minister and the Leader of the Opposition choosing such a person. I would always prefer the Governor-General because in my experience, whoever the Prime Minister is, they have the upper hand and therefore you might have a situation where there is not any precise justice in the choice.

I think it is necessary to have the Defamation Act because you need to have the measure of freedom of speech which allows people to be critical and which allows further investigation into something that they may know something about but dare not say. I am not sure how you view these things but I would take time out at that point and speak to anything you need to have me speak to.

Mr. CHAIRMAN: Thank you very much, Mr. Marville. The panel is asked now to engage. If I might go first though, I do have to say that your recommendation that all customs officers and policemen should also be subject to the Integrity in Public Life...

Mr. R. O. MARVILLE: I am sorry?

Mr. CHAIRMAN: I believe that you are recommending that all customs officers and policemen should also fall under the rubric of this Bill. Is that correct?

Mr. R. O. MARVILLE: Right.

Mr. CHAIRMAN: I unfortunately stepped away for the moment while you were discussing that and I wonder whether you do not consider that there are a large number of police officers, constables, who might not appropriately be targeted. In other words, do you think we need to extend the net so wide as to include officers of junior ranks?

Mr. R. O. MARVILLE: Yes, Sir. I do not think it is a matter of rank in the Police Force, it is a matter of situation. In other words, if a policeman of whatever stature is dealing with drugs there is a possibility of corruption, if he is dealing with drugs and guns let us say, and that terrifies me. In the case of customs officers, I am afraid, I do not know what to say you know. There is possible corruption at practically any level where somebody is in a situation able to release goods.

Mr. CHAIRMAN: Senator Cummins.

Senator Miss L. R. CUMMINS: Thank you very much Mr. Marville for your submission, you have covered quite a number of the areas which are quite far-reaching and I think we are appreciative of the breadth of your presentation and I do want to follow up on the question raised by our Attorney-General with regards to police officers and customs officials. What would be the specific recommendations that you would make in this instance with regard to customs officials obviously as distinct from how you would treat to the Police Force. I would like to hear a bit more from you on that.

Mr. R. O. MARVILLE: I think in both cases it does not have to be every police officer or every customs officer. Police officers who work at Headquarters just sort of going through routine issues do not need to be covered but police officers who are out on the street dealing with guns and dealing with drugs, et cetera need to be monitored. I have other theories about such police officers. I think because of the danger of what they are involved in they ought to be specially treated.

Senator Miss L. R. CUMMINS: As it relates to Customs I would like to hear the specific recommendations because in principle you have customs officials who are functioning not just at points of entry and exits but they are also functioning at people's homes with regard to the un-stuffing of containers and those kinds of activities so they are interacting with the public.

Mr. O. MARVILLE: In the case of customs officers I do know what the limit is. I think somebody who is actually much more directly involved in Customs should be looking at this and saying okay we cannot take all customs officers but we could take a specific number of them or a specific area of customs officers.

Senator C. A. FRANKLYN: Sir, I have a little difficulty understanding your recommendation in regard to the customs officers and police officers. Customs officers, the people who work in Customs from the guard to the Comptroller of Customs, according to the Customs legislation, can be regarded as customs officers, so where will you cut off? We already have legislation in place to deal with corrupt public officers and I am surprised that it is not being used. It is, not because that it is not being used, that you should now lump them in with something else. You should enforce the legislation that you have already. Are you aware that there is already whistleblower legislation in the Public Service Act? Most people do not. Recommendations are not going to be helpful especially if you are going to have 400 customs officers that the Commission now has to review. This legislation started out to deal with corrupt politicians, that is what it was all about, and it is becoming now a hydro-headed monster, everybody wants to put everybody else in, but they left out the judges though and they are people who should be in because they have more opportunity to be corrupt than most people. I do not agree that you would want to go down to the

customs officers and left out the police in the office because the police in the office could be sent next week on the street by the Commissioner changing his duties. So leave the Police Force where it is and control them by the use of the Police legislation and the Public Service legislation. The same thing goes for the customs officers, leave them out. We got too many people already in this. As a matter of fact even Independent Senators and Opposition Senators are included in this legislation and we do not have any avenue to be corrupt. How are we going to do it? Everybody is just throwing in things because somebody might have a bright idea but it is not so bright, Sir, I am very sorry.

Mr. R. O. MARVILLE: I resent the suggestion that everybody is just throwing in things. I do believe that when people make suggestion they just do not throw them in, they think about them seriously. I made the point that in the case of customs and police officers that what scared me most was drugs and guns, and if you are not prepared to believe that these things pass through then we are not living in the same world.

Senator C. A. FRANKLYN: That is not the integrity in public life that we are dealing with, that is the criminal law that we already have in place to deal with those people. We have the Customs Act and the Police Act, and that is why I am saying that people are just throwing in things without understanding that there are other laws that could adequately deal with these. The problem here is that a lot of the problems in Barbados is enforcement, not necessarily another piece of legislation. I think we already have too many people in this integrity in public life thing already, and I do not think we need to expand it to Customs. Police and [the] next thing you would hear is that if you do not pay the firemen something they would let your house burn down. This thing is going too far now, we want to get the politicians who have been taking bribes for years, for ever and ever, coming in here as paupers and leaving as multimillionaires. They are the ones we want to deal with, you know.

Asides.

Senator C. A. FRANKLYN: I do not want to give the list now but I have a list, even in the last Administration, because we are not here for that today, but leave the civil service, leave the Police Force and enforce the regulations. The problem in the Police Force and the civil service is political interference, because you put politicians into these jobs and then they do not do the jobs because people could do favours for people. It is political interference that causes the corruption in the Police Force and causes corruption in Customs. Right now we have a Comptroller of Customs who has never worked in Customs before getting the job, that is the problem.

Mr. R. O. MARVILLE: And I am afraid that in some cases it is private sector interference. I will not go into detail but I do know of a specific case and I am not talking about it, so what do we do then? I think personally that we also have in any conviction of a political figure [that] there is a partner in the private

sector and that that partner should also be judged.

Senator C. A. FRANKLYN: I agree 100 percent.

Mr. R. O. MARVILLE: Good.

Mr. CHAIRMAN: Bishop Atherley.

Bishop J.J.S. ATHERLEY: Thank you very much. Mr. Chairman, good afternoon to everybody. Thank you, Mr. Marville, for coming and taking your time to make the presentation. Could you perhaps give me more of your concerns or your suggestions relative to the role and function of the Office of the Ombudsman? You expressed some concern about there being independence relative to the functioning of that office but you did seem to suggest that the role of that office needs to be enhanced and strengthened. Could you be a bit more...?

Mr. R. O. MARVILLE: The word which is a Scandinavian word "ombud" means "message" or "a man who is carrying a message" and the man is carrying the message for the ordinary citizen. In several cases the ordinary citizen is up against a powerful Government, a powerful private sector issue and he does not have the means to hire a lawyer to fight that. That is where the Ombudsman ought to be able to make an input, and I think more important than that or as important as that, the Ombudsman has never been a totally independent person, he can be moved at the will of the Government. An Ombudsman in Scandinavia can only be moved if there is some malfeasance involved or if he has reached an age that they consider a retirement age. Does that satisfy your question, Sir?

Inaudible response.

Bishop J.J.S. ATHERLEY: What would you do to enhance the independence of the office and the person performing that function? You made reference to how the office is resourced. Any suggestions as to how the Office of the Ombudsman should be resourced as to contribute to the degree of independence that the office enjoys and what else can we do to enhance the functioning of that office such that independence is ensured and the office actually is made to be more relevant?

Mr. R. O. MARVILLE: Well, look, the nature of the Ombudsman as he is now or as she is now is such that the Ombudsman can be moved by Government because the Ombudsman was placed there by Government. I am a little bit different in these respects. I would always prefer to have somebody put in a position like that by the Governor-General who is a neutral political force. However you look at discussions and agreements, the party in office will always have the upper hand that is one way of creating greater independence for the Ombudsman.

Senator Miss L. R. CUMMINS: Thank you, Mr. Marville, one of the purposes of the Joint Select Committee is to receive submissions and to hear both the written and oral inputs of members of the public and interested stakeholders and you have submitted to us a written piece which covers quite a number of things and it did not cover one thing which you [have] just raised but which we have heard from other partners and

stakeholders who have presented at previous sittings and it spoke to the relation between the Integrity in Public Life Bill and the private sector and the fact that it is missing from the legislation. What would be your recommendations based on your experience for the treatment of issues relating to corruption by public officials by those in the private sector. I think certainly our Honourable Prime Minister has always said that it takes two hands to clap, so what would you say should be done?

Mr. R. O. MARVILLE: Make sure that both clapping hands are involved in the judicial process. I think it is only fair because if you have a situation where we decide, okay, ministers are corrupt and that those are the people that we go after or [that] public servants are the people who are corrupt and those are the people whom we go after, what happens in the private sector? In the United States of America, for instance, all private sector operations are governed by a notion that they will not involve other people in bribes to get something. I do not know that we need to go into the business of specific legislation but certainly if we have somebody who is a minister who is corrupt in a certain situation, he or she is not corrupt on his/her own and therefore I do not think it is fair that the person who is involved at the other end should go scot-free.

Mr. CHAIRMAN: Thank you, Mr. Marville. I take it from the terms of your presentation that you are of the view that integrity in public life is only one of the wheels of the vehicle that will allow our country to run smoothly and I do not think you would find any disagreement from anyone around this table. But in terms of your other recommendations and while they are not before this Committee, I wonder if I could canvass your views on the matter of freedom of information. I can say to you that freedom of information is something that has been committed to by this current Administration and I am aware that there was an effort to get a draft ready under a previous Administration. I wonder though if you have any thoughts on the ability of an already challenged public service to meet the potential needs of an inquiring public. It is near impossible to get any quick response from the public service on any of the routine matters that they do on a day-to-day basis and it would seem reasonable to me that request for information on a Town Planning Department file that dates back maybe to 2015 or maybe even earlier might require quite a bit more of the public service and I am wondering if we have given any thought to the balancing act that we have to do, something is a desirable outcome but the desirability of that outcome has to be balanced by the ability of the public service to satisfy that request.

Mr. R. O. MARVILLE: Mr. Chairman, one idea was that the Government Information Service collects information and puts it out. They have members of staff who are familiar with the matter of information, they will be excellent information officers within the system rather than going out looking for completely new people or using people within the system, as it is. That is one possibility. We had done a

lot of work on this, in fact, the Freedom of Information Bill had gone the furthest, and it was right up to the point where it should be redrafted as a Bill for Parliament. We took it out to the public all over Barbados – not all over Barbados [but] in about four or five different places and there was invariably approval for it. Nobody asked why we need to have freedom of information, they understood the point of it. As I said, if you look at the Atlanta Declaration you would see that this was considered by vast numbers of countries meeting there to be a fundamental in democracy; people need to know what is happening. You can also, of course, discard frivolous inquiries.

Mr. CHAIRMAN: Frivolous to you might not be frivolous to the inquirer.

Mr. R. O. MARVILLE: Well, somebody would come up and say, "Look, is it true that we are going to have an epidemic of measles next year?" That is a frivolous inquiry. And I am afraid that if you have freedom of information you would have people asking for information that does not exist, [information] that you cannot provide. *et cetera*. But there are limits to what information they can have anyway, you cannot have information that involves national security and that is quite a range; you cannot have personal information, you cannot come and say is it true that the Honourable Attorney-General has cancer or something, you cannot come and find that information anywhere.

Asides.

Mr. R. O. MARVILLE: I say that because I sincerely believe you do not have.

Laughter.

Mr. CHAIRMAN: I am grateful for the vote of confidence.

Mr. R. O. MARVILLE: Well, I hope I am not wrong.

Mr. CHAIRMAN: [The] next time I am having a checkup I am going to carry you.

Mr. R. O. MARVILLE: Mr. Chairman, I still think, incidentally, we always think within the public service that we need more people and that any other service that is required of us is going to be too much. I do not believe that, I believe that we have, normally, a handful of public servants who are very dedicated, who do a lot of work, but [that] we have a lot of slackers. It is about time they function. I can say this because I have no political standing and I have no desire to have a political standing, but I was a civil servant myself.

Asides.

Mr. R. O. MARVILLE: No, I was definitely not a slacker, and I can name a number of other people who were not slackers as well. I am not going to name any slackers. I remember distinctly when I was in education there were Frankie Jordan and Rudolph Goodridge who were magnificent people. I mean, they really worked and moved things. But I also remember once that something that I dealt with that was supposed to get to the Permanent Secretary did not get there for a year. Okay? That is a reality. I was once asked, after a document in Spanish had gone around a million times,

to do a free translation. I did a free translation, then some very bright spark writes on the file, "This is a very free translation". This was somebody who could not have translated it himself yet he knew that it was a very free translation. That is the sort of thing I am talking about. And putting a little bit of pressure does not hurt, especially now when we all need to put a little bit of pressure on ourselves. I think you would agree with that.

Mr. CHAIRMAN: Mr. Marville, as I said, you would find no contradiction from Members of the panel in terms of the need for other pieces of legislation and I can give you and the public of Barbados the assurance that the Freedom of Information Bill is receiving the urgent attention of the Attorney-General and other similar pieces of legislation. We too believe that they all have to work together. There is no point in having legislation which will buttress our efforts in the fight against corruption if we are not prepared to open up the vaults of public life and governance to the people of Barbados so that they can inspect them. It is, I believe, a maxim by now that sunshine always chases away corrupt agents. I do not know if it is the healing nature of sunlight, but it certainly is that if you shine light on the activity of individuals they are less likely to commit corrupt acts. Mr. Marville, let me thank you for your presentation. We did look forward to hearing you with some enthusiasm and you have not disappointed us. I hope that if there are any other matters that come to mind in relation to the Bill that you would feel free to send us a little note. We noticed that you sent a good old letter and not an email, but that is a discussion for another day.

Mr. R. O. MARVILLE: Well, I just did not know to whom I should have emailed it.

Mr. CHAIRMAN: Thank you very much, Sir. Feel free to stay with us for the other presentations.

Mr. R. O. MARVILLE: Thank you. Okay.

Mr. CHAIRMAN: Mr. Williams.

At this point Mr. Mark Williams was ushered into the Chambers by the Marshal.

Mr. CHAIRMAN: Mr. Williams, welcome. Our practice is to allow the persons appearing before the Committee 15 minutes to present, thereafter the Members of the Committee will engage you as they feel necessary. Your rich tradition as a community activist, [as a] person involved in the cultural industries, and also a distinguished former Member of the Lower House commends your words to the Members of the Joint Select Committee and therefore I give you the Floor.

Mr. M. WILLIAMS: Thank you. First, let me express my sincere appreciation to you, Mr. Chairman and Members of the Joint Select Committee for giving me this opportunity to put my feelings, as well as some of the concerned citizens of Barbados here and overseas. What is extremely important is that I have done this presentation and the introduction, the presentation, the perception, the idea and also recommendation/solutions to move us forward. My

feeling on this. Sir, is that corruption has been all across Barbados for years. Within recent times we have realised that it has now become something of a talking point and there is some fear somewhere along the line that it affects mostly the people in public service, that is to say that politicians have been carrying the bulk of this – well - abuse. Government officers have been carrying the bulk of the abuse and it seems that all along, as far as I am concerned, the corruption is actually bred, birthed and delivered by Government politicians. The perception in this society is that politicians are the corrupt people, that Government officers are corrupt, that as long as you have something to do with the Government you are corrupt. Sir, this is why I am at the point that somewhere along the line private life in Barbados seems to have gone free of this corruption in relation to what is taking place today. I think that most of the corruption by people who are involved in corrupting those people who are not corrupt: that is to say that you have a society which is not one of the 1940s or '50s anymore, but we have got an up-to-date society. My memory goes back to tell me that in the early days the politician and the Vestry system were tampered with by people who could afford to tamper with them. This is an age now where we have moved forward from being members of the United Nations to being members of the Commonwealth Association; we are now world-known. We are sitting and not understanding the people on the outside of us in here, the people who are affected. That is why I am dealing with perception.

Sir, perception tells me exactly that the people on the outside believe that the politicians are guilty, and that as long as you are involved with anything related to the Government you are guilty. Somewhere along the line, there is the feeling by the people outside that politicians receive kickbacks, that people in the Government service receive kickbacks. These kickbacks can only come from people in the private sector. There are people in the private sector who are only interested in themselves, their wealth and deep pockets, and as far as they are concerned as long as they get what they want, who they contaminate and dirty that is what they are up to. I say that to say this: Politicians have found themselves involved in political parties, and I am not naming any one political party. Political parties from as far back as I can remember have been used pawns by some of those very people for their advancement in public life and for deepening their pockets and making them rich in terms of giving to candidates, giving to political parties and getting involved in the election process. Due to the fact that they are getting involved in the election process, they have now become gamblers. I call them political gamblers: these private sector people, because they get involved in the election process with an idea that at some point they will receive the benefit of their involvement. It is that you put money in the bucket with an expectation that you will get called when the time comes for position.

Sir, this is not anything we are supposed to run

away from. This is a fact. I do not want to use personal experience here. I just want to say that it is not fair for us to believe that the public does not have a perception. The public has a perception. I heard an attorney only last night when he said that judges now refer to English rules, and that judges do not refer to what is happening in Barbados. We have to refer to what is happening in Barbados. We have to refer to the fact that when you pick up Facebook, people's lives are at the brink of being destroyed. Some person at that end who does not care about the other person decide they are going to write whatever they like about that person and destroy that person's life for the balance of it.

The public sees this integrity legislation not as having to do with politicians alone. We cannot sit and just embrace and protect Government servants. We have to go after the private sector. The private sector is more guilty, because the private sector people are the ones who are full of corruption. The businessman goes into the public sector in order to advance his business, in order to advance his finances, in order to make sure he lives the life he wants to live, to wine and dine and enjoy life at the expense of the politician. No politician steals money; set this straight. I have been able to tell people that politicians do not steal money. They may be there for a kickback. The same way the politicians are there for a kickback, the private sector people are there to provide what I consider to be the deceit. They are gamblers. They are political gamblers, and their support of one party or the other tells you that they support one party with an objective that when the time comes for them to turn against that party, they will move to the other party for advancement.

Sir, why am I saying these things? I am saying that over the years I have seen the private sector get involved in the idea of contracts. The private sector gets involved in the idea of being placed on Government boards. The private sector contaminates various people within the sectors to suit themselves, so the public sector, as far as I am concerned, are the ones who are gullible and are the ones who should be protected. I agree with that, but I am also saying that we cannot have a legislation that deals mainly with the public sector. We have to have the Barbados Integrity Bill, 2018, and I say that to say this: That the Bill must spread over the private sector and the public sector, and that the private sector is just as evil or more evil for contaminating the public sector and they should not be running scot-free. They should not be providing what I consider to be the padded invoices, where invoices are padded for their own benefits and then the final analysis is that somebody with the public sector is guilty of conveying this type of behaviour through the system.

Sir, let me just come back here and express what I have observed and probably leave it at that point. Politicians have got to be honest with themselves. Politicians have got to face the music and understand that across Barbados for over the last ten to 20 years, the public of Barbados seems not to trust the politician. Until politicians accept that they are embraced in a situation where they need to start to defend themselves,

this is why we are faced with a public Bill more so than a Barbados Integrity Bill. I personally believe that people who I have spoken to as far as the perception is concerned believe that both parties should be involved in this Bill, and that the Bill should be to the point where if someone from the private sector is found guilty of corrupting someone in the public sector, somewhere along the line the penalty – because they are accomplices – should be just as great as it is for that person in the public sector. Politicians must also understand that private sector people join with them in partnership for their own personal gains, and the personal gain is to create the lifestyle which the public of Barbados should not see a politician being involved in.

Finally, Police and Customs officers come from the private sector. They eventually end up in the public sector. They are all part of us, so I do not see how you can separate a group of people who can be considered as being part of society which can be contaminated by deep-pocket people, political gamblers and corrupt people. I put my case at that point.

Senator C.S. FRANKLYN: Mr. Williams, thank you very much for your submission. Do any Members of the panel have any questions for Mr. Williams? Senator Cummins?

Senator Miss L.R. CUMMINS: Thank you very much, Mr. Williams. I want, of course, to express our appreciation also to you as I did to our previous presenter, Mr. Marville, for taking the time out to come today and to share this presentation. I think, obviously having served in the Lower Chamber of Parliament, you have a unique perspective which is of merit, and we are appreciative of your input. You raised a couple of things which I do want to press you a little bit further on in terms of giving some additional recommendations and views. You and several of the presenters who have appeared before us in this Sitting and in previous Sittings continue to make reference to elements of the integrity system, and I say integrity system because if we look at what Transparency International has done globally, they have developed a national integrity system that treats to both public life, which this Bill covers, as well as a number of additional areas. You and many others have spoken about two of them. One of them is when you speak of freedom of information which covers the media and others, but you also speak of the business community and of the private sector. I wanted to hear from you what are your thoughts on ensuring what this Bill, perhaps in its current form, since it speaks specifically to public life and public officials, should be complemented with in terms of other items of legislation to treat to some of the issues which you have raised. I believe that when the Integrity Group of Barbados presented they talked about a number of other ancillary items of legislation that should be incorporated into an overall integrity system in addition to the Integrity Bill and they would have covered some of those issues that you have raised, how would you recommend that the Committee treat with the question of private sector corruption, which is an

important issue? What would be some of your recommendations?

Mr. M. WILLIAMS: I heard one of the Members of the Committee a little earlier talking about bits and pieces of law that go here and go there and obviously if a country has to be governed it has to be governed by laws, there have to be barriers to prevent those lawbreakers. In here you consider yourself as lawmakers, I do not want to put you in the bracket of lawbreakers, so the whole thing about it is that I believe that the Bill is centred, as I have seen it and I have read it, as the Barbados Integrity Public Life Bill, 2018. In order for us to embrace almost every aspect of corruption and evil I think the law has got to be spread outside of public and go to private, and I am suggesting that it should be known as the Barbados Integrity Bill, 2018 because if it is known as the Barbados Integrity Bill, 2018 it means that the public sector and the private sector would have to remain within the ambit of the law, and those persons I have mentioned earlier who find themselves involved in trying to corrupt the system would understand that the criminal law of Barbados falls within the same Integrity Act.

Senator Miss L. R. CUMMINS: Just a follow up then, under the National Integrity System developed by Transparency International aside from entities in the private sector they have a number of other agencies and groupings that they believe should be involved in creating a national ecosystem around integrity and it includes political parties, and you mentioned earlier that both political parties have needed historically to address this question, what would be your recommendation on the inclusion of measures to treat to political parties as well?

Mr. M. WILLIAMS: The recommendation would be that as far as the political system of Barbados - and I am going back as I said earlier - that corruption travelled through the years as far as politics in Barbados is concerned and the bulk of the blame ended on the footsteps of the politician because there was no integrity legislation. I am saying that if we are going for integrity legislation that those persons who were the offenders who stood in the background and benefitted by using people to create what they would consider to be dishonest deeds for their own personal gains are also part of the corrupt system and they should not go scotch-free. We have known people who never faced the law courts. We have known people in this society whose family has never been destroyed. Politicians' families have been destroyed and people stay in the background scotch-free and I saying that this should not be allowed any further, we are lawmakers not lawbreakers.

Senator Miss L. R. CUMMINS: Okay, I am just trying to get a summary conclusion for the purposes of our own records and it sounds to me as though I am hearing you say, without necessarily saying it in those words, that the legislation as is needs to be broadened or that there needs to be relevant legislation to treat to the issue of corruption in the business community outside of those persons in public life because the Bill as it stands now speaks to persons in public life but you

are proposing treatment equally for persons in the business community. You also sound to me as though you are speaking to the engagement of the public because obviously you are talking about things like defamation of character and those kinds of things, so how can those issues, already legislated, be treated to in the context of integrity. Is that what we can capture?

Mr. M. WILLIAMS: Yes, I agree. The more laws that we can have which would fall within the same integrity - because I say that to say this, and I hope that I am understood in what I am saying - as far as the Integrity Bill is concerned I have not read of the penalties - I am saying that if we create a law in Barbados that spreads outside of the public where the penalties are severe and where we investigate not with ordinary people, I have a strong belief that - and I heard about whistle-blowers and these things - nobody is going to come forward as a whistle-blower unless they are going to be protected.

Secondly, this is a small country and everybody knows everybody either by family connection or by some other connection so you are not going to get to the end of the bucket if you are going to ask your own people to investigate your own people. I think we have reached the point now where Barbados is now known worldwide and all types of people come to this country either for vacation or with evil deeds and we have to look beyond our imagination that local people could investigate local people. We have seen this going on over and over where because local people are investigating local people, people are asking the question why this, why that. We are Members of the United Nations and of the Commonwealth and I believe that if we have a question to ask, in the same way we can talk about forensic investigations I see no reason why we cannot have forensic experts from the United Nations or from the Commonwealth to go into serious matters as far as the country is concerned.

In terms of employing people to investigate people my feeling about it is that we will always be spinning top in mud and if we continue to spin top in mud the society would always believe that certain people in the society goes scot-free and others are contaminated and others must pay the price. We have to embrace the whole tree in order to solve the problems we are going through at this particular moment.

Bishop J. J. S. ATHERLEY: Thank you, Mr. Williams for coming and for presenting as well. It seems to me that the provisions of the Bill as proposed respond to the issue of breach of public trust by those who are vested with that trust which is normally the public officials. You seem to be making a case for the private sector to be captured in that context where we are dealing with notions of breach of public trust, and I need to hear you more effectively make a case around that concept of breach of public trust by persons in the private sector who in their private business operations entice and engage people in corrupt practices. I understand you to be saying that this Bill treats to the public official but that corruption starts on the other side of the coin, in the private sector, of those who you

called gamblers, those who seek their own economic advancement and interest over that of the State and over that of the integrity of the public officials that they target, and therefore you seem to be saying that this Bill as it now stands does not treat sufficiently to that aspect of this evil we are trying to address. My concern is if the notion of public trust is central to the provisions of this Bill, how do you establish more effectively the case for capturing the private sector in greater fashion in the provisions of the Bill?

Mr. M. WILLIAMS: I have a very strong belief from what I have just heard that the private sector does not seem to fall into the category of this public sector as far as the penalties and the Bill is concerned. I also have the strong belief that the private sector is responsible and has been responsible over the years for contaminating the political system, that is to say that innocent persons as far as politicians do not get involved in exercises but politicians over the years have been carrying the bulk of the blame. Why am I saying that? I am saying this because if that was the case, we had laws in place to find out exactly the person who gets the contract outside of the person who puts in a balanced tender, imagine two people are tendering for one job and one person tenders less money but the person gets the contract...there is a situation in this country where certain people are beneficiaries of the corrupt system. The corrupt system means this lifestyle which some of us have and which some of us have convinced ourselves is the right lifestyle, but you then realise you have been moved into a position to satisfy certain people. Let me explain: No serious law-making, law-abiding politician who is working on the behalf of honest people within his constituency - the majority - have any right at all embracing drug pushers and corrupt situations within the society. As long as you start to go down that road, what you are actually doing is that you have just conveyed a form of misconduct, and as far as the people in the country are concerned you are not a serious and honest person. I am not saying there are not dishonest politicians, I am saying that somewhere along the line we - I am using the word "we" since I was involved in the system - the politicians have been taking the bulk of the blame when in truth and in fact the private sector people are responsible. The private sector people are the people who provide the bills, who pad the invoices; and in padding the invoices it means that someone at the other end is going to be the beneficiary of those invoices.

You then find that everybody who is involved in this exercise is an accomplice, so whether it be a politicians, a Permanent Secretary or a timekeeper, as long as that person is within the Public Service and is contaminated by the private sector, they will pay the price.

MR. CHAIRMAN: Thank you very much, Mr. Williams. Mr. Williams is now available for engagement by Members of the Committee.

Asides.

MR. CHAIRMAN: Mr. Williams, thank you very much then. Are there any other questions for Mr.

Williams? There being none. Mr. Williams, you are of course invited to stay with us. We have one more presentation from the Barbados Bar Association.

Asides

Mr. M. WILLIAMS: As explained by the Leader of the Opposition, they do not have the feeling that the Integrity in Public Life Bill stretches as far as it should and that it should be expanded to what could be known as the Barbados Integrity Bill, 2018. That is the case which I am putting.

MR. CHAIRMAN: Thank you very much, Mr. Williams. As I said, feel free to stay with us for the other presentation. We now invite the representative of the Bar Association. Representing the Bar Association is Mrs. Kay Williams, and the submission of the Bar has been circulated. I believe.

Asides.

Bar Association represented by Mrs. Kay Williams was ushered in.

MR. CHAIRMAN: Mrs. Williams, good afternoon. Your submission is long, 36 pages.

Mrs. K. WILLIAMS: Indeed we have distilled them into five key recommendations.

MR. CHAIRMAN: Okay, we will still give you 15 minutes to make your presentation and then the Committee will engage you. You have the Floor.

Mrs. K. WILLIAMS: I am obliged to you, Mr. Chairman. Good afternoon to the Members of the Joint Select Committee. First of all we would like to say that the Barbados Bar Association is indeed very pleased to be able to be offered this opportunity to offer feedback on this very important piece of legislation. My name is Kay Williams, as you heard before, and I am a member of the Council of the Barbados Bar Association and Convener of the Law Reform and Legislation Committee who worked alongside the President to field comments from our members and prepare submissions.

This important piece of draft legislation repeals the Prevention of Corruption Act, No. 31 of 2012, and promises to establish a regime including an Integrity Commission to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption. Whatever the Association's concerns might be about the individual aspects of the Bill and whether it effectively achieves its intent in its current form, the Barbados Bar Association welcomes the introduction of legislation to govern integrity in public life. The ethos or guiding principle of the Bill, which thinkers and academics call the Public Trust Principle, is that persons in public life, the institutions of Government and the officials of Government exist to serve the interests of the Barbadian public. Public officers, therefore, carry a serious responsibility and duty to this nation and they must commit to discharging their functions with integrity, fairness and accountability.

Furthermore, the public of Barbados and those who invest in our economy have a right to expect the highest levels of integrity from public officials. The public is also entitled to expect responsible and proper

exercise of public power, which is fundamental to the operation of the rule of law. The Association therefore recognises that this legislation is a significant shift in the tenets underlying the Public Service. Once passed, there will no longer be a mere expectation or just an understanding but rather a binding framework to safeguard integrity and to establish accountability. We sought feedback from our members and the Law Reform and Legislation Committee conducted a comparative review of regional legislation. When the proposed Bill was benchmarked in this manner, it was noted that the Bill proposes a model which is similar to jurisdictions such as the Turks and Caicos Integrity Commission Ordinance No. 8 of 2008. We also looked at the Cayman Islands' Standards in Public Life law and the Bahamas' Integrity Bill of 2017.

In respect of the powers of the Commission, we realise that these later models go further than the earlier legislation which was enacted in jurisdictions such as Antigua and Barbuda, Trinidad and Tobago and Grenada. It is indeed important to establish a statutory regime and a regulatory authority to set and maintain standards of conduct, but it is equally important to demonstrate by legislation a zero tolerance for breaches of that standard and the need for sanctions which clearly indicate the rejection of a substandard conduct. Mr. Chairman, the submissions before the Joint Select Committee, as you have noted, treats chronologically with each Section of the Bill, and it reflects our membership feedback and considerations. We have distilled our presentation today into a number of key recommendations which we would wish to highlight: just five recommendations.

1. We note that the Bill seeks to confer wide and coercive powers on the proposed Integrity Commission. A note of caution must be sounded because coercive powers must only be exercised with the necessary restraints, otherwise the Commission will be open to legal challenges which may encumber its work and its effectiveness.
2. Following the model of the Turks and Caicos, the Bill proposes to confer the power of arrest on the Commission's investigative officers. The investigative officer, we noted, had the power of a constable to arrest any person whom he (the investigative officer) reasonably suspects has committed an offence punishable by imprisonment. The view of the Barbados Bar Association is that the power of arrest must be subject to the requirement that an investigative officer obtain a warrant from a magistrate. In the alternative, the power of arrest set out by the Bill should remain the preserve of the Royal Barbados Police Force, preferably of high rank as there are constitutional responsibilities concomitant with the role of a police officer and the execution of an arrest. In the model proposed by the Bahamas' Integrity Bill of 2017, the Director

of Public Prosecutions upon receipt of the reports from the Integrity Commission of alleged can undertake criminal proceedings against the person for breach of the provisions of the Integrity Bill.

3. Our third recommendation is that the Bill establishes a number of offences and penalties in the event of an adverse finding of an act of corruption. The penalties in the Bill are wholly inadequate as a deterrent and must go further. It is understood that serious offences of extortion, bribery and coercion are criminal in nature and are grounds for prosecution. However, the Bill stops short and fails to propose a system for lesser breaches. The current structure of the Bill appears to be that once there is no adverse finding of corruption by the public official, then lesser breaches are not captured by a system of penalties. If indeed the purpose of the Bill is to maintain the highest ethical standards among public officials, we believe there must be provision for lesser breaches of the Code of Conduct.
4. Our fourth recommendation is that there is support for the inclusion of the Office of the Governor General in the Bill since it speaks to the fact that the proposed Integrity Commission will be operating at the highest level of governance. It is noted that the Bill places a number of responsibilities on the Office of the Governor General. It is the view of the Barbados Bar Association that the Office of the Governor General must be adequately resourced to carry out the mandates of the Bill if and when called upon to act. These resources must be provided from the highest level, they must be clothed in impartiality and insulated from any possibility of interference or bias. Such resourcing and funding should be established and kept in an independent a manner as possible.
5. Our fifth recommendation touches on what the esteemed Mr. Marville and Mr. Williams also mentioned and which was brought up in the discussions: a call for supporting legislation. We had a call for the Contractor General legislation, and for us one of the really important parts is creating an atmosphere where persons or private citizens, if they wish to make a disclosure about the actions of a public officials, there is sufficient protection for them under this Bill. The provisions of the Bill, as drafted, provides for whistle-blower protection for public officials, and this is understood within the context of this particular piece of legislation. Of course, if there is protection for the public official, what protection exists for the private citizen? If a private citizen or an employee in a private company wishes to make a disclosure about the actions of a public official, there is no

protection for the average Barbadian under this Bill, and our call is for supporting legislation and not for it to be necessarily included in this piece of legislation. The right of citizens to report wrongdoing is linked to principles of transparency and integrity. It is time to create and support an atmosphere where Barbadians, whether private citizens or public officials, feel free to report wrongdoing. This will serve as a key means of enhancing openness and accountability both in government and in corporate work spaces, and supports the rule of law. It is recommended that priority is given to providing a comprehensive legislative framework to make all work places, including the private sector, accountable to protect whistle-blowers. There should be mandatory provisions in private sector organisations whether of a certain size or otherwise to set up whistle-blowing mechanisms and have minimum standards and minimum protections for such mechanisms.

Mr. Chairman that concludes our five main recommendations. We have a comprehensive report before the Joint select Committee, and once again we wish to say and reiterate that the Barbados Bar Association is appreciative of this invitation to participate in the crafting of this seminal piece of legislation, which is integral to and a cornerstone of good governance. Thank you.

MR. CHAIRMAN: Mrs. Williams, thank you very much for your fine and erudite presentation, and it is buttressed by a clause-by-clause analysis with specific recommendations. The panel is now invited to engage Mrs. Williams.

Senator Miss L.R. CUMMINS: Thank you very much, Mrs. Williams. Thank you to the Bar Association for taking the time to prepare for us what at best could be described as one of the very comprehensive presentations which we have received from stakeholders over the course of the Sittings of this Committee. We are very appreciative of this level of detail because it will enable our work when the Committee concludes its public deliberations and then proceeds to consider the actual legislation itself. I do have two questions specific to No. 3, your third point in your executive summary. It speaks to the issue which you raised about the failure of the Bill to propose a system for lesser offences, so in the event that you are investigating a significant allegation of corruption and you are found not to have done so, there is no provision for a lesser offence. Could you elaborate a little bit more on that and what you would like to see for the benefit of all of the Members of the Committee but also since this is a public hearing and I think that the speaker who went before you very correctly said that the public of Barbados is very engaged in this particular matter, especially at this time. Therefore, it is important for people to be able to hear the specific recommendations which you would want to make in the event that we do

not get the high-level convictions.

Mrs. K. WILLIAMS: Thank you. Looking at the legislation clause by clause, we looked at the offences set out in Section 54 of the Act and the presumption of corruption. One thing which the Joint Select Committee may notice is that there is a repeated call to see the regulations and the Code of Conduct because perhaps many of the concerns which are raised may be addressed if we had the benefit of seeing the regulations and the Code of Conduct. The concern was, of course, that the Bill sets up criminal penalties. If I could just turn to Section 54 with your permission, it speaks to defences with respect to any act of corruption or what would be deemed as corruption in respect of the Act. The offences are such that if a person commits the act of corruption, they will be subject and is guilty of the offence, so we presume therefore that they have gone through the necessary process to be found guilty of the offence. Then we are dealing with penalties on conviction, either summary or on indictment. The concern was [that] sometimes there may be a breach which may not be as egregious to be an act of corruption, but which by its very nature - of course, we are dealing with public officials and it is in the glare of the public eyes - may be an indiscretion, a breach, an oversight which really at the level that the public officials are operating at, we expect more. It may not actually fall to be considered [to be] an offence whether on indictment or conviction or the particular official who has been charged there may not be a final finding or a final conviction. The question is, if there is a lesser breach it may not be a conviction, what exists? For the public, of course, they will say, but look at the end of the day this person was not made subject to a penalty or a fine of any sort. The way that the legislation is worded [then] you must have a conviction, but there does not seem to be room in-between there where indiscretions or breaches that appear not as egregious but are blatant are somehow sanctioned and perhaps you know again we are coming back to public perception and the need for the public to feel that there is a consequence to your action, whether the action was done wilfully or negligently the public needs to feel that the public official does not get away with what we would call just a slap on your wrist.

Senator Miss L. R. CUMMINS: Thank you very much, Mrs. Williams. Now to my second question which is specific to your Whistleblower protection. Now, you have gone further than I think any of the other presenters before because we have heard multiple persons speak about the importance of private sector coverage and the treatment of the private sector, whether in this legislation or in related legislation in support of what is being sought after here, but you have spoken here about the importance of the private citizen and the role of the private citizen in drawing attention to criminal acts by public officials that they may be privy too, so that if you go to participate in a particular transaction, to conduct a particular transaction and you find yourself being asked for a fee that is not a legal fee, what does that private citizen do, and you have said

here in your presentation that that is not currently covered by this legislation.

Mrs. K. WILLIAMS: Nor can it be.

Senator Miss L. R. CUMMINS: Not can it be. So again, it raises the question that perhaps there is the need for additional ancillary related item of legislation to go along with this in order to make it effective and that some of the issues that should be treated with in those ancillary items or legislation should be, so far based on what we have heard: the private sector, the business community, freedom of information and of course Whistleblower protections and I think there was a reference earlier to political parties, not from your presentation but in others, so [that] from the Bar Association's perspective, is that something that you would be supportive of, the development of additional items of legislation which would be complementary to a holistic national integrity system, because you also mentioned Transparency International and they have the national integrity system and the overall ecosystem. Is that what you will be ultimately proposing to the Joint Select Committee?

Mrs. K. WILLIAMS: Yes, certainly, in general the Barbados Barr Association is supportive of this legislation and any form of legislation which promotes integrity not only in public dealings but in commercial transactions, whether private sector or public sector. Now, when it comes to the issue of the private citizen there are two ways to go about it. There is the thought that there ought to be stiffer penalties, even among the private sector, where persons are dissuaded from being a part of a transaction that is not of the highest integrity. There is another view that perhaps on the end of the private citizen that we should create an atmosphere of whistleblowing where the private citizen feels comfortable to be able to report certain incidences or certain things that have come to their attention and yet they feel protected, so [that] either you create a feeling of greater penalties but there is a feeling that if there are greater penalties on the side of the private citizen or even on the commercial side, that it may stifle or stymie people coming forward.

Our view that we are proposing is [to] create an atmosphere of whistleblowing where you may be several layers deep in a transaction and you are saying something is not quite right and you do not necessarily have the ear of the person at the top of your private commercial company to say that I am very concerned about what I am seeing. That person whether employed with the company or whether it is a private citizen in a transaction, would they feel protected if they had a mechanism by which they can report these things and still feel protected? The question is, which system would we want to implement for our jurisdiction, for our nation, bearing in mind we are a small jurisdiction? So we may be trading certain actions for anonymity, so you have to be very careful which system you think works best for our economy.

Mr. CHAIRMAN: Yes, Bishop Atherley.

Bishop J.J.S. ATHERLEY: Thank you for your contribution as well and for the interest of your

Association in this matter. Your first recommendation had to do with the element of coercive power and you did express a caution that the coercive power enshrined here should be matched by adequate restraint.

Mrs. K. WILLIAMS: Yes.

Bishop J.J.S. ATHERLEY: Are there any expressions, any aspects of that coercive power that you can identify for us which you consider now to be not so matched by the necessary restraint?

Mrs. K. WILLIAMS: The first one has to do with the investigative officers. I will turn to that. There was a concern that the investigative officers had a lot of power. We understand that this piece of legislation is not alone, the Turks and Caicos model also has investigative officers who have the power of arrest. The view that was posited was that the investigative officers are appointed by the Commission: they in turn have the right to - at Section 15 of the Act: "An investigative officer has in carrying out his functions - and of course we understand the functions are delegated to him by the Commission - the power of a constable to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment.

That officer shall - interestingly the Turks and Caicos model said: "*shall, after making an arrest immediately deliver the person arrested into the custody of the Police Force.*" This does not have the word "immediately". Here we say, okay, the Commission delegates to the investigative officer that power of arrest. How is that power of arrest executed? Will it at the end of the day, will the manner in which the investigative officer makes the decision, because it is someone whom he reasonably suspects, if that person is delivered to the Police Force who then brings them before the magistrate, would the investigative officer be able to meet all of the evidentiary requirements when it comes before the court. We just want to be clear that the investigative officer executes the power of arrest in a manner that keeps the Commission out of any quagmire with respect to any concerns about custody, the actual arrest and the execution thereof. There are certain models and this legislation which say that you can, I believe, bring in the powers of the police at any point in time. There are models which specifically leave the power of arrest to the Police Force, and we want to make sure that you do not have a Commission where an investigative officer has a miss-step or exercises that the Commission finds it is being challenged.

There is another aspect. It has coercive powers in Section 16 for production of documents:

"The investigative officer can apply to the judge in chambers for production of documents, or the investigative officer can apply to the Court and get an Order for the power of search and seizure of documents."

Again, Sir, if the search and seizure involves a commercial entity where we know that with search-and-seizure operations there are always the issues of indemnity and liability, how is this coercive power fettered? Again, when we see the Regulations they may answer a lot of our questions and so on. We do not

know whether we want the Integrity Commission necessarily to be in the forefront of legal challenges with respect to these same coercive powers. Would you want to delegate that to the Police Force so that if there is a miss-step or a legal challenge, the challenge goes on but the work of the Commission continues unabated rather than the Commission itself through the investigative officers actually power of seizure and power of arrest? That was one of the main concerns coming out of the comments which we fielded at the time.

Senator C.A. FRANKLYN: Mrs. Williams, you mentioned just once in your presentation the Code of Conduct, and I am here looking so far for someone to support me in my view that this Code of Conduct should be legislated rather than done by the Commission itself. I am hoping for a supporter. In this legislation, the Commission is supposed to draft the Code of Conduct. I do not agree, and I am wondering what the view is of the Barbados Bar Association in respect of that provision. I see in the Public Service there are a whole set of codes and they were legislated in Parliament, and we follow those codes. I want to know what is so special now about the Commission itself drafting its Code of Conduct. I thought that we would have wanted to understand what the will of Parliament and put it in legislation rather than have the Commission come up with its own ideas. What is the view of the Bar on this?

Mrs. K. WILLIAMS: The view of the Bar with respect to the Code of Conduct we were not opposed to the Commission producing that Code of Conduct. The issue was that even 20 years ago we would not have known about the Cloud, for example. Sometimes when you create a Code of Conduct, there may be a set of circumstances which we cannot foresee and it was felt that the Code of Conduct ought to be subject to periodic review so that it adequately captures what really is prevalent at the point in time. The other issue with the Code of Conduct is whether - this is just a question - a public official or someone who is in the list of persons and is already in his or her post and is appointed, and then you legislate that Code of Conduct. We have to make sure that there are no challenges with respect to someone thinking maybe you have varied certain terms of my employment if you legislate the Code of Conduct. It is something to which they must adhere: we appreciate that and I think that is generally accepted. If you legislate that and then you have to tweak it, as you know it is always a bit more cumbersome to be able to make those adjustments. We could be wrong but our feeling was that by having the Commission create the Code of Conduct, the one thing the Commission ought to be responsible for or commit itself to is, frequent review: whenever that periodic review may be. Whether it be every five years or whatever, there ought to be a review of the Code of Conduct. To that extent, we had proposed a legislative framework for the Code of Conduct, but it is something which certainly can be given more thought.

Senator C.A. FRANKLYN: Thank you.

Mr. CHAIRMAN: Just a few questions for you. I really appreciate the work which the Bar has done in going through this Section by Section. I am not trying to defend the work that we have done, but there are some areas which we have found to time that the reading of them by readers produces a result different to what we think the statute is saying. For example, in your analysis of Section 9(3) which you referred to at Page 10 of 36, you are saying that the Commission is empowered to appoint investigative officers but you seem to read 9(3) as prohibiting members of the Police Force from being appointed as investigative officers. I see rather differently. I think that the Section is simply saying that you will have investigative officers who will have certain powers. The mere fact that the investigative officer has those powers should not at all suggest that he is a police officer. The way I read it, it says:

"An investigative officer has the powers described in Part 3 but for the avoidance of doubt, is not a member of the Police Force."

This is not to say that members of the Police Force cannot be recruited as investigative officers. It is simply saying that by virtue of having those powers, he is not a police officer.

Mrs. K. WILLIAMS: Understood, Mr. Chairman.

Mr. CHAIRMAN: That is how the drafters intended it to be construed and that is certainly how we saw it. I note your concern about the possible abuse of powers but, in relation to the power of search and seizure, for example, at Clause 17 at Page 17 of 36, I wonder if your concern is well-founded because the power of search and seizure is one that is exercised by an investigative officer after he has applied to a judge in chambers. The normal power of search and seizure in the Police Force is not exercised upon an order of a judge. A policeman can come with a search warrant signed by a Justice of the Peace, who sometimes will sign 20 at the same time. As we know, there is no consideration of the specifics of the case, and the search warrant is executed, the police search and take up. In this instance, the Commission's functionary, the investigative officer, must actually apply to the Court, and in a situation where he does not satisfy the Court then he cannot get the order. It would seem to me that you would be hard-pressed to find a better protective mechanism than this process, and I do not know whether the Bar considers that to be a sufficient safeguard or whether the Bar felt that there should be some process over and above the application to the judge.

Mrs. K. WILLIAMS: Thank you, Chair. You have to forgive us lawyers. We live to find the challenges.

Mr. CHAIRMAN: I am well aware.

Mrs. K. WILLIAMS: But in respect to that section, after section 17(d), we appreciate the fact that of course the investigative officer has to satisfy a judge in chambers and that of course has its own tests and of course its own evidentiary bar and everything. The

concern here was that the judge may issue a warrant authorising an investigative officer to enter and search the premises for the material and to seize and retain any material, that is, in the opinion of the investigative officer.... We felt that again, although you have been given... although the investigative officer had to go to the court for the power for the search and seizure the determination on the spot as to the material that can be seized and retained, it seemed to us when you look at the phrasing of the section to go back to the discretion of the investigative officer as to what is to be seized and what is to be retained. The concern was that perhaps the order should have been a little more constrained, it cannot be anything at large, and it should not be with the remit of the investigative office but rather it was for the court to determine the parameters of what is to be seized, and that was our concern.

Mr. CHAIRMAN: And I thank you for that clarification, except that I would want to point you a little further, a closer analysis of what follows after that section. The last three lines, so the investigative officer having got the court order is entitled to search, seized and retain any material that is in his opinion, but these are the governing words, "is of the kind described in paragraph (b) and (c) so that it is not that the investigative officer can seize anything that comes to his fancy, he must make a determination that what he is seizing is of a kind described in paragraph (b) and (c). If he goes beyond that then obviously he has ran afoul of the order. To my mind when I looked at it I felt satisfied that that was a sufficient safeguard.

May I take you then to a discussion on the matter of a "blind trust"? It was interesting, the comment of the Bar, I well remember, you know, we try to categorise things, there was a judge who famously said that the categories of negligence are not closed and we have found concepts of trust entering into the law over the years. Now so far as my own research suggests, blind trust is not a statutory trust, it is a trust with particular legal characteristics and it is from those characteristics that the term "blind" is applied to it, it is just that there is a what we in Barbados would call a "blind" between the administration of the trust assets and the person who puts the property into a trust. So that blind trust really in my mind suggests nothing more than a trust which is created with an increased level of separation between the beneficiary and the trustee. So as we all know beneficiaries have certain rights in relation to trust properties and so on but in this case what is being conveyed is that there must be an even greater degree of separation between the trustee and the beneficiary. So I did not think, while I understand that there might be some uncertainty as to what we mean by a blind trust, I think that there have been enough judicial decisions on the concept that we did not need to define it, but I am grateful that you have given us the definition of blind trust used in Trinidad and Tobago and thank you for your research....

Mrs. K. WILLIAMS: Thank you, Chair.

Mr. CHAIRMAN: And we will certainly seek to see if it is a definition that we would....

Mrs. K. WILLIAMS: Just on that point. Chair, for this I would say [that] I spoke to one or two of the trust purists who felt that.... I believe the background for the comments stemmed from the fact that perhaps the time may have come to revisit Barbados' trust law, and I believe, Sir, [that] you understand what I am talking about. The time has come to update the trust law. They just wanted to ensure that an Integrity in Public Life Bill was not importing terms into the trust law that did not have a support mechanism for it, or was perhaps already supported by provisions that made it quite clear. For example, one attorney-at-law said, well the section 28(5) speaks of the assets being conveyed and in a pure sense with a blind trust it is purely contractual between the parties to ensure that there is no participation or that complete separation but [that] there is no conveying of the trust property and this particular section 5(a) speaks about conveying. They just wanted to make sure that it was supported by other laws. So I think that may be just a finer point but maybe the....

Mr. CHAIRMAN: Except I think we know what you mean when you say "convey to a trust company." Let me tell you what my concern about this is, and apologise for monopolizing the discussion. I know Senator Taitt is anxiously awaiting her turn. My concern would really be the requirement that in order to establish a blind trust you have to engage a trust company.

Mrs. K. WILLIAMS: Indeed.

Mr. CHAIRMAN: Now, when we look at the category of individuals who are named in the Schedule as being individuals in public life and who would therefore have to file a declaration, I do not know that any, if any at all, maybe one or two, but perhaps not would be financially able to incur those additional costs and I do not think that there is any sense in which the only time in which you can separate yourself from control of your assets in that way, I do not think that you have to have a trust company, and in fact, with my familiarity with the cost associated with trust companies and so on, I would not want to put anything that I owned or controlled into a trust company, I do not think I could afford it.

Asides.

Mr. CHAIRMAN: That is because I have very few gains. Therefore we may well be insisting on a requirement of a trust company in circumstances where our context does not allow. I think it is fairly well-known that the former Honourable Prime Minister of Canada, Paul Martin, had a large number of offshore companies in Barbados when he became Honourable Prime Minister of Canada, he put his companies into a blind trust but he owned a company called Canadian Steamship Lines, one of the biggest transportation companies in Canada, so that when you have that amount of assets you can afford to engage trust companies, but Senator Franklyn has indicated that he would wish me to become his trustee, he could not afford a trust company. Are there any other comments on the specifics of the Bar's presentation?

Mr. CHAIRMAN: The Honourable Ralph Thorne.

Mr. R. A. THORNE: Mr. Chairman, Mrs. Williams, I take it this is the work of a Committee, a Committee offered this document?

Mrs. K. WILLIAMS: Yes

Mr. R. A. THORNE: And you are a member of that Committee?

Mrs. K. WILLIAMS: Yes

Mr. R. A. THORNE: Now, your namesake Mr. Williams – and I do not wish to be unfair – but you heard him.

Mrs. K. WILLIAMS: Yes

Mr. R. A. THORNE: And he came here today and I think that he is suggesting that the Bill is narrow in terms of the categories of persons that it intends to capture, not capture literally but cover, that is to say persons in public life. He feels that private persons who transact with persons in public life ought to be included in this Bill. I do not know if you are following me. He feels that way.

Mrs. K. WILLIAMS: Yes.

Mr. R. A. THORNE: Has the bar addressed its mind to that issue as to broadening the category of persons beyond persons in public life and to extend it to private persons who transact in a corrupt manner with persons in public life? I know it is not reflected in your final document but may we ask if the Bar gave any consideration to broadening the category beyond persons strictly in public life?

Mrs. K. WILLIAMS: Yes, indeed we did. We had quite a bit of discussion on the Second Schedule and whether that Schedule even went far enough. Some persons felt that, for example, Item 3 which looks at Permanent Secretaries and officers of related grades, I know those who are in public life or in the Public Service would tell me that "related grades" has a very specific meaning. We just felt that in and of itself there were a little too many nebulous areas and perhaps needed to be specified. The other question was, for example in relation to chairpersons of Boards, is it only going to be the Chair of the Board? What about the Deputy Chair of the Board? How far should we go? That is Item 5 dealing with Chairpersons of Boards, commissions, corporations and other entities established by statute. For example, a school may be established by statute. Is it contemplated that the principal or the deputy principal ought to be brought into this? Then we looked at the whole question of judicial office: it says "magistrates" and we asked whether that goes far enough as well.

When it comes to the private sector, I think our feeling was that this may not be the Bill to capture the private sector. As we mentioned when speaking with Senator Cummins, we asked ourselves what was it we wanted to promote: are we promoting an atmosphere where persons are coming to report the wrongdoing or are we going to create an atmosphere of greater penalties for the private sector? There is a feeling that in the private sector those who are either in charge of companies, own companies or are directors are given

far too much leeway and there really is no slap on the wrist and there is no code of conduct for them. There is nothing to which they must adhere. Obviously, they in turn have their own private code of conduct because their banking and other commercial activities require them to declare and disclose assets. We understand that part but it does not necessarily mean that when it comes to dealing with public officials or public contracts that the private citizen or the commercial entity will be penalised for having conduct which is below the expected level of conduct. Again, there was the call by Mr. Marville for the Contractor General legislation, and we believe that there may be a need to have two or three pieces of legislation which would in essence require the highest level of dealing both sides – private and public sector – to capture those private sector persons who interface with public sector persons, whether it involves contracts or otherwise. I do not think this Bill as framed is the one to do it but, yes, we do agree it would appear that the private citizen as well as the private companies need to be called into account. Many of them are also in public very much like these persons, and are we calling them at the level and at the same standard which this Integrity Bill and legislation is calling public officials to? That was our concern.

Mr. R.A. THORNE: You are saying that the reason why the Bar excluded them...

Mrs. K. WILLIAMS: We did not exclude them.

Mr. R.A. THORNE: From your final paper here they have been excluded.

Mrs. K. WILLIAMS: We commented clause by clause but, again, that is something we are always willing to expand on. To be honest with you, even as we submitted there were still people coming with comments so this is not finite by any means. There are still a lot of areas of interest and concern which we would be very happy to continue to comment on.

Mr. R.A. THORNE: You would have to get leave of the Chairman to do that.

Mrs. K. WILLIAMS: Indeed.

Mr. R.A. THORNE: Thank you.

Asides.

Senator C.A. FRANKLYN: Thank you, Chair. Mrs. Williams, I have to come back to you because you started something and you just glossed over it: the issue with the judicial officers. You mentioned magistrates. What is the view of the Bar in relation to the exclusion of judges in this legislation? I remember one of the presenters said that the judges have some constitutional protection and one might be in breach of their constitutional rights and that kind of thing. I do not believe that, because the magistrates have the same protection. They have protection in the Constitution because the Judicial and Legal Service Commission deals with them.

Mrs. K. WILLIAMS: That is it, Sir.

Senator C.A. FRANKLYN: In terms of judges, you have to set up a tribunal to deal with them but the Constitution still speaks to both. I am asking if you are excluding one, why not the other? If you are going to

exclude judges, I want to find out what the Bar thinks about the exclusion of judges from this legislation.

Mrs. K. WILLIAMS: We are of the view that the Second Schedule does not go far enough. There is a reason as well why in our comments we said, "There is a need for much greater clarity", and we actually took the time to show those pieces of legislation which went at length to include, for example, the Director of Public Prosecutions and legal officers employed by the State; I believe that is Grenada. We felt that the Schedule does not go far enough, specifically with respect to judges. The argument back and forth – it is not reflected here because we did not have a final position on it – was that, as you indicated, the judges were subject to the Judicial Service Commission and fell under the Constitution. We looked at other pieces of legislation to see if they included judges as well. We did not find that, so we were very specific to say look at the other Schedules and see how far Barbados wants to go, because we did not think that this particular Schedule went far enough for sure. Yes, there was comment as well on the judges, but it was felt that the judges fell under a regulatory body.

Senator C.A. FRANKLYN: I think it went too far only in including Opposition Senators.

Asides.

Senator C.A. FRANKLYN: Yes, and Independent senators. I must be fair to them as well. We are not paid and we have to go and incur expenses to comply with this legislation and nobody compensates us for it. I think that is going a bit far too but I know Ms. Taitt would agree; I am hoping she would.

MR. CHAIRMAN: Are there any other interventions? There being none, let me thank you and your members of the Bar Association for this very fine presentation. One can tell that everything you have posited here we do not necessarily agree with but that is the essence of a healthy democracy that dissent and opposing views are received in the spirit in which they are given. Please convey our gratitude to the members of the Bar, and I am especially grateful for this format which will allow us to look at your comments on a section-by-section basis. Thank you very much. That ends our public deliberation. There are just two small matters that I want to raise with members of the Committee but we would discuss those ...

Mrs. K. WILLIAMS: Mr. Chairman, unless I can be of further assistance, may I be excused.

Mr. CHAIRMAN: I was about to excuse you.

Mrs. K. WILLIAMS: I am sorry.

Mr. CHAIRMAN: Thank you very much. You can excuse yourself.

Mrs. K. WILLIAMS: I am so sorry. I travel tomorrow and I am under some pressure.

Mr. CHAIRMAN: I know what that is like. If the Committee can just meet *in camera* so if the members in the public gallery can excuse us there are just two short matters that we have to deal with and then we will adjourn.

Mrs. K. WILLIAMS: Grateful to the members of the Committee and to the Chairman. Once

again, thank you very much.

There was a short break in the meeting as the presenters and members of the public gallery exited the meeting.

Mr. CHAIRMAN: We would all have received the correspondence from Her Excellency the Governor-General. I do not know if members have any thought on her recommendations. Senator Franklyn.

Senator C. A. FRANKLYN: Mr. Chairman, we have canvassed that idea here already and we noticed that they would have been some logistical problems but I am not opposed to it *per se*. I was just concerned about the mechanisms for getting it done within the timeframe that we had allotted under the rules of the House. That is my only concern that if we can get it done within the time.

Mr. CHAIRMAN: The Governor-General has made two recommendations. That is your concern about the first one. Regarding the second one?

Senator C. A. FRANKLYN: What is the second one is again?

Asides.

Senator Miss L. R. CUMMINS: If I can go in the meantime while Senator Franklyn refreshes his mind, Mr. Chairman, I was going to say that there are two separate issues here: 1) which is the concern around public education and a lack thereof and 2) the hosting of Town Hall meetings to facilitate a wider discussion process.

I think one of the challenges that we have clearly seen, not just in this room by way of presentations but certainly if you were following the feedback of the public on questions of integrity, there is an absolute dearth of knowledge on what constitutes integrity in public life but at the same time that is offset by the fact that there is a heightened interest in the prevention of corruption and the need for integrity in public life. In principle, I am not opposed to the idea of engaging in some kind of public education.

The second issue then arises which is timing and it is, in some way, outside the scope of the terms of reference of this Committee for sure and the forum within which we would engage in that kind of education process, I think, is the question. I am not opposed to it in principle but I do have questions on the modalities and of the scope of the work of this Committee to give effective recommendations, Mr. Chairman.

Mr. CHAIRMAN: Any other comments?

Mr. R. A. THORNE: In a modern Barbados, I do not think there is anything magical about a Town Hall where we have technology. I do not accept the view that persons will come here and be intimidated if they have something serious to say. We have had a cross-section of people in here. While one does not challenge the Head of State but I think that the technology can be used. We did it a few months ago with something else and it can be done quite easily. I do not think we are being any less democratic for absence of a Town Hall. That is my view.

Mr. CHAIRMAN: Bishop Atherley.

Bishop J. J. S. ATHERLEY: I think, Mr. Chairman, the Office of the Governor-General is a very powerful office. The Office of the Governor-General is being asked to perform certain very important functions under the rubric of this proposed Bill. I, therefore, think we should fairly positively consider proposals coming from Her Excellency. My question would be whether or not these proposed meetings to educate public, et cetera, would not change ... What am I struggling here with, Mr. Chairman, if you can help?

Mr. CHAIRMAN: I am sorry.

Bishop J. J. S. ATHERLEY: This is a meeting of the Joint Select Committee of Parliament if we go to Town Hall meetings it becomes a totally different situation. That is a totally different mechanism. I believe that this is sufficiently important and it captures a sufficiently wide-ranging body of persons that the best possible opportunity should be afforded into the public to benefit from discussing on the matter. I therefore, in principle, do not have any issue with Town Hall meetings. I frankly think that is more a concern for the Government side here and understand me when I say that when you go out into the public you do not necessarily know what is going to come at you and I think the Government would be more concerned about that aspect of the matter than I personally would be, but I am for it in principle. I am for public education and for widening that benefit to the people of Barbados and I think that Her Excellency is a powerful voice.

Senator Ms. M. C. TAITT: I have already spoken to my concern with the people that I have come across. I hear Senator Cummins talk about people seemed to be well versed in what is going on. I do not.

Senator Miss L. R. CUMMINS: I did not say that.

Senator Ms. M. C. TAITT: Did you not say that?

Senator Miss L. R. CUMMINS: No! I said that there is obviously a dearth of knowledge on what constitutes integrity and the pressures of corruption but people are engaged in what is happening.

Senator Ms. M. C. TAITT: Is that not the same thing?

Senator Miss L. R. CUMMINS: No!

Senator Ms. M. C. TAITT: Okay, I am sorry. The people I have interacted with from all spheres – and I am not on Facebook so I do not know what happens on Facebook.

To me, I am concerned about the number of people who are unaware of what is going on and particularly, the people who are in the specified persons' list. The number of those persons who are unaware that they will be impacted by the legislation concerns me. I am also one who believes, I believe, it was Sir David Simmons who said that one of the amendments he proposes is that you include making provision for public education in the legislation. I believe the public education should come before the legislation is passed so that I would feel more

comfortable if because of the wide-ranging implications that this legislation has for a number of people particularly if the recommendations of people like the Barbados Bar Association are taken on board and you broaden the list, that the more people are aware of what is going on and the more people have an opportunity to have something to say, the better. With the worst case scenarios and things are sorted out that you can do to the town hall meetings and nobody shows up, it could not be said, reasonably, that you did not give everybody an opportunity to make comments and have input in relation to the proposed legislation and I certainly do not have any difficulty with public education. Mr. Chairman, at this point I would even be bold to say that I am of the personal view that while it is true that the proceedings have been fully advertised in all of the media, I believe that the list of specified persons should be extrapolated from the Bill and put as a separate advertisement and let people know who is on the list and the Parts IV and V that affect people because there are a lot of people who are unaware that they are going to be impacted, and the extent of the declarations that will be required if the legislation is passed in its current form, so I have had a magistrate saying to me that they did not know that they were on the list. Magistrates work in the environment that one would think they would pay attention but people are seeing the advertisement for the Integrity in Public Life legislation but they are not taking it to clicking and opening and going through, which is not the Committee's fault or I suppose not our responsibility but by the same token, if a magistrate does not know that he or she is on the list, what about the persons outside of the Members of the two Houses? What about them? What about the Permanent Secretaries? What about the chairmen of this, the Chief Executive Officers of that, the persons in Statutory Boards and the Corporate Boards and what about those persons who have spouses and dependent children who are totally oblivious to the impact that this legislation can have, so in my view public education, town hall meetings, taking out the Schedule, putting into the public domain as a separate item, that would make me very... more comfortable. I would say, Mr. Chairman, I thank you.

Senator C. A. FRANKLYN: Senator Taitt, I do not think [that] you have to worry about people not turning up at a town hall meeting. If I know the Barbados Labour Party well enough they would bus in their people.

Laughter.

Mr. CHAIRMAN: Minister Forde.

Hon. Miss C. Y. FORDE: Thank you, Mr. Chairman. Good evening everyone. I have given a little thought to what I see here and I believe that there should be some town hall meetings. There are many people who would never be able to access.... When you look at it in Barbados there are a lot of people who do not even have the technology to be able to read a lot of what would be on the system. Some of them would want to express themselves, because it is a popular thing for a television to show them. I think for the town

hall meetings, one in each zone, four meetings across the island would help. I know that the people's assemblies would help to strengthen a lot of discussions and picking up ideas from people about the management of their affairs in communities and so on, but this one I believe needs those town hall meetings to reach those people who cannot get out, or away from where they are living, lack of transportation, the dangers at night, and understanding what I think that the gathering should ensure that people's names and the jobs they carry are not exposed in the discussions because you would be targeting individuals but a lot of people are unaware of the impact that this legislation would have on them, and I agree with Senator Taitt, persons who are chairpersons of Boards and so on, if we are not explaining it properly [then] a lot of people are not going to assent to volunteer their time and serve in the various institutions as a result of what these penalties and so on bring to the fore, so I am strongly in support of some town hall meetings. As I indicated, at least four, one in each zone of the country so that we could reach the public. Mr. Chairman, I agree, if crowds do not turn up, [then] they do not turn up, but they cannot say that they did not have the chance in a democratic society to express their views and concerns about matters that will impact upon them and so I am in favour of the request by Senator Taitt.

Senator Ms. M. C. TAITT: Mr. Chairman, if it is that it is agreed that we do have the town hall meetings, I would strongly suggest that there is present someone who is well-versed in the legislation to answer questions and/or do some public education, because it is not supposed to be a form for people to see the Honourable Attorney-General and start to attack the Honourable Attorney-General because he is the Honourable Attorney-General, it should be that you are there to be educated or that you are there to ask questions and somebody answers but it is not to be encouraged that you come to attack, so that it might be decided that nobody on the Committee is at the Head table or we sit in the back or something, I do not know how you would work it out but it must be that persons who are versed in the legislation can assist with questions, people can express their views and you can start off by somebody explaining what it is about, [you can] highlight the parts of the legislation that would be the most sensational or the most impactful, but it must be, as you said on the last occasion, we should still establish our privilege and we should also ensure that it is not a form for post-election: "I ain't get to cure the Member for St. Joseph, so I coming to do it now. Or worse yet, the Member for St. Michael West, that would even worse.

Mr. CHAIRMAN: Thank you for your comments. What I am going to say is not by way of any ruling, I am not able to rule, this is a Committee, but there are a couple of things that I would want to point out. First of all, the Standing Orders provide that:

"No Select Committee shall meet outside of the precincts of the House unless power so to do has been given by that Committee by the House."

It is therefore not a decision for us, we would have to seek the permission of Parliament as a body to meet outside of the precincts of the Chamber. Secondly, while I hear all that is said about education, that is not the purpose of a Select Committee. The Terms and Reference of a Select Committee are to receive representations from the public so that we can look at our Bill and see to what extent it has failings that we ourselves may not have observed, with a view to allowing a better or more perfect draft to be produced. I have no doubt that public education is going to be important but this Committee is not intended to serve that purpose and public education should be conducted as a separate exercise, using whatever tools are available. I cannot see how we could have a Select Committee meeting and sit at the back, or not sit at the Head table. It would be different to what happens here. Now, there are some logistical issues but if we want public education I think that can be achieved but that is not the particular remit of this Committee. I note that the Governor-General is concerned to some extent about that but I have to take it... I mean, the letter says that there is no dispute that persons have been or are being offered the opportunity to make submissions. If you are satisfied that they have been given the opportunity, I do not know that going out into four communities to receive submissions is going to be helpful. I am mindful of diluting the importance and – I do not want to say the somberness – but the mood that Parliament sets. When people into the Public Gallery they come to the Public Gallery to observe the proceedings, there is a certain amount of respect, a certain level of decorum and I think that we begin to weaken the institutions by pandering to the lowest common denominator: my own view is that if there are people who wish to make a contribution [then] they should come and do so. I am not concerned about how they are dressed. I am not concerned about the manner of their speech. I do not even mind that they are somewhat awed by the institution of Parliament because Parliament is an awesome institution. So I support town hall meetings for the purpose of edification of the public, explaining how it works and things of that sort, but I think that the Select Committee is an important thing. My preference would be to bring people to where we are and not feel that in every case we have to go to the people. My view is that, given the timing, the logistics and the costs of achieving those logistics, I would rather continue as we are doing. The other thing is that we have not been informed that anyone else wishes to make submissions. We can go out to the public but we have already got a number of submissions, some of tremendous gravitas, and I do not know that there is a lot to be served now by going into Grantley Adams School and inviting from Horse Hill to come up; and by the way, if you did I would insist that you have refreshments.

Asides.

Mr. CHAIRMAN: We have to ask ourselves, "Are these people going to look at the Bill and come and make suggestions about the bill or are they going to

use it as an opportunity to come and ask questions and curse politicians and so on, or curse the business sector?" I think that we have got an awful lot done and we now need to get into the serious work of going through the Bill clause by clause and reporting back to Parliament.

Hon. Ms. C.Y. FORDE: Mr. Chairman, at what point of time can the educational aspect of it occur? I am just concerned that a lot of people....

Mr. CHAIRMAN: I agree. My own view would be that as soon as we get this work completed and we have a better draft.

Hon. Ms. C.Y. FORDE: Okay.

Mr. CHAIRMAN: Then we have to go back to the House and then it comes to the Senate. As soon as we have a draft which covers all the issues. We have to correct the fines. We have said time and time again that these fines are not going to stay, but we still have Mr. Marville coming today and saying that the fines are too low. When we correct these issues, we will have a better Document and we can then go to the public and educate them. We may want to recommend that judges be included, but I think we are now at decision time and I do not think that anything else will be added. While it will give us the aura of democracy, I do not know that we need to get to that point, I think we need to get on with our work and then do the public education.

Senator Miss. L.R. CUMMINS: Sir, I am in agreement with your proposal. In principle, I am in full support of the need for public education but, as you quite rightly said, I am not sure that is within the scope of this Committee or that it is the role of this Committee. However, I think it is a legitimate concern and I believe that one of the recommendations we should make going back into the House after we have done our work collating the inputs and going through the clause-by-clause assessment of the legislation of the draft Bill, is that we do we have on the second round of this Bill a series of public education interventions into the public space and, as Senator Taitt is proposing, that we perhaps in some instances have to disaggregate some bits of key information and distill it or have that recommendation. However, that is not the work of this particular Committee and we would be a bit outside the scope of our Terms of Reference if we were to do so.

Senator Ms. M.C. TAITT: Mr. Chairman, are we making a decision, because I still am of the view for town hall meetings and public education to enhance the final product Bill to be sent back to the various Houses, so inasmuch as we have the letter in from the Head of State and, as Bishop Atherley has indicated, I do not think it should be ignored. I would like to hear what the Committee's position is holistically so that we know what the position is. We have heard individual positions but we have not heard from everybody, and I believe that we should have a final position of the Committee as it relates to the issues identified by the Head of State.

Mr. CHAIRMAN: I prefer to achieve a consensus, but....

Senator M.C. TAITT: Sorry, Mr. Chairman. The Honourable Mr. Thorne has added.

Asides

Mr. CHAIRMAN: I assure you that the Clerk of Parliament would not allow us to go without responding to Her Excellency the Governor General. That is simply not on, but a response does not mean that we have to agree. I would have hoped that there being no consensus that we should do town hall meetings that that would resolve the issue, but it would therefore be left to us to put the matter to a vote.

Asides

Senator C.A. FRANKLYN: While I say that I do not mind having town hall meetings, it is not for us to decide if there are going to be town hall meetings. We are set up with a particular mandate, and to go outside of our mandate... I do not mind town hall meetings. By all means, have town hall meetings but can we order town hall meetings as this Committee. I think not.

Senator M.C. TAITT: To say "Yes, I agree that we should have town hall meetings" or "I do not have a difficulty with the concept," does not mean that I expect the Committee to breach our Rules. It means that if it is that everybody is of that view, then we do what we are supposed to do to get the permission to do so. I am not advocating breaching rules.

Senator C.A. FRANKLYN: My suggestion as to let us throw it to the persons who can make that decision rather than we come here, because it is not for us to do that. It is not our role but we can say, "We have this concern from the Governor General" and we can then ask the House, "What say you?" about this proposal from the Governor General. That is where it should really reside: with the House and not with us.

Mr. CHAIRMAN: It should reside with the House, but the House has not given any fiat that we should meet outside so we would now have to seek the House's permission.

Senator C.A. FRANKLYN: It is not that we would be doing town hall meetings. It is that the House would order them or whatever else, because the town hall meetings should not come from us.

Mr. CHAIRMAN: Well let us just be clear. The Standing Orders provide that no Select Committee, including us, shall meet outside of the precincts of the House unless power to do has been given to the Committee by the House. We do not have any such power.

Senator C.A. FRANKLYN: Our Terms of Reference do not ask us to do that.

Mr. CHAIRMAN: No, I am taking it that in relation to the reference to town hall meetings, the Governor General has bifurcated the town hall matter. She says here, "*Firstly to educate*," but that is not our role. We cannot increase our Terms of Reference.

Senator C.A. FRANKLYN: That is what I am saying.

Mr. CHAIRMAN: Then she goes on: "*But more particularly to allow and encourage those who might be loath to attend at Parliament to make submissions*."

I do not necessarily buy that either because

people have made submissions but have not come. It would seem to me that the only way that this could be addressed would be for us first of all to determine if we wish to have Committee meetings outside of Parliament, and if we do then we would have to seek the permission of Parliament to do so. It would simply be that the next meeting or whatever meeting of the Select Committee would take place in Josey Hill or in Oistins.

Senator Miss L.R. CUMMINS: Mr. Chairman, the second part of that would be that the Select Committee would seek permission to meet outside the halls of Parliament, not only based on Standing Order requirements but that we would also be requesting permission to amend the Terms of Reference of the Committee to include public education.

Mr. CHAIRMAN: I am not interested. I do not think that is our role, and I think that we would be contorting ourselves to feel that we should engage in public education. The Integrity Group did some public education, other people have done public education, and there is no doubt that public education will be required but that is something after we have a Bill that is crystallised and on which we can educate the people. For me, the only issue is a simple one: Does this Select Committee convene in Rock Hall, for instance? I only picked Rock Hall out of deference to the Member for St. Thomas, and the Freedom Village. That is the only issue, and exactly what we have done here will be what we would go to Rock Hall and do. It would be the same process, we would have to have submissions and people would come and appear before the Committee, but I really would be loath to have a meeting at Rock Hall and have people just show up and say, "I want to speak." This is still a Select Committee of the highest court in the land.

Senator Miss L.R. CUMMINS: Mr. Chairman, I want to point out that I took the time while we here to go online on the Facebook live feed coming from here just to see the comments from the public. Among those in a long string of comments initially were people saying that the Attorney General still has not spoken on gun violence. I am thinking to myself that they are following the Select Committee on Integrity in Public Life, so when you now take this process and you subject it to a town hall meeting, you are creating mass confusion on all kinds of things because people will use it as an opportunity to come and bring all kinds of things, and then you would have perverted the work of the Committee perhaps unintentionally but nonetheless that would be the outcome. I think it is something we would have to think about carefully.

Senator Ms. MC. TAITT: Mr. Chairman, why is there a supposition that people would come? If it is that the town hall meetings are deemed to be the way to go, whoever is responsible, the Committee or Parliament would set out the terms and conditions for the town hall meeting.

MR. CHAIRMAN: They have done that.

Senator Ms. M.C. TAITT: I am talking about

in the town hall forum. Obviously if somebody comes and starts to talk about gun violence, just to use Senator Cummins' example, they would be politely advised that this is not the forum for that. I do not want to carry it from one extreme to the next but really.

MR. CHAIRMAN: I am not prepared to sign on to a process that we simply cannot control. We have police officers here. We have a Marshal of Parliament. All of these individuals would have to report to Queen's College school hall, for example, for the town hall meeting. That would be the only way to do it because it would still be a Committee of Parliament. When John Browne gets up and starts to spew whatever he wishes, we have no opportunity to control that. I as Chairman would say, "Mr. Browne, please take your seat. You are out of order. This is not what this Committee is about." but by the time I get out those words...

Asides.

MR. CHAIRMAN: Then we would have to get the Marshal to remove Mr. Browne and then the Marshal would not be able to get Mr. Browne. Then we would have to get the police to remove Mr. Browne, and so what would have begun as a Select Committee meeting for the purpose of receiving submissions on this Bill would take on a completely hostile aspect. Personally, I do not support us exposing ourselves to that. I asked to be elected to Parliament, the Senators accepted an appointment to Parliament. Parliament is a particular thing, and I do not see that we should run from it. This is the highest court in the land. Okay? The Caribbean Court of Justice comes from Trinidad to here to go to court but they have their hearings in the Supreme Court of Barbados. They do not keep hearings in a primary school in Josey Hill.

Asides.

Bishop the Hon. J.J.S. ATHERLEY: Her Excellency is not the first person, and I think you raised this in a prior meeting, Senator Taitt, and I would not support the view that the Select Committee should be out there trying to conduct any town hall meetings. As I said, that is another different mechanism altogether. Parliament has already taken action in setting up this Joint Committee and I do not see anything that stops us from recommending to the powers that be that, along with the work we are doing, there could be or should be a public education effort: whether in the form of town hall meetings or otherwise. It does not mean this Committee has to do it.

MR. CHAIRMAN: Bishop Atherley, I do not know that there is any dispute on the need for public education. Sir David has mentioned it, and I think other submissions have canvassed it. We have all agreed that public education should go on, but that is not within our Terms of Reference.

Bishop the Hon. J.J.S. ATHERLEY: I am simply saying that I think we should make that opinion known where it matters and that the decision is actually taken to do it by whosoever would do it.

MR. CHAIRMAN: Bishop Atherley, remember we have a separation of powers doctrine. The Executive of Barbados would be the ones responsible

for carrying out any education programme: not Parliament.

Asides.

MR. CHAIRMAN: That is not the role of Parliament. As parliamentarians both in the Upper and Lower Houses, we will recognise, given the sensitivity of it, that it is something which is desirable but there is no need to legislate that.

Bishop the Hon. J.J.S. ATHERLEY: I am not talking about legislating anything. Let me get right down to it where the rubber meets the road. We believe a public education effort should be mounted. We also understand that is not our remit: we understand that. What is wrong with the Chairman of this Committee on behalf of the rest of us, if that is the dominant opinion here, saying this to the powers that be: not in the a forum of Parliament but to the people who can make this happen?

MR. CHAIRMAN: be a little bit clearer because right now there are no powers that be. This is a Bill which we are trying to get right.

Bishop the Hon. J.J.S. ATHERLEY: Mr. Chairman, if we are seriously attempting to do this and we realise that there are elements of the public who are out of the loop in terms of their understanding of what we are trying to do and some of them would in fact be immediately impacted by this, then we have to address that. We are saying that a public education exercise would be a forum through which we can address that. All that remains to be done is for the Prime Minister or whoever can make this happen to be told, "This Committee has been given a remit and we are doing that but it would aid us if we could also mount this at the same time." Let us identify the people who can do that and get it done.

MR. CHAIRMAN: Bishop Atherley, this Committee is asked to report back to parliament with a Bill at the end of this process. There are 40 yards between here and the next door. I do not think that we should go back to Parliament and ask for an audience and say that we think that public education should be done.

Bishop the Hon. J.J.S. ATHERLEY: We are not going back to Parliament.

MR. CHAIRMAN: I am sorry but we cannot say anything else. We have been given Terms of Reference. Terms of Reference mean something. We are to comply with those Terms of Reference. The Committee has to submit a report and in our report we can put in a recommendation that given the importance of this and so on, public education should be done, but public education on the Bill when once it is passed.

Bishop the Hon. J.J.S. ATHERLEY: No.

MR. CHAIRMAN: Do you want to do public education on a Bill that we are still now trying to work on?

Bishop the Hon. J.J.S. ATHERLEY: That is not what I am saying at all, but public education on a Bill when once it is passed?

MR. CHAIRMAN: Yes.

Asides.

MR. CHAIRMAN: What is it that you are educating the public on at this point?

Asides.

Bishop the Hon. J.J.S. ATHERLEY: You are educating the public as to what you are attempting to do based on the proposed Bill before us, and you are getting their opinions on it. They can only give an informed opinion if they have been informed. What I am hearing is that they are not sufficiently informed.

MR. CHAIRMAN: We are talking about two different things then, because public education for me within the context of integrity legislation is the process of letting people know this is what is before you, this is what this requires and this is what that requires. If you are asked to be a chairman of a board then you have to file this and your wife has to do that and so on.

Senator Ms. M. C. TAITT: Mr. Chairman, I hear what you are saying but to me public education means, I think more like what Bishop Atherley is saying it is like an extension of what we have been doing, getting submission where we receive opinions, we go through and we use them to enhance the current Bill so that you are getting beyond what we have received so far. We do not know what else is out there that can enhance the Bill but what I have found is that there are a number of persons, who I would have thought, would at least be aware of this Bill, who are not. That concerns me in terms of, and you are hearing the reasons why they do not know and why they do not want to come and so on and so on but I think public education is a before and after process.

Mr. CHAIRMAN: If there is a mechanism to inform the public – and I think that we have done all that we can do to inform the public. We have put it on the website, we have put it at the library, I do not know what else it is that you are suggesting we should do.

Senator Ms. M. C. TAITT: If you look at the recent submission from Institute of Chartered Accountants of Barbados (ICAB), one of the areas that ICAB highlighted is that they feel that a specified persons should be circulated in the public domain before the Bill is passed and I think that is a good idea, a list of persons and the associated sections, or at least the list so that people would actually go on the sight and look at the legislation because there are too many persons to whom the list will apply that I have come across who are unaware that they are on the list. There is no explanation for it. Yes, you are not supposed to have to mollycoddle people but at the end of the day, the reality is, there are a number of persons who are on the list who are unaware that they are on the list.

Mr. CHAIRMAN: We can get ourselves into all kinds of artificial – and I mean no disrespect – but we can get ourselves into all kinds of artificial things. A Bill was passed in this Chamber in 2012 with a list of persons in public life. This was passed in the Lower House and the Upper House.

Senator Ms. M. C. TAITT: Are you going back to 2012? What would be the relevance?

Mr. CHAIRMAN: Yes.

Senator Ms. M. C. TAITT: We are in 2018

now.

Mr. CHAIRMAN: Because in the second Schedule of that Bill - and we had a select committee process then too – we have a list of people in public life. Why are we looking to mollycoddle people?

Senator Ms. M. C. TAITT: Mr. Chairman, back in 2012...

Senator Miss L. R. CUMMINS: Hang on. Why all of the crosstalk? Let one person finish and then another could start.

Mr. CHAIRMAN: I do not know why we are looking to mollycoddle people. It is ...

Senator Ms. M. C. TAITT: It is about educating people and letting them know. As I said, I was surprised about the number of people who did not know. I believe if nothing else, if you put the list as an ad and you circulate it in the same way you have been circulating the hearings, I think it would be useful, for lack of a better word.

Mr. CHAIRMAN: In what way?

Senator Ms. M. C. TAITT: Because at least then, people are aware that they are on the list before it is passed and they do not know and we would have been able to say, we have circulated and given people ample opportunity to have a say.

Mr. CHAIRMAN: If there are any members who wish to propose that we go back to Parliament and ask for a change in our terms of reference, feel free to do so.

Senator Ms. M. C. TAITT: Wait, putting the list in the public domain is changing our terms of reference?

Mr. CHAIRMAN: Well, our terms of reference ...

Senator Ms. M. C. TAITT: Is it not the same thing as advertising the hearings.

Mr. CHAIRMAN: The list is already in the public domain Senator Taitt. The list has been ...

Senator Ms. M. C. TAITT: No, but not as a stand-alone document.

Mr. CHAIRMAN: If we have published the Bill, why do we not take out Section 23 and publish that too.

Senator Ms. M. C. TAITT: Has the Bill been published or the website to which you access the Bill?

Mr. CHAIRMAN: The moment it is laid in Parliament it is published.

Senator Ms. M. C. TAITT: Published where, Mr. Chairman?

Mr. CHAIRMAN: Mr. Clerk speak to her.

Mr. CLERK: It is published in the Official Gazette.

Senator Ms. M. C. TAITT: Yes, it is in the Official Gazette. How many people check the Gazette realistically, Mr. Chairman?

Senator Miss L. R. CUMMINS: How much of a possibility is it? I mean how far do you go?

Senator Ms. M. C. TAITT: What is the harm in publishing the list?

Mr. CHAIRMAN: It has been published, copies of it have been posted and advertisements have

been published saying: "Go and look at the Bill."

Senator Ms. M. C. TAITT: I am disputing that, Mr. Chairman. I acknowledged that when I started to speak. All I am asking is: what would be the difficulty of printing the list, pursuant to the recommendation of ICAB?

Mr. CHAIRMAN: Because I am interested in publishing the Bill. The Bill has been published so the public can look at it. I do not see any advantage now to the salacious thing of publishing the second Schedule. "Herewith are all the people who are going to be affected by it." What would that achieve?

Senator Ms. M. C. TAITT: Why is that salacious?

Mr. CHAIRMAN: What would that achieve?

Senator Ms. M. C. TAITT: It certainly would inform persons that they are on the list because clearly they are not paying the advertisements any mind because there are persons ...

Senator Miss L. R. CUMMINS: Is it that they are not paying attention?

Senator Ms. M. C. TAITT: It would be up in their faces for sure.

Mr. CHAIRMAN: Is there a motion? Oh I am sorry, Honourable Cynthia Forde. Yes, please.

Hon. Miss C. Y. FORDE: I just wanted to say that when I supported the recommendation for the Town Hall meetings and I put forward my ideas. I understood what you indicated about the terms of reference and therefore, I do not see why we are going over and over again. If we have not had this as a part of what we should do inclusive of the Town Hall meetings and they will come after, then I am ready, willing and able to accept that. I believe that we should go on in the interest of many of us having to go very far and lots of meetings otherwise this evening. I am in favour of us and I support what was said by Bishop Atherley and Mr. Thorne that we make sure that we craft a decent letter to be sent back to Her Excellency to indicate ...

Mr. CHAIRMAN: Courtesy demands that we respond but there is a view that the Governor-General ought not to have written in the first place.

Asides.

Mr. CHAIRMAN: It is a breach of a convention. On Parliament's agenda there is an item called, "*Messages from Her Excellency the Governor-General*" and that is how she normally communicates.

Asides.

Mr. CHAIRMAN: Exactly, but to write us ... anyway.

Senator Miss L. R. CUMMINS: Mr. Chairman, I wish to move a motion.

Mr. CHAIRMAN: Yes, please.

Senator Miss L. R. CUMMINS: I wish to move a motion that we agree that the Committee having heard all submissions at this point move to deliberate on the submissions that have been received and to review the Bill Clause by Clause to make our final submission back to the Lower House of Parliament.

Hon. Miss C. Y. FORDE: I beg to second that, Mr. Chairman.

Mr. CHAIRMAN: Are there any other motions?

Senator Ms. M. C. TAITT: Mr. Chairman, I do not agree with that. I do not know if I am supposed to ...

Mr. CHAIRMAN: There is a motion on the table so we vote on the motion or you put a further motion.

Senator Ms. M. C. TAITT: Okay. What happens now?

Mr. CHAIRMAN: Feel free to put another motion or vote against this motion. The motion has been put.

On the motion by Senator Miss L. R. CUMMINS, the question was put to the Committee and agreed to.

Mr. CHAIRMAN: While I think that we need to get on with our work, have there been any other expressions of interests from people? None. Okay. Is Parliament still advertising or have we stopped? We have stopped. Alright. What about email submissions, are there any further email submissions coming in? Okay.

In those circumstances I think the field is set for us to begin our deliberations, not this evening, Ms. Elie so you do not have to worry about that. We should begin our deliberations and as I understand it, Everybody has the recommendations and I think we all know that there are some that, while interesting, do not go towards the Bill, so I would urge members to have a review of the material. Some would take longer than others.

Asides.

Mr. CHAIRMAN: We had three today, not two. You might have stepped out when one of the other people was presenting. I think that ICAB, Solutions Barbados...

Asides.

Mr. CHAIRMAN: Yes, but I am thinking of those people who actually submitted.

Asides.

Mr. CHAIRMAN: Right, fine. I think we have some that approached the matter on a Clause by Clause basis, and we should focus on those, okay.

Senator Miss L. R. CUMMINS: Mr. Chairman, if I could make a recommendation, because I think in one of our meetings we said we were going to ensure that all of submissions were placed on the website so people could be able to access them, do we have a...

Mr. CHAIRMAN: The written submissions.

Senator Miss L. R. CUMMINS: The written submissions.

Mr. CHAIRMAN: They do not belong to us, they belong to the individuals.

Senator Miss L. R. CUMMINS: They had given permission at the time for us to post them online.

Asides.

Mr. CHAIRMAN: Senator Cummins, we are

told that all of the submissions are on the website.

Senator Miss L. R. CUMMINS: Okay. Does this include the ones we got today?

Asides

Mr. CHAIRMAN: I would not want to have to explain to an individual who took his time and energy and came to make a presentation why his submission...

Asides

Mr. CHAIRMAN: No, but I do not think we should be in the business of vetting. The individuals have submitted their things and I think we should publish.

Asides

Mr. CHAIRMAN: Well, perhaps in relation to the spelling errors you could invite Mr. Whoever to edit it.

Asides

Mr. CHAIRMAN: We had agreed to post the submissions and I do not think we should change it now but you do not want to embarrass anybody. Mr. Williams or whoever it is can correct the spelling of solutions.

Asides

Mr. CHAIRMAN: Well, let somebody have a little chat with him. He is very close to Bishop Atherley, so Bishop Atherley can have a chat with him but I would not want to say to him that we are not publishing his stuff.

Asides

Mr. CHAIRMAN: Do not let us discuss it anymore. This should not even be in the record. Bishop Atherley, would you have a word with him, please?

Asides

Mr. CHAIRMAN: I do not think we should do that. Why are we reinventing the wheel? Just have a word with the gentleman.

Asides

The meeting was adjourned until October 22, 2018 at 1.30 p.m.

SEVENTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE

MONDAY, NOVEMBER 5, 2018

First SESSION 2018-2023

PRESENT:

- Hon. D. D. MARSHALL, Q.C., M.P., (Chairman)
- Bishop J.J.S. ATHERLEY, J.P., M.P. (Leader of the Opposition)
- Mr. R. A. THORNE, Q.C., M.P.
- Hon. W. A. ABRAHAMS, M.P.,
- Hon. C. Mc.D. GRIFFITH, M.P.,
- Hon. Miss C. Y. FORDE, J.P., M.P.
- Hon. C. E. JORDAN, M.P.
- Senator Miss L. R. CUMMINS

ABSENT:

- Senator the Hon. Mr. J. X. WALCOTT,
- Senator C. A. FRANKLYN, J.P.,
- Senator Miss. M. C. TAITT, Q.C

IN ATTENDANCE:

- Mr. PEDRO EASTMOND (Clerk of Parliament)
- Mr. NIGEL JONES (Deputy Clerk of Parliament)
- Ms. SUZANNE HAMBLIN, (Assistant to the Clerk to the Committee)
- Ms. Nicole Thompson, (Special Advisor to the Attorney-General)
- Mrs. MECHELLE ELIE, (Senior Draftsperson, C.P.C Office)

Mr. CHAIRMAN: Good Afternoon Members, we will go clause by clause. Everybody should have the analytical note by Rolanda Williams, so let us look at the Definitions. The Bar has also made some comments on Definitions, so let us jump right in. The Bar recommends that we define a number of additional terms, the first one being "act of corruption" found at page 5 of 36 in their document. Mrs. Elie, were you able to make any sense of that one?

Mrs. M. ELIE: I did not agree with defining the "act of corruption" because we have created offences related to corruption, so I felt that was sufficient and anything else would seem to be almost diluting the offences.

Mr. CHAIRMAN: So Clause 51 says what an "act of corruption" is and sets out a whole set of things. We do not need to change "act of corruption", so that is fine. We are satisfied that that is adequately spelt out.

Mr. R. A. THORNE: I do not know if this is the idea that Mrs. Elie has in mind but if you attempt to define it, you are going to limit yourself and I think a court always has a fair idea as to what is an "act of corruption". When you consider the common law offence, Misfeasance, you do not want to limit the court's appreciation of what is corruption, so that I agree with you.

Mr. CHAIRMAN: The Bar also recommend that we define "court".

Mrs. M. ELIE: I also disagreed with that. Well, it depends on what is done later in the Bill, but we might be looking at summary or indictable offence. I think it will generally be clear in the context.

Mr. CHAIRMAN: And the word "conduct".

Mr. R. A. THORNE: Sorry, which section "court" contemplates?

Mr. CHAIRMAN: Sorry, I am not sure, I was just looking but I am seeing it immediately. Probably, where it says that you can apply to the court for an order.

Mr. R. A. THORNE: Normally that is the High Court.

Mrs. M. ELIE: We have duplicated the information from the Proceeds of Crime Act which provides for the orders to be made by the High Court, and things of that sort where "court" is used.

Mr. R. A. THORNE: So you do not think there is any confusion created?

Mrs. M. ELIE: No, I do not.

Mr. R. A. THORNE: I think they obviously want us to say "court" shall refer to the High Court. I think that is what they want us to say.

Mrs. M. ELIE: But, then if the Committee decides to specifically say that certain offence should be dealt with summarily, then we have to make sure as we go through... I really did not think it was absolutely necessary.

Mr. R. A. THORNE: Again, if you limit yourself you could find yourself in some trouble.

Mrs. M. ELIE: Yes, exactly. In response to "conduct", unfortunately I have not finished my search for "conduct" but from memory we have really used conduct much, except for conducting an inquiry and the Commission investigating conduct. Usually, the Interpretation Act says that the word "act" includes an omission. So, I guess the Bar's point is, you have not

used "act" so you cannot rely on the Interpretation Act, you use the word "conduct", "Conduct" is also used in connection with the investigative officer's behavior and complaints made against his behavior.

So for the avoidance of doubt, we could include "acts" and "omissions". In other words, we could include the definition of "conduct" but to me there is not such a danger of ambiguity. The fact that someone has omitted to do something which is critical is not conduct. I leave it to the Committee to decide.

Mr. CHAIRMAN: So you think they really want "conduct" to be a positive act?

Mrs. M. ELIE: No, they want to make sure "omissions" is included in "conduct". I am just wondering with the state of the law as it is now, if that is really in dispute still. Yes, we have the Interpretation Act that makes it clear that the term "act" includes "omissions", so I thought the Bar's point was that we have not used the word "act" where we to speak to actions to cover omissions. So should we not now define "conduct" to include "omissions" as well as "acts" just to ensure that any "omission" is covered, that is what I thought was the Bar's point.

Mr. CHAIRMAN: Does the word "conduct" arise other than with a capital "C"? I am looking at Part VIII of the Act which would be Clause 65 which refers to conduct in public life and "Code of Conduct". Does it appear in other places?

Mrs. M. ELIE: Yes, for example, at Clause 41 (2) (b) we use "conduct" mainly when we are speaking of carrying on an inquiry or now and then complaints against the investigative officers' conduct, or as you see in here in 41 (2) (b), "the member whose conduct was the subject of the inquiry".

Mr. CHAIRMAN: Okay.

Mr. R. A. THORNE: Okay. Is this not referable to the conduct of a public officer, and are they not seeking to capture that where an officer may exercise wilful blindness and may say he was indifferent as to whether the criminality was taking place. I suspect that is what they are aiming at: To capture persons who know of the event and who are in a position of authority to prevent the event, but who do nothing and that becomes an omission which is culpable. I think that is what the Bar is looking at.

Mrs. MICHELLE ELIE: I agree with you. You call it wilful blindness, I call it an omission but the question is...

MR. CHAIRMAN: Your search has found all of the terms or not all?

Mrs. M. ELIE: I would just wish to double-check. What I can suggest is that the decision can be made on even 41(2)(b) because here we are speaking of the conduct of a Member, whether the conduct is wilful blindness or the conduct is actually a positive act: accepting a bribe. Also with an abundance of caution, we can put in a definition but when we put in this definition, know that we are putting it in and that we also have to rely on the Interpretation Act to say that the words defined have the meaning that they have in the interpretation section, unless a contrary intention

appears. Here, in this Bill we use conduct in several instances, so when we define it we only help that one area, whereas we have used it more in the other area. When I say "the other area", in order words, carry on an inquiry. If on the other hand there is a danger that someone is going to escape the law because we have not captured omissions by defining conduct, then we can go ahead and define it. What I am putting out is this: Is not the law at the stage where one cannot easily say that the fact that one omitted to do something is not conduct?

MR. CHAIRMAN: Okay, I am comfortable with that.

Hon. C.E. JORDAN: Mr. Chairman, I am not a lawyer but is there anything that can be done at 41 (2) (b) to make that clause clearer?

MR. CHAIRMAN: Is it less clear now?

Hon. C.E. JORDAN: I do not know judges and magistrates view these things, but I am just thinking that in terms of a Member whose conduct was the subject of the inquiry, could a legal officer interpret that not to include an omission?

MR. CHAIRMAN: I do not see how he could.

Asides.

MR. CHAIRMAN: If I fail to do something it is still my conduct.

Hon. C.E. JORDAN: So conduct in law includes what we laypersons would call misconduct?

MR. CHAIRMAN: Yes, I would say so quite easily, but what we are talking about is even non-conduct.

Hon. C.E. JORDAN: Yes, I see misconduct in one having a responsibility to do something and neglecting to do it; to me, that is misconduct or omission, so if it could be interpreted that way easily by a judicial officer, then I do not have an issue.

Mr. R.A. THORNE: Is there any harm in what the Bar is proposing?

MR. CHAIRMAN: The problem, I think, and I am sure you understand Mrs. Elie, is that once you define conduct, every time the word appears it has to carry that meaning unless a contrary intention is shown.

Hon. C.E. JORDAN: That is why I was referring specifically to this particular clause as opposed to including a definition somewhere which will bind all other uses before it.

MR. CHAIRMAN: I think this clause is self-explanatory but the entire clause presents the problem because conduct in 41 (1) is a different kind of conduct to the conduct in 41 (2)(b). It is the same word but one is one's behaviour and the other is the carrying out of a particular exercise.

Mrs. M. ELIE: Mr. Chairman, if I may, perhaps if the Committee would give the office an opportunity to see if we can dispense with the word "conduct" in at least one context, and perhaps see if the word "act" fits nicely where we are speaking about misbehaviour or wilful blindness. If it works, then we could just use "act" which would allow us to rely on our Interpretation Act which covers all the laws; or we can

just relook the positions so that we do not take too much of the Committee's time on it.

MR. CHAIRMAN: So to the extent that it is possible and could work, we could consider but you will look at it and come back to us. We could therefore say, "The member whose acts or whose actions were the subject of the inquiry" or something, if necessary.

Mr. R.A THORNE: Alternatively, the word "culpable" could be used in the sentence; "conduct that is culpable" could include acts or omissions, because you are really talking about conduct which is culpable and not conduct per se. That is the mischief: culpability is the mischief here, so perhaps when you look at it the word "culpable" could be made clear. You are talking about culpable conduct, which includes acts and omissions.

Mrs. M. ELIE: Sometimes yes and sometimes no, because sometimes if the Commission's investigative officer goes and does something, it is his conduct. It has to be investigated if someone complains. It is only culpable when we have decided that he has done something wrong: so I do not think we should go that far.

Mr. R.A. THORNE: You investigate conduct only if you suspect it is culpable.

Mrs. M. ELIE: Yes, but there is a suspicion, that is why, I think we should seek not to categorise the act or conduct before....

Mr. R.A. THORNE: Before proof of anything. Okay.

Mr. CHAIRMAN: Okay, we are still looking at the Bar's definitions. They propose the word "document"....

Asides.

MR. CHAIRMAN: "Any disc, tape, sound, track or other device in which songs or other data not being visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom." Go ahead.

Mrs. M. ELIE: I think it is a really technical question but at the same time the definition is a bit different from the one in the Interpretation Act. Perhaps, we should rely on what is in the Interpretation Act because as drafters as well, any change we make to capture more sophisticated forms of recording which we may not have captured before, we would take in this way as well.

MR. CHAIRMAN: You are saying that the Interpretation Act is even wider than this?

Mrs. M. ELIE: To my mind it is.

MR. CHAIRMAN: I am just wondering given the era of the Interpretation Act.

Mrs. M. ELIE: It has been amended, and a lot turns on the word "writing" because writing is more than the handwriting. It says "a document in any form", that is unfortunate, and "includes any writing and printing on any material, any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper-based form. Any storage medium including disc and tapes, books and drawings, a photograph, film, tape, negative or other

medium in which one or more." It captures the medium itself as the document. Should I continue?

MR. CHAIRMAN: It is actually a much better definition than this, so would we take this out and keep the Interpretation Act?

Mrs. M. ELIE: The Evidence Act? Yes, please.

Work recorded incorrectly and Hunsard Reporters were unable to figure out which sequence is which sequence.

In addition, Members of the Committee did not use their microphones, therefore the recording was inaudible at times.

Mrs. M. ELIE: Sorry. Staff members using Clause 46(1) in terms of the Commission's report to the Governor-General on gifts.

A different term can be used to simplify it. I guess we can say employee: "with the member of the Commission or the employee".

Before the suggestion, what is the policy as to who in the Commission should declare? It was mention in a different context, the gardener, *et cetera*. So, what level of employee, and is this still the position as the findings?

Mr. CHAIRMAN: An officer or other employee of the Commission who is ...

Members of the Committee did not use their microphones, therefore the recording was inaudible at times.

Mrs. M. ELIE: Same time as Friday?

Members of the Committee did not use their microphones, therefore the recording was inaudible at times.

Mrs. M. ELIE: Maybe two hours on Friday. I will try my best.

EDITOR'S NOTE: The remainder of the Sequences were inaudible.

**EIGHTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

FRIDAY, NOVEMBER 9, 2018

First SESSION 2018-2023

PRESENT:

- Hon. D.D. MARSHALL, Q.C., M.P. (Chairman)**
- Bishop the Hon. J.J.S. ATHERLEY, J.P., M.P.**
(Leader of the Opposition)
- Mr. R.A. THORNE, Q.C., M.P.**
- Hon. W.A. ABRAHAMS, M.P.**
- Hon. C. McD. GRIFFITH, B.Sc. M.P.**
- Senator Dr. the Hon. J.X. WALCOTT, J.P.**
- Hon. Miss C.Y. FORDE, J.P., M.P.**
- Hon. C.E. JORDAN, M.P.**
- Senator Miss L.R. CUMMINS,**
- Senator Ms M.C. TAITT, Q.C.**
- Senator C.A. FRANKLYN, J.P.**

IN ATTENDANCE

- Mr. NIGEL JONES:** (Deputy Clerk of Parliament)
- Ms. SUZANNE HAMBLIN** (Assistant to the Clerk to the Committee)
- Ms. NICOLE THOMPSON** (Special Advisor to the Attorney General)

MR. CHAIRMAN: Good morning, ladies and gentlemen. We were looking last week at the Barbados Bar Association's submissions and also the submissions of Rolanda Williams, and I think we were still at the definitions.

Asides.

MR. CHAIRMAN: Do you have Rolanda Williams' note? It was circulated. Do you have it, Bishop Atherley?

Bishop the Hon. J.J.S. ATHERLEY: Yes.

Asides.

Mr. CHAIRMAN: I do not have a difficulty with the next one. House of Assembly or The Senate and just changing that to Parliament.

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: That is alright.

Senator C. A. FRANKLYN: I do not think the inconvenience justifies this.

Mr. CHAIRMAN: Subject to the drafter. I think we can accept the recommendation but Yolanda Williams is not the substantive drafts person. she was

only here because Mrs. Elie was out, who is now ill. If we get pass those definition issues then let us see if we could look at some substantive. Senator Franklyn, do you have Mrs. Williams' comments?

Senator C. A. FRANKLYN: No. I do not.

Mr. CHAIRMAN: Can we get a copy? What is her recommendation at Clause 3? I would have to check with the drafters but I do not know why you would need to say that Section 21 of the Interpretation Act should apply?

Senator C. A. FRANKLYN: Yes. It is tidier to do that because Section 21 is what gives you the legal personality where ...

Mr. CHAIRMAN: I understand that but you should not need to say that...I do not really accept the Bar Association's recommendations on these.

Asides.

Mr. CHAIRMAN: I am not sure what they are trying to say. It looks like a discussion on everything about something. They asked several questions: multijurisdictional approach is understood.

Senator C. A. FRANKLYN: I think they were saying something about doing research but my thing is: If I have a fellow locked up for stealing in Barbados, whether the other side...I would want to lock up my man for thieving... if the foreign state is willing to give me the information.

Mr. CHAIRMAN: I do not know. We have mutually legal assistance treaties which would help them for external stuff. This seems to me to be dealing with law enforcement agencies in Barbados. The Commission is not itself a law enforcement agency in that sense so it just wants to empower it to be able to get information from the FIU and the Police. Well, it does say Foreign Financial Intelligence Unit at the end.

Senator C. A. FRANKLYN: It says including foreign...

Mr. CHAIRMAN: The Bar Association has ...dangerously broadened in critical aspect, but I do not understand.

Senator C. A. FRANKLYN: For which one?

Mr. CHAIRMAN: They are talking about Subsection 4. I do not think we should expend too much energy on it, the Bar Association has not been very helpful. This is nice for academic discourse but beyond that...

Senator C. A. FRANKLYN: The funds of the

Commission...

Mr. CHAIRMAN: If you look at the Bar Association, nobody puts salary scales in draft legislation. Those are covered by the establishment thing, is it not?

Senator C. A. FRANKLYN: ... For you guys there is the Schedule to the Act...

Mr. CHAIRMAN: That is remuneration. That is a particular instrument. I cannot see why we would put salaries scales in a substantive Act to the Commission, that does not make any sense to me.

Senator C. A. FRANKLYN: No, I do not think so either, it does not make sense.

Mr. CHAIRMAN: Do not analyse it any further, it makes no sense, let us reject it. Rolanda Williams, though she should recommend a shoulder note... There are some recommended annotations. The only body who could see them is Ralph. Those are editorials so I would not worry about them. That makes sense though because reports of the activities do not ordinarily fall under funds of the Commission.

Senator C. A. FRANKLYN: The only thing about funds of the Commission that I would want to suggest is that... You know that the Caribbean Court of Justice has a trust fund that that keeps them independent of things so if you really want to keep these things independent you should have a similar fund, put something there for them and you do not have to go in to get voted on every years because you ... 'wutless' Government that decided you are not getting any money, so you have to have them on a separate footing. They would still be audited by the Auditor General so you would not get anybody stealing the money without...

Mr. CHAIRMAN: If you wanted to do that I am not quite sure how we could get that done at this point.

Senator C. A. FRANKLYN: I just thought it would have been something to look at.

Mr. CHAIRMAN: The way in which the Trust Fund works with the Caribbean Court of Justice, for example, you put a sufficiently large corpus of cash and tie it up so that it can be invested...

Senator C. A. FRANKLYN: And you can live off of the interest.

Mr. CHAIRMAN: Yes.

Senator C. A. FRANKLYN: I know it works. I do not expect that would have been done in this thing but I am thinking that there is some consideration that you should give to it because we have the DEMS, I remember that because George Griffith was a Barbados Labour Party supporter the Family Planning was not getting any support, you see what I mean, so you do not want to have a situation like that where these people could get petty. You know up to now he has not gotten any pension.

Mr. CHAIRMAN: That is sub judice. We would accept the recommendations of Ms. Williams in relation to Clause 7.

Asides

Mr. CHAIRMAN: Clause 8. Ms. Williams

has made other editorial suggestions. She says that Subclause 3 is unclear.

Senator C. A. FRANKLYN: Yes, I have some notes on that here.

Mr. CHAIRMAN: She has recommended that we use terms that we are not... secondment and so on.

Senator C. A. FRANKLYN: The National Insurance Scheme is a board and the Ombudsman is an independent person but their staff are deemed to be public officers. You could do that and transfer them in and out if they want, you know what I mean.

Asides.

Mr. CHAIRMAN: I accept her recommendations. You have no difficulty? She is just recommending that we use secondment or transfer.

Senator C. A. FRANKLYN: Secondment appears in the Public Service Act.

Asides.

Senator C. A. FRANKLYN: Under the Public Service Act you could be on secondment for two years in the first instance and... decide where you want to work.

Asides

Senator C. A. FRANKLYN: That is why I was suggesting that. They say that they are deemed to be public officers in which case you can take them from anywhere you want and put them in the public service.

Mr. CHAIRMAN: But is there a reason why you need to deem that they be public officers?

Senator C. A. FRANKLYN: If you do not make them public officers...

Mr. CHAIRMAN: Alright.

Asides.

Senator C. A. FRANKLYN: Everybody is subject to the PSC but the PSC is not like the head of the department.

Mr. CHAIRMAN: The problem is if you are deemed to be public officers though then you rob the Commission of the opportunity to contract them or to hire them.

Senator C. A. FRANKLYN: You see the thing is we want the Commission to... we do not want to give the Commission additional things like going out there and doing personnel work and things like that.

Mr. CHAIRMAN: But if at the same time they have to rely on CPO to send somebody for them and CPO sends a...

Senator C. A. FRANKLYN: But you see the thing is, you send them back, but the problem is do not look at the Chief Personnel Officer now as the Chief Personnel Officer, look at the real office and not the person...

Mr. CHAIRMAN: Yes but that is the problem. The office is going to be populated by somebody with who legs and a head, and you do not know what you are going to end up with. I would prefer if the Commission be able to put advertisements in the papers and say that they want to hire this body [person] and trust them to hire the best person they would want. Now, if an officer applies and they want to structure the arrangement in terms of the secondment, then I am

happy with that too, but I would not want to remove the options of the Commission to be able to hire its own staff. I think that is better for the independence than for somebody to send across a constituent.

Senator C. A. FRANKLYN: Mr. Chairman, prior to 1972 (*indistinct recording*) and Don Blackman wanted to fire somebody and when it went up to the Commission the Commission said that it found no fault in these people and sent them back, they went to Parliament and abolish the Statutory Board Service Commission (*indistinct recording*.) Because they had an independent commission but it was not in the Constitution like the Public Service Commission, it was easy to get rid of them. Leave human resource matters to human resource professionals. If the Commission had somebody that when they realise the person is a dunk, you send out a report and get rid of them.

Mr. CHAIRMAN: That is a long and ignorant process.

Senator C. A. FRANKLYN: But it will still be a long and ignorant process if you had them here as a corporate body.....it is done under the Employment Rights Act and the process is even longer.

Mr. CHAIRMAN: Well then fire them.

Senator C. A. FRANKLYN: And then you go before a tribunal and then the tribunal reinstates them and then you going send them home and have to pay them for a year...

Mr. CHAIRMAN: Yeah but that is the burden that you....But it becomes a question of which is better.

Senator C. A. FRANKLYN: I like professional people dealing with human resources. You got a lot of people....

Mr. CHAIRMAN: But Member, on the one hand, you are saying that the people dealing with human resources are not professional?

Senator C. A. FRANKLYN: No, no, I am talking about the Chief Personnel Officer is not professional, I am not talking about all.

Mr. CHAIRMAN: That is all we [have] got.

Senator C. A. FRANKLYN: That might not always be the case, we have to live with it now because as you said, two legs and a head....

Bishop J.J.S. ATHERLEY: (*indistinct*)

Mr. CHAIRMAN: Yes, but they can buy in advice. The Financial Services Commission... There are people who get....

Senator C. A. FRANKLYN: The Financial Services Commission, do not use them.

Mr. CHAIRMAN: Well, I do not know....

Senator C. A. FRANKLYN: The Financial Services Commission do not know what they are doing, they will mess up everything, even the hiring.

Mr. CHAIRMAN: My preference would be for the Commission to be able to do its job without having to go through... [Just] give them a funding, this is their budget, however they need to hire, that is it. But other than that you have to rely on the public service, with all of the.... I do not see how it could work otherwise.

Senator C. A. FRANKLYN: Well, I am not

going to get into all that that is just my view. This is not one that I would vote against it because of this....

Mr. CHAIRMAN: Well, tell me if you are going to vote against it before you leave here...

Senator C. A. FRANKLYN: (*inaudible*)
Asides.

Mr. CHAIRMAN: Well, let us note that we can accept the recommendations from...

Cross-talk between Senator Franklyn and Mr. Chairman.

INVESTIGATIVE OFFICERS:

Mr. CHAIRMAN: "issue with respect to a warrant card". I do not know what a "warrant card" is.

Senator C. A. FRANKLYN: I so not see the definition of a "warrant card" here.

Mr. CHAIRMAN: So it does not exist. She says, "the Commissioner designates such members of staff as investigative officers and may issue to such officers an identification card which shall be prima facie evidence of the designation of the officers." So we can accept what she is saying, that we can delete subclause (3). In other words, you are either a member of the Police Force or you are not, whatever job you are doing does not make you under the Police Force.

Senator C. A. FRANKLYN: (*indistinct*)

Mr. CHAIRMAN: That may be but it does not....

Senator C. A. FRANKLYN: You do not have to be a policeman to have the powers of a....

Mr. CHAIRMAN: Fine, but the fact that you may have particular powers.... I agree, I do not think subsection (3) is necessary.

(Cross-talk)

Asides.

Mr. CHAIRMAN: Alright, can we move to Clause 10? We can accept those. Can we go to Clause 10? The Bar has some comments.

Asides.

Mr. CHAIRMAN: I do not, know. Ignore the Bar on this occasion. Number 11, Duty of Witnesses. We are going to stop at number 12. Ms. Williams suggested at number 14 that we make amendments which Ralph has.

Asides

Senator C. A. FRANKLYN: With number 14, I only have one issue with number 14, we have a core of people who are supposed to do that, do not mind that they sent home some unnecessarily the other day.

Asides.

Mr. CHAIRMAN: Alright, the Bar's comments now at number 15.

Senator C. A. FRANKLYN: No, Number 14c.

Mr. CHAIRMAN: Okay.

Mr. CHAIRMAN: Well I can accept that recommendation. Who serves the summonses when they come from Parliament?

Mr. DEPUTY CLERK: We send them out direct.

Mr. CHAIRMAN: Alright, so in relation then to serving summonses, let us make ... Obviously, they would tend to preserve order, perform those duties when they attend the Court, but the Police do not attend Court, Marshall attend Court. We should perhaps change this to the Chief Marshals. We do not need to get that done by statute. There is no law that say this officer has to be here. This then changes to Chief Marshal, alright. We would say, "The Chief Marshal may, when so required," and to use her language, "assigned". Okay? Alright. Nicole tell Rolanda that instead of "the police" we are going to do "Chief Marshal" for number 14, alright? We will have "Marshals", which is therefore no different to how Parliament operates.

Asides.

Mr. CHAIRMAN: The Bar comments on Section 15, but there is a lot of thing about how people should get special training.

Asides.

Mr. CHAIRMAN: Okay. Alright, so we will leave number 15 as it is. If you look at the Bar, at the bottom of page 15 of 36. It is best for you to look at it. They seem to want the words "immediately delivered" put in, so if you are arrested it means that after an arrest there is the word "deliver". In the South African or Australian context they say "immediately deliver".

Asides.

MR. CHAIRMAN: It is not much of a muchness for me but...

Asides.

MR. CHAIRMAN: Let us agree to put in "immediately". Let us put in that he will immediately deliver the person. If they come back and ask how immediately is immediately, you would know.

Senator C.A. FRANKLYN: One of the things I do not like is when these people are drafting is when there is Sections 43-46, Chapter X or Y, I like to put them in because sometimes the law the goes and looks for that other legislation, and then if 43 and 46 change in that legislation you want to have what is there, so that means that the provisions can change in this Act, but you must not intend it to be changed. I prefer to have them spelt out.

MR. CHAIRMAN: I understand but the argument on the other side is that it allows this: Take the Evidence Act, for example. The Evidence Act will not apply to anything but to try and ferret out of the Evidence Act all the possible Provisions which might come in here, you would then have another Evidence Act in this one.

Senator C.A. FRANKLYN: I am not talking about the Evidence Act. I am talking about the procedures, and here there are only three Sections that we are talking about.

MR. CHAIRMAN: I understand what you are saying but I am just suggesting to you that what happens then is that instead of focusing on the subject of your Act, you then end up having a little piece of this and a little piece of that and a little piece of everything when you really do not need to: just incorporate it by

reference. I know that you like things to be done conveniently. Anyway, so we give the Bar Association "immediately" or some such word as they wish. Did the Bar Association have a comment on Section 16?

Senator C.A. FRANKLYN: "Forthwith".

MR. CHAIRMAN: It was some word. I will leave the Chief Parliamentary Counsel to do that. If we are on 16 then, Section 17: Power of Search and Seizure, The Bar Association comments but...

Asides.

MR. CHAIRMAN: I think we can move on. The Bar Association then comments on Sections 19-24. They have made some provision for the types of recommendation.

Asides.

MR. CHAIRMAN: Section 17: Power of Search and Seizure.

Senator C.A. FRANKLYN: Seventeen? I do not have any red marks on 17. Which paragraph? Which sub-clause are they talking about?

MR. CHAIRMAN: They do not say: they just say "the provisions" and then they refer to Section 3. They want to know what practical provisions are made for custody management, but you do not put those things in a statute.

Asides.

MR. CHAIRMAN: I have moved on. Let us go to Section 19.

Asides.

MR. CHAIRMAN: The Bar Association sets out a long process and this is regard to investigative officers, and it goes through stage to stage. I think we can move on, I do not think there is any substance.

Asides.

MR. CHAIRMAN: Section 25: Declaration.

Senator C.A. FRANKLYN: Public officers are dealt with from 19 to 24. What mechanism are you going to get to get all of them settled in? I am serious, you know.

MR. CHAIRMAN: I am sure you are sure serious. Who has the annotated Bill? Okay, fine. Miss Williams is making a recommendation at 25.

Asides.

MR. CHAIRMAN: She says within 90 days of the appointed day.

Asides.

MR. CHAIRMAN: This is a drafting thin. I am happy to defer to her. She is suggesting that instead of saying "on or before the appointed day" that we say "within 90 days of the appointed day". The problem is you may not know when the appointed day is. If that is her recommendation I will go with it: it is not anything that I want to get my knickers in a twist over.

Senator C.A. FRANKLYN: I am asking you why.

MR. CHAIRMAN: You fight on everything: even if people tell you "yes".

Asides.

MR. CHAIRMAN: All right, so we can accept her 25. I think somebody suggested that you should file with the Governor-General and not with the

Commission but I do not think there is any point in that. When you are a member or a staff of the Commission you file with the Governor-General. When you are a person in public life then you file with the Commission. I think that is perfectly logical.

Let us see what The Bar says. I do not have any difficulty with the Blind Trust arrangements.

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: Yes, but Blind Trust is defined in 28(5).

Senator C. A. FRANKLYN: There are two Trusts in here. One if you are holding money in trust for me. You do not have to disclose the ...

Mr. CHAIRMAN: It is like a lawyer's client account.

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: No, no, no, that is not the issue. If Mr. Thorne is a person in public life but he maintains a client account. Mr. Thorne is not obligated to say what is in his client account because it is not his money. He is holding it as a trustee and that was a major failing of the last Bill and I remember making that exact point before the Select Committee because they included moneys that he might have held on trust for anybody else.

I do not have a difficulty with the Blind Trust.

Certain remarks made by Bishop Atherley were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: Because, I remember discussing that with Kay but that is nonsense. A Trust is a structure. It does not require any statutory formulation, or any statute to say this is the kind of Trust. Trusts develop in law so we have ...

Senator C. A. FRANKLYN: Blind Trust is new to us.

Mr. CHAIRMAN: It is not new to us.

Senator C. A. FRANKLYN: Trust is not new to Barbados. I know a lot of people who have the Trustees Act, but the one that is blind now, I do not understand how it functions.

Mr. CHAIRMAN: It is easy enough but the thing about it is right now we have something called an International Trust Act which is to be changed. The problem is that whoever wrote this had no exposure to the function of the International Trust Act because the International Trust Act is by definition a Blind Trust. It is where you sent up a Trust but you so remove yourself from the management of its affairs that you have no power over the trustees. That is all. You appoint somebody under the Act called a Protector whose job is to make sure that the Trustee does not go and do foolishness but you do not get to influence what

happens. When Paul Martin became Prime Minister of Canada, he owned Canadian Steam Ship and he put his stuff in a Blind Trust. When Donald Trump became the President of the United States of America (USA) ...

Asides.

Mr. CHAIRMAN: He called it a Trust but ...

Asides.

Mr. CHAIRMAN: Exactly. I am saying that the lawyers who wrote this, *(Indistinct)* I am not closed.

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: Yes, but it is defined in subsection 5 because however it is set up, this is what it is supposed to do. It is created when a person in public life ... okay? Did they actually say what it is there?

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: I do not have anything to put into a Blind Trust either. I could put debt. I would be very happy to put debt in a Blind Trust. I would love to put my debt in a Blind Trust but ...

I do not think there is an issue here, my only concern and it one I would not trouble, is that you now have to put it in a trust company but the truth is, if you have enough ...

Senator C. A. FRANKLYN: Why I cannot get Mr. Thorne to be my Trustee and manage my stuff? Why do I have to let a company ...?

Mr. CHAIRMAN: You can call Mr. Thorne and tell Mr. Thorne, "Mr. Thorne, I want you to ..."

Senator C. A. FRANKLYN: But I can call the CEO of the company too.

Mr. CHAIRMAN: No, no, but the trust company, *(Indistinct)*..... If Fortress is managing your trust, you cannot call the CEO of the company. You could see him at a cocktail and ask him a question but they are going to follow their fiduciary duty but Mr. Thorne is your buddy.

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: No. If you call me and tell, "Man Dale, things tight this month, I want an extra tralla, I gine tell you no?"

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: You have to set up the trust relationship first. Bring the assets.

Senator C. A. FRANKLYN: I trust you.

Asides.

Mr. CHAIRMAN: You have to trust me with something.

Asides.

Mr. CHAIRMAN: In their statement here, Mr. Atherley you will see at number 19, page 9 of 26, the Bill itself does not define Blind Trust and it says it quite clearly there.

Senator C. A. FRANKLYN: There is a definite but the definite is more of an explanation.

Mr. CHAIRMAN: But how do you define a Trust anyway.

Certain remarks made by Senator Franklyn were inaudible because he did not turn on his microphone.

Mr. CHAIRMAN: Yes, but the nature of a Trust, this says how it is supposed to be structured. As long as it meets those criteria then it is a Blind Trust but the law treats Constructive Trusts and Resulting Trust and all those other Trusts in the same kind of way. I think this is somebody who just came out of law school who is not ... We effectively have these things ...

Asides.

The remainder of the day's discussion was inaudible.

**NINTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

FRIDAY, NOVEMBER 13, 2018

First SESSION 2018-2023

PRESENT:

- Hon. D. D. MARSHALL, Q.C., M.P., (Chairman)**
- Hon. Miss C. Y. FORDE, J.P., M.P.**
- Mr. R. A. THORNE, Q.C., M.P.**
- Hon. C. E. JORDAN, M.P.**
- Mr. C. McD. GRIFFITH, M.P.,**
- Bishop J. J. S. ATHERLEY, J.P., M.P. (Leader of the Opposition)**
- Miss L. R. CUMMINS**
- Ms. M. C. TAITT, Q.C.**

IN ATTENDANCE:

- Mr. Nigel R. JONES, (Deputy Clerk of Parliament)**
- Ms. Beverley, S. GIBBONS, (Deputy Clerk of Parliament)**
- Miss Suzanne HAMBLIN, (Assistant to the Clerk to the Committee)**
- Ms. Nicole THOMPSON, (Special Advisor to the Attorney-General)**

ABSENT WERE:

- Hon. W. A. ABRAHAMS, M.P.**
- Senator Dr. the Hon. J. X. WALCOTT, J.P.,**
- Senator C. A. FRANKLYN, J.P.**
- Mrs. Mechelle ELIE, (Office of the Chief Parliamentary Counsel)**
- Mr. P. E. EASTMOND, (Clerk of Parliament)**

The Chairman stated that he had to leave urgently and asked Mr. R. A. THORNE to Chair the meeting until his return. Mr. Thorne graciously accepted and assumed the Chair.

CALL TO ORDER/WELCOME

Mr. Thorne called the meeting to order at 2:18 p.m.

Mr. R. A. THORNE: *(Gavel hits table).* With that minor thug let us call ourselves to order.

Welcome back Senator Cummins and Honourable Colin Jordan. Were you hear the last time Senator Taitt?

Ms. M. C. TAITT: Yes.

Mr. R. A. THORNE: It is a pleasure to see you as always.

The Attorney-General who chairs these sessions said he will be back in less than an hour so I will try to fill in until he comes back. What we were doing is looking

largely at the submission from the Barbados Bar Association and we doing that conjointly with the recommendations from the Office of the Chief Parliamentary Counsel (CPC). Do you have that Senator Cummins?

Senator Miss L. R. CUMMINS: Yes.

Mr. R. A. THORNE: Good. We have reached part five of our own draft. We have reached Part Five of our Bill, if I can put it like that, and we will go through clause by clause even in cases where the Bar has not commented, even in cases where the CPC has not commented since I believe, we are entitled to review our own work.

Senator Miss L. R. CUMMINS: Mr. Chairman, just a query. Are we going to, at some point, also review the submissions made by the other entities that made few written submissions as well?

Mr. R. A. THORNE: We can do, but for some good reason, our substantive Chairman, on the last occasion, was focussing mainly on the Bar's submission, no prejudice intended there, and the CPC, but yes, everyone can feel free to make reference to any submission made since everyone submission must be respected. If you have theirs or any others, please feel free.

Senator Miss L. R. CUMMINS: Okay.

Mr. R. A. THORNE: We are at Part Five – Register of Interests. Does everybody have our draft, so to speak? Duty of Members to file statement of registrable interests. As I have noted, the Bar has not commented, that is Clause 37 of ours and I am looking at the submission from the office of the CPC. The CPC has not commented. I do not know if they are other independent suggestions or comments. Honourable Leader of the Opposition, do you have any comments.

Bishop J. J. S. ATHERLEY: I did not have any noted comment.

Mr. R. A. THORNE: You did not. Okay. I will just read it so that we follow it.

“Every Member of the House of Assembly and The Senate shall file with the Commission in addition to his declaration under Section 25, a statement of registrable interests. A Member of the House of Assembly or the Senate shall file his statement of registrable interests in such form as may be prescribed within 90 days after.”

Let me pause and say that on the last occasion Senator Franklyn had queried why Senators - and I am saying

this for Senators Taitt and Cummins as well, for some special comment – he felt that, and I think he meant it seriously, that Senators should not be required to file under the Act. All of us felt otherwise and since you have missed that portion of the discussion I do not know if you have a comment. We all felt that Senators should be covered by the legislation. One of us would have said to him that Senators, as lawmakers, sit in influential positions and are possibly subject to influence by outside persons, and therefore they should be covered. I do not think he said it facetiously when he said that Senators are probably not paid as much as others therefore ...

Asides.

Mr. R. A. THORNE: Senator Taitt, I think you are with us as to the provision that Senators should be covered by the legislation.

Ms. M. C. TAITT: Are you asking me that?

Mr. R. A. THORNE: Yes, yes please.

Ms. M. C. TAITT: Are you asking me to comment in relation to Clause 37 or in relation to the Schedule that outlines the ...

Mr. R. A. THORNE: The Schedule. I just wanted to seize the opportunity to go back to the Schedule and since you and Senator Cummins were absent, I wanted to canvass your view on that. If you wanted us to go back and consider that to wit that Senator Franklyn had expressed the view doubting that Senators should be in the Schedule, and we all disagreed with him. Since you and Senator Cummins are here afresh today, I wanted to know if you felt either way strongly.

Senator Miss L. R. CUMMINS: I willing to go with the consensus. I do believe Senators should be covered.

Senator Ms. M. C. TAITT: Mr. Chairman, I would rather not make a definitive comment at this time. I would rather listen on having not been here for two meetings, but thank you for the opportunity.

Mr. R. A. THORNE: Yes. It is my pleasure. Alright, let us come back to Clause 37 which requires "the Member of the House of Assembly and the Senate to file his statement as maybe prescribed within 90 days after day on which he becomes a Member in respect of his interests on the day on which he became a Member and the 31st day of December in each year during which any part of which he was a Member in respect of his interests."

What is operative there would be the requirement to file within 90 days after membership of either body. Any difficulties? It is three months.

Senator Miss L. R. CUMMINS: No.

Mr. R. A. THORNE: Okay, let us press on.

"Notwithstanding Subsection 2(B) a Member need not file a Statement of Registrable Interests for a particular year where the Member filed a statement in the six months preceding the 31st day of December in that year."

Subclause (4) seems non-controversial to me.

Senator Miss L. R. CUMMINS: Mr. Chairman, I know you noted that the Barbados Bar

Association and the Chief Parliamentary Counsel had not commented on this clause of the Bill but in the submissions that we received there was one submission which did make reference to Clause 37(4). Institute of Chartered Accountants of Barbados (ICAB) made no comment but the Integrity Group of Barbados (IGB) did raise Clause 34(4) and it reads as follows:

Mr. R. A. THORNE: What is IGB again?

Senator Miss L. R. CUMMINS: The Integrity Group of Barbados.

Mr. R. A. THORNE: Oh, yes.

Senator Miss L. R. CUMMINS: I have gone through to see who has commented on which and they are the only one that have commented on Clause 37(4). It says, "Clause 37(4) should be removed as it presents a possibility that the estate can be a beneficiary of illegal actions. Prior to transfer to estate, an inquiry should be performed. If there are sufficient grounds for suspicion of corrupt activity and there needs to be freezing of orders and as such provisions before distribution, if there is a reason for disquiet. There should be a certificate from the Commission prior to any distribution to the estate." Those were the comments made by the IGB group and they are the only ones that have commented on this clause.

Mr. R. A. THORNE: Are they saying the filing should be done by the Administrator?

Senator Miss L. R. CUMMINS: Yes.

Mr. R. A. THORNE: And what is the basis again?

Senator Miss L. R. CUMMINS: That the proceeds of corrupt acts could be transferable to the estate without inquiry.

Mr. R. A. THORNE: Except, that they are asking for an obligation to be transferred from, let us say, an impropriety deceased person unto an Administrator who may well be innocent. How do we feel about this?

Ms. M. C. TAITT: I agree with that, Mr. Chairman.

Mr. R. A. THORNE: In other words, should people's sins die with them?

Ms. M. C. TAITT: The responsibility that would fall upon an administrator would be extremely onerous especially if they have no idea, indication or knowledge of any possible impropriety.

Mr. R. A. THORNE: Well said.

Senator Ms. M. C. TAITT: I do not believe it would be reasonable to go after the Administrator of an estate because that is exactly what you would be doing, and it could end up having people not wishing to even settle an estate if they are going to be faced with that type of trouble.

If I may just, Mr. Chairman, if you have finished with Clause 37(4)...

Mr. R. A. THORNE: No. I think the Leader of the Opposition wants to make a comment.

Bishop J. J. S. ATHERLEY: Only if you wanted a comment from me.

Mr. R. A. THORNE: Yes, please.

Bishop J. J. S. ATHERLEY: I understand

what Senator Cummins is saying. I did note when I went through these that it is only the Integrity Group. The Bar Association and others did not make reference to that and it seems odd that the political or public official in question, the principal target, is deceased now and you are transferring obligation on an Administrator who is not a principal target then to follow through with registering that. To me, that is not fair.

Mr. R. A. THORNE: Yes, that is Senator's Taitt's view as well.

Bishop J. S. ATHERLEY: Precisely.

Mr. R. A. THORNE: So Senator Cummins can we sway you?

Senator Miss L. R. CUMMINS: I have no objection to the position. I am just...

Mr. R. A. THORNE: You are just highlighting what they have said.

Miss L. R. CUMMINS: Only because you had prefaced your comments by saying that the Bar Association and the Chief Parliamentary Counsel had not commented and I have only registered in my own notes one comment on this section of the Bill.

Mr. R. A. THORNE: Well, since you have done that with all, please feel free to let us know what the others have said from clause to clause.

Hon. C. E. JORDAN: Mr. Chairman, can I ask a question?

Mr. R. A. THORNE: Yes.

Hon. C. E. JORDAN: The information of immediate family members of that deceased person would have been filed while the person was alive.

Mr. R. A. THORNE: By him.

Hon. C. E. JORDAN: By him or her while he or she was alive.

Mr. R. A. THORNE: Yes.

Hon. C. E. JORDAN: Now, I agree that putting a responsibility on the Administrator is to me almost unjust, however, is there any, and I do not recall seeing it in the Act, any provision for those persons who are immediate family members who may nor may not be beneficiaries of the estate, to have to do some final filing after the estate is settled? I am just trying to think through...

Mr. R. A. THORNE: I do not think so. I will relook it but I do not think so.

Hon. C. E. JORDAN: Okay.

Mr. R. A. THORNE: Legislation like this should not pursue relatives in that sense, the main actor so to speak is the public official and his beneficiary may or may not be innocent, but you cannot presume guilt simply because they are related to him if he is a miscreant.

Senator Miss L. R. CUMMINS: Just a thought though, I know that Barbados is filled with rumours and innuendoes, and sometimes you have to be able to separate that from the facts. There was a lot of discussion in the last few years about corrupt proceeds being transferred into the account of a relative who then died and the estate is battling to figuring out: (1) this person had no way of coming by this amount of wealth

in the first instance and; (2) arguing that the funds should then go to the estate but the person who had put the funds in that estate said the funds were theirs, but then the estate had a responsibility to settle them but they were alleged to be the proceeds of corruption. How do you treat with an instance like that, given what ICAB is asking for because then the money goes to the estate but they came from illicit means.

Mr. R. A. THORNE: I can think of two agencies immediately, one would be the revenue. I think the revenue always has the opportunity and certainly the jurisdiction to pursue funds that are ill-gotten and not declared as being taxable, and the other is the Office of the Director of Public Prosecutions. The Director of Public Prosecutions still has authority to pursue funds that maybe laundered, and you certainly can launder moneys into bank accounts that are not your own. So that, although the legislation may be deficient in that regard there are two other agencies that can pursue ill-gotten gains that are placed into accounts to avoid this legislation. It is very difficult to avoid the Barbados Revenue Authority.

Senator Miss L. R. CUMMINS: We all know.

Mr. R. A. THORNE: Yes, some of us know very well.

Senator Ms. M. C. TAITT: Mr. Chairman, does the terminology of Administrator in this legislation also means Executor? Are they using them interchangeably?

Mr. R. A. THORNE: That is a very good question.

Senator Ms. M. C. TAITT: Is that a very good question, Mr. Jones?

Mr. R. A. THORNE: It is, because Senator Taitt an Administrator is an Administrator and an Executor is an Executor. As you would appreciate the Executor is the named person under the Will, as the Clerk would tell you.

Senator Ms. M. C. TAITT: So do we need to define Administrator of an estate for clarity?

Mr. R. A. THORNE: Or we could extend it to personal representative.

Asides.

Mr. R. A. THORNE: Yes, excellent.

Senator Ms. M. C. TAITT: Do you know that all that means is that people do not have to administer the estate. If you define it...

Asides.

Senator Ms. M. C. TAITT: No, what I am saying is that you could put a definition but if persons determined that to have a definition means that they become under the microscope they just would not administer the estate, so how do you access the ill-gotten gains that way?

Mr. R. A. THORNE: Well, the legislation is saying that it is lost to this Act, to the Commission, that you really cannot pursue an innocent Administrator, an innocent Personal Representative. You seem to feel strongly about it Senator Taitt.

Senator Ms. M. C. TAITT: Not really, we are

dealing with a legal issue. It is always good to ventilate the anomalies of legislation so that, if and when it is passed, you do not have to ventilate it in a court of law.

Mr. R. A. THORNE: Right. Now is the time.

Senator Ms. M. C. TAITT: So I would recommend that there is clarity as to what an Administrator of an estate means in this legislation because an administrator is more than likely to be a family member, whereas an executor could be a non-family member. So you would have more protection if the Administrator is immediate family who would have been declaring anyway under the legislation elsewhere, whereas an executor would not necessarily have been required to do so if they are not family members. Am I right?

Mr. R. A. THORNE: You are right, but in your experience Executors named as they are under the instrument do tend to be relatives.

Senator Ms. M. C. TAITT: No, that is the point and that is why I am saying this...

Mr. R. A. THORNE: More often than not a man names his wife or his brother.

Senator Ms. M. C. TAITT: More often than not, but if the person is a...

Mr. R. A. THORNE: A good friend.

Senator Ms. M. C. TAITT: If the person is a business person with a lot of assets they tend to name the business partner or they would name the business partner and the family member.

Mr. R. A. THORNE: Yes, as joint executors.

Senator Ms. M. C. TAITT: Or they would do three of something like that, three executors.

Mr. R. A. THORNE: Right. Could we accept Mr. Jones' suggestion and use the generic term Personal Representative instead? Based on what you raised Senator Taitt, you raised the fact that this restricts it to an Administrator and seems to exclude an Executor, so can we then substitute the language of Personal Representative?

Asides.

Senator Ms. M. C. TAITT: Yes. I think that would be the safest thing to do.

Mr. R. A. THORNE: Yes.

Senator Ms. M. C. TAITT: If we are finished with subclause (4), I would like to revisit Clause 37 (2) with the ninety-day period, I know that you stressed three months but is three months enough time? I do not believe so.

Mr. R. A. THORNE: You tell us.

Senator Ms. M. C. TAITT: I do not believe so, especially if you are new to public office and you are not used to having your information in a location or locations that would make it easily reduced to what is called for in Clause 38.

Mr. R. A. THORNE: This is just a declaration. Is it not a case of identifying your assets?

Senator Ms. M. C. TAITT: Am I misunderstanding the requirements of Clause 38?

Mr. R. A. THORNE: Clause 38 or 37?

Senator Ms. M. C. TAITT: Clause 37 says that you have to make the declaration a statement of

registrable interest. The content of the statement of registrable interest is found at Clause 38. For you, Mr. Chairman, three months may not nearly be enough time and I am really doing this for you and people like you. Do you understand Minister Jordan?

Mr. R. A. THORNE: I am hoping that the Attorney-General comes back very soon.

Senator Ms. M. C. TAITT: I mean this is really me asking from the perspective of having a very active and vibrant Government who hits the ground running and does not stop. You are many places at different times and if you are aware of it, yes, but if you are new and not expecting it, I am wondering if three months is enough time or if you should give a little more time. It is just a question.

Mr. R. A. THORNE: What time period would you say, four months which is one-third of the year; six months which is one-half of the year?

Senator Ms. M. C. TAITT: Well, I note that at Clause 37(3), there is a six-month period that you do not have to file, I think that is what prompted me to ask if three months is enough time.

Mr. R. A. THORNE: Well you see, subclause (3) is drafted only because 2(b) exists. Clause 37 (2)(b) refers to a year, any part of which he has been a Member. So that, for example, if a chap becomes a public official, let us say in November.... Is that what it is saying?

Senator Ms. M. C. TAITT: No, if the person becomes a Member in November, the only way they do not have to file is if they had filed six months preceding December 31 in that year, so somebody who becomes a member in November, as I am reading it here, would be expected, as it stands 90 days from November, to be submitting a statement. The only way that you are not required to do it is if you had done one six months before. I am wondering if three months is realistic bearing in mind the responsibilities that one may have as a Member of the House of Assembly and/or the Senate and the amount of work that you have to be addressing your mind to, to then have to do this declaration and ensure that it is accurate for fear of being found liable under the Act. One may want more time than three months.

Mr. R. A. THORNE: Let us look at Clause 38(1) (a) to (i), and ask the question whether any of those issues could reasonably be declared within three months.

Senator Ms. M. C. TAITT: But again, Mr. Chairman, if it is you, three months is not enough time. I do not understand.

Asides.

Mr. R. A. THORNE: Would you want to extend it to six months, four months? Well, the legislation expresses itself in days - 120 days, 90 -120 days, another 30 days? 150 days? 180 days?

Senator Ms. M. C. TAITT: I am actually throwing this out to hear what other people think.

Mr. R. A. THORNE: Well, you have raised it.

Senator Ms. M. C. TAITT: I did. In the context of the environment in which I am operating as a

Senator currently I would want six months.

Mr. R. A. THORNE: You would want six months?

Senator Ms. M. C. TAITT: Yes. Only because you want to do it right but you are also doing other things, and I have also my profession to deal with. It really depends on the detail and the amount of information that you have to reduce to writing for the purposes of satisfying Clause 38. But I am not familiar enough with the legislation on the whole to know if to make it more than 90 days would mean it would contravene something else, contradict or clash with another section.

Mr. R. A. THORNE: You have raised an interesting point because while you were speaking I thought of the term "shows an action". You may have an expectation of property, and you referred to yourself. You may be the beneficiary under an estate and that estate may yet be unsettled, and therefore three months may be too short.

Senator Ms. M. C. TAITT: And if it is being settled in Barbados, right now three months is a joke.

Mr. R. A. THORNE: Precisely.

Senator Ms. M. C. TAITT: We cannot do it based on the timeframe for....

Mr. R. A. THORNE: Let us consider an extension of the time, that is what we are here for. You wanted to say something, Mr. Jones?

Mr. Deputy Clerk: Is it saying you have to file twice within 90 days of you becoming a Member and within 90 days after December 31 with respect of your interest at the end of that year. So if you became a Member, for instance, in May you have three months in which to file, but at the end of.... you now have to file a declaration with respect of the interest at December 31. You have another 90 days to do it.

Hon. C. E. JORDAN: Subclause (3) speaks to that because if you became a Member on May 26 or 27 of 2018 and you filed in August 2018, then you are not called on to file at December because you would have filed within six months of the December 31 date. I am using 2018 because you have an instant situation, so if I filed in August 2018 then I do not have to fulfil the filing for 31 December, 2018, and subclause (3), in my view, speaks to that. I have filed within six months of December 31, so I do not have to file again for the end of 2018.

Senator Ms. M. C. TAITT: But hold on, though, Mr. Chairman, does 2(b) say by the 31 or after December 31?

Asides

Hon. C. E. JORDAN: Remember it is after 31st day of December.

Senator Ms. M. C. TAITT: So it is March we are talking about?

Hon. C. E. JORDAN: Yes, and so you have until March to file.

Senator Ms. M. C. TAITT: Can you make your point again, Minister Jordan?

Hon. C. E. JORDAN: My point had to do with a person who became a public officer coming onto

the end of May and filed some time during August, 2018. The requirement for filing interest as at December 31 with subclause (3) in my view would not apply because this person has filed within six months of December 31, 2018, so the requirement to file where I am now at December, 2018, is waived because of subclause (3) and my next filing is within three months of December 31, 2019, if I am still actually a Member of the House of Assembly.

Mr. R. A. THORNE: Public Official?

Hon. C. E. JORDAN: No, but this one is specific to Members of the House of Assembly and the Senate, Clause 37.

Mr. R. A. THORNE: Further to Senator Taitt's suggestion, could we then extend it to six months, which is equivalent to 180 days?

Hon. C. E. JORDAN: It feels long.

Mr. R. A. THORNE: Yes, it feels long. It gives a lot of space to maneuver in a way that the Commission may not be impressed.

Hon. C. E. JORDAN: Mr. Chairman, Clause 38(1)(i) sounds as though it speaks to – I do not know how lawyers determine this- but "substantial" interest. I do not get the impression that it speaks to a bank account like the ones that myself or Bishop Atherley may have, \$200 or \$300. So that, in terms of trying to find out every single detail, I do not get the impression that you need to uncover every single place where you may have an interest. It sounds to me where it speaks to "substantial", it says "any other substantial interest" sounding to me as though subclauses (a) to (h) should be "substantial" in some legal definition.

Senator Ms. M. C. TAITT: But it is interesting Minister Jordan that you should make that point because then, Mr. Chairman, what is deemed to be "substantial"?

Mr. R. A. THORNE: Precisely.

Senator Ms. M. C. TAITT: You cannot use vague language like this and something as serious as this, so that "substantial" would need to be defined because what I consider.... For example, Minister Jordan, you and I would consider \$1 000 to be substantial, but for the Chairman....

Hon. C. E. JORDAN: Yes, both acting and the substantive Chairman, yes, I understand where you are going with that.

Asides

Senator Ms. M. C. TAITT: I would think in this particular piece of legislation we should try wherever possible to be as clear as possible, so that we do not have subjective interpretation for things like "substantial" that is way too vague.

Mr. R. A. THORNE: Are not (a) to (h) sufficiently specific? It reads, "particulars of any directorships be particulars of any contract", whether it is substantial or not. Presumably, a contract with Government is substantial and presumably all those matters raised (a) to (h) are substantial. Particulars relating to sources of income.

Senator Ms. M. C. TAITT: But Mr. Chairman, look at what Clause 38 (1) (i) says, "Any

other substantial interest, whether of a pecuniary nature or not, which the Member considers may appear to raise a material conflict between his private interests and his public duty". That is very subjective.

Mr. R. A. THORNE: What we could do is remove the word "substantial" and say "any interest whatsoever".

Senator Ms. M. C. TAITT: So you need more time then to do yours Mr. Chairman? Okay.

Mr. R. A. THORNE: I think it is just.....

Senator Ms. M. C. TAITT: Do not mean to cross you Mr. Chairman, we have to be careful about "substantial", because if we take off "substantial", then what Minister Jordan is saying would then become something that you have to be concerned about. Do you put every single thing, \$0.10, \$0.50, \$1.00, what do you do? Are you guided by (a) to (h).

Mr. R. A. THORNE: (a) to (h) is very specific. It says, "any contracts, any directorships, any beneficial interest held in land, whether substantial or not." It is just that it is a drafting technique. I think the draftsman believes that there is good reason why she should say "any other substantial interest", presumably, all of these other things are "substantial". Not because of the size of the contract, but because of the meaning of the contract.

Senator M.C. TAITT: Point taken! We can leave "substantial"?

Mr. R. A. THORNE: I would think so.

Senator M.C. TAITT: Alright.

Mr. R. A. THORNE: Substantial is just describing the nature of the relationship between the Government and the public official.

Hon. C. E. JORDAN: Mr. Chairman, that takes me back to Senator Taitt's position on time. This sounds like some scenario where an investigation has to be done and an assessment be made

Mr. R. A. THORNE: By the declarant?

Hon. C. E. JORDAN: The declarant, but in my mind, to figure out if it is going to raise a conflict or not, sounds to me as though the declarant is going to be getting advice.

Mr. R. A. THORNE: As he is entitled to.

Hon. C. E. JORDAN: Right, for Clause 38 (1) (i) specifically, because you do not have to get advice if it is any source of income, you know what the sources of income are.

Mr. R. A. THORNE: Precisely.

Hon. C. E. JORDAN: When you get to Clause 38 (1) (i), you may need then to get an attorney to assess whether this "other thing", and I do not know what those "other things" could be, could fall under Clause 38 (1) (i) and be subject to declaration. I am only raising that because if you have to get advice from a legal or an accounting professional, then you may not have as much control over the time. Maybe that is the only place where the three months could be questioned, whether you want to push it to four months if you are waiting on a response from a professional advisor.

Mr. R. A. THORNE: It comes down to

personal judgement, does it not? If you have done well enough to become a Member of the House or the Senate, surely you had enough judgement to know what is subject to declaration. Ultimately, it would be

Hon. C. E. JORDAN: If we did, then we would not need this, we would not need Clause 37 to apply to us. Clause 37 applies to us, who are Members of these two Chambers precisely because even though we are good enough to be elected, we have not proven in the past to operate at such a level that just become unnecessary. I think it is here for a reason, because we do not always act reasonably.

Mr. R. A. THORNE: Based on what you said, you had recommendation to go to four months?

Hon. C. E. JORDAN: Yes, my thing would be in a case like this...

Mr. R. A. THORNE: As raised by Senator Taitt on the issue?

Hon. C. E. JORDAN: Yes, and for the reason that I outlined.

Senator Ms. M.C. TAITT: Following on Minister Jordan's point about seeking professional advice, if we look at Clause 38(2), maybe that removes the need to seek professional advice to that extent, inasmuch it is not requiring disclosure of the actual amounts or extent of any financial benefit, contribution or interests. Maybe it is not this one that you will need the professional advice for, so maybe the 90 days can work.

Senator L. R. CUMMINS: Mr. Chairman, if we can go back to the discussion on the definition of "substantial". Just recently, Senator Taitt raised the issue on the floor of the Senate some time ago about payments to Senators and Ministers, and how they were inadequately compensated and she made comparisons. It generated quite a bit of public debate, and I saw one particular poll where someone asked, "What do you consider a substantial salary?" The numbers that were being quoted, \$3,000.00, anyone that makes over \$3,000.00 is making a lot of money, I looked at that, and certainly most of us in this room would look at that scoff, but in the public's face the definition of "substantial" is significantly up for question. I did take the point that Senator Taitt made about the definition needed for the word "substantial" because it is entirely subjective based on where you stand in income.

Mr. R. A. THORNE: Well again, if you look at Clause 38 (1) (i), "substantial" is qualified because it says, "whether of a pecuniary nature or not", so "substantial" is not always monetary. It can relate to influence, you can be a director in a company that has influence, you can be a director in a company that does a lot of work with Government, and you can be sitting on that directorship without being paid. It is a question of influence and not always related to monetary or financial value of the interest.

Asides.

Senator L. R. CUMMINS: Having raised that issue Mr. Chairman, if you agree, I would want to introduce two comments that were made on Clause 38.

if you will. Two comments were submitted to us on this clause by ICAB and by the UNDOC.

Mr. R. A. THORNE: Who is UNDOC?

Senator L. R. CUMMINS: United Nations Office on Drugs and Crime. UNDOC made a very general statement, which said that this clause should possibly be considered to include grants, foundations, memberships, employment consultancies and patent licensing. That was their submission. ICAB asked specifically on Clause 38 (1)(b), on the content of statement of registrable insurance. They said they needed clarification on whether this requirement applied to a natural person or a juridical person, in summary. It reads, "need clarification whether this requirement to disclose particulars of any contract made with the Government relates only to those directly including the individual, his spouse or his children, or whether that extends the Government contracts made with entities in which the individual is a director or investor". Those were the two comments that were made on Clause 38.

Mr. R. A. THORNE: In relation to the later that takes us into Clause 38 (1)(i) again, "any other substantial interest, whether of a pecuniary nature or not", and Clause 38 (1)(c) as well.

Asides.

Senator L. R. CUMMINS: We only then have the UNDOC comments.

Mr. R. A. THORNE: We agree that their concerns are covered in Clause 38?

Senator L. R. CUMMINS: We held public hearings, so had to be in a position to say we considered the submissions and we found they were reflected in the legislation.

Mr. R. A. THORNE: Thank you very much.

Senator Ms. M.C. TAITT: Mr. Chairman, as we look at Clause 38, I am interested in hearing persons' view on the relevance of subclause (g): "Particulars of any political trade or professional association to which the person belongs." In some cases it would be stating the obvious.

Asides.

Senator Ms. M.C. TAITT: In my view in some cases it would be stating the obvious and in other cases it is nobody's business.

Mr. R.A. THORNE: Where would it be nobody's business, Senator Taitt?

Senator Ms. M.C. TAITT: The political, particularly as it relates to the Independent Senators, I can speak from what transpired in relation to myself. When we were invited to be Senators by Her Excellency the Governor-General, we were invited to a meeting so that she could express what she expected of us, and she made it clear that we are to have no political affiliation.

Mr. R.A. THORNE: Really?

Senator Ms. M.C. TAITT: Therefore....

Mr. R.A. THORNE: How does one define political affiliation? Does it mean membership of a party?

Senator Ms. M.C. TAITT: The party to

which the person belongs, so I am curious to ascertain that component of this legislation and the relevance of it, and how whatever party you belong to makes a difference: if you are corrupt, you are corrupt.

Mr. R.A. THORNE: Yes. Your concern is that "political" ought to be removed from it.

Senator Ms. M.C. TAITT: I am sorry. Perhaps I did not make that clear.

Mr. R.A. THORNE: Yes, that is a right. In fact, it is a constitutional right.

Senator Ms. M.C. TAITT: Yes, so I think that "political" should be removed and I would want to have someone explain to me how the person's trade or profession forms part of a registrable interest. I do not understand, Mr. Chairman, I probably should not say I do not understand; I would like clarity but I do believe that certainly "political" should be removed.

Senator Miss L.R. CUMMINS: Mr. Chairman, if I may, I accept the constitutional right of association, which is what we are talking about in terms of "political", which is fine. However, if you were to go by the Transparency International standards and use their toolkit for measuring integrity, there are four elements which are incorporated into transparency legislation which we believe are not fully reflected in these documents, and we did have an extensive discussion over the course of the hearings on several of them. The four entities are: The media, civil society, political parties and private businesses. Those are the four that we spoke about. We spoke extensively about related and ancillary legislation which would cover treatment with those bodies, but the exclusion of political parties and political affiliation from the Bill is something that is inconsistent with the Transparency International Integrity Toolkit. Therefore, on that basis I am not supportive of the complete removal of any mention of political parties. If there is a better way to treat with it that is one thing, but Transparency International does set a standard for the incorporation of political parties, and by extension, political affiliation.

Mr. R.A. THORNE: Senator Taitt.

Senator Ms. M.C. TAITT: I am not familiar with the organisation of which you speak. I think the anomaly, though, is that in our environment we have Senators who are independent so by their nature they have been appointed to look after the interest of the people of Barbados. They are not supposed to have a political affiliation. That is in accordance with their remit, so therefore, those persons who fall under the category of the persons appointed by Her Excellency, who have to comply with this, it is to my mind a conflict of interest. It is an anomaly that would need to be addressed. I do not believe that the Independent Senators should be called upon to make any such declarations, particularly those who happen to belong to a political party.

Mr. R.A. THORNE: What about trade and profession?

Senator Ms. M.C. TAITT: That one I would like to understand why we need that. When you are in the House of Assembly, especially the Senators....

Mr. R.A. THORNE: Sorry to cross you, Senator Taitt. In the past – and this is not to reflect on the present – had not Independent Senators been appointed to represent interest groups? The church, business, labour unions....

Senator Ms. M.C. TAITT: But not political. Certainly in the Constitution there is no reference. The political is handled by the Opposition or the Government. We look after interests.

Mr. R.A. THORNE: Correct.

Senator Ms. M.C. TAITT: But not political interests. That is what the Opposition and the Government are supposed to do.

Senator Miss L.R. CUMMINS: So, Mr. Chairman, just a query. Two things, and let me go backwards to where Senator Taitt responded to Minister Jordan, and when we were discussing Clause 37 in its parts, Minister Jordan responded to say that the fact that there should be no need for some of these things if we were to include, for example, the Senators, because we have had instances in the past where they had proven that even though they are in a position to be appointed to the Senate or elected to the House, they are not necessarily not corrupt; so there needed to be the incorporation of these components in the Bill. Likewise and equally so, while Independents should not be representing a partisan interest, that by definition is no different than the Bill itself. None of these things should be but the reality is that the Bill exists because that is not the fact on the ground. So you have to ensure that the interests are protected overall. If I look at the Independent Senators, for example, and I compare to the appointments by sector in the past, they are not reflective of any of those sectors, and that is the discretion of the Governor-General. However, we do have to ensure that the standard is set where we cannot compel human behaviour to comply. I am in support of what was said earlier in another incarnation by Minister Jordan, and it feel it applies equally in this instance as well.

Mr. R.A. THORNE: In other words, you have a right to political affiliation but the legislation can expose that right or can expose that affiliation. I know Senator Taitt has a reply.

Senator Ms. M.C. TAITT: I am not sure what Senator Cummins mean by certain interests are not represented when she looks at the Independent Senators.

Asides

Senator Ms. M.C. TAITT: I am just saying I am not sure what she meant by that but I am saying....

Mr. R.A. THORNE: That is not part of the discussion, Senator Taitt....

Senator Miss L.R. CUMMINS: It was the trades and professions discussion; that is what we were talking about.

Senator Ms. M.C. TAITT: Again, I still do not understand how someone's trade or profession is required for the purposes of the registrable interests. I do not see why it is necessary and I certainly believe that, as it relates to political, it is an invasion of the

privacy of an Independent Senator who belongs to a party. It does not make a difference. Some of the Independent Senators are not in the Senate to vote for the Government or vote for the Opposition. They are looking out for the interests of the people of Barbados, so they will vote in accordance with their remit. How is it that the person's political, trade or professional associations to which they belong impact anything? If someone can explain it to me, I am always open for further education and elucidation. You are an accountant, so you are the Minister of Finance? Is that what it is? You are a teacher so you are a Minister of Education? Help me to understand the relevance of your trade and profession as it relates to the purposes of this particular piece of legislation. I am resolute in my position that the political part should not be a part of this.

Mr. R.A. THORNE: Senator Taitt, Clause 38 is not intending to expose political interest, not even philosophical or ideological interest. Clause 38, and this entire thing is about property. It is about your attachment to property which may or may not bring you into conflict with the office that you hold and a political affiliation may affect your relationship to that property, because my view is that this entire legislation is about property and not about ideological positions, not about philosophical positions, not about political positions. If you belong to a political group, that political group may have some impact or some influence on your relationship to property. I do not know if that is clear. I have said it as clearly as I can, but you have described a political association as private property, I want to disagree with that as well. I do not think it is private property.

Senator Ms. M.C. TAITT: A political association is private property or private information?

Mr. R. A. THORNE: You called it a private right. In fact, it defies privacy.

Senator Ms. M.C. TAITT: Particularly, from any political trade or professional association to which the person belongs. I am struggling to understand the clause in following your point about it is related to property. I am struggling to understand the relevance of the clause as it relates to property. I should say then. I do not quite understand.

Mr. R. A. THORNE: Suppose the Government is proposing to enter into trade relationships with Cuba, for example, should not your membership of a left wing organisation be disclosed as something that could influence your vote in a commercial relationship with Cuba or North Korea for that example?

Senator Ms. M.C. TAITT: we need to make that into ...

Mr. R. A. THORNE: We have a person in Barbados whom everybody knows, I am not going to call his name, but every week on Facebook he posts things about North Korea and Cuba. I am not calling his name.

Senator Ms. M.C. TAITT: I am not on Facebook so you have to tell me.

Mr. R. A. THORNE: Oh well, social media. Everybody knows him. He is always in Cuba, he is always in North Korea. If he becomes a Senator is this Senate not entitled to know of his political association with Cuba or North Korea when it comes to a vote in relation to diplomatic or trade relations with those entities? Political is wide, you see.

Senator Ms. M. C. TAITT: But this says, "to which the person belongs", Mr. Chairman.

Mr. R. A. THORNE: The Leader of the Opposition knows who I am talking about.

Bishop J. J. S. ATHERLEY: Sorry?
Asides.

Mr. R. A. THORNE: Everybody knows him. We are on record, but I am making the point seriously. That is a political association which may influence ...

Senator Ms. M. C. TAITT: A political association is different from, "to which the person belongs." The clause goes on to say "to which the person belongs" and that is when it becomes intrusive. If you use me, for example, ...

Mr. R. A. THORNE: Please do not Senator.

Senator Ms. M. C. TAITT: No as in politics. No, I do not belong to a political party.

Mr. R. A. THORNE: No, but we do not wish to personalise it. This is objective here.

Senator Ms. M.C. TAITT: If you are an attorney-at-law, how does your profession, the association to which you belong, or not, make a difference to ...

Mr. R. A. THORNE: Because, Senator Taitt, you may be a member of the Bar Council and they may be an amendment being made to the Legal Profession Act as to whether lawyers must belong to the association or as to whether you give lawyers the choice. Should not this Senate know?

Asides.

Mr. R. A. THORNE: I think that is the principle that the legislation ...

Hon. C. E. JORDAN: You were not getting personal with Senator Taitt even though you mentioned about the Bar Council ...

Mr. R. A. THORNE: Are you a member of the Bar Council Senator Taitt?

Asides.

Senator Ms. M.C. TAITT: No, I am not a member of the Bar Council, nor am I a member of a political party, for the record.

Asides.

Hon. C. E. JORDAN: But it could also be a Senator who, for example, is related to an organisation that I would have been part of, the Barbados Hotel and Tourism Association (BHTA), and they could conceivably be some application for a waiver of some sort and it would be necessary, if you are dealing with this, that ...

Mr. R. A. THORNE: Or a concession is given to the industry.

Hon. C. E. JORDAN: Even that. I think everybody should know that this person has this connection. It does not stop the person from voting

how they moved to vote, but as least it must be known. The same thing can happen. I may want to do a renovation to a property either in George Street or Roebuck Street, and I may want concessions as well. I think it is appropriate that it be known that if I am asking for concessions for this renovation that my background is known. Whether or not I purport to be an independent person, if I am independent but my card is at Number 111, Roebuck Street, I think the public ought to know that especially in relation to some act that the Parliament in whichever Chamber is carrying out, in this case the Upper Chamber, that could cause a conflict of interest.

Senator Miss L. R. CUMMINS: Mr. Chairman, if you can apply this equally at a lower level, for example, in corporate governance for Boards when you have a vested interest in many of these things are you are a member of a given entity and a discussion comes up that you have a vested interest in, you have to recuse yourself. You cannot be party to the decision that you have a direct interest in, and I think at this level the standard should be equivalent.

Mr. R. A. THORNE: Senator Taitt, a previous Government took a policy decision to make a contribution to political parties. It is \$100 000 per year? As long as you declare yourself a political party, I think you are entitle to that. I think, if you have a seat in the House. Should not the Government know if there is a vote to contribute moneys to political parties whether a Senator or a Member of the House have a political association? We are getting a sense that you want us to treat – and this is not an attack on you – but you want us to treat political affiliation as sacred and more sacred than any other affiliation.

Senator Ms. M.C. TAITT: I did go on to say that I was looking at subclause (g) holistically.

Mr. R. A. THORNE: It is not sacred.

Senator Ms. M.C. TAITT: But even so, from the practical nature of it, it really does not matter what an Independent Senator's position is based on the constitution of the Senate if it is something that is going to require a simple majority, because chances are it is going to succeed if the Government wants it to succeed. Again, as it relates to the Senate, ...

Mr. R. A. THORNE: Not necessarily, we know that is not true.

Senator Ms. M.C. TAITT: Unless it is Constitutional motion. What difference does it make what person ... Let us move the politics, your trade or your profession. I simply do not get it.

Mr. R. A. THORNE: When you become a public figure nothing is sacred, nothing that could possibly affect your decision-making and that is the whole aim of the legislation. It is no longer sacred.

Senator Ms. M.C. TAITT: Mr. Chairman, I hear you and I want it to go on record as saying that I do not agree with Clause 38 (1)(g) particularly as it relates to ... Maybe it is because I am looking at it as how I would do it. You make a decision based on what is before you and it really should not matter what your political, trade, or professional association to which you

belong, that is probably me being too subjective when it comes to this clause. I would concede that, but to my mind it really ought not to be relevant to what is trying to be achieved with this legislation as it relates particularly to this Clause which relates to the declaration of registrable interests.

Mr. R. A. THORNE: Which is to say you see no circumstance in which a political association can influence my vote.

Senator Ms. M.C. TAITT: Me, as in Monique Taitt?

Mr. R. A. THORNE: Objectively, Senator or a Member of the House of Assembly.

Asides.

Senator Ms. M.C. TAITT: What else to do?

Mr. R. A. THORNE: No, let us look at it objectively.

Senator Ms. M.C. TAITT: Mr. Chairman, it is very difficult to look at it objectively because the fact that there is a feeling that there is a need to do this speaks volumes, so for me, I would be considered a member of the old school and I would probably be considered naïve so it is not easy for me to look at it objectively. Personally, political trade or professional association cannot, will not and will never affect any decision that I make in the Honourable the Senate. That is my position. So that for me, a clause like this would be more of an invasion of privacy or intrusive than relevant to what we are doing, that is me. I appreciate the contributions and the positions of everyone else but it behoves me to say that is what I feel about anything of this nature, because I mean it is not relevant.

Mr. R. A. THORNE: And the thrust of the legislation is to define privacy that is possibly inappropriate, so that, privacy is no longer sacred when it comes to the legislation.

Senator Miss L. R. CUMMINS: Mr. Chairman, in my view, I do not consider that any of this, this entire Bill, is applicable to me in my personal circumstance.

I do not consider that I would be at any point likely to engage in any of the activities that this Bill attempts to treat to, but I understand that this is not necessarily about me personally, the whole purpose of the law is to treat to those to whom it may apply and for that reason I cannot make a determination because I am not likely to drive down the street the wrong way but somebody else should not be charged for so doing. Equally so, I am fully supportive of the retention of these elements of the legislation because in my view when you come to public life, I think I like the word that you have used, these things become open to scrutiny, and I am supportive of the retention of the Bill as it may be not necessarily for Senator Taitt who I know is of the highest moral standing but for those who are not equally disposed.

Mr. R. A. THORNE: Leader of the Opposition, I do not know if we can abide your silence much longer? Do you have a view on this? Seriously, I would like to hear you on it.

Bishop J. J. S. ATHERLEY: Maybe my

understanding of the definition of registrable interest is deficient because it seems to me that what subclause (g) speaks to is not simple membership of a political party or an identification of what trade or professional association may be apparent whether or not you have a vested beneficial interest to be served to the membership, so the fact that I am appointed an Independent Senator and a member of a political party is not the issue, but there is some vested beneficial interest that I derive from that membership. I think that is the issue so it is beyond simple membership.

Senator Ms. M.C. TAITT: Mr. Chairman, what Bishop Atherley says...

Mr. R. A. THORNE: Sorry to put you on the spot, Bishop Atherley.

Senator Ms. M.C. TAITT: But no, it makes sense but that is not what this says. If what the Bishop is saying is what subclause (g) is supposed to mean, subclause (g) needs to be amended because that makes sense. This, as it stands here, I maintain, is intrusive but what the Bishop is saying makes sense.

Hon. C. E. JORDAN: I think it makes sense using the example that I gave just now in terms of while I may not have an ownership stake at 111 Roebuck Street, if there is a decision to be made on a planning permission, some kind of concession and I am a member of the organisation, then I have a certain stake that I think should be made public.

Mr. R. A. THORNE: And a duty too.

Hon. C. E. JORDAN: Yes. Because it benefits me even though I am not a shareholder but as a member of the organisation, I think this Bill is crafted - I do not really want to say it this way - primarily people at the political level and then at senior levels in judiciary and the public service, because we have not been as true to our accepted values as we ought to have been is the reason why we need this kind of legislation. Those who are held to the highest scrutiny but those who are put under the greatest scrutiny are political leaders, those found in the two Chambers, and while it could be considered a little bit intrusive I think to satisfy a public that wants to be sure that there is no underhand things going on, and that political affiliation is something that needs to be identified.

Mr. R. A. THORNE: "Undisguised" is the word I like.

Hon. C. E. JORDAN: When I became a candidate I was still working in the private sector but all of a sudden all kinds of forms turned up because I do not have any ownership stake but I signed on an account, and I do not sign alone, I am signing with people but I become what the banks call a politically exposed person (PEP). Because I am a (PEP) - I thought it was a new party - I am now a politically exposed person and the banks have to be clear as to where I am and what I am involved with. It is just the nature of the beast of being called to serve in the Chamber, and that occurred even before I was actually in the Chamber.

Senator Ms. M. C. TAITT: That makes a lot of sense, Minister Jordan but the reality is, Independent Senators are not political.

Mr. R. A. THORNE: Why do you say that

Senator Taitt? You are in a political body. Independent Senators sit in a political body.

Senator Ms. M. C. TAITT: We sit in a Parliament.

Hon. C. E. JORDAN: Parliament is a...

Senator Ms. M. C. TAITT: The very nature of our remit as outlined in the Constitution says we have the interest of the people to look after, it does not say anything about politics.

Mr. R. A. THORNE: But it is a political body.

Senator Ms. M. C. TAITT: Yes, but you all have it to deal with not...

Mr. R. A. THORNE: Not you all. There is only one Senate, Senator Taitt.

Senator Ms. M. C. TAITT: So tell me your interpretation if there is one Senate.

Mr. R. A. THORNE: And the country is run by politicians.

Senator Ms. M. C. TAITT: The Senate has parts.

Mr. R. A. THORNE: There are three arms of the State and two of those arms are political, the judiciary is not, they can make that claim, which is why they tend to be excluded. You see if we do what you are asking us to do you are creating a privileged class not of Senators but of Independent Senators.

Senator Ms. M. C. TAITT: And the challenge with that is?

Hon. C. E. JORDAN: That there should be no special class.

Mr. R. A. THORNE: Even within the Senate.

Senator Ms. M. C. TAITT: But our definition in the Constitution makes us a different class of Senators by virtue of what our remit is.

Mr. R. A. THORNE: No, you belong to a body.

Senator Ms. M. C. TAITT: Let us look at the Constitution and see what it is.

Mr. R. A. THORNE: Well, perhaps we should take Independent Senators out of the...

Senator Ms. M. C. TAITT: Oh my goodness, that is such a good idea. Thank you, Mr. Chairman, let us make sure that is noted. Mr. Chairman suggests that we remove the Independent Senators, and perhaps, this kind of thing is what Senator Franklyn...

Mr. R. A. THORNE: Senator Taitt, that is not true.

Hon. C. E. JORDAN: As one elected by the people, at least the people in St. Peter, and people who have told me repeatedly that they are not trusting of people who sit in these precincts, then the people who have sent me here do not want any of us to be excluded from this. That is my distinct sense having walked and rubbed shoulders, spoken with and heard the people from St. Peter.

Senator Miss L. R. CUMMINS: I have to say, Mr. Chairman, that having not been elected by anyone to be here that having been appointed to speak on behalf of the same people it is not my sense that the people of this country wish to have anyone excluded

from coverage. This is not my sense, not of the mood of the country as it stands.

Asides

Hon. C. E. JORDAN: So you know the judiciary could probably be separate but the people out there want to know why judges are not included in this Schedule.

Senator Miss L. R. CUMMINS: And we must not appear to be out of sync with the mood of this country. This country is not in a mood for us to be exempting people.

Senator Ms. M. C. TAITT: I am not asking for...

Mr. R. A. THORNE: Senator Taitt, it would have been more comfortable if you had mentioned the entire body but if you seek to separate...

Senator Ms. M. C. TAITT: No, you are the one who suggested it asking if you want us to be in a class and I played along. I raised it as a question. My question with respect to subclause (g) was for everyone. I just did not see the relevance for any one because to my mind the political is obvious whether you are in Opposition or in Government or Independent, it really does not matter and it is not supposed to. I was focusing on the political, the trade and the professional but I believe that this point has been fully ventilated, and I thank everybody for helping to try to elucidate.

Mr. R. A. THORNE: Yes, we had a very good discussion on it.

Senator Miss L. R. CUMMINS: But if I could qualify...

Mr. R. A. THORNE: Just to say it does not say political party, Bishop Atherley, it says political association which can be loose.

Senator Miss L. R. CUMMINS: Indeed, that is what I was just about to say, because in the case as Senator Taitt has just said, it is pellucidly clear when you are dealing with Government or Opposition, I am certain I have heard Bishop Atherley as Leader of the Opposition say that he is not a political party, so that the two Opposition Senators do not, arguably, have a political party and so technically "political" does not necessarily have anything to do with party.

Mr. R. A. THORNE: Yes, it can be a philosophy. So can we close on that?

Asides

Mr. R. A. THORNE: So we leave "political" then, without your chagrin?

Asides

Bishop J.J.S. ATHERLEY: I feel it should be better worded, that it is not a political entity.

Mr. R. A. THORNE: Okay, that is worth a thought. We do not have our Office of the Chief Parliamentary Counsel person here today.

Senator Ms. M. C. TAITT: Mr. Chairman, the point that was made, if you have a beneficial interest in a particular body?

Asides

Bishop J.J.S. ATHERLEY: It does not trouble me, but I understand...

Senator Ms. M. C. TAITT: But it concerns

me because Mr. Chairman, you know full well that for us if it is not said, it is not, so we must make it so that what Senator Cummins and Bishop Atherley think it means, it should say that it means because that would probably be why I sounded like I was speaking at variance to what everybody was saying because I am reading as an attorney, and I am reading it as it is written here, which suggests that it is more of a personal thing, there is no beneficial interest. To me subclause (g) does not deal with beneficial interest and I think what Bishop Atherley is....

Mr. R. A. THORNE: "Registerable interest"

Senator Ms. M. C. TAITT: No, it says, "particulars of any political trade or professional association to which the person belongs." When Bishop Atherley explained what he thought it meant, he thought it meant in relation to those associations if you have a beneficial interest... Is that not what you said?

Mr. R. A. THORNE: If you read Clause 38(1) it says, "A statement of registerable interest shall contain the following information..." You declare that registerable interest and it shall also include any political association.

Senator Ms. M. C. TAITT: And I am saying that my understanding of both Bishop Atherley and now Senator Cummins is that that clause relates to if you have a beneficial interest in these three defined associations - political, trade and professional. If that is what makes it what they think it to be, that is what it should say. I was reading it as to what it said, so therefore, it is a clause that could be misinterpreted, misunderstood or people would say yes, thinking they are saying yes to one thing when they are actually saying yes to something else.

Mr. R. A. THORNE: Senator Taitt, I do not wish you to use your legal knowledge to the disadvantage of others. You know that in a political party, for example, the persons who own the properties are the trustees, not the president, not the chairman, not the P.R.O., so I would want to hasten to add that it could not refer to a beneficial interest in a political association only, but that it refers to all persons who have an association with that entity.

Senator Ms. M. C. TAITT: But, Mr. Chairman, all you are doing is confirming that the clause is not clear, because Bishop Atherley is not of the same mind as you are; Senator Cummins, I believe, is not of the same mind as you are as it relates to what Bishop Atherley is saying. I am already out of it because I am reading it the way you are saying.

Mr. R. A. THORNE: Except, we are *ad idem*.

Senator Ms. M. C. TAITT: Yes, so that we agreed to disagree on the point but it is interesting that Bishop Atherley and Senator Cummins think it says something else.

Bishop J.J.S. ATHERLEY: Because all of the other clauses denote some form of beneficial interest, all of the others.

Mr. R. A. THORNE: And this one does not because it does not intend to.

Bishop J.J.S. ATHERLEY: Well, that is

where I interpret it because it said in the context of all the rest.

Asides.

Mr. R. A. THORNE: No, please, it depends on your point of interpretation, correct?

Senator Ms. M. C. TAITT: Yes, but Mr. Chairman, it could also mean that the clause needs to be enhanced.

Mr. R. A. THORNE: Well, let me say that my interpretation is that this has nothing to do with beneficial interest.

Senator Miss L. R. CUMMINS: But the difference between beneficial interest versus registerable interest is clear and I am comfortable that the clause as written could benefit from some tightening up to minimise the questions of differential interpretation, but I think the point that all of us were explaining, and I do not want to speak on the behalf of anyone but certainly for myself, is that if you have an interest in any of these things which are registerable under the provisions of this Bill that you are then in a position to use your influence in the House or in the Senate to make decisions in the interest of yourself. It does not have to be directly beneficial to you personally but it could be beneficial to any of these registerable interests right here and they are listed for a reason, so just for clarification on what my view is, if it can benefit from specificity in the wording, I am comfortable with that, but that is my understanding of how it is worded as it stands.

Mr. R. A. THORNE: The clauses which say that it relates to beneficial interest must be taken as that, this subclause says nothing about beneficial interest, this speaks about a political association, a professional or a trading association which can influence your decision-making here and the legislation feels that that ought to be declared, as your property ownerships ought to be declared. Can we press on then? The discussion was useful, Senator Taitt.

Senator Ms. M. C. TAITT: Always happy to oblige, Mr. Chairman.

Mr. R. A. THORNE: No, I say so in all seriousness. The Bar Association's question of "blind trust". Let us look at the clause itself under the rubric "register of interest".

"The Commission shall maintain a register to be called a "Register of Interest" in such form as maybe prescribed. The Commission shall maintain a register to be called the Register of Interest in such form as maybe prescribed.....within six months of the change occurring"

Senator Taitt, I know you are going to come back to Clause 38.

Senator Ms. M. C. TAITT: No, Mr. Chairman.

Mr. R. A. THORNE: You are not?

Senator Ms. M. C. TAITT: No.

Mr. R. A. THORNE: Ok, great.

Ms. M. C. TAITT: I was not here, I was just asking during your deliberation....

Mr. R. A. THORNE: I beg your pardon.

remember that "register of interest" includes – does that not mean "registerable interest"?

Senator Ms. M. C. TAITT: You did not hear my question, though, Mr. Chairman, you are assuming, I am just asking whether....

Mr. R. A. THORNE: We are urging you because this has to be thrashed out.

Senator Ms. M. C. TAITT: Mr. Chairman, before we get to that, I just wondered when you were doing deliberations earlier if "spouse" was sorted out.

Mr. R. A. THORNE: Yes, it was.

Senator Ms. M. C. TAITT: What was it?

Mr. R. A. THORNE: Under the Family Law Act it is five years.

Ms. M. C. TAITT: Thank you, so much.

Mr. R. A. THORNE: In fact, the point was made that a man or woman - women have great powers these days, women are property owners - and a lady is unlikely to entrust in an eighteen-month boyfriend, that five years was stable....

Asides

Mr. R.A. THORNE: Now, Clause 39 is very serious because it invites or allows members of the public, does it not, to inspect the interest that have been registered, Senator Taitt?

Asides.

Mr. R. A. THORNE: All the Bar says about that is to see or note under Clause 28- Blind Trusts, the reason for declaring interest and assets is the prevention of conflicts of interest and to uncover illicit enrichment, I was thinking that I would have heard some resistance to the idea that anyone can walk off the street and identify or examine your interest.

Senator Ms. M. C. TAITT: My question, Mr. Chairman, is how giving the public access to this type of information assist with Integrity in Public Life? I think it is very intrusive.

Mr. R. A. THORNE: I think this is something we need to seriously discuss.

Senator Ms. M. C. TAITT: The other information is supposed to be submitted under

Mr. R. A. THORNE: Are we supposed to be satisfied with the Commission itself?

Senator Ms. M. C. TAITT: Yes, so this is very intrusive.

Mr. R. A. THORNE: It is.

Hon. C. E. JORDAN: The Bar's submission spoke to or speaks to redacting information, but only as it relates to security risk.

Mr. R. A THORNE: They speak about discretion on the part of the Commission.

Hon. C. E. JORDAN: Yes

Mr. R. A THORNE: If you read the penultimate sentence of their submission which states, "others are of the view that the description only needs to be in the nature of the asset, and such details are not necessary to meet the requirements of the Act." It would be useful to have sight of the regulations to assist in the discussion.

Hon. C. E. JORDAN: Yes, even the Bar's is

concerned.

Mr. R. A. THORNE: Yes, they have reservations. Members how do we feel?

Senator Ms. M. C. TAITT: I am 100 per cent in agreement with that, I think it is way too intrusive. Some of the information that you are called upon to declare with respect to the statement of registrable interest, you are an open target. Literally, all of your business would be in the register of interest, and I am not satisfied that that will enhance the purpose of the legislation. To me, it is like a free for all and it is not everyone who is going to look at the register kindly in relation to Mr. Thorne, a Member of Parliament, Minister Jordan, or the Independent Senators and how they are going to use the information. It is bad enough that you have to submit the information but then it becomes public information, and our society is showing every day that they have no respect for persons' privacy. They have no bars in what they do on social media and they have no filters. This clause here is objectionable.

Mr. R. A. THORNE: I think so too. That is my personal view.

Senator Ms. M. C. TAITT: Because it cannot be that you have made yourself available to serve the people your country and then expose yourself there. At the end of the day it is not just you, you are doing it to your spouse, your children, your corporate associates and everyone who is a part of whatever companies, beneficial interest or properties you would have purchased, everybody's business goes on a register for everyone to see. That to me does not help the purpose of the legislation and this clause needs to be seriously revised, because at the end of the day you still have to protect your public officials even as you fight corruption, you still have to protect your public officials and not make the environment within in which they have to operate and work so onerous to be unattractive.

Mr. R. A. THORNE: Thanks very much, Senator Taitt. Was there not earlier discussion in which it was said that this would be submitted to the Commission in a sealed envelope?

Senator Ms. M. C. TAITT: That is in relation to the assets and liabilities.

Senator Miss L. R. CUMMINS: Mr. Chairman, I am coming to the same conclusion as Senator Taitt, but for slightly different reasons. If I go on the basis of principle, what is the principle that is being applied here? The principle in my view is that there must be a certain level of transparency in wealth that you have to then be able to have a threshold by which you can assess unexplained sources of wealth, illicit gains, and those kinds of things. The threshold is important in terms of the registrable interest. I am comfortable that. What we do when the registrable interest then becomes a challenge. We are able to use a registrable interest to be able to make a determination where there is a suspicion of engagement in corrupt activity that you have a basis for your assessment. The public is not part of that assessment, the public does not have any role to play in making a determination in what

you had at the beginning, what you required in December 31 of that year, and then what you required four years on. That is done through the Commission, and for that reason, I am not supportive of the idea of having the public access the contents of the registrable interest in circumstances where there is not even a suspicion of wrong doing. The principle for me, is that, if the public has no role to play either to enable or otherwise the investigation of the behavior of public officials then they should have no role in accessing the information.

Mr. R. A. THORNE: Bishop Joseph Atherley.

Bishop J. J. ATHERLEY: Understanding the fact perhaps that you can have administrative regulations that govern access to the information. I rather go along with the view expressed by Senator Taitt, it is supported over here that you should not have this.

Mr. R. A. THORNE: Okay. Can we hear a voice of long experience, Minister Forde? The proposal under the legislation is that a member of public can come to the Commission and ask for your registrable interest to be disclosed to the public or to that person. I really want to hear you on this you have been here for a long time.

Asides.

Mr. R. A. THORNE: You do not have a problem with that. That is you personally, but in principle?

Asides.

Mr. R. A. THORNE: Okay. Minister Griffith, how do you do you feel about it.

Hon. C. McD. GRIFFITH: I share similar sentiments to Minister Forde because I think if you are getting involve in public life then I do not think there should be anything to hide if we are talking about integrity. Therefore, I do not have a difficulty with it.

Mr. R. A. THORNE: Okay. Minister Jordan.

Hon. C. E. JORDAN: I have a challenge with it, and I agree with the view that the information should be available to those who can make some kind of adjudication or do some kind of investigation, those are the people to whom I think it should apply.

Asides.

Hon. C. E. JORDAN: I am thinking that those who are able to investigate based on a suspicion or some information received should be the ones to access the information, at will, so to speak. In my view, I agree that it really relates to members of the Commission. The second thing I wanted to say, though, is that we have to be careful. While I take Ministers' Forde and Griffith position, we have to be careful not to create a scenario where we make the pool from which we want to pull our public officers so small. Once there is a situation where everybody in the public will know everything about me, my spouse and children, then we are going to create a situation where there are going to be very few people conceivably who will come forward for any kind of public office. That is not what we want to create, even though we want to maintain a certain

level of transparency. I think the public needs to repose a certain level of confidence in the Commission, and I think the emphasis then should be on ensuring that those who are the Commissioners are of such standing that the public can feel comfortable that they will execute their functions without fear or favour, without bias, and thoroughly. I do not want this to be the case, where every person in the public has access, but I want that the Commission – those who will be given the responsibility – are at such a level that the same public which is now suspicious of many or all of us feel confident that any breaches, any infelicities, any corruption will be sniffed out and will be addressed. I think that is really where I am at in that regard.

Mr. R.A. THORNE: Thanks. Let the record reflect that I have demitted the Chair and the substantive Chairman is here.

Hon. C.E. JORDAN: One conglomerate for another.

Asides.

MR. CHAIRMAN: Do we have any contrary views? I think I understand fully what the issue here is.

Asides.

MR. CHAIRMAN: There is a consensus?

Mr. R.A. THORNE: Yes.

MR. CHAIRMAN: So let it be done.

Asides.

MR. CHAIRMAN: That the public shall not have access to the register.

Mr. R.A. THORNE: You are not going to say that, are you?

MR. CHAIRMAN: No, it will just be removed from the section.

Asides.

Senator Ms. M. C. TAITT: Why do we need a register then if it is not going to be for the public?

MR. CHAIRMAN: Not for the public, but the register....

Senator Ms. M. C. TAITT: Does the Commission not get the financial information differently, under seal or something like that?

Asides.

MR. CHAIRMAN: Let us remember what a registrable interest is. If you look back at Clause 38(1), we still have to settle the form, but in your declaration of assets a directorship is not an asset, so there is no reason why you would put that you are a director of ABC Limited in your declaration of assets; because it is not an asset.

Senator Ms. M. C. TAITT: But it says here that you are supposed to put particulars of a directorship. What is your point, Chairman?

MR. CHAIRMAN: I do not know. Is it Clause 38(1) you are referring to?

Senator Ms. M. C. TAITT: Section 38(1)(a) says particulars of a directorship.

MR. CHAIRMAN: I am sorry, I thought it was being clear. I understood you to be asking, "why do you need a register since the Commission will already, by virtue of another document, have information of you?" I am only suggesting that there is different

information.

Senator Ms. M. C. TAITT: I am sorry. I am probably not being clear. I am just suggesting that you are submitting information to the Commission anyway. Having submitted all of it to the Commission, do you still need a register? I thought the register was being used for the purposes of access to the public, so my question is: Do we still need to have a register of assets if we are removing the public component from the legislation?

Mr. R.A. THORNE: I was thinking to suggest that access should be by the court. Let us say, for example, that some member of the public feels that he has a good and legitimate case to retrieve this information; let him go to the court and ask the court to make the order rather than just walk into the Commission and see it. That is just a suggestion.

Senator Ms. M. C. TAITT: I think I like the idea. I thought the Commissioner was going to be the person who was controlling the information.

Mr. R.A. THORNE: Yes.

Senator Ms. M. C. TAITT: So why are we bringing the court in?

Mr. R.A. THORNE: For access.

Senator Ms. M. C. TAITT: Should not the Commission be the one to determine if the person has the right to access?

Mr. R.A. THORNE: Yes, I suppose the Commission can make that judgement.

MR. CHAIRMAN: I would not presume to help my friend. Can I ask you to look at Clause 25(5)?

Asides.

MR. CHAIRMAN: Clause 25(5) says "a declaration shall be in such form as may be prescribed and shall give full, true and complete particulars of (a), (b) and (c): your income, assets and liabilities, assets of your spouse and dependent children, any gifts received in the course of the performance of the person's public function. This is the declaration of assets that you file. I would suggest that the requirements under Clause 38(1) go rather further than that. Is there an objection?"

Senator Ms. M. C. TAITT: Mr. Chairman, I was just simply asking, since we no longer have the public having access to the register without more, do we still need a register of interests? That is all I am asking. We already have to make separate declarations to the Commission as outlined in Clause 25, so having removed the public component and assuming that the register was for the public access, if we remove that public access, do we need the register at all? That was my question.

MR. CHAIRMAN: I have never felt that the register was for public access.

Senator Ms. M. C. TAITT: I am being general about the comment.

MR. CHAIRMAN: There is a declaration which you file, and then there is a register which covers different information. This is just provided that the public could have access to it, but I do not think this attempted to set up a register for the purpose of providing information. I am fortified in that because the

breadth of data which you have to give under Clause 38 is far wider than the amount of data you have to give under a declaration.

Hon. C.E. JORDAN: Also, Sir, at Clause 40 I get the impression that it is for the Commissioners, because they are going to examine it and they are going to see if it is deficient in any way. I think it is for them primarily, Clauses 40 and 41.

Asides.

MR. CHAIRMAN: If the Senator's criticism – if I can use that word – is that we seem to duplicating the effort, I do not have a difficulty with that. If it is that Senator Taitt is questioning why do two different documents when instead not just do one thing? Is that what the Senator is proposing?

Mr. R.A. THORNE: They are of different natures; one is of assets and this one is of interests.

Senator Ms. M. C. TAITT: None of that is in dispute. My question really was primarily the removal of the portion of subclause (2) that states, "And shall at the request of any member of public permit inspection of the register."

Having removed that component, I was simply asking whether you need to have an actual register or if you were just going to submit all of the information to the Commission. If it is that you all feel that a register is needed, by all means I was simply asking so that if we are amending and doing editing we do it holistically.

Mr. R. A. THORNE: My view, Mr. Chairman, since there of different natures, I would want to suggest that you have two separate records. Assets and interests are clearly different things.

Senator Ms. M. C. TAITT: You can have records, I was only asking whether you actually need a register.

Mr. R. A. THORNE: Yes, I think so.

Senator Ms. M. C. TAITT: That is what I was asking.

Mr. R. A. THORNE: No harm.

Mr. R. A. THORNE: What happens right now, Mr. Chairman, as you know, the Sunday Sun goes up to the Registry on Friday evenings and they do a search based on hearsay and guess work, and they publish. They still have the opportunity, the public records are still accessible, except that you have to guess. That is what happens now. The point I am making is that they still have access to this kind of information at the Corporate Affairs Office.

Asides.

MR. CHAIRMAN: Which word, Minister Forde.

Asides.

Mr. R. A. THORNE: But if we do anything, Mr. Chairman, I would like to suggest that outside of the commission of the court, that if a person goes to the court with a legitimate request, let the court decide, but I agree with you. This invasion of a man's or woman's privacy has to be controlled.

MR. CHAIRMAN: Can we then move to Clause 40? Yolanda Williams has made no recommendation on Clause 40. The Bar recommends

in their document that we should appoint a tribunal to do this drilling down into the inquiry in relation to the registerable interests. Let me just say that I know in Trinidad they receive, I think, it is thousands of declaration a year and thousands of statements as to interests a year. I do not believe that the number of people in public life under our Schedule will come to 250, so Trinidad needed to have a tribunal process so as to be able to look into that. I do not know that we need one.

Asides.

Mr. R. A. THORNE: Did we have a written submission from Sir David Simmons?

Mr. CHAIRMAN: Yes.

Mr. R. A. THORNE: But his was general, if I remember correctly, rather than clause by clause.

Mr. CHAIRMAN: Yes. Any contributions?

Senator Miss L. R. CUMMINS: No. There was only one comment on Clause 40 but it was specific to Clause 42, and it was not a recommendation, it was a just a comment.

Mr. CHAIRMAN: Let us move on then to Clause 41. I do not support the recommendations but I do not see any need to limit "opportunity" to "reasonable opportunity".

Senator Ms. M. C. TAITT: I am sorry, Mr. Chairman, what did you say?

Mr. CHAIRMAN: We are looking at Clause 41. The Bar has recommended under Clause 41(1) it says:

"The Commission shall not inquire ... without giving the member an opportunity to be heard." The Bar wants to say: "a reasonable opportunity to be heard." I think that is gilding the lily. I do not think we need to get into that level of refinement.

If there are no other comments on this one, are there any comments on Clause 42?

Mr. CHAIRMAN: Sorry, did everybody get this now?

Senator Miss L. R. CUMMINS: Mr. Chairman, the UNODC is asking for a definition of "prohibited interest".

Mr. CHAIRMAN: In Clause 41?

Senator Miss L. R. CUMMINS: Sorry, in Clause 42. I have gone ahead. I am sorry.

Mr. CHAIRMAN: Chief Parliamentary Counsel is recommending that we make this conjunctive so you will send to the Speaker, the President and the Member. I do not think there could be any dispute about that.

Asides.

Mr. CHAIRMAN: Clause 42.

Senator Miss L. R. CUMMINS: That is where UNODC is asking for a definition of "prohibited interest".

Asides.

Mr. CHAIRMAN: So the recommendation of Chief Parliamentary Counsel is that what is at (a) and (b), she has just put it in the chapeau.

Senator Ms. M. C. TAITT: What you just said, Mr. Chairman? What about (a) and (b)? She has

done what?

Mr. CHAIRMAN: She has moved (a) and (b) into the chapeau. It is French for hat.

Senator Ms. M. C. TAITT: Okay, so it is cross...

Mr. CHAIRMAN: It is a stylistic thing. I do not fight with the draftsmen. Do you see what we are talking about? Which one are you looking at?

Senator Ms. M. C. TAITT: Who am I supposed to be looking at?

Asides.

Mr. CHAIRMAN: Yes.

Senator Miss L. R. CUMMINS: Well, I have her.

Mr. CHAIRMAN: So if you see the recommended changes, editorial not substantive, she has combined (a) and (b) and put it in the chapeau. You would see it in bold.

Senator Ms. M. C. TAITT: So are we going with her?

Mr. CHAIRMAN: I am happy to go with hers.

Senator Miss L. R. CUMMINS: Sir, in relation to Clause 42, where are we with the Code of Conduct?

Mr. CHAIRMAN: We are nowhere yet.

Asides.

Mr. CHAIRMAN: Yes, the Commission shall establish the Code of Conduct. In fact, that is one of the early ... Which Clause that was? I think that was in the definition. Code of Conduct is defined and means "the Code of Conduct for persons in public life established pursuant to Clause 65", and at Clause 65, "the Commission shall by Order, after public consultation, establish a code to be called the Code of Conduct for persons in public life."

We go to Clause 43. We all commented that the fines were too low and already agreed we are going to go back through the fines when we get to the end, rather than changing the fines *ad hoc*.

Asides.

Mr. CHAIRMAN: Clause 44. Let us talk about Clause 45. I have been asked by a Member of the Lower House to offer on his behalf that the value of the gills, upon the receipt of which you should make a report, should be \$10 000 and not \$1 000.

Asides.

Mr. CHAIRMAN: He is suggesting that it should be changed. I have at least indicated the gender.

Asides.

Mr. CHAIRMAN: Quite seriously, he recommends that we say any person who gets a gift of more than \$10 000 but I am not prepared to... For me, I think we would be inviting the wrath of the people. I mean there is a minimal limit. I mean if a man gives Minister Jordan a leg of pork I would not enquire into that at all because I know he is not carrying it home.

Asides.

Mr. CHAIRMAN: And if he gives it to me I would not report it because I would not want anybody to feel that he has become a purveyor of pork. I will

keep that a secret, but there is a minimum amount to which I do not think we should look to enquire. The question is: Is that minimum... I do not know. Do the Members have a thought? Because somebody gives you a bottle of Beehive Brandy, whisky or a case of coke or something you run yourself afoul of the law by not sending it in. It does not matter if it is a personal gift or an official gift. I mean the Chinese Ambassador gave me some packs of tea.

Senator Miss L. R. CUMMINS: Sir, just to point out that in Orlando Marville's submission, he submitted that the fines should be lower not even higher. He was suggesting that they should be at \$500.

Mr. CHAIRMAN: The fine or the gift?

Senator Miss L. R. CUMMINS: Gifts of \$1 000. He was saying that the figure should be \$500. He was actually going in the opposite direction of the colleague from the Lower House.

Mr. CHAIRMAN: Bishop Atherley. I want your spiritual guidance.

Bishop J. J. S. ATHERLEY: I think it is the principle.

Mr. CHAIRMAN: It is the principle, but the Commission would then be bombarded every time somebody gives you something.

Asides.

Senator Ms. M. C. TAITT: Mr. Chairman, while we try to work out what the figure is, I seem to recall, I believe it was when Sir David Simmons was here, that we raised the issue of defining personal gift and official gift. What is the difference between a personal gift and an official gift?

Mr. CHAIRMAN: A personal gift is something for me to carry home and give to my wife, and an official gift is a gift given to me by virtue of being the Attorney-General of Barbados, presented to the Attorney-General of Barbados on the 12th anniversary of the founding of the...

Senator Ms. M. C. TAITT: Yes, but suppose the gift presented to you on that occasion was something for you to carry home to your wife?

Mr. CHAIRMAN: Well, then it would be a personal gift.

Senator Ms. M. C. TAITT: No, but it was given to you in your capacity as Attorney-General and when you open it...

Mr. CHAIRMAN: Anything that is given to me in my capacity as Attorney-General unless it is perishable or available for consumption, it comes into the Ministry, Minister Forde, you are in the Cabinet, so when people give you gifts that are obviously for you and then others that are not necessarily yours...

Asides.

Mr. CHAIRMAN: No, no, you have to say whether the gift is official or personal. I do not think there is any issue as to whether the gift is personal, if it is personal it is yours. I give this to you, but I think when once you get it by virtue of the office that you hold it is...

Senator Ms. M. C. TAITT: But you could get something personally and it is expected to have an

official result.

Mr. CHAIRMAN: An official result?

Senator Ms. M. C. TAITT: Which is...

Mr. CHAIRMAN: It is not the question of the result.

Senator Ms. M. C. TAITT: No, I am just...

Asides.

Senator Ms. M. C. TAITT: No, no, do not harp on the use of the word 'result'. When you say something is for you versus something is for you as Attorney-General, how do you draw the line? If you use your colleague in the Lower House, so somebody could give you personally \$10 000 even though you are Attorney-General, do you perceive that or accept that as a personal gift and you are good to go, or do you have to declare that?

Mr. CHAIRMAN: No, no, you have to declare any gift but you have to state whether in the gift is personal or official. If it is personal, it is for your individual benefit. If it is official, then it is not for your individual benefit. The Prime Minister and other Ministers would get loads of things presented to them and it is presented to them because they are the persons in the office, but it is not intended for them to carry home.

Asides.

Senator Ms. M. C. TAITT: Did not Sir David Simmons agree that it should be defined? I have a note in my draft here saying it should be defined and I would have written that when he was here, so I am just checking to see if that is what he said, because we discussed it when he was here. Whatever was the discussion at the time it led to me thinking why you not just define it. There was banter going on between persons and I said instead of going through all of this why not just define it but if it is that...

Mr. R. A. THORNE: There would always be another definition that pops up down the road. There are some terms you leave alone to the dictionary.

Senator Ms. M. C. TAITT: Very well.

MR. CHAIRMAN: I would leave the Commission to make a determination as to what it is. I think it is an easy distinction to make but it is like terrorism, you know it when you see it, but it is difficult to define. For me an official gift is something given to me by virtue of the office. Now, there are some official gifts that will make their way to Lower Estate, St. Michael across the cart road. There are others that would not because it was clearly intended for the office.

Asides.

Mr. CHAIRMAN: At Clause 45 (2) it says, "The Commission shall determine whether the gift is personal or official". So let us just leave that, if you do not mind.

Asides.

Mr. CHAIRMAN: I am waiting for your contribution on the matter.

Mr. R. A. THORNE: I think we should be attacking the principle and not quantum.

Mr. CHAIRMAN: I understand that and I think you are right to some extent, but it becomes a

matter of degree.

Mr. R. A. THORNE: As I said to you, it was not facetious, suppose you get a \$9.90 gift?

Mr. CHAIRMAN: It is just not in the threshold, it is a gift.

Mr. R. A. THORNE: Yes, but is it intended to influence you?

Mr. CHAIRMAN: No, it does not say that here, they just want to make sure that any gifts you get are known, there is no definition saying whether or not it intends to influence you.

Mr. R. A. THORNE: I would be inclined to go back to a word that we were thrashing out before you came back – a gift of substantial value.

Mr. CHAIRMAN: Well, then that is too subjective.

Mr. R. A. THORNE: Well, in the judgment of the Commission, let the Commission exercise its judgment.

Mr. CHAIRMAN: But why not just have a figure? In my view, if you say “substantial value” you would agree that a case of Polar Beers, easily the cheapest beer in Christendom and nobody drinks them, that is why they are given away.

Mr. R. A. THORNE: But somebody may like them in a substantial way.

Mr. CHAIRMAN: There are some things that I cannot imagine as a Parliamentarian or a Minister that I would want to be responsible to account for every time somebody gives me something.

Mr. R. A. THORNE: Mr. Chairman, let me say for the record that I am uncomfortable with the dollar value, I think the principle is far more important.

Asides.

Mr. R. A. THORNE: Judging the sin by its monetary value, I think \$500 is no less a sin than a gift costing \$1 000.

Asides.

Senator Miss L. R. CUMMINS: There should be a way narrowing down....defining....

Asides.

Mr. R. A. THORNE: You may give a man a tie that he likes, and as some of us know, sometimes flattery works and that has no dollar value on it.

Asides.

Mr. R. A. THORNE: No, the point I am making is that I am dealing with the principle, I am uncomfortable with a dollar value, I do not want to say vulgarises the issue but....

Senator Ms. M. C. TAITT: You are uncomfortable because what?

Mr. R. A. THORNE: You are allowing somebody to commit a sin or you are defining a sin by its dollar value, it is a sin. It is wrong to take the gift whether it costs \$9.90, \$1 000, \$1 100, \$300; if it is a necktie costing \$30 it is sinful, it is wrong to take it.

Asides.

Mr. R. A. THORNE: Yes, and let the Commission use its judgment and decide whether it is trivial.

Hon. C. E. JORDAN: What if you receive

from anyone except a family member gives it to me, what happens then?

Mr. R. A. THORNE: You do not report it but if they find out, I mean, if somebody gives you a \$30 tie, why would you go report that to a Commission?

Senator Ms. M. C. TAITT: Because you have to put it at a dollar value.

Mr. CHAIRMAN: A gift is a gift. That is the thing, I do not like you being able to determine for yourself what the value is.

Asides.

Hon. C. E. JORDAN: Who determines it is \$50 or not?

Mr. CHAIRMAN: There you go, remember, it is a very subjective thing, you know, I am sure that my first watch probably does not cost more than US\$20, but in those days.... I am sure those of us with children have given them watches of far greater value.

Senator Ms. M. C. TAITT: Mr. Chairman, may I suggest, I am reliably informed that in the public sector there are limits for gifts, I think the monetary value – and no disrespect to Minister Forde – allows for some kind of structure, because then you could take it to one extreme, what one person might think is valuable at \$30 might not be valuable to somebody else, so that where do you draw the line and when do you work out what needs to be declared and what does not need to be declared, I do not like the idea of whether if you get found out, somebody may feel very important by giving Minister Jordan a particular tie that you might not be impressed with but they might think it is a marvelous thing, and then it is not declared as a gift and the person who gave him that tie walk about saying that they gave him a gift and that he has not declared it because he did not think it was a remarkable tie. So should we not just have some guidelines?

Hon. C. E. JORDAN: Mr. Chairman, in speaking to that, I have some personal experience. We had some VAT officers at a business where I worked about 15 years ago. They came and we had a meeting around 12:30 p.m. I worked in a hotel and so once people come around that time you would ask them if they wanted to have lunch. They were two ladies from the VAT Office and they said to us that they were not allowed to accept anything that they would not ordinarily be able to purchase or would purchase, I am not sure if that is what you are referring to, and if there is anything specific that is written down somewhere that could offer guidance because that apparently governs people employed in the public service. Apparently, there was some regulation that governed them and that is what they said to us.

Mr. CHAIRMAN: Do you have Rolanda Williams' note? It was emailed. Her note is that the General Orders and the Public Service Act prohibit public officers from receiving any gifts of any value, but I do not think that we need to get to that level.

Mr. R. A. THORNE: She said that it conflicts with the General Orders.

Mr. CHAIRMAN: I would not even say that it conflicts with the General Orders, it covers other

people, but public servants. Permanent Secretaries and so on are only one part of the Schedule of persons in public life. So, for example, the Chairman of the Barbados Water Authority has to make a declaration, by this she is forced to say who gave her a gift and what that gift is, but to compel her to refuse a gift? She is an attorney. Mr. Thorne, you are an attorney, a client comes and gives you a bottle of Whisky at Christmas... It is not the same thing. **Hon. C. E. JORDAN:** I have received a book.

Mr. CHAIRMAN: In your personal capacity or in your professional capacity?

Hon. C. E. JORDAN: There is already one in the Ministry...

Mr. CHAIRMAN: I know the book, from the Chinese Ambassador.

Asides.

Mr. CHAIRMAN: That is an official gift, it is not going home.

Asides.

Mr. CHAIRMAN: I do not think we should try to impose strictures in the public service on people in public life generally.

Hon. C. E. JORDAN: I do not think it should be ridiculously trivial either.

Mr. CHAIRMAN: To be frank the political class finds itself in an awkward position, because they are people who will give me things, I say give me because I do not know who else to say to give. My Christmas luncheon is coming up and I am going to be asking for contributions, but no one will say I gave to the seniors of St. Joseph a box of macaronie.

Asides.

Mr. CHAIRMAN: We can move on if there is no more comments but I have to say, I do not think we should use no value because then it tends to become subjective or it puts the Commission into doing too much work on trivial matters. The burden of reporting every gift that you get is just not worthwhile.

Hon. C. E. JORDAN: No, that is going crazy.

Mr. CHAIRMAN: I do not think you would achieve anything by doing that.

Asides.

Mr. CHAIRMAN: No, somebody like you because you have a life outside the Senate. If a client comes and gives you a bottle of wine or something at Christmas does it means you have to flip it in a declaration, which we only file once a year anyway and you probably will not remember. I mean I actually use to look forward to Christmas because that is the only time they give you anything.

Asides.

Mr. R. A. THORNE: I was saying there is no difference between \$1,000.00 and a \$900.00 gift.

Senator Ms. M. C. TAITT: But somebody who is corrupt will do it anyway.

Mr. R. A. THORNE: It could be three \$900.00 gifts, I do not have to report them.

Hon. C. E. JORDAN: Mr. Thorne, the Leader of the Opposition was saying there should be a time frame attached, that a person who wants to give

\$10,000.00 can give ten \$1,000.00 gifts. I just overheard him to say that a little earlier, so I thought I would mention it based on what you said.

Mr. R. A. THORNE: That is interesting.

Asides.

Mr. R. A. THORNE: A figure is a safe a convenient route.

Mr. R. A. THORNE: Yes, but not a figure there is nothing to make you stop and think, you know what I need to declare this because you can look at it and say no this is not an official gift.

Mr. R. A. THORNE: I think it is convenient but is does not defeat the opportunity for corruption, that is my view. The opportunity still exists, I agree with the Chair that you want to declare a bottle of whiskey, and so on, but you have to find a way to defeat corruption. Corruption can be propelled through a bottle of whiskey.

Mr. CHAIRMAN: If you take out the figure then you are really saying every gift, I think that would be counterproductive.

Asides.

Mr. CHAIRMAN: The Commission has powers, and it is on the next page where it has to determine if the gift is trivial, and if not trivial was tended to motivate.

Mr. R. A. THORNE: The duty is on you to report. How do you know then that it is over \$1,000.00?

Mr. CHAIRMAN: I do not know if there is any science to it.

Mr. R. A. THORNE: Precisely, how do you know? It is a gift.

Mr. CHAIRMAN: Yes, but let us assume there is no science to it, if someone gives you a Rolex watch, there is a good chance it cost more than \$1,000.00. On the other hand, if it is a Citizen watch and you say it worth \$750.00, done with that.

Asides.

Hon. C. Y. FORDE: Is this clause to do with gifts referring to cars and things of that nature?

Mr. CHAIRMAN: It will include those. Anything over \$1,000.00 that is intended to cause to make a decision a particular way to influence you, is to be declared.

Asides.

Mr. CHAIRMAN: I do not sense that there is a lot of movement one way or the other, so let us leave it the way it is. In response to Bishop Joseph Atherley concern about a person giving many \$990.00 gifts, it does say at Clause 45 (6) that "a report on application..." Sorry, that is the wrong thing, I think the way to deal with that would be to

Mr. R. A. THORNE: Mr. Chairman, if you get the gift do you have to declare it within 30 days.

Mr. CHAIRMAN: No, that is not what they said, so I am wondering if we should not propose that.

Mr. R. A. THORNE: You know let us not.

Mr. CHAIRMAN: That is not what this says. Yes, a report under Clause 45 (1) or Clause 45 (5) shall be made within 30 days.

Senator Ms. M. C. TAITT: You should say

that to Minister Jordan because he was talking about the time limit.

Mr. CHAIRMAN: It was Minister Jordan referring to Bishop Joseph Atherley's comment. I think that then allows the Commission to look at the gifts.

Senator Ms. M. C. TAITT: If you are getting three \$9.99 gifts. Are you going to declare a gift for \$9.99? You are not going to declare a gift for \$9.99, because you are under the \$1,000.00. The Commission is not going to see someone giving you a series of \$999.00, so this does not do anything but do a lip service to this whole point.

Mr. CHAIRMAN: What will you do? Do you lower the threshold? Because no matter what you lower the threshold to, you can just go under by \$1.00.

Senator Ms. M. C. TAITT: I think that we should have some kind of figure so that we do not go from Mr. Blind to be ridiculous, but in reality if you are going to be corrupt you are going to be corrupt, no matter if it was \$50.00, \$300.00, \$1,000.00 or \$10.00.

Asides.

Mr. CHAIRMAN: Bishop Joseph Atherley, you were concerned about a person being given by one donor multiple gifts of small amounts?

Bishop J.J.S. ATHERLEY: That was part of the discussion we had earlier: getting gifts of small amounts over time.

MR. CHAIRMAN: The time thing, though, is that any time you get a gift of more than \$1,000, you have to report it within 30 days so the Commission is able to see if in the course of a year you get eight gifts of \$1,000 from John Brown, so that does help to promote transparency and to discourage.

Asides.

MR. CHAIRMAN: Maybe we should just leave this figure and go from there. Unless when it goes back to the House and the Senate there is a prevailing view otherwise. I think we could leave it. If we increase it, it will look as though we are trying to preserve territory for ourselves.

Clause 46.

Hon. C. McD. GRIFFITH: A quick question, Mr. Chairman. If I was given a vehicle to drive for over a period of time – an expensive vehicle – how would you treat to that?

MR. CHAIRMAN: A gift is something where the ownership parts to you, but I could see why the benefit could be considered the gift and to drive a luxury vehicle or an expensive vehicle for multiple weeks, I do not see why that would come out. I do not see why it would not be caught under this.

Asides.

MR. CHAIRMAN: Mr. Griffith, I think that good judgment would suggest that even though the ownership does not pass to you, it is a benefit: it being a substantial benefit you should declare it. Let us look at it this way. Suppose somebody gives you a weekend at the Crane, it is a benefit. It is not yours because you cannot carry it anywhere, but you can carry people to it.

Senator Ms. M. C. TAITT: So, is this a gift to be declared? You would have to declare a Crane gift?

MR. CHAIRMAN: I think so. If it has value and if the room rate was over \$1,000, is gift defined otherwise?

Asides.

MR. CHAIRMAN: Why would that not be included? I have a good example for you of official or personal. For a weekend?

Senator Ms. M. C. TAITT: I do not know. Do not use the Crane as an example.

Asides.

Mr. R.A. THORNE: I think the Chair was anticipating subclause (7), where:

"The Commission finds after inquiry that a gift was given to a specified person in public life personally and was trivial or was not trivial, but was not intended to be a motive or reward for doing or forbearing to doing anything in the course of the performance of his official functions or for causing any other person to do or forbear from doing anything, the Commission shall allow the specified person in public life to retain the gift."

I think that is a significant way to round off that piece of legislation.

Senator Ms. M. C. TAITT: So, whatever it is you have to give it up?

Mr. R. A. THORNE: No, no, no, that the Commission can forgive the transaction as being trivial.

Senator Ms. M. C. TAITT: If it is not trivial and it is a breach you have to give it up?

Mr. R. A. THORNE: Let us see what the legislation says.

Senator Ms. M. C. TAITT: But what if you have used it already? You have gone on the trip already, or you drank the bottle of wine already, or the chocolates have been already eaten?

Asides.

Mr. R. A. THORNE: Whatever sanction is there.

Senator Ms. M. C. TAITT: There is no other sanction, and the thing is you have 30 days to declare, so in that 30 days you could have used the gift, gone with Mr. Griffith and ...

Asides.

Mr. R. A. THORNE: I know why Minister Griffith is smiling.

Asides.

Mr. R. A. THORNE: Subclause (7) seems to allow the Commission to make a final judgment as to the gift, whether trivial or not and the sanction obviously relates to a gift that is material, and not a gift that is non-material.

Senator Ms. M. C. TAITT: Mr. Chairman, subclause (8) of Clause 45 reads: "The person shall be entitled to be represented in the inquiry in person or by an attorney-at-law." There is one of those tribunals that allow you to bring somebody other than an attorney-at-law.

Mr. R. A. THORNE: A friend or a relative, but all tribunals normally.

Senator Ms. M. C. TAITT: So should we extend this or no?

Mr. R. A. THORNE: Yes, why not?

Senator Ms. M. C. TAITT: Okay.

Mr. R. A. THORNE: You can bring an attorney-at-law, friend, or other representative.

Asides.

Mr. R. A. THORNE: Should we remove "attorney-at-law" and replace it with "by any other representative".

Senator Ms. M. C. TAITT: No. You can put attorney-at-law, friend, or representative.

Mr. R. A. THORNE: Okay. We will ask the office of the Chief Parliamentary Counsel to fix that, to include a person who is not an attorney-at-law. Yes, of course.

Senator Ms. M. C. TAITT: Because a person may feel that without an attorney-at-law they have to come alone, and that is not right.

Mr. R. A. THORNE: Report to Governor-General on gifts at Clause 46(1). Senator Cummins, did we have any controversy on that from other persons?

Senator Ms. M. C. TAITT: Mr. Chairman, before we move on. This may sound like a joke, but in subclause (7)(b) where you are saying that the Commission shall direct the specified person to deliver the gift to the Minister responsible for Finance, what happens if you are found liable but it is a gift that cannot be handed over or be delivered to the Minister of Finance because it was of a nature that it has already been used or whatever, what do we do with that?

Mr. R. A. THORNE: Well, it cannot cover it, can it? This obviously relates only to material gifts. You cannot turn over a stay, for example.

Senator Ms. M. C. TAITT: Yes, but you do not only make provision for material gifts in this legislation.

Mr. R. A. THORNE: Good point. How do we solve the problem? Do you do an assessment of the gift and ask the person to pay the amount into the Treasury?

Senator Miss L. R. CUMMINS: Are we are Clause 45 still?

Mr. R. A. THORNE: Yes, Clause 45(7)(b).

Senator Miss L. R. CUMMINS: Okay.

Mr. R. A. THORNE: This is the sanction where the Commission could ask you to deliver up the gift to the Minister of Finance. We will come back Senator Taitt.

Senator Miss L. R. CUMMINS: So at Clause 45(1), IGB made a submission and I think it spoke to some of the issues that were being raised in the discussion just now. It says at Clause 45(4):

"If one gets a gift worth more than BDSS1 000 from a relative or a friend why should it not be reported with a statement that it was a personal gift?"

Clause 45(4) is an unnecessary loophole which was submitted and defeats the entire purpose of the section. That is what IGB is suggesting. My apologies for the delayed reaction.

Mr. R. A. THORNE: Not at all. We want to consider all submissions.

Senator Miss L. R. CUMMINS: Okay. In

subclause 45(1) they say:

"This should also include a clause to prevent gifts of annual cumulative value of BDSS1 000. This would frustrate attempts by a potential bribe to present multiple gifts that accumulate in value about the BDSS1 000 threshold. This should be included in the declaration to the Commission and subject to reviewed. Additionally, gifts should not be accepted if the public official is conducting business negotiations with the benefactor."

They have made a specific reference to, not just a one off gift.

The second anomaly they have raised is:

"If it is more than BDSS1 000 from a relative or a friend. It should be reported but with a statement that it is a personal gift."

That is the IGB submission. They are the only ones that have spoken in any detail specifically to this clause.

Mr. R. A. THORNE: I do not know how we are going to define "friend".

Senator Ms. M. C. TAITT: No, this one said the section should not apply to any personal gift received by a specified person in public life from a relative or a friend.

Senator Miss L. R. CUMMINS: And they are questioning that. They are saying that it should cover personal gifts with a statement that it is a gift from a friend or a relative.

Mr. R. A. THORNE: Suppose somebody wants to bribe you and he describes himself, and you describe yourself as his friend. I am uncomfortable with the friend provision. Anybody could be your friend. In fact, a man who gives you a gift is your friend immediately.

Certain remarks made by Senator Taitt were inaudible because she did not turn on her microphone.

Mr. CHAIRMAN: Precisely and he is your friend.

Certain remarks made by Senator Taitt were inaudible because she did not turn on her microphone.

Mr. CHAIRMAN: Yes, we may have to revisit that. I think we should remove the "friend" element. Again, somebody could bribe you and say, "But he is my friend. I gave him that as my friend."

Certain remarks made by Senator Taitt were inaudible because she did not turn on her microphone.

Mr. CHAIRMAN: No, I am making another point. The point I am making is that somebody could bribe you and claim to be your friend, and therefore it is not a bribe because it says: "This section shall not apply to any personal gift given by a friend." If somebody gives me a car, "Oh, he is my friend. It was not intended to influence me, he is my friend."

Senator Miss L. R. CUMMINS: And IGB sees that as a loophole.

Mr. R. A. THORNE: I do too. Thanks for referring us to that. I think it is a major loophole to permit a person to excuse a bribe by saying that he is your "friend".

Senator Ms. M. C. TAITT: No. I do not have a difficulty with that, but by the same token those of us who would not be bribed but would be getting a gift from a friend for real, you then put their business in the public domain. It is really a catch-22 situation either side. I am not suggesting in any way that it is not a clause of the Bill that need further ventilation, but I am still saying for the record that I think that it then goes to the other extent where you are delving into people's business. There are people who feel you do not have any business once you are in public life. I, of course, disagree.

Mr. R. A. THORNE: Senator Cummins, I agree with IGB that that is a major, major loophole. As I said before, it permits a bribe to appear to be a gesture of friendship and I think we owe it to the legislation to remove that friend provision. Bishop Atherley.

Bishop J. J. S. ATHERLEY: We should put a question mark by that.

Mr. R. A. THORNE: Yes. So can we agree then that we are proposing that "friends"... What about relatives? I mean you cannot stop somebody from being your relative.

Asides.

Mr. R. A. THORNE: Precisely.

Asides.

Senator Miss L. R. CUMMINS: What did you say? You said something about precisely.

Mr. R. A. THORNE: You cannot prevent a person from being a relative and, as Mr. Jones said, being generous as a result of the relationship.

Asides.

Mr. R. A. THORNE: Senator Taitt is your microphone off?

Senator Ms. M. C. TAITT: Yes.

Mr. R. A. THORNE: Mine is not. Let us agree then to remove "friend" until the Attorney-General comes back and let him know that? "Friend" is too loose a term to be bound up in legislation. Thanks very much, Senator Cummins. Are we going back then to Clause 46?

Mr. CHAIRMAN resumed the Chair.

Asides.

Mr. CHAIRMAN: Can I suggest that we go up to Clause 48 which would bring us to the end of Part Six.

Senator Miss L. R. CUMMINS: We are still on Clause 45.

Mr. CHAIRMAN: We are still on Clause 45? Okay, that is alright.

Asides.

Senator Ms. M. C. TAITT: The "friend" thing. Are you not telling him about it?

Asides.

Senator Ms. M. C. TAITT: Mr. Chairman, my issue was that it is preventing me from getting a car from my friend.

Asides.

Senator Ms. M. C. TAITT: The question I raised related to subclause (7) (b). We started it deal with it, where the gift cannot be handed over to the Minister of Finance. I think Mr. Thorne was suggesting that you put a value to it?

Mr. R. A. THORNE: No.

Senator Ms. M. C. TAITT: We are talking about if it cannot be handed over, what do you do? That it is?

Asides.

Mr. R. A. THORNE: I was saying that the provision is obviously intended to...

Asides.

Senator Ms. M. C. TAITT: Yes, who determines the value? It becomes ridiculous.

Mr. CHAIRMAN: If a person wants to buy an individual and conveys to them a parcel of land in their name and in the name of somebody else, you are not capable of handed that over because you can only hand over your interest.

Asides.

Senator Ms. M. C. TAITT: I think that is where we were before we went back to the earlier part, so we need to probably add that component or its value.

Asides.

Mr. R. A. THORNE: Clause 47 (a) to (c) reads as follows:

"...knowingly makes a report to the Commission

pursuant to Section 45(1) or to the Governor-General pursuant to Section 46 which is incomplete or false in any material particular without

reasonable excuse fails to comply with section 45 or 46 fails to comply with section 45(1) or section 46(1); or without reasonable excuse fails to comply with a direction given by the Commission pursuant to section 45(7) or by the Governor-General pursuant to section 46(2), is guilty of an offence and is liable, on summary conviction, to a fine, which shall not be less than the value of the gift involved in the commission of the offence, or to imprisonment for 3 months or to both."

Senator Cummins, you must have had a submission from somebody on that?

Senator Miss L. R. CUMMINS: No, I have not had a submission. I had a submission on Clause 51.

Asides.

Mr. R. A. THORNE: It says, first of all, "summary conviction" means that it is triable in a magistrate's court.

Asides.

Mr. R. A. THORNE: Why are you laughing, Senator Taitt?

Senator Ms. M. C. TAITT: Summary conviction for something like this?

Mr. R. A. THORNE: Well, that is why we are here, let us discuss it. It is like the athletes not making themselves available for drug testing, you ban them. Let us see what Clause 45(1) says. Do you think to have a person standing up in a magistrate's court and have evidence led against him, expose himself to a fine or

imprisonment is excessive?

Asides.

Mr. R. A. THORNE: I may think so too.

Asides.

Senator Ms. M. C. TAITT: I did not say that.

Mr. R. A. THORNE: I am looking at Clause 45(1), a chap gets a gift for \$1 200 and fails to report it.

Senator Ms. M. C. TAITT: I suppose the nature of the offence that the magistrate's court suits it. Under this clause you are talking about incomplete or false material.

Mr. R. A. THORNE: Yes, in relation to gifts, 47(a) which refers to 45(1) which is non-reporting on gifts. If you get a gift for \$1 200 and you fail to report it, should you be sent to the magistrate's court, in a public place, be charged, convicted and possibly fined or imprisoned for three months, or both?

Senator Ms. M. C. TAITT: And fined to the value of the gift. The fine shall not be less than the value of the gift. Do not forget that part.

Mr. R. A. THORNE: He can go to prison too.

Senator Ms. M. C. TAITT: Clearly.

Mr. R. A. THORNE: Recently, somebody went to prison for six months for stealing chocolates from Collins Limited.

Asides.

Mr. R. A. THORNE: But do we feel that this is something that should be referred to a criminal prosecution in a magistrate's court, exposing the person to possible imprisonment for failing to report a gift?

Hon. C. E. JORDAN: My apologies, I had to leave to attend to a matter concerning my daughter, but the incompleteness of a report which subjects a person to what you are talking about, I am just wondering what really does that mean? The reason I am asking is that I am not sure I saw something that suggests that if the Commission saw it to be incomplete that they should go back to the public officer and say that it is incomplete, and that this would be the result of the person's failure, after being approached. Normally, legislation would allow for some kind of approach before it goes to court.

Mr. R. A. THORNE: So you are asking about the word "incomplete"?

Hon. C. E. JORDAN: Well, I do not have a problem with the word "incomplete" here, but is there something that says the Commission should approach the person as in to say this is not just an incomplete report but it is an incomplete report where it has been brought to the person's attention and that person has refused to remedy what was wrong.

Mr. R. A. THORNE: Clause 45(1) more or less tells us what a "complete report" is. It states, "it shall state the name and address of the owner, the description and approximate value of the gift and whether in the opinion of the donee the gift is personal or official." Presumably, if it fails to state what the legislation prescribes then it is incomplete.

Hon. C. E. JORDAN: Does the Commission say to the person that it is not complete?

Mr. R. A. THORNE: I would think so, yes.

Hon. C. E. JORDAN: Does the Commission

have to or can they take the person straight to court?

Mr. R. A. THORNE: Is there a provision for an inquiry?

Asides.

Hon. C. E. JORDAN: So that something is going to happen before it gets to that stage?

Mr. R. A. THORNE: Yes.

Hon. C. E. JORDAN: That was my concern because if there are attempts to remedy before court and a person is just blatant, that they are not doing whatever, then I think that whatever the highest form of embarrassment is I am happy with.

Senator Miss L. R. CUMMINS: Mr. Chairman, my challenge though is the level of the gift, so that we are talking effectively here about \$1 000 or less gift.

Mr. R. A. THORNE: No, \$1 000 or more.

Miss L. R. CUMMINS: Sorry, so that there must be some kind of proportionality in how this is handled at the extreme level.

Senator Miss L. R. CUMMINS: I think it is the distance of frontier that I am challenged by. So, I am fine with there being the inquiry and the pre-actions before getting to the court. I would want to say that we would have to be introducing steps after inquiry that will lead us to give an incremental build-up based on the level of the offence, in terms of the gift. If, for example, the gift is worth a car like Senator Taitt's and we are talking over \$100 000, that is one thing. If we are talking about a pair of diamond earrings worth \$ 3 000, that is a different matter, right, Senator Taitt? But I think the sentencing component needs to be commensurate with the level of the offence.

Asides.

Senator Ms. M. C. TAITT: Surely, I think that is what the Magistrate would take into consideration.

Mr. R. A. THORNE: It is the exposure that one is thinking of. Taking him to the magistrate's court for something like this, to use Senator Cummins' word, do we consider that "proportionate" to what the legislation deems to be the offence? In other words, do you drag a man across to the magistrate's court for something like this?

Hon. C. E. JORDAN: You are dragging him across to the magistrate's court, and that is the reason I asked the question before.

Mr. R. A. THORNE: After the inquiry.

Hon. C. E. JORDAN: But you have done all you could to get a person to comply, what do you do after? You are not just dragging him, this person is now willfully contemptuous and so now you have to be treated like such. If it were that there was no provision for that intermediate saying that this is not complete, then I would not agree that you would just look at a report and say, "incomplete, go to court".

Mr. R. A. THORNE: Are there any other views? It seems we are going with you, Minister Jordan.

Hon. C. E. JORDAN: I am not addressing, though, the level of fines that Senator Cummins is

speaking to. I am just talking about that it goes to the magistrate's court, which is fine with me. Three months may be a little bit high.

Mr. R. A. THORNE: Well, that is an outer, you do not do minimum.

Mr. CHAIRMAN: We should ask the Office of the Chief Parliamentary Counsel to advise. It states, "the fine shall be not less than the value of the gift."

Asides.

Mr. R. A. THORNE: No, it takes away the discretion. It should say "not more than..."

Senator Miss L. R. CUMMINS: The fine is to be not less than, so if you go over by \$1 500 your fine is going to be \$1 500.

Asides.

Mr. CHAIRMAN: No, I am just wondering if you are taking away the magistrate's discretion. Remember last week, on that glorious day when we had the discussion...Remember on last week when we had the discussion.....

Hon. C. E. JORDAN: Mr. Chairman, you should have pointed it somewhere else, because not everyone believes that people should have discretion in terms of sentencing.

Mr. CHAIRMAN: When we looked at the Interpretation Act says where a statute sets a maximum fine you can impose anything lower, where it sets out a minimum term you can impose anything lower. I am not sure it says anything about a minimum.

Mr. R. A. THORNE: Yes, if you state minimum you are fettering the magistrate's discretion.

Hon. C. E. JORDAN: For my non-legal mind, how does taking away the floor remove the hindrance of discretion but putting an upper limit not do the same?

Mr. R. A. THORNE: Part of it is entitled to settling outer limits, what it cannot do, is to ask the magistrate to start here and go there. The magistrate has discretion from here to the ceiling. Not asking not to go beneath midway and the ceiling. That is discretion, half is discretion.

Hon. C. E. JORDAN: Okay.

Asides.

Senator L. R. CUMMINS: Only one of our submissions covered Clause 48 which was from Solutions Barbados, and they felt the provisions as written in Clause 48 mean that someone could be patient until five years after they have retired and get away with wrong doing. That is the solution's submission and I am just paraphrasing what they have said, and they feel as though it is an open door for politicians to just buy their time until the five years have elapsed following retirement, and then get way with ill-gotten gains. So they want it to be reviewed.

MR. CHAIRMAN: We have a quorum today, we did not have a quorum last week. Last week, the small group of us who were here decided not to delay and that we would still try to get on with our work, but obviously it is work which would need to be ratified by the larger group. I regret to say that I am not inclined now to go over everything that we did last week so that

you can ratify it. What I think I would ask the Deputy Clerk to do is, as soon as he prepares the Minutes for last week's meeting, at least circulate them.

Asides.

MR. CHAIRMAN: We only did drafting last week? We did drafting for two weeks? Oh, yes, the week when Mrs. Elie was here, did we have a quorum?

MR. DEPUTY CLERK: No, we had no quorum.

MR. CHAIRMAN: I would ask then that we try and get those Minutes available and circulated as soon as possible, so that Members in their own time can look to see what decisions were made so that maybe at a later meeting I could ask for those decisions to be ratified. Today's decisions do not need to be ratified because we have a quorum. We are at Part Seven. We are more than halfway, I think. We have from Clause 49 to 86 to go. Let us have a look. I do not think the Bar Association made much heavy weather. Let us see if we can try our best to push through.

Asides.

MR. CHAIRMAN: Let us see how far we can get next time, but we should probably try to do no more than two meetings to go through the rest.

Asides.

MR. CHAIRMAN: I am just looking at the amount of work we have to do. Parliament meets Tuesday, Senate meets Wednesday. Next week is an impossible week for me, I have to say. It is impossible.

Asides.

Senator Miss L.R. CUMMINS: Mr. Chairman, if I can make a suggestion: not on the timing for the meeting but on our public communication, particularly with the stakeholders who have made submissions. I have been observing obviously some of these public groups in which people are making comments like, "We started the process, there was a lot of talk about the process, we are not hearing anything anymore."

Asides.

Senator Miss L.R. CUMMINS: They do not understand the process, so I was just wondering if in the same way as you would in a corporate space – once people have made written submissions and you wrote to them advising them that they were invited to write submissions – whether we can equally respond to them saying, "Having concluded the public hearings, we are now in the drafting phase which is expected to conclude within due course, and we will communicate thereafter." It could be something along those lines, Mr. Chairman.

Asides.

The remainder of the discussion was inaudible

The meeting adjourned until November 16.

**TENTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

TUESDAY, NOVEMBER 16, 2018

First SESSION 2018-2023

PRESENT:

- Hon. D. D. MARSHALL, Q.C., M.P., (Chairman)**
- Bishop J. J. S. ATHERLEY, M.P., (Leader of the Opposition)**
- Hon. Miss C. Y. FORDE, J.P., M.P.**
- Hon. W. A. ABRAHAMS, M.P.**
- Hon. C. E. JORDAN, M.P.**
- Mr. R. A. THORNE, Q.C., M.P.**
- Senator Miss L. R. CUMMINS**

IN ATTENDANCE:

- Mr. Nigel Jones** - Deputy Clerk of Parliament
- Ms. Beverley Gibbons** - Deputy Clerk of Parliament
- Ms. Suzanne Hamblin** - Assistant to the Clerk to the Committee

ABSENT WERE:

- Senator the Hon. Mr. J. X. WALCOTT, J.P.,**
- Senator Ms. M. C. TAITT, Q.C.**
- Senator C. A. FRANKLYN, J.P.**

Mr. CHAIRMAN: This Meeting is called to order. I would like us to finish by 5:30 p.m. When we last stopped we were at Clause 48 of the Bill, so we will resume at Clause 49. Has the Bar Association made any comments on Clause 49? The Bar has not commented on it. Ms. Rolanda Williams did not make a comment either so I think we could move on. In any event, I do not think that in principle there is any issue there.

Asides.

Mr. CHAIRMAN: I cannot tell you that I have a clear understanding of Clause 50. I think this would relate to the Public Service Commission. I believe the reference to the appropriate disciplinary authority would be reference to the Public Service Commission, the Police Service Commission and the Judicial and Legal Services Commission. The Judicial and Legal Services Commission would not matter because we do not have judges here, but I would like to come back to the issue of judges or maybe now is a good time to mention it.

We had mixed views on the matter of making judges subject to this legislation. The most cogent argument may have been that you cannot change the judges'

terms and conditions in a negative way. I am able to say though that in the new financial year we should be looking to increase the size of the judiciary. We will be bringing on three judges to deal with the backlog which will be temporary appointments: two criminal and one civil. Therefore, I am wondering if it would not be appropriate for new judges to file a declaration. It is possible that by mid next year we will probably have an additional five judges. The Court of Appeal will have three vacancies and the High Court currently has two.

Hon. W. A. ABRAHAMS: You said that by next year the Court of Appeal will have three vacancies?

Mr. CHAIRMAN: Justice Burgess will go in January and we already have two vacancies right now. You must not assume that the two persons who are acting now will get dumped in. On the basis we will have three Court of Appeal vacancies, currently have two High Court vacancies and a further three judges, we may be looking to make as many as ten judicial appointments next year.

Asides.

Mr. CHAIRMAN: This has nothing to do with promotion. I am just saying that given the changes that are going to be made to the Bench, that if you take the High Court Bench alone you are looking at potentially five new judges in the High Court.

Asides.

Mr. R. A. THORNE: You are relating that to this, I think.

Mr. CHAIRMAN: Yes, because if you look at Clause 50, it says that: "This Part shall apply without prejudice to the powers conferred upon the appropriate disciplinary authority by the Constitution or any other enactment."

Now, disciplinary authorities in the Constitution are the Public Service Commission, the Police Service Commission and the Judicial and Legal Services Commission.

Asides.

Mr. CHAIRMAN: Exactly. The appropriate Commission will be determined by whether or not you are a specified person in public life, so judges are not in now.

Hon. W. A. ABRAHAMS: I am saying that even if you put them in it does not change...

Mr. CHAIRMAN: No, the question is: What

exactly is Clause 50 trying to do? It just caused me to rethink the issue of whether or not we should include judges. All I am suggesting is that even if the argument was that judges' terms and conditions are fixed, this is an imposition and could be seen as a negative thing, and therefore, that we should not put in judges. Given that we would need to make some judicial appointments next year we should put in "judges of the Supreme Court". I do not think it is good for judicial officers not to be caught in the same way. What are your thoughts, Mr. Thorne?

Mr. R. A. THORNE: Sir David Simmons, speaking for him, he was pretty adamant that you should exclude them, if you remember correctly, that was his view, he spoke of terms and conditions, the larger issue of the independence of the judiciary and one is mindful - I do not know if he is saying this - but one is mindful towards the fact that the ultimate location of a matter springing from this legislation goes before the court.

Hon. W. A. ABRAHAMIS: But equally, the category of people following politicians who are offered bribes also are the judges. *(muffled recording)* I think we should put it in.

Mr. R. A. THORNE: Magistrates are in.

Hon. W. A. ABRAHAMIS: If magistrates are in, there is no reason not to put in judges. I take the point, Mr. Chairman, about the fact that you cannot alter their terms and conditions to their detriment, but that does not apply to the new people. To be honest...

Mr. R. A. THORNE: Yes, but it is an institution. I do not know if you can circuit that way.

Hon. W. A. ABRAHAMIS: All judges appointed after.

Mr. R. A. THORNE: Then you would be treating them separately.

Hon. W. A. ABRAHAMIS: It does not matter, they now come under new terms and conditions.

Senator Miss L. R. CUMMINS: That is my question as well, Mr. Chairman, because my understanding as a non-lawyer of what Sir David Simmons had said, was that it was an alteration of their terms and conditions of service as existed, but once they are now being elevated to office by virtue of a new appointment, then those terms and conditions are open to negotiations.

Hon. W. A. ABRAHAMIS: They would be paid under different salaries.
Asides.

Senator Miss L. R. CUMMINS: Yes, on that basis I think it is one thing. The second point raised by Mr. Thorne was going to be my original question, which was, do we now have different standards among persons who will sit in the same category in the judiciary?

Mr. R. A. THORNE: Not only is it a category but it is an arm of the State. You cannot bring a Parliamentarian here and tell him that he is going to be treated differently from those elected at the general election...*(Indistinct)*

Mr. CHAIRMAN: Well, suppose for some reason the

laws had changed?

Senator Miss L. R. CUMMINS: Then it is a question of grandfathering, which is what you raised.

Mr. CHAIRMAN: You are not grandfathering in, you are grandfathering out.

Senator Miss L. R. CUMMINS: So those who come in would be subject to the new laws?

Mr. R. A. THORNE: I do not think you could treat an arm of the State that way. It is an arm of the State, it is a constitutional authority. There are three arms of the State as we know, you cannot bifurcate between them.

Hon. W. A. ABRAHAMIS: Mr. Thorne, initially I understand from what has been said that they are considering using the *Latimer House Principles* for the appointment of judges, so even the method of selecting judges is changing.

Mr. R. A. THORNE: I understand, that is different.

(Indistinct response)

Mr. R. A. THORNE: When you become a judge you have all of the protection, privileges and everything of the office, and you are independent from the person who has selected you, that is different. Whether you are selected by the Prime Minister under the Constitution or by the Judicial and Legal Services Commission Act by advertisement, that is different, you are not yet a judge. But until you become a judge, you are entitled not to be treated differently from any other person is being treated in the institution.

Mr. CHAIRMAN: I understand that, but my problem Mr. Thorne, is that a reason not to... *(the microphone switched off)*

At this point there is no official recording.

Mr. CHAIRMAN: that he is perhaps the ultimate arbiter of whatever this Commission does or that the imposition of this requirement would operate to his prejudice. Now, judges are the ultimate arbiters of everything, even the ultimate arbiters of what is constitutional, whether the Executive...so I do not know that that...Even this very law or any law that we pass will affect judges, they can rule that it is unconstitutional, so I am not sold on the ultimate arbiter point. I do have a little bit of discomfort with having some judges subject to a particular rule and others not. I have to admit that.

Mr. R. A. THORNE: Like you, Mr. Chairman, that is the one I feel very strongly about.

Mr. CHAIRMAN: On which side will you err? Will you err on the side of having none subject to rule in circumstances where...The curious thing is that the only person who can become a judge is a lawyer, and while you will choose the best lawyer to become a judge.

Asides.

Mr. CHAIRMAN: Let us ask him, maybe we can invite Sir David Simmons to join us if he is

available. Can you ask Sir David Simmons to join us at our next meeting to discuss this point?

Asides.

Mr. CHAIRMAN: Trinidad's judges are included.

Asides.

Mr. CHAIRMAN: I do not think you have to beat Mr. Thorne on that. I do not think Mr. Thorne has an objection to inclusion of judges, it is just that if we only appoint one judge next year, he has to file a declaration....

Asides.

Hon W. A. ABRAHAMS: Hold on Mr. Thorne, if you are using the *Latimer House Principle* for the appointment of judges going forward, the service for life are likely to change. So even the terms and conditions under which judges serve will change, but it can only change for those you are appointing going forward. You are still going to have judges sitting in the same courts with two different contracts.

Mr. R. A THORNE: Judges do not work by contract. Judges are appointed under the Constitution is what I meant, terms not a contract.

Asides.

Mr. CHAIRMAN: I am looking at the Trinidad Integrity in Public Life Act and the Persons in Public Life Schedule has ten categories as follows: Members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Members of the Tobago House of Assembly, Members of the Municipalities, Members of Local Government Authorities, Senators, Judges and Magistrates, Members of the Boards of all Statutory Bodies, Permanent Secretaries and Chief Technical Officers.

MR. R. A. THORNE: Do you have any information on Jamaica too?

Mr. CHAIRMAN: I have Google. The point is Trinidad would have changed the law at some point, either it applied or it did not applied, but it applied to someone. Their Act was first passed in 2000. I am looking at Jamaica now. At first blush it looks as though judicial officers are included.

Asides.

Mr. R. A THORNE: In Jamaica?

Mr. CHAIRMAN: Yes

Mr. R. A THORNE: Okay.

Asides.

Mr. R. A THORNE: Remember Turks and Caicos Islands (TCI) is still a colony but they do not call it that, they call it some other thing, a dependent territory I believe.

Mr. CHAIRMAN: Just bear with me one second, I just want to make sure. Mr. Thorne it says at first blush, and I want to look at Jamaica's statute just to be clear, but I do not want take up our time to do that. It is worth checking it, but we can see that Trinidad includes judges. My challenge with Jamaica is that Trinidad has their new Schedule "Persons in Public Life", ours is the same thing but Jamaica does not have....

Asides.

Mr. CHAIRMAN: Let us ask Sir David Simmons for his views. Jamaica's latest Act is 2017. Alright, so we will defer a final position. Bishop Atherley, any thoughts?

Bishop J. J. S. ATHERLEY: I agree fully with the position and I questioned this in the Lower House.. I hear the argument about changing their terms and conditions to their detriment and I do not necessarily understand how you are doing that just by introducing this. I support the view that both categories, those who are now there, those to be appointed should be included. I cannot see a judge in Barbados, even in private conversations, challenging the Government's attempt to do this, because it is protective of them as well.

Mr. CHAIRMAN: We can still ask Sir David Simmon's view. If he wants to come or if he just wants to send us a short note. We are at clause 51; Acts of Corruption.

Asides.

Senator L. R. CUMMINS: Sorry, there are two comments. The first one is from the Financial Intelligence Unit on Article 51, the director proposes the inclusion of extortion in this section, extortion like bribery is a type of corruption, in a bribery scenario a giver is provided something of value in exchange for benefit offered by the recipient. With extortion the recipient is not typically offering to provide anything of benefit to the giver, instead, the individual is threatening to take an action or engage in conduct that would harm the giver if he or she does not provide something of value usually of a significant amount or comply with the recipients demand. Currently, none of the paragraphs explicitly refers to the element of duress, threat of harm, *et cetera*, as would be included with extortion.

That is their first comment. Then they went on to speak further in paragraphs (j) and (k) referring to the Employment Sexual Harassment Prevention Act of 2017 as necessary and warrants applicable. A second comment which is relevant also to that second point was made. Let me pull it up in a minute but in the meantime you can start with that other one and proceed.

MR. CHAIRMAN: Let us start with the first one. While I think I understand what they are saying....

Asides.

MR. CHAIRMAN: Sorry, the extortion from what I understand is a bit of a different thing. Extortion is really blackmail. I do not know if we want to put a person who has been blackmailed in the same category as this. Certainly it does not fit in this legislation because a person who is blackmailed does not get to list the fact that he does not get shot and the assets are quick to stirr interest. I think this covers a different type of action. A person whose child is threatened if he or she does not do a particular action; to say that person is corrupt would require a stretch as far as I am concerned. Corruption requires a willingness.

Asides.

MR. CHAIRMAN: Mr. Abrahams, what do you think?

Hon. W.A. ABRAHAMAS: I am trying to wrap my head around it now.

MR. CHAIRMAN: If you extort a benefit from me or blackmail me, I am the victim. I am not doing that willingly.

Asides.

Hon. W.A. ABRAHAMAS: A person who extorts in this case I guess would be the public official.

MR. CHAIRMAN: No.

Senator Miss L.R. CUMMINS: It says under Extortion: *"The recipient is not typically offering to provide anything of benefit to the giver. Instead the individual is threatening to take an action or engage in conduct that will harm the giver if he or she does not provide something of value; usually of a significant amount or comply with the recipient's demands."*

Mr. R.A. THORNE: He is the victim, the public official is the victim.

Hon. W.A. ABRAHAMAS: The official is the person extorting. I think what they are suggesting is including in the acts of corruption where a public official extorts somebody....

MR. CHAIRMAN: No, but that is extortion and corruption too, so I have a difficulty there, but it says:

"A person commits an act of corruption where he solicits or accepts, performs or omits to perform, offers promises or gives, recklessly allows, communicates, improperly uses."

What are we then saying? Extorts?

Hon. W.A. ABRAHAMAS: Correct. Do you see the "offers promises or gives?"

MR. CHAIRMAN: Could you read what the Financial Intelligence Unit(FIU) says again on extortion?

Senator Miss L.R. CUMMINS: I am going to read the full paragraph:

"Extortion like bribery is a type of corruption. In a bribery scenario, a giver is provided with something of value in exchange for a benefit offered by the recipient. With extortion, the recipient is not typically offering to provide anything of benefit to the giver. Instead, the individual is threatening to take an action or engage in conduct that will harm the giver if he or she does not provide something of value, usually of a significant amount, or comply with the recipient's demands. Currently, none of the paragraphs explicitly refer to the element of duress, threat of harm, et cetera, as would be included with extortion."

Hon. W.A. ABRAHAMAS: Of course, let me look at paragraph (k). Of course, if it is an act of corruption where he pursues in the extent of his function as a public official and exploits his position for the purpose of sexual gratification. If we have that, then we could put in extortion because it falls under the same thing: you are using your position to leverage something else. I do not see it as a harm in putting it in.

MR. CHAIRMAN: Okay. These relate really to public officials, so if the public official does not demand money but demands something else....

Mr. R.A. THORNE: You could demand

money as well.

Asides.

MR. CHAIRMAN: So the position is that it is the public official who is corrupt by virtue of using his office to get a benefit.

Hon. W.A. ABRAHAMAS: Yes.

Asides.

MR. CHAIRMAN: Is that not covered by Clause 51(b)?

Senator Miss L.R. CUMMINS: The question is that you are doing it under a threat of duress or threat of harm.

Asides.

MR. CHAIRMAN: Why do we need to put duress in? A person in subclause (b) who performs or omits to perform in his function for the purpose of....

Hon. W.A. ABRAHAMAS: Their point is this. Is an extortion case captured under any of these? Perhaps!

MR. CHAIRMAN: Okay. I guess there is an element of duress. I do not see a whole lot of difference between saying "if you give me \$10 000 I will make sure you get the contract" and saying "if you do not give me \$10 000, you cannot get this contract."

Asides.

MR. CHAIRMAN: It is all the same, just another side of the Rubik's Cube to me.

Hon. Ms. C.Y. FORDE: This is not teaching so give me a break. I am not use to the legal realm of things. Where would a police officer or customs officer come in regarding a matter like this, where perhaps a police officer working in the port one night and a drug dealer calls in the day and says, "When I pass tonight at ten o' clock, look the other side: a hundred thousand is yours, or ten thousand"? Where would that come if he is found guilty?

Hon. W.A. ABRAHAMAS: "Who performs or omits to perform in his function..."

Hon. Ms. C.Y. FORDE: Which letter is that?

Hon. W.A. ABRAHAMAS: (b).

Hon. Ms. C.Y. FORDE: Okay. It is (b). A lot of that is happening.

Asides.

Mr. CHAIRMAN: I think it is properly captured but sometimes rather than try to fit it in, it might be good just to say it explicitly. We would then accept the FIU's recommendation? In Clause 51 we want to put in that "a public official who extorts". So, we would add a clause which for the avoidance of doubt, would establish that a public official.

Hon. W. A. ABRAHAMAS: What is causing some confusion here is the structure of this because it includes what the acts of corruption are generally, not necessarily the acts of corruption on the part of the public officer but the acts of corruption on the part of the public official as well as the person seeking to pervert the law. That is why, if you are going from one paragraph to a next, it might appear confusing.

Senator Miss L. R. CUMMINS: While we are on this discussion that is not on the record, just to make a typographical change to subclause (c), the

correct spelling of "public".

Asides.

Senator Miss L. R. CUMMINS: Yes.

Mr. CHAIRMAN: I want to ask here though.

This defines acts of corruption in the context of public officials, now public officer or public official, neither of them are defined as to include a person in public life. If you look at the definition section, public officer means a person in the public service act. Public official means a public officer or any other person who is a member, officer or other employee of a public body as the case may be. So does it say then that acts of corruption, public official, public official, public officer, but a chairman of a board, if he does any of these things?

Asides.

Mr. CHAIRMAN: Okay. I think what we really want to say is that "a person commits an act of corruption in the exercise of his public function." Let us see how "public function" is defined.

It is not defined. Look at Clause 25(1). That Schedule refers to but it should not refer to Clause 25 (2). This should be Clause 25(1). Do you see what I am saying? Make a note somewhere that it is Clause 25(1).

Clause 51 says "acts of corruption generally."

If a person commits an act of corruption where he does any of these things in the exercise of his function as a person in public life or as a public officer or public official. I think that should be there.

Remarks made by Hon. W. A. ABRAHAMS were inaudible because he did not use the microphone.

Mr. CHAIRMAN: What we are trying to say before we figure out how to say it, is that a person commits an act of corruption where he does any of these things in the exercise of his function as a person in public life or as a public officer or a public official, but you cannot keep putting as a person in public life at the end of every clause, so they need to put it in the chapeau. Are you with me? Clause 51 needs to apply to a person in public life as well.

Remarks made by Hon. W. A. ABRAHAMS were inaudible because he did not use the microphone.

Mr. CHAIRMAN: No the one you are looking at is an annotated draft. Everybody does not have that but everybody should have it by now.

Asides

Hon. C. E. JORDAN joined the meeting at 2:34. Mr. CHAIRMAN welcomed him and Hon. C. E. JORDAN apologised for being late.

Senator Miss L. R. CUMMINS: The UNODC has made subclause comments on each one. I think, from (a) through to (k). Starting at (a); they have proposed the first changes at subclause (a). For some reason they are proposing "himself or herself" which is not

necessary under our Constitution, and then they added another element which is "or person or entity". They want to have "or entity" added to subclause (a).

Mr. CHAIRMAN: Subclause (a) and not the others?

Senator Miss L. R. CUMMINS: Well, all the way through, (a) and (b).

Hon. W. A. ABRAHAMS: "It might obtain if it is a benefit for himself or another person or an entity?"

Mr. CHAIRMAN: That might not be necessary. Let me check.

Senator Miss L. R. CUMMINS: Then at subclause (b) they want to insert the word "undue" before the word "benefit".

Mr. CHAIRMAN: Subclause (b)?

Senator Miss L. R. CUMMINS: They want to add the word "undue" before "benefit".

Hon. W. A. ABRAHAMS: No, any benefit.

Mr. CHAIRMAN: Benefit can be in the form of a reversal. They want the word "undue" to be before benefit?

Senator Miss L. R. CUMMINS: An undue benefit.

Mr. CHAIRMAN: If I pay you to get something that I am really entitled to not knowing that I am entitled to it, I would not try to add the word "undue" there.

Senator Miss L. R. CUMMINS: Right. So, "an entity" is what they are looking for here.

Mr. CHAIRMAN: Okay, please go to the next one.

Senator Miss L. R. CUMMINS: At Clause 51 subclause (c), they are considering adding "for the official himself or another entity". They are purporting that this element is held as mandatory under the UNCAC, the United Nations Convention Against Corruption.

Mr. CHAIRMAN: Well, I mean I guess there is a distinction between them, but let me see how our statute defined "persons".

Asides.

Mr. CHAIRMAN: Give me the Section in the Interpretation Act that deals with "persons".

Well, I mean as long as we cover it off, I think that is key. Alright, Mr. Clerk, would you recommend "entity" to the Chief Parliamentary Counsel (CPC). What are the other UNODC things?

Senator Miss L. R. CUMMINS: Their most substantive comments are at Clause 51 subclause (g), so throughout the first section of the text they are repeating the call for the inclusion of "entity", but at 51 (g) they are proposing considering a modification in the paragraph as follows. The language reads like this: "Commits embellishment, misappropriation or other divergence for his or her benefit or for the benefit of another person or entity of any property, public or private funds or securities or any other thing of value belonging to the State, the Government or a statutory body or State-owned company to which he has access as a result of or in the course of the exercise of his or

her functions.”

Mr. CHAIRMAN: I think we could probably accept some of that.

Hon. W. A. ABRAHAMS: Yes and fine-tune it.

Mr. CHAIRMAN: Yes. So then the note would be that we agree with the UNDOC in principle but it needs to be fine-tuned for our purposes. We would not say “the State and the Government”. That might make sense in the United States of America, but we do not have any state or federal... I am sure the Interpretation Act has something to do with... but I am not seeing it.

Asides.

Hon. W. A. ABRAHAMS: Mr. Chairman, we can deal with that in the Interpretation Section and just say that for the purposes of this Act, a person includes an entity.

Senator Miss L. R. CUMMINS: Then it would cover that.

Mr. CHAIRMAN: That would be a... unless a contrary intention is shown.

Hon. W. A. ABRAHAMS: Correct. Just put it in the Interpretation Section.

Mr. CHAIRMAN: Yes, that a person should include an entity.

Senator Miss L. R. CUMMINS: On (j) and (k), the FIU is calling for specific reference to be made to the Sexual Harassment Act in these clauses. Let me read exactly what they have said, let me pull it back up.

“The Director suggests that paragraphs (j) and (k) make reference to the Employment Sexual Harassment (Prevention) Act of 2017” and then thereafter from the UNDOC they make a specific comment on subclause (j). They say: “This is not an act of corruption as such although it is highly inappropriate conduct that should be reflected in the Code of Ethics and Conduct. Nonetheless, Barbados may wish to criminalise sextortion.” So that is consistent with the FIU’s submission.

Mr. CHAIRMAN: You are right. I see the difference. I think we should probably take out (j) because that is a person who uses but there is no benefit or anything so.

Asides.

Senator Miss L. R. CUMMINS: They then made very specific comments on elements which they would wish to see incorporated into the clause and they said: “Barbados should consider including other UNCAC offences such as trading in influence- Article XVIII, bribery in the private sector- Article XXI, embellishment in the private sector- Article XXII, obstruction of justice- Article XXV and liability of legal persons- Article XXVI”.

Asides.

Mr. CHAIRMAN: This is integrity in public life so I do not want to...

Senator Miss L. R. CUMMINS: Yes, keep it narrow.

Mr. CHAIRMAN: What is the first one they had though?

Senator Miss L. R. CUMMINS: Trading in influence- Article XVIII.

Asides.

Hon. W. A. ABRAHAMS: That would be covered under (c), but that would actually only then be for the person who is corrupting as opposed to the corrupt official. It is captured between (b) and (c), both parties. The public official is captured in (b) and then the person who is corrupting is captured in (c).

Mr. CHAIRMAN: Except that influence is a bit of a different thing. You may have influence with somebody which when exercised does not constitute doing anything pursuant to your duties.

Hon. W. A. ABRAHAMS: My position on this is to make the Act as wide as possible.

Hon. C. E. JORDAN: In terms of trading influence because (c) speaks to maybe influenced for something tangible, and I am thinking without knowing the details, trading influence could be [that] I would do something for you which gives me no material benefit but then I would agree to do something for you another time. So there is no actual gift or money or anything like that but maybe a kind of a *quid pro quo* situation.

Mr. CHAIRMAN: In that way you would require us to redefine the benefit as being financial or... (*indistinct*). Benefit includes any property, service or valuable, either direct or indirectly.

Hon. W. A. ABRAHAMS: You could also put in “current or deferred”, that would take care of your “thing”.

Mr. CHAIRMAN: The thing is, trade in influence is not something that you do as part of your duty. What we are talking about here is where you do something pursuant or as part of your responsibility as a person in public life, as a public officer or public official.

Asides.

Mr. CHAIRMAN: So that a judge may know the Minister of Energy, the judge might not do anything pursuant to the duties, but because of his connection to the Minister of Energy he might be known to the judge. I am agreeing that it should go in but I am saying that there is a difference – it is a horse of a different colour.

Asides.

Hon. W. A. ABRAHAMS: But understand something Minister Jordan, if we put that in, that captures situations, for example, if you call me, if I pick up the phone and call Bishop Atherley and say to Bishop Atherley, I would like you to hire Colin Jordan’s daughter, that is that, and that is so much a part of our reality and existence without... We ask for favours, we ask for things knowing that they will be done because of who we are and not necessarily to get any benefit from it.

Hon. C. E. JORDAN: And that also goes beyond *politicians*.

Hon. W. A. ABRAHAMS: Correct, that would capture that, so you might want to be careful.

Mr. CHAIRMAN: May I suggest that we wait to see what Article 18- “Trading of Influence” says?

Senator Miss L. R. CUMMINS: I actually

have it here, hold on. It reads as follows:

"Each State party shall consider adopting such legislative and other measures as maybe necessary to establish as criminal offences when committed intentionally:

(a) The promise offering or giving to a public official or any other person directly or indirectly of an undue advantage in order that the public official or the person abuses his/her role, influence or supposed influence, with a view to obtaining from an administration or public authority of a state party, an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person directly or indirectly of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his/her real or supposed influence with a view to obtaining from an Administration or public authority of the State party an undue advantage."

Mr. CHAIRMAN: Seems to me like it is not focusing on the public official but on the other person.

Senator Miss L. R. CUMMINS: Yes.

Mr. CHAIRMAN: I do not have a difficulty with it but I do not think this was intended to be a criminal statute.

Senator Miss L. R. CUMMINS: No.

Mr. CHAIRMAN: So we may have some difficulty. For me, this is the first draft as an agenda, we need to update our anti-corruption legislation which was never intended to be that updated. We still need to enact a new Anti-corruption Bill, this just deals with integrity in public life, so maybe we could come back to it, but that may better be located in another legislation...

Senator Miss L. R. CUMMINS: Mr. Chairman, the United Progressive Party (UPP) has a general comment on these clauses overall.

Asides.

Senator Miss L. R. CUMMINS: The Sheriff has not made any substantive recommendations clause by clause, the UPP make a definitional argument, so that they are saying that Clauses 51 to 55 make an effort to set up the nature of corruption. However, what it means to have integrity in public life is yet to be defined in the legislation, so that when you do back to the "Definitions" that is what they are making reference to as it relates to Clauses 51 to 55.

Mr. CHAIRMAN: And I thank them for it.

Senator Miss L. R. CUMMINS: Mr. Chairman, throughout Clause 52 in all of its subclauses - UNODC is again reiterating the importance of incorporating "entity", so it is also applicable to 51 and 52. Then, at 52 (2) (a) they have a language change where after "offers" they want to insert the words "promises" or "gives".

Mr. CHAIRMAN: Promise is an advantage.

Hon. W. A. ABRAHAMS: No, "promise" is an advantage if it is carried through. The "offer" sounds more like a solicitation, the "promise" is more a

certainty, it is a commitment.

Asides.

Mr. CHAIRMAN: (*indistinct*)

Hon. W. A. ABRAHAMS: You see, I could say, "I sent him a bottle of champagne". I did not say, "Do you want a bottle of champagne?" Or I could give you a bottle of champagne.

Senator Miss L. R. CUMMINS: That is an offer.

Hon. W. A. ABRAHAMS: So if I just send the bottle of champagne I am equally as culpable.

(*Indistinct response*)

Hon. W. A. ABRAHAMS: I have a difficulty with it.

Hon. C. E. JORDAN: (*indistinct response*)

Asides:

Senator L. R. CUMMINS: Chair they are also asking in following up, we consider including a provision....

Asides.

Mr. CHAIRMAN: Rolanda Williams has suggested for the avoidance of doubt in sub clause 1(b), related to.....

Senator L. R. CUMMINS: Mr. Chairman, not only are they proposing that we keep it but they want to add UNODC. They are suggesting that we consider including an additional provision to allow or rescind the contract, withdraw a concession or take other remedial action to address the consequences of corruption, and they are making reference to Article 34 of UNCAC. Let me read the Article itself, and it says, "Consequences of Acts of corruption with, due regards to the rights of Third Parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of domestic law, to address consequences of corruption." Mr. Chairman I will not read any further because this is specific to what you just said and the changes that needs to be made to the corruption act, rather than in the context of this legislation.

Asides.

Mr. CHAIRMAN: I would like to suggest that the recommendation of UNODC in respect of number 52(1) could be captured in our proposed procurement legislation, so that, that new legislation could have a clause which says, "if the contract procuring through bribery or other act of corruption that the contract should be null and void". Alright, Rolanda Williams recommends that we should not only make the bribee criminally liable but also the briber. Section 52(2) captures what she wants, does it not? Because Section 52(2) says, a person who offers, promises or gives to a public official is guilty to an act of corruption, so I think this is already covered, Minister Abrahams. Yes, I think so. Section 53, Transnational Bribery, Rolanda recommends that Government official should be introduced. She says, consideration should be given to other Government official should be used here, she thinks public official so as to be consistent should be used. I do not have a difficulty with this.

alright. Section 54.

Asides.

Senator L. R. CUMMINS: Mr. Chairman, in section 34, there are multiple comments, but I believe you would have dealt with those previous in lines.

Mr. CHAIRMAN: Rolanda Williams has suggested at sub clause 3 that we take into account with section 22(7) and she had done that for us by recommending A to number 6 is an accessory after the fact two participates. Okay.

Hon. W. A. ABRAHAMS: Does our legislation actually have, at any part, have "accessory after?"

Mr. CHAIRMAN: I have no idea, but the Interpretation Act is right in front of you.

Hon. W. A. ABRAHAMS: If not, we have to word that differently.

Mr. CHAIRMAN: Let us move on to Section 55 while Minister Abrahams stretches his brain on that one.

Senator L. R. CUMMINS: Alright, Mr. Chairman from the IGB Group, they have made a submission on section 55. In this instance they are cross correlating this legislation with the Prevention of Corruption Act, the old formulation. Before I go into this, let me ask if you to rest this here or if you want to...

Mr. CHAIRMAN: Let us still have it.

Senator L. R. CUMMINS: Okay, so this section has replaced section 7 in the Prevention of Corruption Act 1929, but the old formulation is stronger and we strongly suggest that apart from the removal of the words crown, government department, the word benefit ought to be included after gift. Where one refers to criminal offences clarity is required as to reasons why...

Mr. CHAIRMAN: Crown? The word crown does not appear in section 55.

Senator L. R. CUMMINS: No, they say these are things which were in the original 1929 Act that are not in here, so they want them put back in.

Mr. CHAIRMAN: Not put back.

Senator L. R. CUMMINS: Well put in.

Mr. CHAIRMAN: The 1929 Act is still the law.

Senator L. R. CUMMINS: One refers to criminal offences, clarity is required as to reasons why criminal offences should be disproved based on the balance of probabilities. The words crown or any government department ought to be substituted with the words public body the definition of which covers all the relevant bodies. Further, the formulation of section 7 in the Prevention of Corruption Act is preferable. The difference is substantial in the old section 7, it must be noted that section 7 covers receipt of monies, etc....

Mr. CHAIRMAN: This is from who?

Senator L. R. CUMMINS: IGB

Mr. CHAIRMAN: Who is IGB?

Senator L. R. CUMMINS: Integrity Group of Barbados. The difference is substantial in the old section 7.

Mr. CHAIRMAN: May I suggest then seeing as how

we are not repealing the act that we can move on.

Senator L. R. CUMMINS: There is also a submission made by...

Hon. W. A. ABRAHAMS: Mr. Thorne, do you know whether the term accessory after the fact is used in any legislation? I do not think so.

Mr. R. A. THORNE: I do not recall that...I am trying to remember if it is in the Offences against the Person Act. It just might be.

Asides.

Hon. W.A. ABRAHAMS: You see, accessory after the fact is actually a legal construct, so I would more go with "assist in" whether before, during or after, and take out "accessory after the fact".

Asides.

Hon. W.A. ABRAHAMS: You would just leave "accessory after the fact"?

Mr. R.A. THORNE: It is used in British Common Law.

Hon. W.A. ABRAHAMS: If you all tried to charge me with that, I would say, "Tell me how that is defined in our law."

Asides.

Hon. W.A. ABRAHAMS: We do not use it as "accessory"; we use it as "receiving" or something.

Asides.

Senator Miss L.R. CUMMINS: All right, we are coming back to the fines themselves so I am not going to read the recommendations. We will come back to that.

Mr. R.A. THORNE: Go ahead.

Asides.

Senator Miss L.R. CUMMINS: I have nothing on Clause 55, I have already read 55 so it is now to move on to the other Sections, I have nothing on 56 or 57.

Asides.

Senator Miss L.R. CUMMINS : Okay, I will read the Bar Association's comments on 57. At Section 57 it says:

- (1) *"This Section fails to qualify the extent of the suspicion which is required to summon the public official. There is the potential for legal challenges in these circumstances. In light of the criminal penalties which may flow from a finding of guilt, it is recommended that at least a reasonable suspicion be required."*
- (2) *"This Section permits the Commission to resume the guilt of a subject by making no reference to the production of and right to challenge the validity of the evidence which gave rise to the suspicion of the Commission and there is the potential here also for legal challenge and it is recommended that this be clearly stated."*
- (3) *"The term satisfactory evidence is one which is unknown to law as a general standard of proof, as well as one based upon which criminal penalties may be imposed. It appears to be a nebulous concept, which may give rise to varied and potentially unfair outcomes. It is proposed that the common standard on a balance of*

probabilities be expressed as the standard of proof which is to be met by the public official."

MR. CHAIRMAN: I have no problem with that.

Senator Miss L.R. CUMMINS: This is the Bar Association's comments on Section 57.

Hon. W.A. ABRAHAMS: The instructions are that they should be drafted taking the Bar Association's comments which are valid into consideration.

Asides.

Hon. W.A. ABRAHAMS: Rolanda Williams' comments:

"To avoid a gap in the law it is necessary to insert a provision to allow for innocent, bona fide purchases to retain property"

I cannot argue with that. We should keep it standard.

"The provisions should be reviewed to ensure that they apply to all specified persons and staff of statutory boards and not only to public officers. A review is also necessary to ensure that it is appropriate to apply the provisions to all public officers as distinct from specified persons."

Asides.

Hon. W.A. ABRAHAMS: It also reads:

"Sub clause 3 should be reviewed and redrafted the mandatory penalty in that provision is unconstitutional since it removes the Court's discretion to vary the penalty."

Asides.

MR. CHAIRMAN: Take out the area of Rolanda Williams' comments about statutory boards.

Asides.

Senator Miss L. R. CUMMINS: Mr. Chairman, IGB also at this Section is calling for the inclusion of estates of specified persons who are deceased in the instances where their estate holds unaccounted property or peculiar resources. I think we discussed this on Tuesday as well in a different section.

Certain remarks made by Mr. CHAIRMAN were inaudible because he did not use the microphone.

Hon. W. A. ABRAHAMS: And would hardly be able to explain it but the person is dead.

Certain remarks made by Mr. CHAIRMAN were inaudible because he did not use the microphone.

Hon. W. A. ABRAHAMS: The only thing with that is that we might have to look at, seeing that the investigation, once started – this is the general idea – the investigation, once started might not be hindered by death. If we start investigating you and we have the evidence against you, the fact that you have died does not mean we do not continue to go after the assets but as a different situation from you trying to start it when the person is already dead. Do you understand where I am coming from?

Inaudible conversation ensued.

Mr. CHAIRMAN: It was the first time it would have been done in England and pretty much among the first done anywhere. Unexplained Wealth Orders are becoming increasingly important in dealing with transnational crime, terrorism and money laundering. In the context of Barbados, for example, if a drug lord or even a politician had assets accumulated which do not match his earnings, Unexplained Wealth Orders actually puts the burden on you.

Mr. R. A. THORNE: On the suspected person?

Mr. CHAIRMAN: Yes, but it does not require any criminality, so if I, all of a sudden, instead of my 30 foot boat, but a 100 foot yacht then I would be the subject of an unexplained Wealth Order and the burden is put on me to explain it and if I cannot explain it then there is a presumption. There is a presumption that it was acquired through illicit means.

Certain remarks made by Hon. W. A. ABRAHAMS were inaudible because he did not use the microphone.

Mr. CHAIRMAN: Were you not saying though that in this Clause the burden should be shifted to the person making the allegation?

Hon. W. A. ABRAHAMS: They were saying that they would summons the person to produce evidence but what they were saying was that the standard of the evidence was not specified, so it should be, I think they said, reasonable evidence, as opposed to satisfactory evidence.

Mr. R. A. THORNE: That is the issue relating to standard. My issue is related to burden.

Certain remarks made by Hon. W. A. ABRAHAMS were inaudible because he did not use the microphone.

Mr. R. A. THORNE: Yes, you can. Somebody will argue that it is unconstitutional but you can and this would be an enquiry done by the Commission itself.

Mr. CHAIRMAN: In this one, yes.

Mr. R. A. THORNE: Yes, in Section 57(2).

Mr. CHAIRMAN: This is saying though that it is on summary conviction.

Mr. R. A. THORNE: On summary conviction which means a Magistrates' Court.

Mr. CHAIRMAN: Perhaps it is a bit of a difference here because if we are going to seize it civilly the burden is on you. I am not locking you up. I am just taking it away but in this case you are subject to imprisonment.

Mr. R. A. THORNE: And the burden ordinarily is always on the prosecution not on the accused.

Mr. CHAIRMAN: The Bar is only suggesting

that we change this to reasonable evidence? Because the burden of proof...

Mr. R. A. THORNE: They should use the usual standards, balance of probabilities or beyond a reasonable doubt.

Mr. CHAIRMAN: For a criminal offence, so this is really a criminal offence because it is not that having it is a crime but if you cannot produce evidence as to how you got it then...

Mr. R. A. THORNE: Satisfactory evidence they called it.

Mr. CHAIRMAN: This is what the problem is. It is not having it that is the crime it is the failure to produce evidence.

Mr. R. A. THORNE: Satisfactory evidence according to this legislation.

Mr. CHAIRMAN: If you failed to produce evidence that it was acquired by lawful means you are guilty of an offence. Is it not that having it is the crime, it is failure to produce evidence.

Mr. R. A. THORNE: Satisfactory evidence according to this legislation.

Mr. CHAIRMAN: If you failed to produce evidence that it was acquired by lawful means you are guilty of an offence, so it is the failure, which does not sit...

Mr. R. A. THORNE: It is doing two things: (1) it is shifting the burden of proof to you the accused and (2) when they say satisfactory evidence it means nothing. Civil law recognises a standard that is...

Mr. CHAIRMAN: Then the third element is, it is not the having it that is the offence, it is...

Mr. R. A. THORNE: No, it is being unable to prove it.

Mr. CHAIRMAN: Which cannot be an offence.

Hon. W. A. ABRAHAMS: It is if you have it without sufficient proof.

Mr. R. A. THORNE: So this legislation is really...

Mr. CHAIRMAN: It is the having it...

Mr. R. A. THORNE: Without satisfactory proof.

Mr. CHAIRMAN: So how do you purge? If I have drugs...

Asides.

Mr. CHAIRMAN: No, drugs could work because you have medical marijuana. If I have medical marijuana, but on the other hand nothing is wrong with you and you have marijuana but you say you are sick, you could purge your criminality by either proving that you are sick or the men will take away the marijuana. Now, so if you get locked up for having it but when you come out of prison you still have it, are we going to lock you up again?

Asides.

Mr. CHAIRMAN: Every day that you have it, are you going to get locked up?

Asides.

Mr. R. A. THORNE: In my view this 57 (2) has to say precisely what it intends to do. If it is

reversing the burden of proof, it has to say expressly that the onus shall be on the accused to prove that he gained the property lawfully. It has to say that because it is just implied there. It says a person referred to who fails to produce evidence...

Hon. W. A. ABRAHAMS: What Mr. Chairman is saying is that how Section 57 (2) is structured it is the inability to explain that is the criminality as opposed to the possession, so it has to be first referred to in Subsection (1).

Mr. CHAIRMAN: A person who possesses.

Hon. W. A. ABRAHAMS: But at least Subsection (1) says that you are suspected to be in possession of. But I guess we can restate it to say a person who - do not say in Subsection (1) - has this unexplained or disproportionate wealth and is unable to satisfy the explanation is guilty of an offence.

Mr. CHAIRMAN: I do not want to deprive a man of his liberty. I might make him pay a fine but not go to prison because if you cannot explain it, I cannot make you lose it but I can fine you, so you could lose the benefit of it. So if you have a BMW that you cannot explain then the fine will be one-and-a-half times the BMW or up to that whatever it is, so that is your problem you can keep the BMW but you got to pay but I would not want to send a man to prison...

Asides.

Mr. CHAIRMAN: Not in this context because you see this is where...

Asides.

Mr. R. A. THORNE: My concern is that 57 (2) is reversing a fundamental principle of law, the principle of law being that he who alleges must prove and if the Commission is alleging that you have obtained moneys unlawfully the Commission must prove that.

Hon. W. A. ABRAHAMS: The Commission is actually not alleging it, the Commission is saying you have this, how did you get it. You are alleging that you got it legally.

Mr. R. A. THORNE: No, they can do it of their own motion. If you look at 57 (1)...

Hon. W. A. ABRAHAMS: They can ask you for the explanation.

Mr. R. A. THORNE: Precisely, and when they ask for the explanation they are clearly alleging or...

Hon. W. A. ABRAHAMS: No, they are not saying so. You are alleging that you have it legally.

Mr. R. A. THORNE: Okay, let me put it differently. They have the authority to refer the matter to court because it speaks of summary conviction, presumably they are the complainant, and 57 (2) is saying that unless you can prove satisfactorily that you gained this thing lawfully you are guilty, that is a reversal of the...

Asides.

Mr. R. A. THORNE: It is like saying that - and I am sorry to use this example but...

Asides.

Mr. R. A. THORNE: This Section is saying

to them. we suspect you had knowledge and control and unless you can prove that you did not have knowledge and control you are guilty, so that is a reversal of...

Hon. W. A. ABRAHAMS: What I would suggest, Mr. Chairman, seeing that we are well seized of the issues with this, is to let us just wrap our minds around it and come back.

Mr. CHAIRMAN: What I would like to suggest is that we let Sir David have a chat with us because he has worked with this. Let me just say that I want us to remember...

Mr. Clerk: could you ask Sir David to come back and spend a few minutes with us on this?

Mr. R. A. THORNE: You can reverse the burden of proof, the law can do it. My only point is that if you are doing it the law has to say it clearly and we should have a clause here saying the onus of proving his innocence shall be on the accused that is all I am saying.

Mr. CHAIRMAN: One of the things though about corruption is that people will acquire assets and we just have to accept that.

Mr. R. A. THORNE: And it can be difficult for you to prove.

Mr. CHAIRMAN: So a clerical officer or a politician who comes into great wealth, I would have no difficulty making his life uncomfortable by shifting the burden to him.

Mr. R. A. THORNE: Precisely. So let us say it clearly.

Mr. CHAIRMAN: I am happy with that, but Mr. Abrahams and I are saying that in Subsection (2) the offence is not having the stuff, the offence is failing to explain...

Senator Miss L. R. CUMMINS: In my non-legal view, when we went back into the discussion on Tuesday we were talking about the responsibility being placed on the public official to (1) declare and (2) to submit to the register of interests and those things and failure to have registered this wealth or these possessions under those requirements of other sections of the Act would then render you liable to unexplained surges of wealth because you are required under other sections of the Bill to declare.

Mr. CHAIRMAN: But even if you declare it though, declaring it does not solve the problem. You got to declare it and when once you declare it and you cannot explain this particular...

Senator Miss L. R. CUMMINS: But if you had it declared and you cannot explain...

Mr. CHAIRMAN: Then you got problems.

Senator Miss L. R. CUMMINS: It is the failure to declare and then the inability to explain.

Mr. CHAIRMAN: So there are two things. You could declare and hope that because you declare nobody is looking but everybody knows what your salary is as a Minister.

Mr. R. A. THORNE: Are you saying that you would have been captured by that other provision of failure to declare?

Mr. CHAIRMAN: That assumes that you do

not declare but you may declare. You may declare on the basis that... You know they talk about the Obama swagger, you declared it thinking that you are easy but another fellow would look as ask how did you get it, you have declared it but that is how you then get into it here. Can we ask Sir David....? I think Minister Abrahams and I are right on this point. We can discuss it further, I do not want us to spend the rest of the afternoon here because I am mindful of the time but the offence here at subsection (2) is failing to produce the evidence and I do not think that should be the offence, the offence should be having it.

Asides.

Mr. CHAIRMAN: Well, if we correct that, then I could live with the "imprisonment". May I suggest that we stop at 4:00 p.m.? Can we go to Section 58?

Senator Miss L. R. CUMMINS: Mr. Chairman, there is only one comment at Section 58 and it is from the Financial and Intelligence Unit and I do not think it is necessarily a recommendation on the Bill itself, it is calling for the establishment of an adequately resourced and maintained Financial Intelligence Unit.

Mr. CHAIRMAN: Let us move on. They are in my department, so that they are trying to tap that into there.

Section 59, the Office of the Chief Parliamentary Counsel has made a few editorial changes. We have to come back to the "fines" but I do not have a difficulty there. Section 60.

Senator Miss L. R. CUMMINS: Mr. Chairman, let us start with ICAB as it relates to Complaints to the Commissioner regarding contravention of the Act. It says:

"The Commission should be given the express power to establish a hotline to receive anonymous tips from the public..."

Mr. CHAIRMAN: You do not need to put that in a statute.

Senator Miss L. R. CUMMINS: IGB also has one on 60. IGB says:

"Electronic communication ought to be considered as an option for submitting complaints to encourage reporting..."

UNADC has also called for....

Hon. W. A. ABRAHAMS: Hold on, I think the "may complain in writing", that part needs to be worded slightly as to allow for electronic communication.

Mr. CHAIRMAN: I do not like anonymous things, okay?

Hon. W. A. ABRAHAMS: Mr. Chairman, it cannot be anonymous because the complainant then has to produce the evidence, the person has to state whatever purposed evidence that they want to produce.

Senator Miss L. R. CUMMINS: Because this would then go along with the whistle-blower protection.

Hon. W. A. ABRAHAMS: They could email it too.

Mr. CHAIRMAN: I accept that, there is no difficulty....

Asides.

Mr. CHAIRMAN: So that this is unnecessarily rigid, the point is that it may be presented or submitted. If you just say "submitted in writing" I think you would cover whatever that is, "registered post" and others do really make a big difference. But what I am saying is, I am just wondering if there is.... No, never mind, leave it there.

Hon. W. A. ABRAHAMS: But to say A, you have to say B, if the person submits something completely anonymously with sufficient evidence to point to it, [then] it is incumbent upon the Commission to investigate it.

Mr. CHAIRMAN: Right, and anonymously just mean that they have not signed it, it is true you get letters that do not have any signature on them from people, because they do not want to sign them. They want to complain about people all the time but they do not want to sign them.

Senator Miss L. R. CUMMINS: UNODC is also asking for the consideration of anonymous complaints.

Mr. CHAIRMAN: That is what I am saying, given what we are dealing with.

Hon. W. A. ABRAHAMS: But anonymous complaint is not invalidated once the evidence is sufficient. An anonymous complaint with proper evidence is better than a complaint *visu voce* with no evidence.

Mr. CHAIRMAN: And vice versa.

Hon. W. A. ABRAHAMS: Yes, I would not cut out "anonymous".

Mr. CHAIRMAN: Nor would I but I do not know that we want to say here that a person can complain anonymously. This does not mean that the Commission could not consider a complaint made verbally, a person may come in and sit in front of the officer and said that he/she is aware of this and here is the evidence, but [that evidence] has not come in writing, does it?

Hon. C. E. JORDAN: It does not say that it has to be brought.

Hon. W. A. ABRAHAMS: It says "in writing". It has to be in writing.

Hon. C. E. JORDAN: I am saying "may complain in writing". To me that does not prohibit a verbal/oral complaint.

Mr. CHAIRMAN: There are some times when "may" means "shall". You are not compelled to complain but if you do complain it should be in writing that is how it has to be construed. You may complain and when you do it shall be in writing. You may not complain, in which case there is nothing to be written.

Hon. C. E. JORDAN: That does not make sense to me.

Asides.

Mr. CHAIRMAN: There are times when interpreting statutes "may" means "shall".

Hon. W. A. ABRAHAMS: If we go, "shall make a complaint" or "shall complain to the Commission" or "shall make a complaint to the Commission" such complaint include the particulars of

the contravention in relation to(blah, blah, blah).

Mr. CHAIRMAN: That is all, I do not think we need to say "in writing" so that if you eliminate "in writing", then you can say "the complaint may be made in writing or verbally". Or you do not even need to specify it at all.

Hon. C. E. JORDAN: Yeah.

Hon. W. A. ABRAHAMS: Understood.

Mr. CHAIRMAN: Well, you see, our problem then becomes (b) – the nature of the evidence that the complainant proposes to produce in....

Hon. W. A. ABRAHAMS: (inaudible)... photographs.

Mr. CHAIRMAN: I do not like [the word] "complainant" here because "complainant" makes it seem as though you now are part of a process. Leave it at that, a complainant is just one who complains.

Hon. C. E. JORDAN: Mr. Chairman, Bishop Atherley was saying you should use "informant" rather than "complainant".

Bishop J.J.S. ATHERLEY: Do you hear asides?

Hon. C. E. JORDAN: I hear asides, yeah.

Asides.

Hon. W. A. ABRAHAMS: A complainant complains, an informant informs.

Mr. CHAIRMAN: In which case you do not need subsection (2). I think this is giving it a rigidity that we do not want, we want people to come forward. I mean, for example, a whistle-blower is not likely to come and follow all of these formalities and I do not think that we should put things in their way.

Hon. W. A. ABRAHAMS: I do think you have to mention some of the other things there.

Mr. CHAIRMAN: Fine, I accept that, I am going to leave (b).

Mr. R. A. THORNE: Do you want the complaint in writing?

Mr. CHAIRMAN: No, that is what is here, [so] that is why we are taking it out. Then consequently we would take out... We do not want to say it must be "presented in person" neither, or "sent by registered post." Those things all bring a level of formality. The Commission has to understand [that] it will make a determination as to what it will or will not follow up on, and we should not have people working there where a fellow comes and says that he/she is not telling you who he or she is, but [here is some evidence] Instead the person asks for the name and if they do not get your name they are not going to write down anything.

ADJOURNMENT

Hon. W. A. ABRAHAMS: Mr. Chairman, this is a good place to stop, Mr. Chairman, I beg to move the adjournment of this Joint Select Committee until Monday 26th November, 2018.

Senator Miss L. R. CUMMINS: Mr. Chairman, I beg to second that, Sir.

The question was put and resolved in the affirmative, without division. The meeting was therefore adjourned until Monday, 26th November, 2018, at 1.30 in the afternoon.

Mr. CHAIRMAN: Minister Abrahams, I am going to ask you to chair Monday November 26, 2018. I will come in the afternoon, if I can get here. I have a CARICOM meeting which I have to chair on Monday at 12:00 p.m. It will probably run until 4:00 p.m.

Meeting Adjourned

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**ELEVENTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

MONDAY, NOVEMBER , 2018

First SESSION 2018-2023

PRESENT:

- Hon. D. D. MARSHALL M.P., Q.C. (Chairman)**
- Bishop the Hon. J.J.S. ATHERLEY, . J.P., M.P. (Leader of the Opposition)**
- Hon. C. E. JORDAN, M.P.**
- Mr. R.A. THORNE, Q.C., M.P.,**
- Hon. W. A. ABRAHAMS, M.P.**
- Hon. C. McD. GRIFFITH, M.P.**
- Senator Miss L. R. CUMMINS**

ABSENT:

- Senator C. A. FRANKLYN, J.P.**
- Hon. Miss C.Y. FORDE, M.P.**
- Senator the Hon. Mr. J. X. WALCOTT J.P.,**
- Senator Ms. M. C. TAITT, Q.C.**

IN ATTENDANCE:

- Mr. NIGEL JONES (Deputy Clerk of Parliament)**
- Ms. BEVERLEY GIBBONS (Deputy Clerk of Parliament)**
- Ms. SUZANNE HAMBLIN (Assistant to the Clerk to the Committee)**
- Mrs. MECHELLE ELIE (Senior Draftsperson, C.P.C. Office.)**

Meeting commenced at 2:00 p.m.

Mr. CHAIRMAN: Good afternoon, Members, we do not yet have a quorum, which is very important, but we will seek ratification at our next full quorum meeting. The last time we met we stopped at Clause 60, but before that the question had arisen as to whether or not we should include judges in that Second Schedule which stipulated who the specified persons in public were to be. Members would recall that magistrates are included, magistrates do not have any constitutional protection, however, judges do have constitutional protection in that you cannot change the terms of their employment to their disadvantage. While a declaration is not necessarily a disadvantage, it is an imposition on them to make certain disclosures which, under the law as it stands today, they are not required to do. It is to my certain knowledge that the Government intends to

establish some specialist courts and to expand the size of the Bench, but in any event going forward, we now have a number of vacancies on our Court of Appeal Bench, at least two and a third will arise. I think, very early next year, so we will have to make appointments to the Court of Appeal Bench and possibly to the High Court Bench. Therefore, the question is whether those individuals who are now to be appointed should not, as at the date of their appointment, be subject to the rigors of declaring their assets as contemplated by the Integrity in Public Life Bill.

When we last met, we agreed that we would invite Sir David Simmons to join us to share his views, inasmuch as he had made a few comments on this particular element when we had our opening meeting. So without more, I would like to invite Sir David Simmons who has joined us again to share with us in perhaps greater detail but at least to reiterate what his thoughts were on the question of including either the existing judges or judges to be appointed going forward on the Second Schedule of specified persons in public life. Sir David Simmons.

Sir DAVID SIMMONS: Thank you very much, Honourable Attorney-General. Well, I think the first point we should make is that we should look at what happens in other countries in the region. Jamaica amended their legislation last year and so far as I can recall judges are still required to disclose. I have not been able to check Trinidad and Tobago yet but that is a matter I can deal with shortly. There is no reason in principle why a judge should be exempt from the disclosure provisions. We have been lucky in Barbados that no one on the Bench, during their tenure, was found to be corrupt, that does not mean that all judges pass the test. We are in an era where the private sector, and this is my own personal observation, in Barbados is very, very corrupt and that has been evident in recent elections and in recent behaviours outside of election. There are some elements in the private sector who I believe will not be deterred from offering a bribe to a judge in the belief that it may advance their case, and I am saying that with a basis of factual knowledge gleaned when I was Chief Justice. I do not believe that we should think that because no judge has been exposed over the years that that will be the situation for all times. It would be better if all judges were made subject to the provisions of this legislation, but as the

Honourable Attorney-General has properly recognised there may be an argument advanced – I am not saying that it would succeed - but there would be an argument advanced that this is now an attempt to alter the terms and conditions of appointment to their disadvantage. They have to show how it is operating to their disadvantage, that is the language of the Constitution. I think we all are aware that the ingenuity of lawyers is elastic and that this, I am sure, could be advanced as an argument against making the existing judges subject to the legislation. I am not going to speculate whether or not it will succeed because that requires the weighing of arguments.

Now, it is perhaps different qualitatively but the Supreme Court Act makes provision for judges to try tax cases even though they themselves are taxpayers. There is an exemption, in other words, to the rule against bias and conflict of interest but it is specified in the Supreme Court Act, Cap. 117A. This is not at the same level but I cannot see why a judge, as a matter of principle, should be exempt from disclosure when all the existing judges should have this. Certainly the ones who were around in my time when I had this promulgated, the "Guide to Judicial Conduct" in June 2006, and you were on the Council at the time. In a way we may have foreshadowed this kind of situation because at 1.24 page 10, it says: "A judge should make such financial disclosures and pay all such taxes that are required by law." Now, this would be a financial disclosure.

The point of this is that this "Guide to Judicial Conduct" was developed by all of us who were then serving judges. It was canvassed in a weekend meeting with all of us, some amendments were made and ultimately this was agreed by all judges and magistrates who were serving in 2006. It went to the judicial council which is a body on which all the judges are members and two or three magistrates, but not all the magistrates, all of the judges and they all approved it. In addition to that, there is a general prescription at 4.5.2 on page 14 that says, "a judge should therefore recognise that transparency assist in combatting corruption and suspicions and he or she should encourage judicial colleagues and the court staff to assist in promoting the intrinsic merits of transparent conduct and infusing public confidence in the role, functions and operations of the court." These were prescriptive and they are not backed by any sanction, if a judge does not follow them it does not mean automatically you are guilty of misconduct. It may mean misconduct but it automatically does not rise to that level of misconduct causing removal under the Constitution. It is made to lay down principles of best practice. Now, when I brought this, I had it distributed at every post office, people could go and get them, because we wanted the public to be involved to know what were the responsibilities and the ethical standards expected of a judge. It got good reviews, I must say, at the time. The judges who were there in 2006 and who still serve should be aware of this. I recommended to CPO that when new judges came on they should have

been given a copy. I do not know what happens now. There is no reason why we should not include judges with magistrates in the Second Schedule, because any judges who are appointed after the law is passed should be made liable to disclose. As I said, they may be argued by the serving judges, but what I would encourage is that you adopt an approach similar to that which Jon "Tom" Adams and Henry Forde in particular, around 1978/79 adopted in respect of the Tenancies Freehold Purchase Act. What we were doing then was going to plantation owners and saying, we want you to give up some of your land to the tenants who would have been on this for donkey's years and their predecessors and so on and pay \$0.10, that is not the real value, \$0.10 per square foot. We tried to get them, "buy in" is the contemporary catch word, by talking and getting them to agree, so it was never an issue. The plantations agreed, and I would suggest that the approach to the Chief Justice and the judges, by which, I can give you the list by tomorrow, but to say that in Jamaica they have to do it. I have to check Dominica, Antigua and Trinidad. The Bahamas has not done their legislation yet. Try to encourage the judges by moral suasion to agree that they would not create an issue out of it on the basis of an alteration on terms and conditions. There is no harm including the word "Judges" next to "Magistrates", because clearly even they fight you, the new ones would be caught by it and any subsequent.

Mr. CHAIRMAN: Thank you, Sir David Simmons. Any questions or commentary on what Sir David would have offered? Bishop Joseph Atherley?

Bishop J. J. S. ATHERLEY: Position is the same, I cannot come to any conclusive reason as to why they should be exempted. I certainly do not like a two-tiered system where you exempt those currently serving seek to include those who may be brought on next year. I hold the view and was glad to hear reference made to this document and that there was agreement and buy in on this. I certainly hold the view that I really cannot see any judge in Barbados today who would advance the argument of being disadvantaged by this change, simply to be exempted. My position remains the same and I am heartened by whatever.

Mr. CHAIRMAN: We have a consensus on the inclusion of judges and to the extent I think there might be a challenge, I think the doctrine of severability would apply. We can either stipulate those, I would be reluctant to say those judges appointed after this, I would rather say judges and if there is a challenge, then we adjust to meet that challenge.

Hon. W. A. ABRAHAMS: One question Sir David Simmons. Mr. Thorne had raised before the fact there may be an issue with the judges saying you cannot have one rule applying to a section and a different rule applying to another section, so if sought to require new judges to have to declare their assets they may take the point that it cannot be that they have to declare while those who are already in the system do not. I have looked at the other legislation from the other Caribbean territories who have judges on...

Sir DAVID SIMMONS: Did you check it? Jamaica has them. Trinidad too?

Hon. W. A. ABRAHAMS: The legislation did not make any...

Sir DAVID SIMMONS: Distinction.

Hon. W. A. ABRAHAMS: No. It WOULD appeared from the legislation that they just said, you know what, judges are included. I think a judge would be hard pressed to explain why they do not want to submit themselves to disclosure and to the integrity legislation everyone else has to. My preference would be to just put it in across the board.

Mr. R. A. THORNE: Thank you Chair. I do not have a difficulty with Sir David's Simmons position for inclusion, but Chair you mentioned the latter point of what I termed on the last occasion bifurcation of duties and obligations as between the Bench. I would quite simply say Sir David Simmons, my view last time and now continues to be this, that the judiciary as you know is an arm of the State. There are three of them. I am probably now going to go as far as to say that you cannot treat an arm of the State in a bifurcated fashion, which is to say that judges appointed before X date are to be treated differently to judges appointed after a certain date, that is not how the State functions. You cannot have a State body or an arm of the State treated in that manner. A constitutional body or an arm of the Constitution is continuous and there is a certain solidity about it. You simply cannot - and I am sorry if I am sounding very adamant on this - but you simply cannot take a State body or an arm of the State and divide it in this manner. A judge is a judge is a judge is a judge, and there is no difference between them: certainly not in terms of appointment, terms and conditions or their service. Mr. Chairman, I feel very strongly that they must all be treated equally because they belong to an institution that is established under the Constitution and is protected under the Constitution. I feel very strongly that you cannot make a division between them.

Hon. W.A. ABRAHAMS: It is a fundamental principle of labour law that you cannot actually change anybody's contract to their detriment, so it applies pretty much across the board. By bringing this legislation in, we are changing the terms and conditions of every public servant to whom it applies. I do not see it as being to the detriment of anybody the fact that you have to disclose circumstances as they exist. To take a snapshot at a given point in time, to me, does not fall to be considered as detrimental to your employment. If it was considered so, it could only be detrimental in terms of the expense in compiling it, at which point you give them an allowance for it.

Asides.

Mr. R.A. THORNE: Before Sir David answers, I am sorry to be dragging you between us.

Sir DAVID SIMMONS: Go ahead.

Mr. R.A. THORNE: Again, my view is that a judge's service is not contractual unless the State hires somebody who has retired elsewhere and gives them a special kind of service. Like the Public Service, it is not contractual, and Sir David knows this from the

Gladwyn King case. It is service, which is a different creature from a contract; so that I do not think it is open to any judge to speak about contractual terms. It is not contractual; it is an appointment - a very sacred appointment - under the Constitution of this country. It is not a contract, so I think that argument is beyond any judge who wants to take that up in terms of the contractual argument. Thanks.

Sir DAVID SIMMONS: I am glad to have heard those two points because the point made by Minister Abrahams is one that I wanted to remind us all about. The key words, it seems to be, would be "altered to their disadvantage". That is the language of the Constitution, that the terms and conditions cannot be altered to the judges' disadvantage. The question is this: Is there a disadvantage in asking a judge to fill up the forms? It is different from 1991 when we had the Reduction of Emoluments Act, which cut civil servants' salaries by law by eight per cent. In that legislation, the judges were exempt, and it was specifically written in that this Act shall not apply to the judges because that would have been an alteration of their terms and conditions to their disadvantage because they would have been losing X dollars a month in salary. This is different. This is not at the level of any monetary disadvantage, so I say go ahead with it.

Hon. W.A. ABRAHAMS: Across the board.

Sir DAVID SIMMONS: Yes, across the board.

MR. CHAIRMAN: Thank you, Sir David, for that sage advice. I detect no dissent, therefore the floor is yours, Mrs. Elie, since you have a comment to make.

Mrs. ELIE: Thank you, Chair. The Insurance Corporation of Barbados (ICAB) on Page 5 of its comments mentioned the position in Trinidad and Tobago. Unfortunately, I was unable to verify the case, but they said that the court ruled that judges and magistrates should not be included. That was a side issue to the original point they were making, and they cited a High Court case which, as soon as I can, I will look at.

Hon. W.A. ABRAHAMS: What is the name of the case?

Mrs. M. ELIE: They did not give the name of the case. They just said, HCA1735 of 2005. In their submission, it is dated September 24, 2018.

Hon. W.A. ABRAHAMS: What is the citation again?

Mrs. M. ELIE: HCA1735 of 2005.

Asides.

Mrs. M. ELIE: The issue I wanted to raise did not relate so much to the disclosure but the process after the disclosure, where the Commission would be able to summon the judge before it to answer questions and so on, and I wondered whether that would be appropriate in terms of the Constitution and the separation of powers.

Senator MISS. L.R. CUMMINS: It is The Integrity Commission v The Attorney General of Trinidad and Tobago.

MR. CHAIRMAN: I am not sure that the Commission summoning a judge would trespass on separation of powers but it may be open to us to consider whether in relation to judges, at least, we should not trigger the Governor-General's process. Remember, in this schema if you are a Member of the Commission you declare to the Governor-General while anybody else declares to the Commission on an investigation. It may be appropriate in the case of a judge.

Sir DAVID SIMMONS: In the case of special appointment?

MR. CHAIRMAN: Yes, that might be an appropriate measure.

Asides.

MR. CHAIRMAN: Have you found the case? We will look for that case but I do not know how a court could say that magistrates and judges should not be subject to integrity legislation. You cannot state that as a principle.

Asides.

MR. CHAIRMAN: The moral of that story is that, with due respect to an accountant in our midst, you should not accept an accountant who quotes law any more than you should accept a lawyer who quotes accounting. She has stated the case but for the moment let us proceed on the basis that (a) we would include judges in the Schedule, all judges whenever appointed, and (b) that in terms of the supervisory authority under the Act if there is a report to be made or any action to be taken or declarations to be filed, they should all go to the Governor-General. Yes?

There were other matters, Sir David, on which the Committee wanted your vast experience and I believe it related to Clause 51 of the Bill.

Mr. N. R. JONES: Whether there is a complaint or whether we find that you have assets that go beyond your income and they ask you to give satisfactory evidence ...

Mr. CHAIRMAN: Oh, no, no, no. That was not 51. Sir David, that had to do with unexplained assets. The Clause in relation to unexplained assets, puts the burden of proving ...

Sir DAVID SIMMONS: Shifting the burden.

Mr. CHAIRMAN: Yes. Where is that clause?

Mr. N. R. JONES: That is 57.

Mr. CHAIRMAN: I think the issue here was whether the burden of proof should have been put on the person who is declaring. Then in subclause 2, this one here: "*A person referred to in Subsection 1 who fails to produce is liable*" and what we are arguing here was that it is the failing to produce that is an offence and not the possession itself.

Sir DAVID SIMMONS: Possession alone gives you the right to summon the person to explain the sources of income. That is Subclause 1, where you suspect that the person is in possession of property that is disproportionate to known sources of income. First thing you do is to summon the person to show you evidence that the property he has or the big house he has built was lawfully obtained. It only asks to show

some evidence as to how you got this big house and you are a small Customs Officer II.

The persons referred to then who fails to produce that evidence that you are asking for is guilty of an offence and is liable to a fine and to imprisonment for not less than six months or more than three years.

Hon. W. A. ABRAHAM: But the offence of what?

Sir DAVID SIMMONS: The offence is that he has not been able to produce to you the evidence to substantiate his acquisition of the property.

Hon. W. A. ABRAHAM: But, Sir David, if we have a fundamental right to remain silent, my failing to produce evidence or my failing to defend myself should not be the crime. That is what I am saying. It would have to be the possession. This is where we had the issue in how to wrap our minds around it. The fact that I said nothing, it cannot be a crime that I failed to explain. It would have to be a crime that I had the stuff without a valid explanation or something.

Sir DAVID SIMMONS: So if you have an accident this evening, God forbid, and you failed to produce your driver's licence at the police station within 48 hours they cannot prosecute you under the law?

Mr. CHAIRMAN: But the offence is not failing to produce.

Sir DAVID SIMMONS: That is the offence.

Mr. CHAIRMAN: That is the offence?

Sir DAVID SIMMONS: Yes. Failing to produce the driver's licence. It is an implication that you do not have it because you cannot produce it.

Hon. W. A. ABRAHAM: But do you see the difficulty we have here?

Sir DAVID SIMMONS: No, I do not. In the light of that I do not see the difficulty.

Mr. CHAIRMAN: It is kind of hard to find the analogy.

Sir DAVID SIMMONS: All we are saying here is that we suspect that you ... and we would like to know how you built this big house here. This must be worth \$700 000 or \$800 000. Show us the contractors' bills and so on.

What we need to do with this is to compare it with the recent legislation in Britain which, I think, you mentioned and Unexplained Wealth Orders. I believe also in the Proceeds of Crime Act, something tells me that there is a burden of proof that is shifted, in the Proceeds of Crime Act on a defendant to explain possession of certain things. The shifting of the burden of proof is well accepted now in cases where it is a situation where the facts can only be within the peculiar knowledge of the particular person. He has the facts. Nobody else can have them, therefore, the burden of proof shift on him to divulge them.

Mr. CHAIRMAN: Mrs. Elie is also working on the Unexplained Wealth Orders for the Money Laundering and Proceeds of Crime Act so there might be some similarity because this is, essentially, the same basic concept.

Asides

Mr. CHAIRMAN: I am not saying that you have done it yet but I know you are supposed to be working on it.

Mrs. M. ELIE: Yes. I believe that there is some similarity. I do not have it with me, unfortunately, but also in the current money laundering legislation. I think, there is provision for unexplained wealth as well. Perhaps, what we might just need to compare is the language used. If we say like the person on a balance of probabilities or is likely that it is unjust enrichment or words to that effect, would that be more satisfactory that saying a person failed to produce?

Hon. W. A. ABRAHAMS: I take the point. Let us look at the existing legislation just so that we use what has already been accepted insofar as it is relevant, no reinventing the wheel.

Mr. CHAIRMAN: There was something about extortion but I cannot remember what it related to, whether we should include or ... Senator Cummins could you just read the question on extortion so that we could get Sir David's view at the same time?

Senator Miss L. R. CUMMINS: Mr. Chairman, the Financial Intelligence Unit was proposing that the term "extortion" should be included in this section. I have Clause 51 where it says:

"In a bribery scenario, a giver is providing something of value in exchange for a benefit offered by the recipient but with extortion the recipient is not typically offering to provide anything of benefit to the giver. Instead the individual is threatening to take an action or engage in conduct which will harm the giver or if he or she does not provide something of value usually of a significant amount or comply with the recipient's demand."

None of the paragraphs currently explicitly refer to the element of duress, threat of harm or *et cetera* and would be included with extortion. That is what they are recommending.

Mr. CHAIRMAN: So basically, I think from our discussion we were saying that in most cases of bribery a person will accept a bribe but we now have a situation that it is conceivable that a public officer can extort a payment from you but it is really no different from somebody at a particular... they will probably say I will give you this licence if you pay.

Asides

Senator Miss L. R. CUMMINS: One is consensual though, and one is not.

Sir DAVID SIMMONS: We have two cases like that before the courts in Turks and Caicos, of immigration officers who got hold of some Haitians who had illegally entered the country and extorted a couple thousand dollars from them, made them work on their houses and would not pay them and they went before the court. In fact, I think one may have been convicted recently but there is still one pending. There

was a similar one with a police officer who was found guilty, so this is a real thing. At certain levels public officers would do that. Certainly, in the experience of the Turks and Caicos Islands with this so I would have no problem with including it. I mean they seem to have drafted something which Mrs. Elie could look at to cover extortion and add it as a separate offence.

While we are on that the only unhappiness I had with this Bill and my work on it was that I did not know how far the Government would go in trying to drill down to where a lot of the corruption is in Barbados among public officers. I am going to say that Customs and Immigration are no any longer at the top. When I say any longer I know what I mean, but historically it has always been lower down. With a little time we probably could still do it, check out the house of the average customs officer who was in there for 10, 12, 15 years, you check out that it is lavish. Now, how do we make them disclose? You see there are so many of them you cannot have 200 Customs Officers disclosing, we would not be able to run a thing but that is a real problem. At Immigration we know that people come in particularly from Guyana when certain immigration officers are on call with the US\$500 in the passport and when they go to a particular desk they give the fellow the passport, he takes the passport, puts the money in the draw, stamps and you get to stay as long as you like. I was Minister responsible for Immigration for eight years and I know all of these things, Bishop Atherley worked with me. How are you going to get them to disclose? They are too many.

Senator Miss L. R. CUMMINS: I have a question. We have had a number of submissions from various bodies and they had talked about the challenges with this particular legislation attempting to treat to every element of the issue and the need therefore for ancillary legislation to either be introduced and/or updated in complementary areas. The question then would be as it relates to entities like Customs, and this is particularly an issue for me because our ports of entry are particularly compromised as a result of the activities of Customs and Immigration, so how do you then recommend in terms of ancillary legislation or either additional legislation how we can treat with some of these issues. What else should we be looking at?

Hon. W. A. ABRAHAMS: Well, I well know Sir David as a man who can multi-task so the other thing you can do, Mr. Chairman, because I have thought about this as well, is while the legislation sets out the categories of people who have to make disclosure there should also be a sweep-up type clause in there that anybody employed by the Crown if called upon to make this disclosure should be obliged to make this disclosure. There are certain people who will have as per the legislation obligation to file things at certain times but that does not prohibit the Integrity Commission in the same case of let us say a Customs Officer from saying, "okay, look skipper you are driving a Mercedes Benz and you have a \$1 million house."

Sir DAVID SIMMONS: You get him by Section 57.

Mr. CHAIRMAN: My concern about residual discretion in the hands of a Commission to say who should declare on an ad hoc basis is that it really is a sword of Damocles over any public servant, and perhaps even anybody at all.

Sir DAVID SIMMONS: And allow for spite and all kinds of things to be motivating factors to investigate somebody. The Chairman of the Commission does not like a particular person who was giving him trouble over the years and he says "I gine get back at them now, I gine use this". I do not like that kind of looseness. It is too arbitrary, it opens up the possibility for arbitrariness and with arbitrariness will come unfairness and we do not wish to be unfair to people. Leave it as it is. I think that there are other means of getting at some of these lower level operatives who we know are involved in corruption by other legislation.

Mr. CHAIRMAN: Thank you, Sir David. I would like you to stay with us if your time allows as we go through the other parts of the Bill. I am told by the recording Clerk that we had stopped at Clause 60 or 61. Which one? We had stopped at Clause 60 and I think our discussion at Clause 60, Sir David, was the issue of "in writing". This Clause requires you to complain in writing. We recommended that we delete the terms in writing. Is that consistent with the recommendation for you having to work with similar legislation? In fact, one of the issues that arose and one of the things that we canvassed was that some people would prefer to lodge a complaint anonymously and while that is not the best thing in the world, in fact it is very far from the best, but equally individuals might really not want to put pen to paper and try to put forward a positive allegation. So we propose to delete "in writing" so that you can complain.

Sir DAVID SIMMONS: But as a rule of practice, you would prefer if the complaint is in writing.

Mr. CHAIRMAN: We would prefer, but there are individuals who if you stipulate that they had to be in writing [they] might not come forward, but let us put it in another sense. You have had the experience and you still – well, you are not the substantive Chair in Turks and Caicos Islands but you are the *locum tenens*, it seems.

Sir DAVID SIMMONS: No, I have retired.

Mr. CHAIRMAN: Okay, but an individual who had grounds to complain and sought to do so other than in writing, would a Commission reject the complaint for that reason?

Sir DAVID SIMMONS: The way it is done is that if you come in and speak to investigators, they will ask you to come back, so that they can take a statement from you so that your oral concern is reduced to writing at some point to trigger an investigation. So if you word it as "may complain, that is fine. Now how we deal with that after the complaint has been made to the Commission for its determination as to what practice or procedure they would follow in respect to the particular

complaint, if it is, for example, I saw somebody signed a work permit or whatever – we get a lot of those – who is not authorised to issue a work permit to a Haitian, you would hear it and then you would ask him to go back and see how much more he could find out, if there is a book, if he could photocopy the actual work permit, bring it and so on. But he has told us something orally, as the Commission you now have to make sure that you have that evidence in its best possible form and you get there by inviting him to come back and you taking the statement from him in writing, you then read it back to him and then you sign it, so that I have no objection to deleting the words "in writing."

Hon. W. A. ABRAHAM: So that we could probably just change that to "may make a complaint to the Commission".

Mr. CHAIRMAN: I leave that for Mrs. Elie. At Subclause 2, "may be presented in person or sent by registered post".

Sir DAVID SIMMONS: It could be done by oral or you send in something.

Mr. CHAIRMAN: Why would there be magic to registered post? These days people can email. It just seems to ask that you do not want to put little hurdles in the way of individuals who want to make complain, I mean, an individual may show up at my office with a cheque and say: "A.G. I want you to see this, this is a cheque made from 'so-and-so' to 'so-and-so' and if you check the public record you would see that 'so-and-so' got a contract from that person's Ministry." If I were the Commission, for me to say you have to come and give me a statement in writing and so on, that is probably even better evidence than most complaints would be. So that we were just thinking that we would not want to so limit....

Sir DAVID SIMMONS: No, well, you are sending electronically?

Mr. CHAIRMAN: Well, it does not matter how it may be sent at all. In fact, the section which speaks to it I do not think is needed. However the person comes...

Asides.

Mr. CHAIRMAN: May I delete Subclause 2, Mrs. Elie?

Mrs. M. ELIE: Yes.

Mr. CHAIRMAN: Okay, we can move to Clause 61- The duty of public officials to report, Ms. Elie, Mrs. Williams has opined that Subclause 3 is ambiguous: you really should not say that, "the person shall be convicted of an offense". You cannot say that.

Sir DAVID SIMMONS: No, that should not be there.

Mr. CHAIRMAN: You can say any number of things but not "shall be convicted..."

Asides.

Mrs. M. ELIE: I tend to agree with Mrs. Williams but for a different reason in the sense that when we look at (1), it imposes a duty on the public official to report to the Commission, but the public official may because of his chain of command, *et cetera*, has a duty under a different piece of legislation to report to another person and no one else, so [that] (3), to my mind almost wants

to suggest that if the public official reports to another person, a person other than the Commission, then that would be sufficient but it does not go quite that far, so it makes it seem a little bit ambiguous to me. Is it the intention that the public official has the option of reporting to the Commission or to whomever is his senior, or is it saying something slightly different whereas if he reports to someone else, he is not liable to be prosecuted because perhaps he might be breaching some duty of disclosure by not reporting. The two do not jell well, they are two different policies.

Mr. CHAIRMAN: This makes that okay, if you report to the Commission then you are okay but [that] if you report to somebody else you may be liable, but in any event I think what this section is intending to do is to confer an immunity, so what we really want to capture is that a person who lodges a complaint, as long as it is bona fide is not... because there may be a duty of confidentiality under some other rule or statute. So, I think if we perhaps go back to what this section is intending to do- you would agree with me. Sir David- this is intended to confer immunity on an individual who complains, an immunity in respect of that action.

Hon. W. A. ABRAHAMS: If this is what it is trying to do then the existing wording accurately conveys that.

Mr. CHAIRMAN: Well, no, it says that you shall not be convicted. Now when does the conviction happen: at the end of a process, so a person might perversely go through a trial and then you cannot be convicted.

Sir DAVID SIMMONS: It should be "*shall not be liable to prosecution*".

Mr. CHAIRMAN: It should be "*shall not be liable to prosecution*". Mrs. Williams, I think, is also looking to suggest that, supposed there is a breach of a confidentiality clause in an employment contract, so that what we want is that there should be no civil or criminal liability if you disclose.

Sir DAVID SIMMONS: Well, it should be that "*they be exempt from civil or criminal liability*".

Mrs. M. ELIE: There is just one point that remains to be resolved, 3 ties in with 2, so that the offence referred to in 3 is a failure to report to the Commission which is why I thought maybe the issue was between two possible reporting regimes. Even if the

Asides.

Mrs. M. ELIE: It depends on what the policy is. If the policy is, regardless of whatever reported requirement a public official may have under a different piece of legislation, the public official must report to the Commission directly, then we can craft the language accordingly. If it is sufficient however, for the public official to go through his other reporting mechanism, and I guess what the outcome should be is that eventually the report would get to the Commission, which of course depending to whom the public official is reporting, that may not be a case, we would then craft the language to suit.

Hon. W. A. ABRAHAMS: I do not think that is the intention. I think the intention is once you have

discharge your duty to report under this Act or some other Act then you are exempt from prosecution. If my duty is to report up the ladder to Nigel and then Nigel reports to Susan, the point is I have discharge my duty. If I report to Nigel and he fails to send it up the line to Susan, then Nigel now answers as to why he did not. It cannot be that somebody has to have in their mind that I need to comply with that and this legislation. Once you have reported and shown good faith in trying to uncover or disclose the complaint of behaviour that should be sufficient. Although you may not come under this, if you have generally attempted to address it or disclose it under some law otherwise you should be exempt. What do you think?

Sir DAVID SIMMONS: That is the only problem I have, otherwise I think the section says what it means. First of all, if you are a public official and you know or suspect that someone is doing something in breach of the Act, you have a duty to report it to the Commission. If you do not carry out that duty that is an offence, and you are liable under Subclause 2 to a fine of \$5,000 or to imprisonment for two years. If however, you report the thing as you say in good faith and nothing comes of it, this is saying that you carried out your duty and you should therefore not be liable to prosecution. I do not see anything else in this other than change "shall be convicted" to "should not be liable to be prosecuted for an offence."

Mrs. M. ELIE: Perhaps, what might assist is if say where the public official has a duty to report under another enactment and reports, but does not report to the Commission. I think that might make it abundantly clear that he reports only to his senior and not to the Commission.

Sir DAVID SIMMONS: With respect, this is dealing with offences in this legislation, nothing else. "A public official who knows or suspects that another person has been or is likely to be engaged in contravention of this Act", take one of those Clause 51 offences, then he must report that knowledge or suspicion to the Commission. Only this Act, nothing to do with any other Act.

Mr. CHAIRMAN: I think we need to remember what it is we are about. The Commission has a specific duty under the Act, I think that duty has to be discharged. If you do not put the Commission and you allow the person to report to the head of the department, there is nothing triggered. They may even report to a Permanent Secretary and there is nothing triggered, so I think that this tends to orient an individual who has an idea that something corrupt might be going on to report it to the Commission, an agency that is set up hopefully staffed, specifically for the purpose of rooting out corruption. In those circumstances having discharged your duty under the Act and your duty under your good conscience, you are exempt from any liability, civil or criminal. I understand you are suggesting that the person in their line of command might be...

Mrs. M. ELIE: Yes, that is what I am saying.

Mr. CHAIRMAN: The Permanent Secretary is not under a duty to do anything. I do not know of any Act anywhere in Barbados which says that the Permanent Secretary is under duty to investigate or to report. I do not even know if there is any Act in Barbados that refers to that.

Sir DAVID SIMMONS: I can give you an example of the most egregious thing that happened in my parliamentary career, in my first term, for that one year, 1985 to 1986 as Attorney-General. A prisoner called Olbourne Mason, a Trinidadian, who had robbed a bank- Barclays Bank use to have a branch somewhere in Dover or Maxwell- carried away thousands of dollars. He was caught by the police about four days later at the famous place in Belleville, the guesthouse. All the criminals used to hang out there. The police caught him and Mr. Mason went to trial and was convicted. Let us say he had ten years. I cannot remember, for armed robbery and whatever. He wrote me a letter from prison, asking me to investigate how come he stole, let us say \$50,000.00, he only had time to spend \$1,000.00 before he was picked up. The police took from him \$49,000.00 and he was charged only for \$11,000.00, where is the other \$38,000.00? I called the Senior Police Officer and said, "*I want you to go to the prison and take a full statement from Mr. Mason for me before I consider sending this to the Police.*" He said, "*Alright Minister.*" That was 4:00 o' clock in the afternoon. First thing the next morning he came back to me and said Minister: "*Not me, I will not be doing it because a name was mentioned in the letter, that Police Officer and I were friends in St. George together.*" Nothing ever happened, we lost the election. I told two senior Officers about it but I could not get the senior administrative official to deal with it, and they said to me: "*Everybody knows that when the fellows come in with the money the night so-and-so tell them, 'come, put it there in the corner and you all go along' in his room.*" They said: "*You have not seen the big house that is being built up in Atlantic Shores?*" It happens. It is a very corrupt country; a terrible place.

Asides.

Hon. W.A. ABRAHAM: I just want to condense to where we are with that. Attorney-General, do I understand you to be suggesting that the person still has an obligation under this Act to report? How I see it, if I report and it eventually reaches the Permanent Secretary, although the Permanent Secretary does not have a duty to report anything to anybody, the fact is if he now comes in possession of information that would qualify under this Act for reporting and he does not, then he is guilty.

MR. CHAIRMAN: Let us look at the objects and the reasons here. I think what we want to do is provide a coercive mechanism for causing public officials with knowledge of possible corruption to report; so you want to be able to say you have to report. Then the other part of it is, when you do report, to whom do you report? I take it that what you are saying is if you report to the Permanent Secretary, certainly that person would have

done all that he could do, and you should not penalize him because he went to the Permanent Secretary instead of going to the Commission. Secondly, the Permanent Secretary now knows or has reason to suspect the act of corruption and he should report. I see what you are saying but what is our preference going to be?

Hon. W.A. ABRAHAM: We can put down whatever we want in legislation. The reality is that, chances are, a person in a department who sees something is going to go to the person above them to whom they report.

Asides.

MR. CHAIRMAN: Should we not then orient them to somebody outside of that stream?

Hon. W.A. ABRAHAM: I accept this entirely. That is why the principal reporting duty is to the Commission.

Sir DAVID SIMMONS: Correct.

Hon. W.A. ABRAHAM: Perhaps, Sir David, we can capture back in your suggestion that somewhere in this no public official who reports his knowledge or suspicion in good faith to somebody under a different Act should be liable to prosecution.

Sir DAVID SIMMONS: Correct. It only deals with offences under this Act. It does not deal with offences under the Drug Misuse Act or some other Act; it deals with these offences. Do not forget that this legislation builds upon the Common Law and the existing Criminal Law.

Hon. W.A. ABRAHAM: I understand, Sir David, but what this is saying is not you are reporting an offence under another Act; it is that your reporting to your superior is informed by another piece of legislation, such as the Public Service Act or the Companies Act.

Sir DAVID SIMMONS: That would be a defence; that is why you put in the words "*bona fide*" because it would be a defence to say "*I did not come to the Commission because of my Civil Service Regulations*" or something.

Hon. W.A. ABRAHAM: So we can stick in "*in good faith*" somewhere in here and take out "*conviction*" and put "*liable for prosecution*" or something like that.

Asides.

MR. CHAIRMAN: All right. Mrs. Elie are we reasonably good there?

Mrs. M. ELIE: Just to make sure, if I may. The decision is that once the public official reports to his senior that is sufficient reporting?

MR. CHAIRMAN: No, we still want to direct them to the Commission but I think Sir David is saying it would be a defence.

Sir DAVID SIMMONS: It would be a defence. That is why we say "*who in good faith who reports his knowledge or suspicion*", we put in the words "*in good faith*".

Mrs. ELIE: So the defence relates to disclosure as opposed to the duty to report? The thing is that the offence only relates to a failure to report. It is

not a disclosure offence. The offence in Subclause 2 is merely a failure to report.

Sir DAVID SIMMONS: Correct.

Mrs. M. ELIE: So any exception to Subclause 2 has to relate only to failure to report or by virtue of reporting somewhere else? I am not sure that this is the appropriate place to put in "*protection from disclosures*".

Hon. W.A. ABRAHAMS: Reports "*bona fide*" to another person or entity in accordance with the purpose of another enactment, and so on?

Mrs. M. ELIE: That is what I am suggesting. Yes?

Sir DAVID SIMMONS: Rather than with a good excuse. There are some offences that allow you to have an excuse. A person who, without reasonable excuse, does so and so.

MR. CHAIRMAN: Maybe we should look at the obvious. Suppose a person say, "I am not going up there by you. I am going straight to the police?"

Sir DAVID SIMMONS: Correct.

Asides

MR. CHAIRMAN: You did not hear? It is the dialect. The person says, "I am not wasting any time with any Commission. I am going straight to the police." You really cannot want a better disclosure than that, and such a person should not be subject to any penalty for exercising that option. Agreed?

Mrs. M. ELIE: Agreed.

MR. CHAIRMAN: So is it "a person who fails to report his knowledge to the Commission?"

Sir DAVID SIMMONS: "*Who, without reasonable excuse, fails to report his knowledge?*"

MR. CHAIRMAN: That is workable.

Sir DAVID SIMMONS: It would be under another Act, so you are writing it into the defence.

MR. CHAIRMAN: And you are reporting to the Permanent Secretary.

Hon. W.A. ABRAHAMS: Then we can actually get around this entire thing by changing Subclause 2 and say "a public official who, without reasonable excuse, fails to report his knowledge" and so on. We do not need then Subclause 3.

Sir DAVID SIMMONS: No.

Hon. W.A. ABRAHAMS: So Subclause 2 will be "*a public official who, without reasonable excuse, fails to report his knowledge*", and let it run its gamut.

Mrs. M. ELIE: I understand that aspect. I just wanted to suggest that perhaps by deleting Subclause 3 we might lose a little bit of clarity as to what the officer has to do, because then we would have now incorporated Subclause 3 and whatever else might constitute reasonable excuse into Subclause 2.

Hon. W.A. ABRAHAMS: I do not think we actually need to define reasonable excuse. We are saying the duty to report is to the Commission. If you have not reported to the Commission and you do not have a reason for not doing so, then you are guilty of an offence. You have to then establish what your reasonable excuse is. It could be that I reported to my

supervisor in good faith, or to the police or whatever. It is up to you now to convince the investigating officer or whoever is dealing with it that you did what you had to do or you did sufficient in your honest belief.

Mrs. M. ELIE: Thank you.

Hon. W. A. ABRAHAMS: Are you sure? Speak your point.

Mrs. M. ELIE: I do not think we can delay the points anymore. I understand what you are saying and I am very clear.

Hon. W. A. ABRAHAMS: Okay.

Mr. CHAIRMAN: Alright. Clause 62, there were no recommendations from Mrs. Yolanda Williams. Are there any recommendations from any other entity?

Sir David Simmons: I have a question in relation to forwarding the matter to the Director of Public Prosecutions. In this instance, the investigative work done by the Commission would be the replacement for investigative work done by the Police. When a person is charged with an indictable matter, it is the Crown or the Queen against. Is that charge not at the committal stage?

Sir DAVID SIMMONS: No, it would be the Commissioner of Police against David Simmons.

Mr. CHAIRMAN: Right, but then once they bind you over for trial on indictment, it then stops being the Commissioner of Police.

Sir DAVID SIMMONS: As soon as an indictment is framed it becomes the Queen against David Simmons.

Mr. CHAIRMAN: Right. In a situation where the Commission is doing the investigation it then goes to the DPP. Is that the equivalent of the DPP filing an involuntary bill of indictment?

Sir DAVID SIMMONS: It could be. I was going to ask, have these sections been discussed with the DPP?

Mr. CHAIRMAN: No, I have not discussed them with the DPP at all. Nicole, could you draw this to the attention of the DPP and ask her how her office considers them working in this context, whether by voluntary bill of indictment, otherwise we would, in fact, then have to go back to the Police. Mr. Thorne?

Certain remarks made by Mr. R. A. THORNE were inaudible because he did not use the microphone.

Mr. CHAIRMAN: Mr. Thorne normally relies on me. In 62(1)(C), the Commission investigates and on conclusion of the enquiry they forward the complaint and any documents to get their recommendations to the DPP. Clearly the intent is that the DPP takes it from there but takes it from there and does what with it? My question was whether it is contemplated that the DPP would do a voluntary bill of indictment where they start the process without reference to the police because it would really be an absurdity having done all of this work that they have to go back to the Police, but then what is the case called?

Certain remarks made by Mr. R. A. THORNE were inaudible because he did not use the microphone.

Mr. CHAIRMAN: No, but that would not make sense in this context.

Sir DAVID SIMMONS: No, no.

Certain remarks made by Mr. R. A. THORNE were inaudible because he did not use the microphone.

Sir DAVID SIMMONS: That is right. A file is sent to the DPP by the investigating team. The DPP liaises directly with that investigator and says, take a further statement from this witness. I do not need that. I do not need that. Do you have photographs? I need photographs. The DPP prepares the file and then institutes the proceedings in the name of the Crown.

Mr. R. A. THORNE: The procedure I am thinking about Sir David, where is it that person appears, is it before the Magistrate or a Judge?

Certain remarks made by Mr. R. A. THORNE were inaudible because he did not use the microphone.

Sir DAVID SIMMONS: Under the old system but are we not moving towards abolition of PIs.

Mr. R. A. THORNE: Yes.

Sir DAVID SIMMONS: In fact, there is provision from my first term as Attorney General ...

Mr. R. A. THORNE: There is a hybrid system now.

Sir DAVID SIMMONS: Do you mean the ones that can be tried either way?

Mr. R. A. THORNE: Yes. In any event they are always giving the person the opportunity to go before the Magistrate even if it is to facilitate the disclosure of the document. They do not do that in the High Court. I do not think the Judges entertain this exchange of documents in the High Court. They want that done downstairs.

Sir DAVID SIMMONS: That should be done before.

Mr. CHAIRMAN: Well, the DPP has always had, so far as I know from going back to common law, the capacity to bring a voluntary bill of indictment.

Sir DAVID SIMMONS: Oh yes.

Mr. R. A. THORNE: Yes, correct.

Mr. CHAIRMAN: That is just on the basis of information coming. I am bringing a criminal charge against you.

Mr. R. A. THORNE: It seems as if they are using the Magistrate's Court now with the administrative ...

Certain remarks made by Mr. R. A. THORNE were inaudible because he did not use the microphone.

Mr. CHAIRMAN: But to go through all of those then to go back to the Magistrates' Court, to me, is a waste of resources.

Mr. R. A. THORNE: It is a formality. They are just going there, as I said, to serve documents on the accused and they send it back. They wait on the DPP ...

Certain remarks made by Mr. R. A. THORNE were inaudible because he did not use the microphone.

Hon. W. A. ABRAHAMIS: Mr. Attorney General, if we are moving forward, our legislation should be drafted forward thinking and forward moving and there are some things that we actually need to do and stop wasting time on them to get the Court system running properly. I do not think we should be looking to draft this to perpetuate the system that is not working.

Senator Miss L. R. CUMMINS: If I may as well, Mr. Chairman, just to point out here that the UNODC had suggested that on this particular matter there should be a specified timeframe within which all of this is done. So if it is that it is meant to last a minute or two minutes, that should be one of the considerations in terms of the processes and the procedures that you are discussing here now as to where it goes and how it is dealt with at each level.

Mr. CHAIRMAN: That is nice of them, except that let us creep before we can walk. To set a time limit would be a little bit ambitious at this point, Sir David?

Sir DAVID SIMMONS: I was going to suggest that – you told Nicole already – the DPP should be asked for her comments on the operationalising of Clause 63. How would she want this done? Well, Clause 62 and 63 because we have to send the reports to her. She will liaise with the investigator but then would she want to use the paper committal procedure? We cannot make that mandatory.

Mr. R. A. THORNE: I think she would decide. Who actually does the charge? Do they not always ask a police officer to charge the person, because it is a criminal offence and she does not do that? She engages the Police and the Police actually reads the charge to the person.

Sir DAVID SIMMONS: Because they come from the Police. They start as COP against David Simmons and then go up.

Mr. R. A. THORNE: She gives the opinion if she says to charge, it goes back to the Police.

Sir DAVID SIMMONS: Correct.

Mr. R. A. THORNE: The Police charges, takes the persons before a Magistrate where the formal charges are read, because as you know, it has to be done as soon as possible. You are not always going to get a judge like that so I think that is why they use the Magistrate's Court for convenience of speed and to serve the interest of the rights of the person. I think, if any event, always start at the Magistrate's Court even if for administrative purposes, as I said, certain documents and so on.

Mr. CHAIRMAN: We will ask the DPP, but you know, Phillip "Lumpy" Nicholls did not ... A

voluntary bill of indictment was filed against him by the now deceased Director of Public Prosecutions, Charles Leacock, and he did not go to the Magistrates' Court for those charges. He had been charged earlier but those charges were dropped.

Asides.

Mr. R. A. THORNE: This thing went through the Police, I am sure.

Sir DAVID SIMMONS: When he was arrested.

Mr. CHAIRMAN: Yes, but nothing came of that and then Charles Leacock filed a voluntary bill of indictment against him, so let us just ask the Director of Public Prosecutions how she could see this working.

Sir DAVID SIMMONS: Yes, because I see this working as the Integrity Commission against David Simmons.

Asides.

Sir DAVID SIMMONS: No, when it goes before the High Court it is then the Queen, but if she sends this for exchange of documents disclosure to a magistrate or invokes any procedure before the High Court it would be in the name of the Commission.

Asides.

Mr. R. A. THORNE: Right, or the Comptroller of Customs, when they charge people.

Sir DAVID SIMMONS: Yes.

Mr. R. A. THORNE: They are the informant as opposed to the Commissioner of Police.

Sir DAVID SIMMONS: Correct.

Mr. CHAIRMAN: Okay, Nicole, if you could do a memo... Thank you.

Sir DAVID SIMMONS: Before you finish, what would happen is that the Director of Public Prosecutions' Office would assign an officer to prosecute the matter in the Magistrates' Court if they bring it down there because these are summary or indictable offences so they may want to proceed summarily but they would send down a Crown Counsel or whoever to do it.

Asides.

Sir DAVID SIMMONS: Yes, it is the Integrity Commission.

Mr. CHAIRMAN: Let us look at Clause 64. Ms. Williams has commented on Clause 64. This basically says that where an allegation is made in public a person who is entering a complaint shall lodge that complaint within three months. Now, her question is: When does the three months start to run, how can he or she be sure that it was within three months and why should it be that in any public allegation you should be under an obligation to report, if you report at all? A lot of allegations are made, rumour, and gossip. Public is public, so what does it mean by public? The allegation is made in public, is that on Roebuck Street on an election platform? I do not know that this Clause actually adds anything at all to the Bill.

Sir DAVID SIMMONS: No, you really do not need to have it.

Mrs. M. ELIE: Perhaps the idea is that if something is said publicly enough the Commission should be seen to be doing something about it rather than waiting for and hoping that a formal complaint would come to them. I think there were a few comments from various stakeholders on it. Just like Ms. Williams, the time-frame seems to be too short, and one person suggested that perhaps rather than requiring a member of the public to lodge a complaint the Commission itself should just have a duty to investigate it if they think it is worth investigating.

Sir DAVID SIMMONS: That is what happens in practice. That is how we do it in the Turks. Things have appeared in the newspaper in the Turks, we are normally careful about acting on newspaper reports because newspaper reports are problematic but what we do is to put one of the investigators to dig and check up and chase that particular thing to see if there is any substance in it. In a few cases there has been substance and we have followed it up from there, but it is an internal arrangement and it is part of your operational procedures, so I would not insist on it.

Mr. CHAIRMAN: Well, I take it that there is a consensus that we can remove Clause 64 and that is fine but remember that statutory bodies always have a limitation as to their scope of operation. I just did a quick look through and I do not remember seeing anything which says that the Commission can investigate anything of its own motion.

Sir DAVID SIMMONS: Yes, we said it a few times.

Mr. CHAIRMAN: I could not find it. The Commission can look at declarations, it can require further information and conduct inquiries, look into gifts...

Mr. R. A. THORNE: Mr. Chairman, not wishing to go back but Clause 64 is a way of protecting the suspected person against lingering rumourmongering. You are putting the person on notice, look you have gone public and say something, within three months let us see how serious you are as opposed to six months or a year later "Puddin and Souse" is still carrying this thing.

Hon. W. A. ABRAHAMS: But say A and say B: If I have the evidence that you have done something wrong and the evidence can stand up to the scrutiny of the Commission then it does not matter whether I bring it three months, four months or five months afterwards, either the evidence is there or it is not.

Mr. R. A. THORNE: But if it is there...

Hon. W. A. ABRAHAMS: Then I can bring it at whatever time I want.

Mr. R. A. THORNE: But is that fair to the person? If you have it why keep it.

Hon. W. A. ABRAHAMS: If you hold it, if the evidence is there, you are not really hurting his reputation, are you?

Mr. R. A. THORNE: Well, the allegation is out there in the public.

Hon. W. A. ABRAHAMS: I would not put a time limit of three months.

Mr. CHAIRMAN: So maybe we need to...

Hon. W. A. ABRAHAMS: I would not put a time limit.

Mr. CHAIRMAN: To be fair, I think that Clause 64 does not quite identify who they are targeting. It says where an allegation is made in public, it does not say who makes it or what forms it takes. Then it goes on, a person desiring to make a complaint, it could be an allegation made in public on a political platform and Patrick King decides he wants to make a complaint, he did not make the allegation, he might have been in the audience, so why should he be constrained by three months, why should he even feel obligated to report it at all. If there is a public utterance maybe the duty should be on the Commission to go after it which is why I asked the question if there is anything that empowers the Commission to.

Mr. R. A. THORNE: I think it is a way of testing people who like to rumourmonger about people's reputations to see how serious they are.

Asides.

Mr. CHAIRMAN: I do not know that this really adds much though because I do not think it stops rumourmongering or "Puddin and Souse" and perhaps the best way to go at it is to say anybody who makes a public allegation is obligated to report but you cannot go that far either, so there is no reason why you should have it.

Mr. R. A. THORNE: I think the legislation is telling people if you have something serious take it to the Commission.

Asides.

Mr. R. A. THORNE: The person's reputation is what is at stake and after three months a person can say look he said something, they gave him three months to come and he did not report it, so clearly it is not as serious as he wanted the public to believe.

Hon. W. A. ABRAHAMS: What then happens if somebody makes the allegation in public, does not report within three months and then turns up six months later with all of the evidence for a slam dunk case, are you going to tell the person no?

Mr. CHAIRMAN: That is a good point.

Sir DAVID SIMMONS: I do not think this adds anything really to the...

Mrs. M. ELIE: If I may close, 4(1) (d) and (e) deal with offences, but there seems to be...

Asides.

Mrs. M. ELIE: Clause 64 to my mind seems to give standing, where there will be no standing, it simply just seems to give standing. Apart from the limitation in terms of the three months which the Committee can deal with as it sees fit. But I see it as a standing issue otherwise I suppose a person would not have standing. They are not connected but they actually do have some knowledge that someone else might have given them, it still gives them a way to get it before the Commission because even if the Commission investigates on its own initiative it may not have access to the information that member of the public may have.

Mr. CHAIRMAN: So you are saying, perhaps 61(1) speaks to a public official who knows shall report. A person who is not a public official is not under any such obligation, so perhaps you are thinking that 64 covers that, because 64 only covers an allegation made in public?

Mrs. M. ELIE: To me is it just so that anybody who wants to devote the time is now being given the standing to do so.

Sir DAVID SIMMONS: Let us see that you are serious or not, if you have facts, bring them within three months, if not forever hold your peace. That is what we are saying.

Mr. CHAIRMAN: Yes, three months from the date of which the published allegation was first made. I mean, I always get news late, from the time I get....

Asides.

Sir DAVID SIMMONS: But it is the allegation made by you.

Mr. CHAIRMAN: No, it does not say that.

Hon. W. A. ABRAHAMS: Sir David, the point is, let us say that you made the allegation to the Committee, let us say that you do not come forward for three months, let us say that you turn up six months later with all of the documentation to prove conclusively [that] the person was corrupt, are we [still] going to say no? We are not going to say no, so we take it out, I agree with the Honourable Attorney-General, it adds nothing at all.

Mr. CHAIRMAN: As long as the Committee relies... there is power under 4... Whether the information comes after a public announcement, after a public allegation, after a private allegation, six months, three months, two months, they can just go for it, never mind whoever brings it. Do we have a consensus to take it out? I hear no dissent.

There was no dissent to the question to remove the particular clause

Mr. R. A. THORNE: Mr. Chairman, I am not being very difficult on it but social media is an extremely powerful and wicked thing and I think... I do not know who drafted this legislation but I can see why they did. If you are going to say this thing to everybody in Barbados and in China and you have claimed that you are serious about it, [then] let me see how serious you are.

Sir DAVID SIMMONS: This speaks to three months from the date at which the allegation was first made. The difficulty that Mrs. Williams sees in it is how you are going to start counting the three months.

Mr. CHAIRMAN: I may only see it three months after it gets published.

Hon. W. A. ABRAHAMS: Sir David, once again, hearing everything that Mr. Thorne said... First of all, the corrupt public official should not benefit from a short timeframe. Secondly, if we are prepared to entertain the person if they bring conclusive evidence, whatever time they bring it, then this paragraph makes no sense. If the person turns up with every "i" dotted, every "t" crossed and deliver the corrupt official to us

on a plate, we are not going to say or we should not say, well, you should have brought it three months before you put it in "Pudding and Souse" or put it three months after.

Sir DAVID SIMMONS: So why not then stop it at "shall lodge a complaint with the Commission" and delete "from not later..... (down to the end).

Mr. CHAIRMAN: Well, we are now trying to put a burden on a person who desires to make a complaint.... Well, you do not need to empower him to make the complaint, anybody can complain, it does not matter if the allegation is made in public or private.

Mr. R. A. THORNE: Mr. Chairman, where it is public it is more dangerous.

Mr. CHAIRMAN: And I accept that.

Mr. R. A. THORNE: In that case you sue for defamation.

Mr. CHAIRMAN: Yeah, I suppose that cures it. I propose that this comes out. We can always give it some further consideration.

Mr. R. A. THORNE: Parliament can put it back in when they are ready.

Asides.

Mr. CHAIRMAN: Members, I have to let you know that Mrs. Elie is still recuperating and may not be able to stay with us much longer. I have told her that she can excuse herself when she is ready.

Hon. W. A. ABRAHAM: Mrs. Elie, I am sorry to hear.

Mr. CHAIRMAN: We are going to press on for as long as we can.

Sir DAVID SIMMONS: I am going to suggest that we stop that subsection at the word "commission," "shall lodge a complaint with the Commission" and delete everything that follows. That just says [that] if you want to make a complaint, Section 64, a person who desires to make a complaint to the Commission must lodge that complaint.

Hon. W. A. ABRAHAM: Why or what?

Mr. CHAIRMAN: Why do we need to implore him to do it? Is there a sense that without this section he would not be able to complain?

Sir DAVID SIMMONS: No, it says in other sections that you can complain orally or in writing. This is just saying in respect of a public statement, if you want to do something about that, [if] you have information you must file that complaint with the Commission.

Hon. W. A. ABRAHAM: So, does this give a person a power that they do not otherwise have under the legislation?

Sir DAVID SIMMONS: No, this strengthens your position, it tells you that you can lodge a complaint.

Mr. CHAIRMAN: My problem is that you do not need to tell somebody that, this would be an empowering mechanism, it comes back to where Ms. Elie was saying, it is a question of *locus standi*. But this says where an allegation is made in public. Why is "in public" key?

Mr. R. A. THORNE: You see, Chair, if you are bold enough to do it behind some microphone or on the street corner, [you should] do it before the Commission.

Mr. CHAIRMAN: Well, that is not what this does. It just says where an allegation is made. It does not say where the person making the allegation. This says anybody who wants to make a complaint shall file it with the Commissioner.

Asides.

Hon. W. A. ABRAHAM: Even more so, if it is the person who said it that has to make the complaint then the person is empowered under other sections of the legislation.

Mr. R. A. THORNE: Well, I cannot complain for something that you said.

Mr. CHAIRMAN: But that is what this is doing.

Asides.

Mr. R. A. THORNE: I figure that you are telling the person that if they are bold enough to go public, you give them three months to come before the Commission.

Hon. W. A. ABRAHAM: Then the laws of defamation take care of that person. If that public official against whom the corruption is alleged, if they are disputing what the person said, [then] they can sue the person making the allegation for defamation, they can get an injunction. There are other aspects of law that take care of that, we do not need to deal with that here. The fact that we are spending so much time discussing that, means that that is an unnecessary complication in this legislation, truthfully.

Asides.

Mr. CHAIRMAN: While he is reading that we have moved on to number 65.

Senator MISS L. R. CUMMINS: Chair there is only one submission on clause 65 and it is from the UNODC. They are making specific request to have additional functions assigned to the Commission. The additional function they make reference to include, publication and dissemination of the code of conduct as well as a design of training programs. It goes into a level of specificity that is not necessarily reflective of what is in the existing clause.

Mr. CHAIRMAN: I am sure the Commission will do all of those things. I do not think there will be any..... In section 65(4) however, there is a proposal to change two years to five years.

Hon. W. A. ABRAHAM: Section 65(4)?

Mr. CHAIRMAN: Remember we would have looked at this on an earlier date. We wanted to regularize all of those limitation periods to five years, Section 66.

Sir. DAVID SIMMONS: Some of these we deal with informally, where we ask the official to give an explanation in writing and if we are satisfied, then that is the end of the matter. If we are not satisfied, we go on to hold an inquiry.

Mr. CHAIRMAN: So what you are suggesting is that we need to...

Sir. DAVID SIMMONS: No I do not suggest anything.

Mr. CHAIRMAN: We do not need to change it?

Sir. DAVID SIMMONS: No we do not need to change it.

Mr. CHAIRMAN: Upon (a) in the representations you may not be of the view that the person is conducting.

Sir DAVID SIMMONS: You may not hold an official inquiry.

Mr. CHAIRMAN: It is permissive with change?

Sir DAVID SIMMONS: Correct.

Mr. CHAIRMAN: Okay. The fines are going to be changed but we said we will come back to the fines in the last of those meetings. Section 67?

Hon. W. A. ABRAHAMS: Just one second. Mr. Chairman. You have to be careful with the fines in section 66(2), because of what there are for. Someone who fails to turn up. I will be very hesitant to raise that fine above what is says there. You might want to break down who fails to turn up and separate that from giving false or incomplete information.

Sir DAVID SIMMONS: These are dealing with code of conduct inquiries not corruption cases and so on.

Mr. CHAIRMAN: Let us just make a note. Like I said I would rather come back to the fines one day and just deal with all of the fines one time. You can make a note. Section 67?

Asides.

Mr. CHAIRMAN: Nothing in Section 67. We had some discussions about section 67(3) b (IV)

Sir DAVID SIMMONS: The public body in relation to which...

Mr. CHAIRMAN: I am trying to recollect what it was. I think it was one of Ms. Williams earlier comments. Definition of Public Body, was that it? Once you have.... you send a report.

Sir DAVID SIMMONS: Yes, you have to send a report, so that the various people who are in authority over the public official will know what the decision is.

Mr. CHAIRMAN: Section 67(3) b IV, for some reason I have mine deleted, but I remember earlier we were talking about public body, what it meant and so on. Public body includes Parliament and Cabinet. Definition of public body.

Asides.

Mr. CHAIRMAN: I think the point is that you may be a statutory body.

Sir DAVID SIMMONS: It is a public body relating to the particular public official in the case of an alleged...

Mr. CHAIRMAN: We have to be able change this in a way that other people can understand it.

Asides.

Sir DAVID SIMMONS: I am just taking out one public official.

Mr. CHAIRMAN: Public official means a public officer or other body, another person who is a member, officer or other employee of a public body as the case may be.

Sir DAVID SIMMONS: The public body with which the particular official is employed indicates of an alleged contravention relating to that public official.

Mr. CHAIRMAN: All specified persons in public life are not public officials, so you have chairpersons of boards, commissions, and corporations. If you look at the definition of a public official here....

Sir DAVID SIMMONS: Section 2. I will find it. "Or another person who is a member."

Mr. CHAIRMAN: By "member" they could mean work member.

Hon. W.A. ABRAHAMS: What we need to probably do is fine-tune the definitions.

Mr. CHAIRMAN: That was one which was recommended for fine-tuning. We spent a lot of time on that. Make it easier: You report it to the Minister. You have to capture Board Chairman and so on. Is that correct?

Senator Miss. L.R. CUMMINS: Yes, Chairman.

Mr. CHAIRMAN: Chief Executive Officers of statutory bodies, general managers and so on. The statutory body is really difficult to be presented so you could have a Section 4 which would say....

Hon. W.A. ABRAHAMS: The Minister where the person in public life is attached to a statutory body?

Mr. CHAIRMAN: I do not know. In relation to persons in Sections 5 and 6 of the Second Schedule, the Minister with responsibility for those entities.

Hon. W.A. ABRAHAMS: Yes.

Mr. CHAIRMAN: If you are a member of Cabinet who will it go to?

Sir DAVID SIMMONS: As a member of the House of Assembly, it goes to the Speaker, which is Section 2.

Mr. CHAIRMAN: But not if you are a member of Cabinet.

Sir DAVID SIMMONS: You are also a member of the House of Assembly or the Senate.

Hon. W.A. ABRAHAMS: President of the Senate.

Mr. CHAIRMAN: Yes but when you think about it, the Speaker of the House of Assembly has no jurisdiction over me; he did not appoint me.

Sir DAVID SIMMONS: No but they are not asking for jurisdiction. They are sending the report so that as Speaker you know whatever the decision is.

Asides.

Mr. CHAIRMAN: if you are a member of Cabinet, you should be reporting to the Chairman of Cabinet.

Sir DAVID SIMMONS: And if you are the Chairman of Cabinet?

Mr. CHAIRMAN: The Governor General.

Asides.

Sir DAVID SIMMONS: I do not see anything wrong with it. Section 4 is a little complex; convoluted.

Mr. CHAIRMAN: If we say in respect of Board Chairmen and so on and in respect of chief executive officers and general managers, the report goes to the line Minister. The drafters will find the language for that. In relation to the Cabinet....

Sir DAVID SIMMONS: If it is a member of the House....

Mr. CHAIRMAN: A person who receives a report, a public official, shall.... This could not have been intended to refer to people who are not in the employ of the Public Service or a statutory corporation because the Speaker of the House of Assembly in relation to a Cabinet Minister cannot decide to implement measures. If a member of Cabinet is corrupt and he reports to the Speaker if he is in the House of Assembly or to the President of the Senate if he is in the Upper House....

Hon. W.A. ABRAHAMS: What can they do?

Mr. CHAIRMAN: Look at Sub section (4), which says: "*A person who receives a report from the Commission pursuant to Sub section 3(b) shall decide without delay what measures shall be taken, if any, in response to the report and shall implement such measures without delay.*" The Speaker of the House of Assembly....

Hon. C.E. JORDAN: Speaking as an accountant trying to speak on law, the scenario we had where there bore certain allegations made against the previous Speaker. I recall hearing learned persons who are now my colleagues speaking about the Parliament being the highest court of the land and suggesting that there should have been some action which should have happened in that construct, as in the construct of Parliament. He was not a Cabinet Minister but I am just thinking about the phrase I heard, "*the highest court in the land*". One aspect of that was that he was presiding and should not have been presiding over a court when he was involved in that kind of matter, but given that it was also referred to as "*the highest court in the land*", is there not some jurisdiction which that highest court could have when one of its members, who also happens to a Cabinet minister, is in breach?

Sir DAVID SIMMONS: You would bring a Resolution condemnatory of the particular person.

Asides.

Sir DAVID SIMMONS: It depends on what you want to get out of it, yes. You bring a motion of no confidence. It depends. You would have to come with a resolution from the Floor.

Mr. CHAIRMAN: When David Estwick brandished his firearm on me, I reported to the Committee of Privileges which never sat, of course. That might be a possible thing, but can I ask then if Beverley could look at Trinidad and see how they treat in their statutes who they would report various people to? I mean I do not think we need to reinvent the wheel in this regard. If we could look at that and let us have it for our next meeting. I think we understand what it is

we want to do but sub-clause (4) makes it quite clear that the person must be able to do something with you.

Sir DAVID SIMMONS: This is probably taken straight from the Turks and Caicos. Do not forget that they have a very draconian provision that if a Minister is found by the Commission to be in breach of the Code, then you have to give up your position as Minister. You lose your office as Minister; not your seat but your office as Minister. What the law does, and that is in the Constitution, is that it does not say for how long, and we have been fighting but the British Government will not change it.

Hon. W.A. ABRAHAMS: So you could be reappointed?

Sir DAVID SIMMONS: It does not say for how long but it says must step down: six months and then reappoint him, but to do it permanently for some things which are reasonably trivial is hard, unfair and disproportionate.

Asides.

Senator Miss L.R. CUMMINS: I wish to make a few recommendations on Section 68. Mr. Chairman, if I may. From the United Nations Office on Drugs and Crime (UNODC) as well as the Integrity Group of Barbados, both of them have raised the concern about the provisions being applied only to public officials. In the case of the Integrity Group they have recommended that the legislation needs to offer whistle-blower protection to persons other than public officials if the public is to join in the campaign to root out corruption.

Mr. CHAIRMAN: It is always awkward to say but this Bill is directed more towards public officials than the general public...

Certain remarks made by Mr. CHAIRMAN were inaudible because he did not use the microphone.

Hon. W. A. ABRAHAMS: Mr. Chairman, the one problem I have with that is if we deem it necessary to put some more legislation in place then it should cover everybody who is contemplated as giving the information. We contemplate that public servants or public officials may inform on other public officials but we also want those situations where members of the public have the information and they should come forward. If we are prepared to protect the whistle-blower in the public service then we should be prepared to protect the member "Joe Public" who comes forward as well.

Mr. CHAIRMAN: I agree that what we have here is a few clauses. The vast whistle-blower legislation that we are looking at 45.

Hon. W. A. ABRAHAMS: I hear you. The fact that that was raised ...

Mr. CHAIRMAN: I understand that but because with whistler-blower legislation for John Public will not be in the public service. That is going to require a deeper set of provisions and I really do not want to hold up this to try to get that done. It is not going to be

so easy as saying that a person who makes a disclosure shall benefit.

Sir DAVID SIMMONS: Are you looking at American legislation for this?

Mr. CHAIRMAN: No. We are looking at English, Jamaican, there is a whole set. Some of them have about 122 sections so we have to contemplate a deeper set of provisions and I just was not prepared to hold up this to try to incorporate that.

Sir DAVID SIMMONS: That is what you have to say and when this comes, it would be more comprehensive with more legislation coming.

Senator Miss L. R. CUMMINS: Okay, Mr. Chairman, if that is the position on that particular one ...

Mr. CHAIRMAN: Honourable Member if it is taking a while, the protections are in 76 and 77.

Hon. W. A. ABRAHAMS: I would then say we would have to adjust 76 or expand it to include that person. It is easy to slip in a clause that says anybody who victimises or subjects a person to their detriment only by reason of is easy to actually just stick in an additional paragraph. We want members of the public to come forward and if this is raised, and trust me, it will be raised in the Senate.

Mr. CHAIRMAN: It has been raised before but my counter to that is we are going to bring substantial legislation to deal with it.

Hon. W. A. ABRAHAMS: Then the person will argue if you are bringing substantial legislation to deal with it, why do you need to protect the public officials? If you are protecting one, protect all. Either we have whistle-blower protection in this or we do not.

Mr. CHAIRMAN: It may be possible to extend this to ...

Hon. W. A. ABRAHAMS: You could easily.

Mr. CHAIRMAN: I would not say easily because it may be easy to start but the problem is when you open the door and then all the other things start coming at you, all that we would be saying here is that a person who subjects and individual to a detriment is guilty of an offence, but the person is still fired. All I am doing is charging you with an offence but I am not really protecting the whistle-blower. That is the problem. This does not protect the whistle-blower in that way. A public servant cannot really get the rid of another public servant. That is near impossible to do but you could create problems for him. In the old days you would send a policeman to Crab Hill Sub-Station, not to dreadfully offend these days, but days ago you can ensure that. All this would do is say you are guilty of an offence and you would get fined. For a person who is employed by a company, for example, what is the penalty? I am just saying, I understand you are saying it is easy to do but it is not easy to implement. An employee of a corporation in Barbados looks at codes?

Hon. W. A. ABRAHAMS: Should we ask the drafter and see what they can come up with?

Mr. CHAIRMAN: No, we have to tell the drafters what we want. At this point and time I am

mindful. I do not want to allow perfection to stand in the way of progress so I am comfortable saying as I did when I introduced the Bill, that we will come with more substantial whistle-blower protection legislation and with any luck it will come in fair short order but certainly not this year and I do not want to hold up this now.

Senator Miss L. R. CUMMINS: It may get held up in the Senate though.

Mr. CHAIRMAN: Yes, but what are they going to do, not pass it?

Senator Miss L. R. CUMMINS: Yes. There are three more comments, Mr. Chairman: 1) from the Democratic Labour Party (DLP) which reads as follows and I will read it in its entirety:

"Section 68 provides protection for whistle-blowers who are public officials. However, Subsection (3) withdraws that protection where the person commits an offence by making the disclosure. Public officers are required to make oaths of secrecy when they assume certain offices. Further, the Official Secrets Act may apply to officers. It is likely that a public officer may have to act in contravention of another Act in order to make a disclosure as contemplated by this Bill."

Hon. W. A. ABRAHAMS: If we go back to 68 (3), a disclosure is not a protected disclosure where the public official discloses privileged information disclosed to him in the course of obtaining legal advice. If we tap down to Clause 70, a public official may make a disclosure to a legal adviser in the course of obtaining legal advice.

Mr. CHAIRMAN: Here, the public official is obtaining the legal advice, there, the information is disclosed to him.

Hon. W. A. ABRAHAMS: The information is disclosed to him in the course of obtaining legal advice?
Asides.

Hon. W. A. ABRAHAMS: I would actually prefer that we ring-fence anything that occurs within the framework of obtaining or dispensing legal advice.

Mr. CHAIRMAN: There is no difficulty with it there, in a sense that you probably do not need 3 (b) since you have 70. I mean that is why I was able to tell you so quickly because... I wondered how I would get a disclosure.

Senator Miss L. R. CUMMINS: Mr. Chairman, here the IGB is also proposing 68 (3) (b) for deletion. They think it does not add any value to the Bill.

At this point there was across the table discussion with regard to Section 68(1) regarding Whistleblower protection.

Sir DAVID SIMMONS: Everything will depend on the evidence. It is not unusual to spell out what that is.

Sections 69 - 72 were discussed.

Hon. W. A. ABRAHAMS: Let us go back to 68(3)...

Clause 68(3) was discussed.

Mr. CHAIRMAN: Any other comments on the other suggestions?

Senator Miss L. R. CUMMINS: Mr. Chairman, the UNODC has made substantial comments in relation to this matter.

Clauses 76 – 81 were discussed. Concurrence was had on those particular clauses.

Clause 82 was agreed to be deleted.

Clause 83 was discussed, concurrence was had on Clause 83.

(across the table talk)

Mr. CHAIRMAN: Why change the composition? Why not amend the Act itself? (sic!) Take out, "If Government wants to amend", it has to come back to Parliament.

The First Schedule at Clause 3 was discussed.

ADJOURNMENT

Before the motion was put for the adjournment, the Chairman asked that decisions of all previous meetings which did not constitute a quorum be now ratified by the full membership. The motion was seconded by Hon. Wilfred. Abrahams. The meeting was therefore adjourned at 4:35 p.m. sine die.

**TWELVETH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

MONDAY, DECEMBER 03, 2018

First SESSION 2018-2023

PRESENT:

Hon. W. A. ABRAHAMS, M.P., (Acting Chairman).
Bishop J.J.S. ATHERLEY, J.P., M.P.
Hon. C. E. JORDAN, M.P.,
Mr. R. A. THORNE, Q.C., M.P.
Hon. C. McD. GRIFFITH, M.P.
Senator C. A. FRANKLYN, J.P.
Senator Miss L. R. CUMMINS

ABSENT:

Hon. D. D. MARSHALL, Q.C. M.P.,
 (Chairman)
Hon. MISS C. Y. FORDE, J.P., M.P.
Senator the Hon. Dr. J. X. WALCOTT, J.P.,
Senator Miss. M. C. TAITT, Q.C

IN ATTENDANCE

Mr. NIGEL JONES, (Deputy Clerk of Parliament)
Ms. BEVERLEY GIBBONS, (Deputy Clerk of Parliament)
Ms. SUZANNE HAMBLIN, (Assistant to the Clerk to the Committees)
Mrs Mechelle ELIE, (Senior Parliamentary Counsel of the Chief Parliamentary Counsel Office.)
Ms. NICOLE THOMPSON, (Special Advisor to the Attorney-General)

The Acting Chairman called the meeting to order at 2:12 p.m.

Hon. W. A. ABRAHAMS: Good afternoon everyone, just want to call the meeting to order, we do not yet have a quorum, but I expect we should get a quorum by the end of the meeting and we can then just ratify any decisions taken. But I suggest that we press ahead in the interim. The work we have today is relatively simple, we just need to settle on what form we wish to use for the declaration of assets and we need to address our minds to the vexing question of the penalties under this legislation bearing in mind all the comments that were made, so I propose that we jump straight into it and just start to deal with the fines, set the fines and then move onto the form.

Senator Miss L. R. CUMMINS: Thank you, I think we also have to deal with the housekeeping matter Chair of appointing an interim Chair.

Hon. W. A. ABRAHAMS: I was simply providing you with information on which to base your proposal for the appointment of an interim Chair.

Asides.

Hon. W. A. ABRAHAMS: Okay, good afternoon once again. Round 2. I call the meeting to order, we are now quoric.

Asides.

Ms. BEVERLEY GIBBONS: Good afternoon, I call the meeting to order.

Mr. R. A. THORNE: Good afternoon, I propose that Minister Abraham Chair this session.

Senator Miss L. R. CUMMINS: I second the proposal.

Ms. BEVERLEY GIBBONS: Are there any dissenters this afternoon? I appoint the Honourable Wilfred Abrahams as Chair for today's meeting. Thanks.

Hon. W. A. ABRAHAMS: Thank you. Our task is not that difficult, we need to set the fines under the legislation and we also need to decide on which forms we are going to use for the declaration assets. So, I propose that we jump straight in and deal with the fines. The first instance of a fine would be under paragraph 11(4). A person who (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons served on him; (b) attends, but leaves the Commission without the permission of the Commission; (c) refuses, without sufficient cause, to answer or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Commission; (d) refuses or omits, without sufficient cause, to produce any document in his possession etc., is guilty of an offence and is liable, on summary conviction, to a fine of \$10,000 or to imprisonment for 6 months or to both. This is at the end of paragraph 11(4)(e). The floor is open to suggestions on that one. In setting the fines we need to look at what the offence that we are fining is. I know there is an instinct in this to fine very heavily but we need to actually consider the nature of the particular offence and the fine that attaches that offence.

Senator Miss L. R. CUMMINS: Sir if I may, given that the original Bill when first circulated part of

being laid in parliament and then the Bill that came back from the office of the Chief Parliamentary Counsel contained very differing levels of fines. Is there advice that had been given by the C.P.C of what the parameters should look like in terms of the threshold that would help guide the deliberations of the Committee?

Hon. W. A. ABRAHAMS: No. Any thoughts?

Hon. C.E. JORDAN: The offence, to me in this case, the \$10 000 seems appropriate. It does not seem too low – let me put it that way – given that this is a witness. It seems in my mind to be kind of appropriate.

Hon. W.A. ABRAHAMS: Bishop Atherley?

Bishop the Hon. J.J.S. ATHERLEY: I have a question for you in regard to the term “witnesses” being referenced. Might a witness in this case also be the person who is the subject of the investigation?

Hon. W.A. ABRAHAMS: It actually says a person who refuses, so it does not narrow it down to witness.

Bishop the Hon. J.J.S. ATHERLEY: It might refer to the person who is being accused, and if that is the case then that fine is low.

Hon. C.E. JORDAN: Yes.

Bishop the Hon. J.J.S. ATHERLEY: I was saying if the person in question here at Section 11 (4) is the person who is the subject of the query, then perhaps the fine of \$10 000 is too low.

Hon. W.A. ABRAHAMS: The one thing I would suggest is that we balance. Mr. Thorne, I would particularly lean on you in this session.

Asides.

Hon. W.A. ABRAHAMS: Bishop Atherley, the thing here is to understand that this person is not yet guilty or has not been found guilty of any wrongdoing, so this is effectively a contempt fine. The thing about it is if you do not turn up or you are found guilty of an offence and you then do not turn up a second time, you can still be fined an additional \$10 000.

Bishop the Hon. J.J.S. ATHERLEY: You can be fined in the first instance for refusal to turn up and imprisoned for contempt, and if you do that again you are saying....

Hon. W.A. ABRAHAMS: I am saying it is more in the nature of a contempt. It is not stated as contempt so this is just by way of explanation.

Bishop the Hon. J.J.S. ATHERLEY: But the sentence can be repeated? The fine?

Hon. W.A. ABRAHAMS: Yes.

Bishop the Hon. J.J.S. ATHERLEY: Okay. My concern was that if the person is the subject of the query and knows to himself or herself that they are guilty, they might seek to frustrate the process, but if the fines can be repeated I do not have a problem.

Mr. R. A. THORNE: Chair, are you attempting to harmonise with the other jurisdictions in the Caribbean close by, such as Guyana, Trinidad, Jamaica and just do the conversion?

Hon. W.A. ABRAHAMS: No.

Mr. R.A. THORNE: You are not doing that? Okay. Why not, may I ask?

Hon. W.A. ABRAHAMS: I think the harmonising is what led to the low fines initially, so I think that we should apply ourselves to fines which suit the gravity of what it is that we are discussing and the message which we want to send across.

Mr. R.A. THORNE: I see. In harmonising as previously, had they done the conversion?

Hon. W.A. ABRAHAMS: I do not know.

Mr. R.A. THORNE: Probably not, or perhaps they did the conversion and ours then looked low, because \$1 million in Guyana sounds like a lot of money and when it is converted here, it sounds like a little bit of money so that may be the problem.

Hon. W.A. ABRAHAMS: Let us just deal with the numbers we have.

Mr. R.A. THORNE: Yes, okay.

Hon. W.A. ABRAHAMS: Miss Cummins?

Senator Miss L.R. CUMMINS: Thank you, Chair, I do not know what the other Members of the Committee are minded to do but in the absence of the harmonisation which Mr. Thorne referred to, and in the absence of comparable fines at the domestic level, I am just asking what would be the basis upon which we would then identify the threshold for the fines. If I recall, the comments made by the Attorney-General in his initial presentation in the House spoke to the absence of comparable fines in our own domestic legislation as well, so we would have to – especially since this is a public process – be able to justify the basis upon which we came up with these fines as a minimum threshold. I would suggest that we just have a bit of a conversation around what our parameters would be and then, on that basis, move to defining the specifics of the fines themselves, but we have to be able to justify the explanation as to where they came from. The text of the Bill, as it stands before us, we are able to say it came from the Turks and Caicos and it is a hybrid of primarily the Turks, and we looked at the Trinidad model, and the forms which we have here are reflective of what is done in multiple jurisdictions. We have had a baseline, and equally so I think we need to be able to have a similar one as it relates to the quantitative identification of fines.

Hon. W.A. ABRAHAMS: Why I am hesitant to embrace that fully is because at the end of the day, whoever it was that first instituted fines had to pull the fines from somewhere. At some point in time, any other Caribbean jurisdiction had to have had this conversation and set their fines according to their domestic circumstances, so we know that the feedback generally has been that the fines have been low. The other thing I want everybody to bear in mind is when it says you are guilty of an offence and liable on summary conviction to a fine of \$10 000, that simply means up to \$10 000. That does not mean you are getting a \$10 000 fine, so if the Committee wishes to increase the discretion of the magistrate, then it may do so. The difficulty here is that I think you may run into some challenges with the magisterial jurisdiction, so if the fines go past a certain

amount it may take it out of the realm of the Magistrates' Court.

Senator C.A. FRANKLYN: If you look at the severance payments and wrongful dismissal legislation, there is an exception in the rule which says "notwithstanding this, magistrates can award a certain amount." We can do something similar.

Hon. W.A. ABRAHAMS: Fair enough. Let us make a note of that. As a safety measure, we can up this fine if the Committee wishes, bearing in mind that the fact that \$10 000 here does not mean you are going to get \$10 000. You can get from zero up to \$10 000 but it gives the magistrate the discretion based on whether the person is guilty of a first offence or that they are guilty but there was not sufficient malice to constitute a genuine attempt to destabilise the process. Do you want to take it to \$20 000?

Senator Miss L.R. CUMMINS: Chair, I was going to ask what is the maximum figure that would allow us to remain within the confines of the Magistrates' Court.

Mr. R.A. THORNE: Is it \$10 000 in the Civil Court? For drug offences, I think magistrates can go as high as a quarter of a million dollars. Is that not correct?

Hon. W.A. ABRAHAMS: As Senator Franklyn said, you have to put the provision in the legislation to exclude the normal jurisdiction. That part we can cover. Otherwise, forget the jurisdiction of the court for now. Let us set ourselves to the task of the fines and then the Chief Parliamentary Counsel can draft the appropriate exclusion to bring it in line.

Mr. R.A. THORNE: My own feeling is that a fine should reflect – if we are trying to do it in a principled way – the extent of public revulsion against the offence. We must be mindful that the public even now believes that what we are doing here ultimately is aimed at protecting our political kith and kin, and they have accused us of setting small fines for that precise purpose: to protect our political kith and kin. I think what we need to do to assure the public is to set fines which are not too low but which reflect that public revulsion. I think we have an idea as to the extent of public revulsion. When they did the Narcotics Act, they went as high as \$250 000 because at that time the public was really repulsed by the importation of drugs and the trafficking of drugs. I think we have a pretty fair idea as to what the public expects of us in terms of punitive action. If it is light they are going to believe that our motives are aimed at protecting ourselves. That is what they would believe and we must guard against that.

Senator Miss L. R. CUMMINS: Mr. Chairman, if I may, I wanted to ask a question. Is there any reason why we could not simply revert to the fines as were outlined in the original Bill which were quite high and they would be prohibitive in some instances and they would also be reflective of what the public saw in the first instance as the commitment to dissuading person from engaging in a certain type of behaviour.

Mr. R. A. THORNE: I am of that view as well because the public will suspiciously ask, why you had it up there and brought it down? For whose benefit

is that? I am sorry, Mr. Chairman, remember that is a maximum. The magistrate does not have to go there. The magistrate can go beneath that.

Hon. W. A. ABRAHAMS: I believe the initial fine for this one was actually \$10 000.

Mr. R. A. THORNE: Is that the one that is akin to contempt one?

Hon. W. A. ABRAHAMS: Yes.

Mr. R. A. THORNE: Yes. Contempt would be of that nature because it is just a disobedience against a magisterial or judicial Order.

Hon. W. A. ABRAHAMS: Can we agree to stick at the \$10 000 for that one?

The meeting agreed.

Hon. W. A. ABRAHAMS: So the fine at the end of Section 11(4) remains at \$10 000 or six months in prison or both.

Can we go now to Section 18: Obstruction of an investigative officer? The fine here:

"A person who resists or obstructs an investigative officer in the execution of his duty is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or imprisonment for six months or both."

I would probably suggest that this is almost in line with the first one so we can harmonise that at \$10 000 or six months or both.

Mr. R. A. THORNE: Yes. It is the same kind of offence.

Hon. W. A. ABRAHAMS: Are we in agreement?

The meeting agreed.

Hon. W. A. ABRAHAMS: The next one is Section 35 the "*Duty of Secrecy Regarding Declarations*".

"Every member of the Commission and every person performing any function in office or is an employee of the Commission shall treat our records and information relating to declarations as secret and confidential and shall not disclose or communicate text of any record information declaration to any unauthorised person or allow such unauthorised to have access to any records to the information declaration. A person who contravenes this subsection is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or imprisonment for three years or both."

My concern here is if you are looking at an imprisonment of three years then \$20 000 is a small fine when you compare the option. If we are going with the three years then I suggest that fine ... and the other thing is we need people to feel comfortable that their declarations are not going to be revealed. There should be a heavy penalty especially in that one. I would suggest that we look at \$50 000.

Mr. R. A. THORNE: Custodial is how much?

Hon. W. A. ABRAHAMS: Three years.

Bishop J. J. S. ATHERLEY: Mr. Chairman. I agree with the reasoning that you are using. I just do not agree with the conclusion you arrived at. I think you should move down the custodial and leave the monetary fine where it is.

Mr. R. A. THORNE: Yes.

Bishop J. J. S. ATHERLEY: That three years is a long time for a document that falls off the back of one of Mr. Jordan's trucks.

Hon. W. A. ABRAHAMS: While I hear you on that and I have no difficulty in moving the three years down, I still think that we might want to bring that fine up a bit so that people understand it is a serious issue of leaking documents with the financial records of people who filed with the Commission.

Senator C. A. FRANKLYN: If the fine was \$5 000 people would know that it is serious. No one would want to pay that fine, but I would like it to be such a deterrent so that a fellow would say, "That ain't happening to me. I ain't selling my house." I even think that \$20 000 is minor.

Hon. W. A. ABRAHAMS: It is open for suggestions.

Senator Miss L. R. CUMMINS: When you say "minor" what do you mean?

Senator C. A. FRANKLYN: It should be a bit more.

Senator Miss L. R. CUMMINS: Mr. Chairman, if I may. This also applies to the other fines as well as the additional penalties mentioned whether it would be imprisonment or otherwise. Someone said to me when we were discussing this particular item of legislation on the question of the Bill they said, "If you include fines at a certain level, below a certain threshold persons, particularly those who are corrupting public officials, would simply incorporate the cost as part of the transaction cost so if you put it at too low a level, they would simply incorporate it in the cost of the actual deal.

Hon. W. A. ABRAHAMS: Senator Cummins, no one is refuting the rationale. We are trying to find a figure.

Senator Miss L. R. CUMMINS: No, no, so I was going to make a point, Mr. Chairman. The first thing is the level of the fine. The second thing is a dissuasive measure and you were proposing at this time to lower the custodial sentence but I wanted to also ask a question and then make a recommendation. Throughout the text, in many of the submissions, many of the persons commenting made the point that we should be treating with legal persons and judicial persons, well the two types and so they were making the recommendation in one of the documents that we have, that in addition to whatever measures were put in place, fine or imprisonment, that any company found or any entity found guilty of corrupting a public official be barred from being able to do business with the State for a period of time and I just wanted to put that into the equation as a possibility in terms of penalties as a third layer, where applicable. It may not be relevant for this particular section of the legislation but it may come up

elsewhere. You pay a fine, you can go prison and also you are barred from engaging in contractual relationships with the State.

Hon. W. A. ABRAHAMS: I do not think this is something that we actually need to legislate in. The reality is that if a company or an officer of a company is convicted of corruption and the company is fined or the officer is fined that in the normal course of things the Government would have a very hard time explaining why they continued to contract with that company. I do not think we need to legislate a bar.

Senator Miss L. R. CUMMINS: I say that, Mr. Chairman, because the Inter-American Development Bank and many of the development agencies with whom we interact do have that incorporated into their governance procedures. If you are found guilty and I think we had an instance of that under the Competitiveness Commission, I believe, in the last Administration where a company was found to be involved in corruption practices and they were barred from doing business with the Inter-American Development Bank so I used that only because there is a best practice example with our development partners.

Hon. W. A. ABRAHAMS: The floor is open on that one but I would just point out this. That aspect should have been raised before ... I have made my position clear. Mr. Thorne?

Mr. R. A. THORNE: I am fine with that.

Bishop J. J. S. ATHERLEY: I am willing to leave the fine where it is or even up.

Hon. W. A. ABRAHAMS: No, I am talking about Senator Cummins' contribution which was that in addition to fine or penalty or imprisonment there should be a bar from companies who have been convicted or associated with corruption from getting Government contracts for a period of time.

Bishop J. J. S. ATHERLEY: Mr. Chairman, I think we ought to be very careful about the bar on companies. Barbados is a very small economy in context and there are not a lot of companies sometimes that can provide services to Government. Employment opportunities are always a challenge and I would be reluctant to move too quickly to this business of barring companies.

Hon. C. E. JORDAN: That, Mr. Chairman, is my fear as well. It would work in larger economies, but we may end up having situations where officials, managers or owners, engage in corrupt practices essentially for their own benefit, but I do not want the penalty to affect innocent people in a situation where their employment is put in jeopardy and then the possibility of getting new or alternative employment becomes a challenge. I like the principle because we should really be sending a very strong message against those organisations that attempt to corrupt the process but in a small economy there are going to be some elements of fallout that would affect a lot of innocent people because we do not have a whole large number of businesses, alternatives, for people in terms of employment, and that is the challenge I would have.

Senator C. A. FRANKLYN: I tend to side with Senator Cummins. You do not have to say you 'shall be', you should say that you 'may' so as to give the presiding officer the discretion to say, well look, it was this particular fellow who was doing it on his own steam – just like what you are saying - and not a company, so you could hold an individual in the company and not hold the company itself. Now, if the company is completely corrupt, I think they should go out of business.

Hon. W. A. ABRAHAMS: The problem there is that using the 'may' of itself then opens up the system to corruption as opposed to the 'shall'. The other thing is that if we use the 'shall' we then bind the Government as well because if it is a situation where there is only one company providing that particular service and the Government has to contract then, then what? I think that this could be better dealt with at a policy level. We need not legislate the Bar so once again we are back...

Senator C. A. Franklyn: I would love to hear from you your suggestion as to the fine. I believe you thought it should go up. I believe it should go up. I think most people believe that it should go up.

Hon. C. E. JORDAN: My view is that it should be \$50 000 and two years.

Hon. W. A. ABRAHAMS: Fine, that was my thought. Is that the will of the Committee? Okay, \$50 000 or two years. The next instance of a fine is...

Asides

Hon. W. A. ABRAHAMS: If you look at the first one that we considered, that is kind of on par with the first one. I believe that we stuck at the same \$10 000 fine for that one.

Hon. C. E. JORDAN: Sir, this one I feel from the public's perspective is going to be seen as a little bit more egregious because the first one even though it may include a person who may become subject to an investigation, I am not sure the public is going to see it that way. When you hear 'witness' you think there is somebody other than one of the persons mentioned in the Schedule whereas this one speaks, from what I can gather, to the persons mentioned in the Schedule. Outside of being convicted of some act of corruption, the public, I think, would expect that the sanction here be a bit more than the contempt type one which speaks to witnesses as far as the public is concerned.

Hon. W. A. ABRAHAMS: What number are you at?

Hon. C. E. JORDAN: Section 36 (1).

Hon. W. A. ABRAHAMS: No, I mean what figure?

Hon. C. E. JORDAN: Well, \$15 000 or \$20 000. It is at \$15 000 now.

Hon. W. A. ABRAHAMS: I like \$25 000.

Hon. C. E. JORDAN: Okay, \$25 000.

Asides

Senator C. A. FRANKLYN: While we are at it I want to suggest that instead of changing this we can say that the magistrate...

Hon. W. A. ABRAHAMS: Let us deal with this one now.

Asides

Hon. W. A. ABRAHAMS: We will note that and ask the Chief Parliamentary Counsel about that but it is probably best that we deal with it. So, do we use the figure of \$25 000? Mr. Thorne, it is \$25 000 at 36(e) down at the bottom. I would actually suggest the \$25 000 and 18 months.

Asides

Hon. W. A. ABRAHAMS: Are there any comments?

Hon. C. E. JORDAN: I am fine with the \$25 000 and 18 months.

Hon. W. A. ABRAHAMS: There is another fine on the back of that page at (3) for \$3 000 a day. That is sufficiently severe I think, so I think we could leave that.

Asides

Hon. W. A. ABRAHAMS: The next fine is at Clause 43 (1) which says that a member of the House of Assembly or the Senate – please pay particular attention, this relates to all of us – who fails to file the Commission a statement, who knowingly files a false statement, fails to comply with a request or fails without reasonable cause to attend an inquiry... Now, to be honest with you all this is where we actually need to demonstrate a... The one before that was what?

Asides

Hon. W. A. ABRAHAMS: It has \$15 000 or imprisonment for a year or both, so shall we say \$50 000?

Asides

Senator C. A. FRANKLYN: I am saying that people think that all politicians are crooks anyhow, so this got to be high for the public...

Hon. W. A. ABRAHAMS: Senator Franklyn, if you are getting locked up for \$15 000 then you would get locked up for \$50 000. There are some of us like Mr. Thorne who could perhaps even manage the \$50 000.

Senator C. A. FRANKLYN: Mr Thorne can handle that easily, that is no problem. The conglomerates...

Hon. C. E. JORDAN: I am thinking that we are not at the point here of actual corruption as yet.

Hon. W. A. ABRAHAMS: Included in there is failure to file a declaration.

Hon. C. E. JORDAN: This is the upfront declaration.

Senator Miss L. R. CUMMINS: Registrable interests.

Asides

Hon. C. E. JORDAN: Yes, I would agree with that even though I would put for a... I am thinking that the actual act of corruption has to be in the hundreds of thousands.

Asides

Hon. C. E. JORDAN: No, but I used that to come to some intermediate point where this is concerned.

Hon. W. A. ABRAHAM: And understand that I think further down under (iii) it has the fine for the continuing everyday thereafter, so you may start at \$50 but then you get [up to] \$3 000 a day where the offence continues. Mr. Thorne, \$50 000 and two years?

Asides.

Senator C. A. FRANKLYN: Ralph is saying 'chicken feed'.

Asides.

Mr. CHAIRMAN: The next, Section 54, a person commits an act of corruption under sections 51 and 52, so let us look at those sections, that is the general acts of corruption, while 52 is bribery and procurement.

Hon. C. E. JORDAN: This has to be large.

Mr. CHAIRMAN: These are the ones that I suggest have to be a bit steeper. So, the original of \$500 000 or five years, or both?

Senator C. A. FRANKLYN: Depending on the contract, if you got a contract for a few millions, \$500 000 must be...

Mr. CHAIRMAN: So what we should also indicate, just put a note to the office of the Chief Parliamentary Counsel, that they should also draft in "as well as forfeiture of the benefit". So that you will forfeit any benefit that you acquired, plus you would be liable to the fine of...

Asides.

Mr. CHAIRMAN: Five hundred thousand or five years or both. The second one on (b), I suggest \$250 000 and two years or both.

Hon. C. E. JORDAN: And in all cases the forfeiture of the benefit?

Mr. CHAIRMAN: Yes.

Senator C. A. FRANKLYN: (indistinct)... ban from holding public office. I think you should be banned from public office, period.

Mr. CHAIRMAN: I think the purpose there of five years is an election cycle, the reality is that if the public knowing all of that [still] chooses to vote for you again, [then] that is the public business.

Senator C. A. FRANKLYN: No, you see the thing is, this one applies to elected people because we had everybody under the Schedule, whether they are chairmen of statutory boards, magistrates... (Indistinct).

Mr. CHAIRMAN: Senator Franklyn, would you want to turn on your mike?

Senator C. A. FRANKLYN: What I was saying was that persons here should be banned from holding public office, period, because the electorate will deal with politicians, people who seek the vote but there are other people outside of that category who could be appointed to public office, and I do not think that you should ever get a public appointment again. I think you would have forfeited that right.

Mr. CHAIRMAN: I remember when we were initially drafting the... we did not find anywhere where they banned anybody for life, so [that] you may...

Asides.

Mr. CHAIRMAN: The problems coming here is that we generally tend to believe that a man who has

paid his fine and served his time has purged himself, so you [would] have paid your debt to society, so [that] even the banning for five years is a bit of a new step for us but I think banning for life we may be subject to some serious challenges on that. I mean, if we are getting hit with the \$500 000 fine...

Senator C. A. FRANKLYN: No, I did not say that he is not going to work again, but just that he is not going to work for the Government, if you see what I mean.

Mr. CHAIRMAN: I am prepared to leave it at the five years.

Senator C. A. FRANKLYN: Well, it is up to us but I mean...

Asides.

Mr. R. A. THORNE: The thing about it is that... (indistinct)

Mr. CHAIRMAN: So, shall we keep it to five years?

Mr. R. A. THORNE: If a man is found guilty of corruption why should he be allowed to have that covered up (?)

Senator C. A. FRANKLYN: To do it again?

Mr. CHAIRMAN: Well, let us remember, Mr. Thorne, we are pushing and publicising and encouraging restorative justice and reforming the offender and what's-not, so [that] a ban for life is a bit of heavy thing. If you have been stripped of \$500 000 and the forfeiture of the benefit and banned from public office for five years, I think... We could always amend that subsequently if the need arises but I think it is a good start, without being over the top. Can we agree to that? Section 54(2):

"A person possessing or in control of a property knowing that the property or part of the proceeds of the property were obtained or derived directly or indirectly from the commission of an act of corruption is guilty of an offence..."

Let us understand that the part that informs this is "knowingly" so [that] it is not a strict liability offence, you have to prove knowledge, so [that] if you have established the knowledge [that] the person obviously voluntarily and willingly went along with it for the benefit, so the fines that we are looking at here that were in the previous draft were once again \$500 000 and \$250 000 and the ban of five years and the forfeiture of the property.

Mr. R. A. THORNE: (indistinct)

Mr. CHAIRMAN: Please make the note as well that Office of the Chief Parliamentary Counsel also needs to work in again that they forfeit the benefit.

Senator C. A. FRANKLYN: Because you really do not want to put it in your mother's name.

Asides.

Mr. CHAIRMAN: That would be a very, very low thing to do.

Asides.

Mr. CHAIRMAN: The next paragraph (3) (i) "accessory". I suggest we keep it consistent in this bracket, to \$500, \$250 and a ban of five years.

Asides.

Senator C. A. FRANKLYN: *(indistinct)*

Mr. CHAIRMAN: Okay, that is a good point, so amend that to "a person who assist, aids, is an accessory to..." "Take out "after the fact". So take out "after the fact" is that agreed? We remove "after the fact" to "qualify accessory". Alright, on page 53, sorry, "Possession of unaccounted property or pecuniary resource", Section 57. I do not know whether we have dealt with this already but there is a period of not.

Asides.

Hon. W. A. ABRAHAMS: It says that a person is guilty of an offence and is liable, on summary conviction, to a fine and to imprisonment for not less than 6 months that is actually illegal. Did we clarify that already?

Hon. C. A. JORDAN: Yes we did that already. We said "up to".

Hon. W. A. ABRAHAMS: Alright, Okay, "Making of false allegation", this is section 59, "A person maliciously makes a false allegation or maliciously provides false information related to a contravention of this Act is guilty of an offence and is liable". This has \$20,000

Hon. C. A. FRANKLYN: Section 59?

Hon. W. A. ABRAHAMS: Yes. That is steep. This is somebody who provides false information, we had raised the issue about people maliciously, I think you had raised the issue about people maliciously making reports. The initial fine suggested that we suggested was \$500,000 on indictment and \$250,000.

Asides

Hon. W. A. ABRAHAMS: False reports.

Mr. R. A. THORNE: To the Commission?

Hon. W. A. ABRAHAMS: It does not say. It will probably be to the Commission because it is something in convention of the Act.

Asides

Hon. W. A. ABRAHAMS: I am hesitant to go to \$500,000 for that.

Senator C. A. FRANKLYN: The thing is, the jurisdiction, we have now ex..... the magistrate jurisdiction with others. We have on conviction, indictment \$20,000, we have already given the magistrate more power than that there, so we can just say "on conviction" and take out (a) and (b) and just put one.

Hon. W. A. ABRAHAMS: No, because there are going to allow people to plea.... The summary jurisdiction allows for the pleas to happen early and take it out of the system, so we still have to provide for the summary jurisdiction. You get an easier sentence if you plead at the lower level than if you carried it to trial.

Senator C. A. FRANKLYN: What I am saying is that we have actually given the magistrate more power than \$20,000, so if you are going to go on indictment you should go higher than \$20,000.

Hon. W. A. ABRAHAMS: No I am saying change these fines entirely.

Senator C. A. FRANKLYN: Okay

Hon. W. A. ABRAHAMS: So our initial draft had \$500,000 and \$250,000, I think those are quite high. I say \$250,000 and \$125,000.

Mr. R. A. THORNE: We are in the realm of in terms of sentencing principles deterrence, rather than retribution. If you want to deter somebody you do not have to go as high as... *(indistinct)*

Hon. W. A. ABRAHAMS: Call a number Mr. Thorne.

Mr. R. A. THORNE: I would say \$100,000. You are basically preventing people from engaging in mischief.

Hon. W. A. ABRAHAMS: \$100,000 on indictment and \$50,000 on summary?

Mr. R. A. THORNE: Do you need more that high just to deter somebody from being mischievous?

Hon. W. A. ABRAHAMS: "Up to", Mr. Thorne.

Mr. R. A. THORNE: "Up to", Okay, Yes.

Hon. W. A. ABRAHAMS: Okay, so we go to \$100,000 and a term of imprisonment for 18 months?

Asides

Hon. W. A. ABRAHAMS: \$100,000 and one year and \$50,000 and six months.

Senator. C. A. FRANKLYN: We have Section 61 to do before Mr. Thorne leaves.

Hon. W. A. ABRAHAMS: Section 61, "A public official who fails to report his knowledge or suspicion as required by subsection (1) is guilty of an offence and liable, on summary conviction, to a fine of", we had \$100,000.

Senator. C. A. FRANKLYN: You know he will go to jail if he is a public official.

Mr. R. A. THORNE: You would want to compare that with the person you dealt with just now, who would just be any person of the street so to speak who is just... Now this is a public official.

Hon. W. A. ABRAHAMS: This is a public official who fails to report as oppose to maliciously reports.

Mr. R. A. THORNE: Should there be a higher expectation of responsibility on this part?

Hon. W. A. ABRAHAMS: Do you mean duty to report?

Mr. R. A. THORNE: Yes. Would you not want to go somewhat beyond the previous one that we just did.

Hon. W. A. ABRAHAMS: Let us take that one to \$100,000 because it is a negative duty. Will you all go to \$100,000 for that one?

Mr. R. A. THORNE: If you want to keep at the same level as the most recent one that we just looked at.

Hon. W. A. ABRAHAMS: Okay, \$100,000.

Senator. C. A. FRANKLYN: The only thing I do not like about it is the word "suspicion". I might suspect but that is not enough for me.

Hon. W. A. ABRAHAMS: We clarified that to be a public official who without reasonable excuse, so if your reasonable excuse is like to be honest I was

not certain, the Court would have to weigh that. But if the evidence points to that fact that you knew.

Senator. C. A. FRANKLYN: That is what I am saying, if you have knowledge the Court will establish you have knowledge. I might believe... (indistinct)

Hon. W. A. ABRAHAMS: That would be captured by without reasonable excuse. Remember we amended this section to say a public official who without reasonable excuse.

Senator. C. A. FRANKLYN: Yes but what you have there, "or suspicion". I do not like the suspicion part. I have this complex way I always suspect people to steal first. (indistinct)

Hon. W. A. ABRAHAMS: The thing is, once again remember it is "up to".

Senator. C. A. FRANKLYN: No, I am talking about "suspicion", the part I do not like is the "suspicion". If you look at (2), "A public official who fails to report his knowledge or suspicion".

Hon. W. A. ABRAHAMS: Correct. I think the reason we put "suspicion" in there is a lot of the times the reports are exactly based on that. It is hard to know with certainty if you are involve in the deal, but if you see a pattern and something does not look right then you still have a duty to report to the Commission. You would not be caught under the malicious because malicious had a certain definition. So if you report in good faith, your "suspicion".

Senator. C. A. FRANKLYN: I will be guided by you but that is my initial thinking when I saw it.

Hon. W. A. ABRAHAMS: So we take this as the \$100,000 and 1 year, Mr. Thorne?

Mr. R. A. THORNE: Yes.

Hon. W. A. ABRAHAMS: Mr. Thorne we have three more left. You do realise that if you leave now we do not have quorum. We are going to get through very quickly even if you have to leave before we get to the forms. Let us just push through. Section 66. This one actually duplicates one previously that deal with failing to attend the inquiry or failing to...

Mr. R. A. THORNE: The quorum is back.

Hon. W. A. ABRAHAMS: The quorum is with you and her.

Asides.

Hon. W. A. ABRAHAMS: What is the previous one that we had in relation to failing without reasonable cause to attend an inquiry and knowingly giving false and incomplete information? Anybody can remember that one? That would have been under Section 36. What fines have we put in there?

Hon. C.E. JORDAN: Under Section 36, from \$5 000 and 18 months.

Hon. W.A. ABRAHAMS: There was another one for the public official: a separate one. The one with the public official who failed to declare or makes a false declaration: the public official as opposed to the person. That is under Section 43(1)?

Asides.

Hon. W.A. ABRAHAMS: is it Section 61? No, not that; this is who files a bogus declaration.

Asides.

Hon. W.A. ABRAHAMS: How much did we have there? Fifty thousand dollars and two years?

Asides.

Hon. W.A. ABRAHAMS: "A public official who fails without reasonable cause to attend an inquiry or furnish information or gives false or incomplete information is guilty of an offence." I suggest we stick to the same \$50 000 and two years.

Asides.

Hon. W.A. ABRAHAMS: What is that figure you just said?

Senator Miss L.R. CUMMINS: \$50 000 and three years.

Hon. W.A. ABRAHAMS: No, not three, not for \$50 000. Okay, Section 76:

"An employer, a person in authority of a public official who subjects the official to detriment by reason of him having made a protective disclosure is guilty of an offence under Section 68 and liable on summary conviction."

Okay, this is the one that protects the person from retribution from the employer. I think that needs to be heavy. I am thinking that is up there in the hundred and something. That is protection vis-a-vis employer and a person in authority.

Mr. R.A. THORNE: Does that include violence, physical violence?

Hon. W.A. ABRAHAMS: It does not say, I think this is persecution or demotion.

Asides.

Hon. W.A. ABRAHAMS: We initially had \$150 000 or a term of two years or both. I suggest we go back with that.

Asides.

Hon. W. A. ABRAHAMS: Section 79 deals with confidentiality of information, and speaks of a Member of the Commission or employee of the Commission who contravenes and reveals the information.

Senator Miss L.R. CUMMINS: Is that Section 79(2)?

Hon. W.A. ABRAHAMS: Yes. The first one we had with people disclosing the information was how much?

Asides.

Hon. W.A. ABRAHAMS: The disclosure one which we had, does anybody remember the Section? Can we do a search for disclosure?

Asides.

Hon. W.A. ABRAHAMS: Duty of secrecy regarding declarations: that is Section 35(1). What did we have for 35(1)?

Hon. C.E. JORDAN: \$50 000 and two years.

Hon. W.A. ABRAHAMS: No, if it is a Member of the Commission I actually think it should be more.

Asides.

Hon. W.A. ABRAHAMS: So shall we say \$100 000?

Asides.

Hon. W.A. ABRAHAMS: I would this half of the one before it because the first one is somebody disclosing and the next one is somebody receiving. Mr. Thorne?

Senator C.A. FRANKLYN: I would keep them on the same level, except they are going to give it to me and I would let it blow off a truck.

Hon. W.A. ABRAHAMS: Alright, keep it at the same level.

Senator Miss L.R. CUMMINS: What is the basis in law?

Hon. W.A. ABRAHAMS: You tend to look at the criminal and the accessory in the same way; so like stealing and receiving tend to get the same thing.

Asides

Hon. W.A. ABRAHAMS: That is it, so what I can suggest is that we can perhaps do this very quickly. I do not know if anybody had a chance to look at the forms.

Asides

Hon. W.A. ABRAHAMS: Our legislation was based primarily on the Turks and Caicos legislation. The Turks and Caicos form is sufficiently comprehensive. I am figuring that as we based it on their legislation, it might make sense to just follow their form. Can we agree to use the Turks and Caicos form and just tailor it to suit? Yes, Charles? Colin? Caswell?

Senator Miss L.R. CUMMINS: Okay.

Hon. W.A. ABRAHAMS: That is it. I want to thank everybody for coming. I do not know whether we will actually need to have another meeting. We may need to have one just once the Chief Parliamentary Counsel fine-tunes its draft but I will leave that to the Committee to call that one. I want to thank you very much.

Asides

Hon. W.A. ABRAHAMS: The Committee would like to see the draft before it goes back; the final draft from the Chief Parliamentary Counsel.

Asides

Hon. W.A. ABRAHAMS: Okay, I understand that we are going to have to ask for a further extension of the time to complete the work of this Committee, because we had an extension for a month which will be expiring some time this week. I think.

Mr. R.A. THORNE: On the 11th, I think.

Hon. W.A. ABRAHAMS: I wish to advise the Committee that we will be seeking an extension for a month to conclude the work of the Committee.

Senator Miss L.R. CUMMINS: Chair, I just wanted to make a recommendation but I am not sure if any of my colleagues would agree. When we started this process, we engaged with the public fully and we made the decision as a committee to retreat to in-camera discussions. However, there has been considerable discussion among the many stakeholder groups which took the time to prepare submissions to respond to us. I think that as we would do with any of our agencies, Ministries or companies, we should write back to advise people on where we are, and I would want to make the recommendation that Parliament – in

the same way we wrote and requested people to give feedback – write back and give people an update on where we are now, having concluded this stage of the deliberations.

Hon. W. A. ABRAHAMS: Is that the will of the Committee?

Mr. R. A. THORNE: Agreed.

Hon. C. E. JORDAN: Agreed.

Hon. W. A. ABRAHAMS: Mr. Deputy Clerk, can you see that it is done please?

Please let the Minutes reflect that the Chairman directed the Deputy Clerk to see that it is done. Anything else from anyone else?

ADJOURNMENT

I want to thank everyone for coming out. This has been an exceedingly productive session and Mr. Thorne, Godspeed in collecting your children.

Mr. R. A. THORNE: Thank you very much, Mr. Chairman.

Hon. W. A. ABRAHAMS: This meeting stands adjourned.

The meeting was adjourned

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**THIRTEENTH MEETING
OF THE
JOINT SELECT COMMITTEE ON THE INTEGRITY IN PUBLIC LIFE BILL, 2018
IN
THE HONOURABLE THE SENATE**

FRIDAY, DECEMBER 06, 2019

First SESSION 2018-2023

PRESENT WERE:

Hon. D. D. MARSHALL, Q.C., M.P. (Chairman)
Hon. Miss C. Y. FORDE, J.P., M.P.
Hon. W. A. ABRAHAMS, M.P.
Hon. C. E. JORDAN, M.P.
Mr. R. A. THORNE, M.P.
Senator Miss L. R. CUMMINS.

ABSENT WERE:

Bishop J.J.S. ATHERLEY, M.P.,(Leader of the Opposition)
Senator C. A. FRANKLYN
Senator Dr. The Hon. J.X. WALCOTT
Senator Ms. M. C. TAITT

EXCUSES FOR ABSENCE:

Bishop J.J.S. ATHERLEY, M.P.,(Leader of the Opposition)
Senator Ms. M. C. TAITT

IN ATTENDANCE WERE:

Mr. NIGEL JONES, Deputy Clerk of Parliament,
Ms. SUZANNE HAMBLIN, (Library Assistant)
(Procedural Officer to the Committee (Ag.)
Ms. NICOLE THOMPSON, Special Advisor to the
Hon. D. D. Marshall, Q.C., M.P.

1. WELCOME

The Chairman called the meeting to order at 11.45 a.m.

Mr. CHAIRMAN: Let me welcome everybody. I am glad that we can have a quorum so that we can complete the work of this Committee. This process is one which could be tedious but I hope it would not be. We are just going to go through the Minutes and confirm them. I would suggest that they can be dispatched with some dispatch, then we will consider the Bill, as amended, and the Report. When I come to the Bill, I will make some more comments on what has happened to the Bill since we were last here.

So with "Welcome" out of the way, all of the Minutes as are shown in Agenda Item 2 have been circulated. I am assuming that they have been read. Can

we have a motion for the confirmation of these Minutes?

2. CONFIRMATION OF MINUTES:

(a) Minutes, Friday, September 7, 2018.

Such Minutes were moved by Senator Miss L. R. Cummins, seconded by Hon. Miss C. Y. Forde.

(b) Minutes, Wednesday, October 10, 2018.

Such Minutes were moved by Hon. C. E. Jordan, seconded by Hon. Miss C. Y. Forde.

(c) Minutes, Monday, November 5, 2018.

Such Minutes were moved by Senator Miss L. R. Cummins, seconded by Mr. R. A. Thorne.

(d) Minutes, Friday, November 9, 2018.

Such Minutes were moved by Senator Miss L. R. Cummins, seconded by Mr. R. A. Thorne.

(e) Minutes, Friday, November 13, 2018.

Such Minutes were moved by Hon. Miss C. Y. Forde, seconded by Senator Miss L. R. Cummins.

(f) Minutes, Tuesday, November 16, 2018.

Such Minutes were moved by Senator Miss L. R. Cummins, seconded by Hon. C. E. Jordan.

(g) Minutes, Monday, November 26, 2018.

Such Minutes were moved by Hon. C. E. Jordan, seconded by Senator Miss L. R. Cummins.

(h) Minutes, Monday, December 3, 2018.

Such Minutes were moved by Hon. C. E. Jordan, seconded by Senator Miss L. R. Cummins.

3. MATTERS ARISING:

There were none.

4. CONSIDERATION OF THE BILL, AS AMENDED:

Mr. CHAIRMAN: Now, by way of Chairman's comments, let me say that The Bill, as presented to you and as considered by the Joint Select Committee during the course of its work, is actually very different. It is a big difference between what we had at the beginning and what we have at the end. Some of those were, or I should say, many of the amendments that were recommended by our witnesses, if you would call them that, some have been accepted, some have been rejected by the Joint Select Committee but as a matter of drafting and so on, I would like to point out

the Committee that as Attorney-General, and being responsible for the Office of the Chief Parliamentary Counsel, there were some changes that were felt to be necessary to the Bill. Now, I will just try to explain what some of those changes are.

In the original Bill, for example, we had new provisions relating to corruption and we replicated a whole set of corruption provisions in that draft. Our existing Prevention of Corruption legislation is dated – well, it was enacted first in 1929. The Integrity in Public Life Bill only properly relates to that 200 or 300 people in public life. It will include other people too but it includes a very narrow swath of people, and it was obvious that it would have been better just to bring a new Prevention of Corruption Bill which would cover everybody than to have passed in the Honourable House an Integrity in Public Life Bill which has corruption provisions but then the rest of us are still dealing with 1929 provisions. It does not make sense. So the solution is to update the 1929 Act to have a whole new Act. So that if you have a whole new Act then you do not need to put in six or seven prevention of corruption provisions in this Bill and it was better by far to just have a new piece of legislation which gave us a new prevention of corruption framework, including the things that were in the Bill, but in a separate document so that there is no doubt as to whether if you have to charge somebody whether or not under the Integrity in Public Life Act, in which case you then have to ask yourself if you are charging somebody who is covered by the Act, does it relate to a fellow in Eagle Hall, or does it relate only to a Chief Executive Officer of a statutory corporation. So the recommendation from my staff, which I accepted, was that we should prepare a whole new Prevention of Corruption Act which will include everything that was here. In fact, what was in our Bill has been.... The two things were fungible, really. [there was] no difference between what was in our original Integrity in Public Life Bill and what is being completed now as the Prevention of Corruption Bill.

But a similar rationale also extended to Whistleblower [legislation], in our original iteration we had whistleblower provisions but again that only related to a very narrow scope of public endeavor and would not have offered any protection to anybody else outside of the scope of this Bill, so again it became evident that we needed to have a whole Bill dealing with whistleblower protection, rather than just crafting out whistleblower protection for people who are acting in the course of trying to expose offences under this Act. So the whistleblower provisions have also been taken out and a new Bill is being drafted.

It is important for me to make it clear to the Committee that we are not shortchanging anybody by this effort. I can tell you that the Prevention of Corruption Act is virtually completed and therefore, certainly before year-end, I am hopeful that we would be able to lay it at the same time as we put this Bill back in Parliament, so that people will not be able to say: "But you took it out of this and you put it into that,

okay?" So if I am not going to be able to lay this.... At least if the Prevention of Corruption Bill is not ready by next Tuesday, I will defer putting the report in. I am sure that the Prevention of Corruption Bill will be ready in a matter of a week or two. You will have my assurance that the Prevention of Corruption Bill will be before Parliament, laid at the same time that we do this.

Whistleblower legislation is taking a bit longer and the fact of the matter is that the Office of the Chief Parliamentary Counsel is inundated with work, there are too few people, and everybody wants his stuff done urgently, so [that] they keep having to say to me: "Minister, what is your priority? We cannot do public procurement and whistleblower legislation too. We cannot do whistleblower legislation and Minister Toppin's Companies (Amendment) Bill. They have now added to it that a new Central Bank of Barbados Act must be completed and laid by Tuesday, so they keep having to put things aside, but whistleblower legislation is well on the way.

So what is here, therefore, is, I think, a much better Bill and by removing the provisions on corruption and the provisions on whistleblower, I reiterate that it is not any attempt to weaken or shortchange this, but it was only done in favour of having better legislation dealing with the entire Barbados' sector, rather than just dealing with the narrow swath of public propriety.

So those are my opening remarks in relation to the Bill, so unless there is any comment I would like us to go through the Bill itself. There is a table which has been circulated. Yes, Senator Cummins?

Senator Miss L. R. CUMMINS: Attorney General, thanks for that. I am supportive of the proposal from the comments which you have made. I think, strategically, we have had a lot of commentary in the public space around the delays associated with this particular item of legislation and the absence of the second piece. So I think, strategically, we would absolutely have to lay both items at the same time. I did have a question, though, specifically for those persons who did present to the Committee. There was an agreement that we had made that we would communicate with them by way of the Office of the Clerk of Parliament about where we were and what was happening. I just wanted to be advised whether or not that had been done in terms of communication.

Mr. CHAIRMAN: If I can speak for the Clerk...

Mr. N.JONES: That was done.

Mr. CHAIRMAN: You have. The fact is, I know a cause for concern that our last meeting was the 3rd of December, 2018, and we are now here on the 6th of December, 2019, approving the Bill and there are people who will say that we were slow on it and so on. It has been a monumental task.

Senator Miss L. R. CUMMINS: (*indistinct*).

Hon. C. E. JORDAN: (*indistinct*).

Mr. CHAIRMAN: I know people have been concerned to know whether we are....

Senator Miss L. R. CUMMINS: Attorney General, I do not want to do the relativity thing, you know, relative to ten years or one year, but what I think we do need to do as an Administration, for the purpose of public information, we need to also share the additional legislation that has been passed over the course of the last year that also speaks to the issue of public management of finances, integrity and those kinds of things, including things like the Public Financial Management Act. So a lot of discussion obviously has been fixated on this one item of legislation but we have to put into the public space this conversation that so much other stuff has also happened to strengthen the governance provisions over the last year.

Mr. CHAIRMAN: Thank you for that. So there is a Concordance that has been circulated. Charles, do you have a copy? So what is here and the staff has very kindly prepared a Table of Concordance and it sets out the changes that were made pursuant to the decisions of the Joint Select Committee, so it is very easy to see what specific changes have been made and you can see that we have made changes to many, many sections of the Bill, so if we can just go through, I think we can do this with some dispatch. I am not going to linger over the amendment to the Long Title but it is important that the Long Title reflects that some of these things may alter the provisions of the Constitution and therefore to the extent necessary this is a recital that is needed if you are not specifically amending the Constitution but you are passing a Bill which may have that impact.

From the Concordance you can see the definitions would have been changed and the rationale behind changing the decision. So I do not have any comments in relation to the amendments to Clause 2 which are definitional.

The Concordance identifies easily where the changes are made but I mean, if anybody wants to just revisit any provisions in the Bill. On page three we are looking at Item 3: "The Establishment of Integrity Commission". We are now providing that Section 21 of the Interpretation Act applies. Just for completeness, Section 21 of the Interpretation Act is the provision which serves to provide that a particular entity is a Board and a body corporate and therefore is able to hire, fire, contract and otherwise. You will see at Part 2. "Establishment of Integrity Commission", at 3.2 it says that Section 21 of the Interpretation Act applies. So section 21(1) says:"

"Where a Bill contains words establishing or providing for the establishment of a body corporate and applying this section to that body those words shall operate to vest in the body the power to use its corporate name entered into contracts, rights, to have a seal, to acquire and hold real property, to regulate its own procedure, the right to employ such staff as they may need..."

And a whole set of other things, so this puts it on the same footing as the National Housing Corporation; like anybody else they can hire their own staff. Those are things that are important for the independence of the

commission. So they do not need to rely on a public service commission to engage people and then have your work stifled because you are waiting on a... We know how that goes. It is to my eternal regret that the software used at Office of the Chief Parliamentary Counsel does not have anything called track changes, it is called LIN-software, a special software cost near one million dollars. 'Track changes' is Word, they do not use Word. It is a peculiar programme so if they change something here and there is a need to change it in 20 other places, the software automatically changes it. So if you changed a reference to Section 2.1 to a different place of the Bill and suppose you renumber and 2.1 becomes 5.1, every place else that refers to 2.1 will automatically get changed, so it does a lot of that kind of stuff which makes good sense, but for some reason something as simple as track changes it will underline so I know what comes out and what gone in does not exist.

I do not know how you all want to go through this, really, because it has been so long since we looked at this stuff. For my part, I can take you to Clause 10 (3). You will know that we are establishing a Major Organised Crime, Anti-corruption and Anti-terrorism Agency. That Bill is shortly to be completed, and in fact the draft is finished, it is just with the Prime Minister for her final sign off. What this provision at Clause 10 (3) does is that it allows the commission to get that agency, which would be staffed specifically with investigators to deal with corruption. Rather than having to go to the police to do it, they will be able to go to that agency to do it.

The context of that is quite simple, the Financial Intelligence Unit that would investigate corruption only has three police officers in it, and they do corruption, money laundering, fraud, all of the financial crimes they have to do, so they are just do not have enough bodies and seats to be able to do it. If the Integrity Commission had to refer a matter to them, well, God knows when it will ever get investigated. It does not stop us from doing that, it just empowers the Commission to get them to investigate if they need to.

The Declarations are in the Schedule. I must tell you that these Declarations took a lot of work and they have tried to capture, in as easier way as possible, how you will disclose stuff. Those of us who had to fight with the disclosures for Cabinet would know that it was not an easy form to grapple with, a form that we completed last year. This uses that as a foundation document, but we have tried to simplify it and make it a lot more practical.

We have sorted that problem out and the level of fines in here are significantly higher, but I think we [have] covered this.

Mr. N. JONES: (*Indistinct*)

Mr. CHAIRMAN: At Clause 23 on page 27, "GIFTS", we had \$1 000 in there, but it was felt that while it is good to capture any gift, you still had to be practical and you could find yourself reporting so many things that it becomes a nuisance. There were recommendations that we should carry it to is high as

\$5 000, but that would have been going to the other extreme, so we are saying anything more than \$2 500 you are obligated to disclose. There have some countries like Malaysia, you have to disclose all gifts, you cannot accept any gifts.

Mr. CHAIRMAN: I would like to highlight Clause 21. There was no change to Clause 21, but just to remind you that this Clause disqualifies any Member of the House of Assembly or the Senate who is convicted of not filing and/or filing dishonestly. There was no change to that from the Committee, so there is no issue there.

Senator Miss. L. R. CUMMINS: Just a query on Clause 21. When I was reading through the Minutes, it reminded me that there was a query raised by Independent Senator Monique Taitt about the applicability of some of the measures to Independent Members of the Senate, given that they, in her view, did not hold public office. The Minutes said that there was no consensus, but my recollection of that discussion was that there was consensus and we did not agree with Senator Taitt at the time. I am just expecting that once these provisions here in Clause 21 and others which speak to the whole come up that there is not...

Mr. CHAIRMAN: We have not bifurcated the Senate into an Opposition Government or anything like that.

Senator Miss. L. R. CUMMINS: I agree.

Mr. CHAIRMAN: So that a Senator, however he gets appointed, is a person in public life. There is no issue there.

Mr. N. JONES: (*indistinct*)

Mr. CHAIRMAN: If I can jump forward to the Second Schedule, which is on page 57. This Schedule sets out the list of persons in public life. In a recent email, probably as recent as eight weeks ago, you would have been sent a slightly older draft, but I asked that they send along with those documents a number of cases which came out of our sister jurisdiction in Trinidad. You will remember that in our discussions we felt that we should include judges. The body of legal opinion suggests that to include judges in these provisions and therefore impose on them an obligation to file a declaration would be a change in their terms and conditions that is not only unilateral but that, while not quite punitive, it is an imposition. In that jurisdiction looking at similar legislation with a similar Constitution those Trinidad Courts ruled that it was unconstitutional. While we are not bound by any decision of a Trinidad Court, it is certainly going to be persuasive in helping a Barbados court to consider the issue.

Hon. W. A. ABRAHAMS: That went to what level?

Mr. CHAIRMAN: Just to the High Court, whether it was constitutional for a judge to declare and the court ruled, but it is a very well-reasoned decision and I really did not think that we really wanted to get into a row with our judges.

Hon. W. A. ABRAHAMS: Mr. Chairman, are we looking at any new judges that would come on hereafter?

Mr. CHAIRMAN: The difficulty would be...

Hon. W. A. ABRAHAMS: I think judges are as equally... (*inaudible*)

Mr. CHAIRMAN: And that might be true but that the challenge that we would have had would have been trying to say: "These judges are subject to the provisions and those judges are not", because you now have judges who are not operating on equal terms, so that is equally awkward. We can always revisit it but for the moment so as not to create too big a storm...

Hon. C. E. JORDAN: Magistrates are separated from judges?

Mr. CHAIRMAN: Yes, magistrates have no security of tenure or no constitutional protection. You know, I agree but we do have substantial judicial authority that says to do it and their constitution, in this respect, is the same as ours. And if you read the judgment it is a very well-reasoned judgment. I do not think that we can get away from the logic of it, so judges are still out. They were in but they are still out.

We have listed the agencies, as you can see, so we will know what agencies we are dealing with. You will see at Part II, the Second Schedule, there is a list of Government entities. The Minister can add to that, you do not have to come back to Parliament. For example, we have just created the Medicinal Cannabis Authority, and it might not even be listed here, so that any new agencies can be just added by Order.

Colleagues, I do not know, we have been at this for a long time. Unfortunately, a long time has passed between when we last looked at it and would have been fresh and now. All I can say is that in this regard the Table of Concordance is helpful in explaining where the changes are.

Hon. C. E. JORDAN: (*spoke of standardising fines*).

Mr. CHAIRMAN: Well, it is difficult to standardise fines for different offences but there should be some consistency, and we can look...

At this point Mr. Chairman turned off the microphone to have around-the-table discussion on some elements of the Bill beforehand.

Mr. CHAIRMAN: Clauses 49 to 64 of the older Bill were taken out. The fines will now be reflected in the other Bill. For example, you would now pay \$3 000 per day if you failed to file.

Hon. W. A. ABRAHAMS: What does this mean in relation to the existing Code of Conduct regarding the Public Service Act, like Permanent Secretaries who straddle in both of them?

Mr. CHAIRMAN: The Code of Conduct is found in the Fourth Schedule of this Bill. That only deals with specified persons. The Fourth Schedule is very short, it is on page 95. Now, if you look at Section 25(4), it says:

"Subsection (1) does not derogate from the obligations of a public officer under the Code of

Conduct and Ethics established by Section 11 of the Public Service Act”.

So a Permanent Secretary, for example, is still bound by this and [is] also bound by the other Act.

Senator Cummins asked us to go through the independence of the Commission, but she is not in her chair. Moving ahead, the discussion on the independence of the Commission is a discussion of the First Schedule which is found from pages 52 to 56. You could probably take a look at those pages.

At this point Members went through the Bill, reading at the First Schedule.

Senator Cummins just asked if we would go through the independence of the Commission’s provisions and this is really established in the First Schedule to the Bill.

When we begin to look at the question of independence, we begin first by looking at the method of their appointment. The Leader of the Opposition raised issues in relation to the appointment of the Selection Committee in relation to judges, for example. He argued because they are appointed by the Government, then they will necessarily appoint people as judges who the government wants. It did not happen, but no such argument could even be entertained here because the Commission itself is only made up of six members, and four of those members are appointed by the Governor-General after consultation. The consultation is in relation to:

“1. The Commission shall consist of

- (a) a person who has held the office of judge in a superior court of record in any part of the Commonwealth, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition”.

So constitutionally, she is not bound to accept the recommendation of either. Is that not correct, Mr. Clerk?

Mr. N. JONES: Yes, I think so.

Mr. CHAIRMAN: So it is a discretionary appointment for her. In the Constitution where it provides that she shall consult, if it says she should consult with the Prime Minister, then she is bound to accept the Prime Minister’s recommendation, but in this case, she must consult both the Leader of the Opposition and the Prime Minister.

In relation to the attorney-at-law, also in her discretion but after consultation only with the Council of the Barbados Bar Association.

- “(b) an attorney-at-law with at least 10 years’ standing whose name appears on the Roll of Attorneys-at-law pursuant to the Legal Profession Act, Cap. 370A, appointed by the Governor-General, after consultation with the Council of the Barbados Bar Association”.

It is the same thing for chartered accountant, and again in respect to the Clergy, after consultation with both the Prime Minister and the Leader of the Opposition. Then, to make sure that the views of the political class are

represented, the Prime Minister has the right of appointment [so that] at

“(e)

A person appointed by the Governor-General on the advice of the Prime Minister.”

[There is] a similar provision in respect to (f).

So in this particular Commission only two individuals are appointed by the political class, and it is one each, so that brings immediate balance. The other four individuals are essentially appointed in the discretion of the Governor-General, and in respect of two of those, a lawyer and an accountant, she does not consult the political class, at all.

I think this is as fair a way as possible to have a commission that is appointed even-handedly and in the most dispassionate that our law will allow. One of the people I think who criticised this felt that even the appointment of the individuals by the Governor-General is tainted because the Governor-General is a creature of the political class but in our case, our Administration did not appoint the Governor-General. So to keep referring everything to the public means that you will end up having an election every time you wanted to appoint somebody.

In relation to the appointments, they are appointed for three years. I think there is provision too for removal and at Clause (6) – Removal of a Member, this level of security of appointment is similar to that of judges. The Governor-General can only remove you from your office if you are unable to discharge the functions of the office, whether arising from infirmity of mind, body or any other cause. This is exactly what we have in relation to High Court Judges, and if you want to remove a member of the Commission, then you actually have to go to a tribunal process which is exactly the same as with judges. So I am satisfied that, firstly, in the method of their selection, they are chosen from a broad base of interest groups, but secondly, in the method of their appointment, the only appointments that are potentially political in any way are going to be in relation to those on the advice of the Leader of the Opposition and on the advice of the Prime Minister. Those will be the only two political voices. They are not in the majority and even when appointed they can only be removed for cause and following a tribunal process, so I am satisfied that the level of protection that they have is akin to the level of protection that are afforded to members of the Judiciary, so I am very comfortable with that.

I do not know if Members want to just look at the forms quickly. As I said, we have tried to keep them as simple as possible. Name and contact detail is easy, I do not think there could be any issue there. The employment history is for good reason, that does not require... The employment history is on page 64. Now, you would recollect that spouses and dependent children are swept up into the net and spouse includes common law spouse. Minister Griffith, I just wanted to be sure that you were hearing me.

Let me just clarify one thing here. At page 4, “Declarant’s Children”, you are required to state your

children and in the last column you just say if the child is dependent or not. Now, if you are interested in recognising the distinction between children and dependent children, you just need to look at Clause 12, which is on page 19, (so back up a little bit), and it reads:

"A specified person in public life shall disclose in his declaration such details in respect of his income, assets and liabilities, and those of his spouse and dependent children dependent children, as, by the exercise of reasonable care, should be known to him including;

- (a) any benefit accruing to his income and assets and those of his spouse and dependent children; and
- (b) any income, assets and liabilities acquired, held or incurred by any other person as agent or on behalf of himself and his spouse and dependent children, or any of them".

Okay? So you only need to disclose for dependent children, so in the Form you list all of your children, you stipulate then which children are dependent. There is a footnote on page 66 which tells you:

"dependent child" means any child of a person, whether a minor or not who is unmarried and is being maintained by the person".

So if you are married and still eating home, you are not a dependent child.

Okay, so that is how the Act works, you list all of the children, say which ones are dependent and then you are responsible for disclosing the assets and income of those dependent children.

On page 67, Part II, is fairly easy, [it sets out] the name and address of employer, the recipient's name. That is whether you, your wife or your children; the title of office, and the gross annual earnings.

Now, remember this is from employment [history]. Okay? The other category at page 68 is "Income from Trade, Profession or Vocation", so [that] a Permanent Secretary who also bakes cheesecakes on weekends and runs a thriving business or runs a bed-and-breakfast, or something or another, that is where trade, profession or vocation income would come in.

At (3) "Income from Property" is probably where the bed-and-breakfast would come up.

At (4) "Interest Income", (5) "Divided Income" (from shares and stock). On page 70 "Gains/Profits". We talk about Capital/Gains Tax, but this is any capital gains on the sale of any asset.

I think on these pages we have captured pretty much all of the possible income. Then on page 72 "Details of Assets (of Declarant, Spouse and Dependent Children) we have to state the assets, including townhouses and condominiums. To my mind that was not necessary but there are some things you do not quarrel about.

Hon. C. E. JORDAN: (*Indistinct*)

Mr. CHAIRMAN: No, it does not include time share.

Hon. C. E. JORDAN: (*Indistinct*)

Mr. CHAIRMAN: It might be, as a matter of law to put it in but given that the Form is going to be

completed by laymen, for the most part, it was easier just to put it in.

I think we have captured pretty much all of the various property interests that you can have. At the very end it has provisions for mortgages and liabilities but this is not really intended to give you an income statement, this is really just to set a base point against which subsequent years' filings will be based, so that [if] this year you have a Suzuki, then next year you have a Mercedes, then you have a duty to explain the difference between the two. So there we have it, colleagues, I have to trust your judgment.

Hon. W. A. ABRAHAMS: We have to trust yours (hic!)

Mr. CHAIRMAN: But I think this reflects a workable Bill. It is certainly an improvement on the original draft, in many respects. We have taken on board many of the contributions of our witnesses. There are some who will feel aggrieved that we did not follow what they wanted but that is the nature of a Joint Select Committee, we sift through the various contributions and then try to apply them to the policy directives that we have and hopefully come up with something that is better than we had initially put.

Hon. C. E. JORDAN: Mr. Chairman, was there any proposed legislation that we could not have accommodated at all, those that call for significant public response? Were there any that could be strong in terms of public response?

Hon. W. A. ABRAHAMS: Fines generally went up.

Mr. CHAIRMAN: Well, let me remind you of the process, after we had all of the witnesses' contributions, they were all put into a compendium, more or less, and in the Joint Select Committee we went through each of the contributions and took a decision as to whether we were going to accept or reject. We went through that in relation to every one [of them]. Now, I regret that nothing comes to mind immediately but we did go through that process and we would just have to....

Hon. C. E. JORDAN: (*indistinct*)

Mr. CHAIRMAN: Yes, fines was one, but we have been careful to take those things on board which we could take. Obviously, views of various parties would differ but I think that we have approached it in a fair and dispassionate way. Judges was one of them, yes.

Senator Miss L. R. CUMMINS: Mr. Chairman, in terms of how we approach the process of persons who did make presentations, some of whose contributions could not be accepted because of the policy direction, just to say that my own assessment of a lot of the public conversation is that if an article comes out in the newspaper and it pulls the most inflammatory things like low levels of fines, that becomes an itch of the conversation, that is what becomes controversial. So I was perhaps going to make a recommendation or perhaps ask your guidance as to whether you felt we could have an opportunity to engage perhaps with those persons who made

submissions prior to the actual new Bill being laid in Parliament, so that just we have this opportunity to do exactly what we have done here with those persons, just for the purpose of heading off in the public space.

Hon. W. A. ABRAHAMS: If I may weigh in, Honourable Attorney-General, I take the point that we are trying to achieve and I would say let us just circulate the Bill itself to them, [for them] to have sight of it. To all the people who tendered their comments, let us just circulate the Bill, advising. And it will go up on the website, anyhow.

Senator Miss L. R. CUMMINS: I am sorry, the challenge of circulating the Bill by itself for them to have sight of it is exactly what we are trying to avoid by having the two Bills laid simultaneously, which is all the corruption elements are out and the related offences are out from there and [that] in a new Bill if you just circulate this by itself, without explanation or context, then you are going to get an unnecessary firestorm that you did not want.

Mr. N. JONES: I think if you let them have sight of the new Bill, with the substantial changes, the whistleblower Bill when it comes but more particularly the Corruption Bill, let them know that this replaces those aspects of the Bill which were deleted.

Mr. CHAIRMAN: Well, I agree, the people who were interested and interested enough in coming will certainly be interested in what output we present, if only for their ego, [for them to say] "*I went in there and keep noise, my things in. What about you, you get in anything?*" Perhaps it would not be so crass but I appreciate the importance of going back to them, but I think you have hit on a potential snag. I would not want to go back to them to say anything until I have at least been able to put the Prevention of Corruption Bill in Parliament, so [that] for myself as the person who will have to do it, I will lay the report and I will lay that Bill at the same time. I will not have an opportunity to speak, as you know, those are done by way of notice, so that the debate does not start then?

Mr. N. JONES: No.

Mr. CHAIRMAN: So it may be possible when once, and the occasion may be sooner than you think. Let me say World Anti-Corruption Day is 19th December [actually 9th December] and I am hoping to be able to get Cabinet's approval to sign the United Nations Treaty. When once you have signed the Treaty you have to fulfil the obligations, of course, but the fact is that there are only two countries in the world who have not signed the Treaty: Barbados and Syria, and that is not company that we [would] want to keep. I do not want to be in a duet with Syria, so I really would like to be able to get Cabinet's approval. In fact, the Cabinet Paper will probably go next Thursday seeking Cabinet's permission to sign it and obviously on that occasion would be opportune to begin the discussion because I am not going to sign it on World Anti-Corruption Day either, unless the Prevention of Corruption Bill is laid. So ideally, on the sitting of Parliament on 17th December, I would like to present the Report to His Honour the Speaker, I would like to

lay the Prevention of Corruption Bill. There is no opportunity for debate then. Two days later, on World Anti-Corruption Day, I will be able to sign it, having just put these two things in Parliament, and instead of writing to individuals, it may be possible to invite all of those people who presented, [for them] to attend that signing. So I think that would be a better way of doing it.

Senator Miss L. R. CUMMINS: I am in support of that, Mr. Chairman.

A correction was made as to the 9th December, instead of the 19th.

Senator Miss L. R. CUMMINS: I happen to know that the Integrity Group of Barbados, one of the groups that did present to us and one of the groups that writes to the newspaper every single week, is preparing to write a scathing article on December 9 for that purpose. I do not have a difficulty with that, I am just saying that I feel as though we have done a significant amount of work, certainly the Office of the Chief Parliamentary Counsel and this new Bill, and once the Anti-Corruption legislation comes though that I would love to have us to be in a position where we can say, in advance of December 9th, that this process is underway and we expect that by December 19th, as you have just outlined, to be further along than we were a year ago.

(There was across-the-table discussion)

Mr. CHAIRMAN: If there are no further comments on the Bill, we will have to consider the draft Report which has already been circulated. Let me just explain that the form of these Reports is not to provide a Minute of the discussions. The transcripts of the proceedings are at the back. The Report just goes through who were the Committee, the establishment of the Committee, the Terms of Reference, the dates on which we met, who gave witnesses submissions and so on and therefore, the draft Report having been circulated, I would beg to move...

(across-the-table discussion)

5. ANY OTHER BUSINESS:

Senator Miss L. R. CUMMINS: Just to say, Attorney General, that in this room, and the Clerk of Parliament is here, we have seen a raft of legislation passed through over the last 18 months, and it has not been insignificant. So, ah! I am presumptuous, but I will do so anyway, to ask you to convey on behalf of the particular Committee to the staff of the Office of the Chief Parliamentary Counsel our deep appreciation for the incredible work that they have done so far and continue to do, including on this legislation.

Mr. CHAIRMAN: I will be sure to convey that.

Hon. W. A. ABRAHAMS: Seeing that you are not on the microphone and I now have the floor...

Hon. C. E. JORDAN: This is very trivial, so I do not want to spoil your good stuff. Even in spite of this Bill, I think they deserve a gifts, probably a little more than \$2 500.

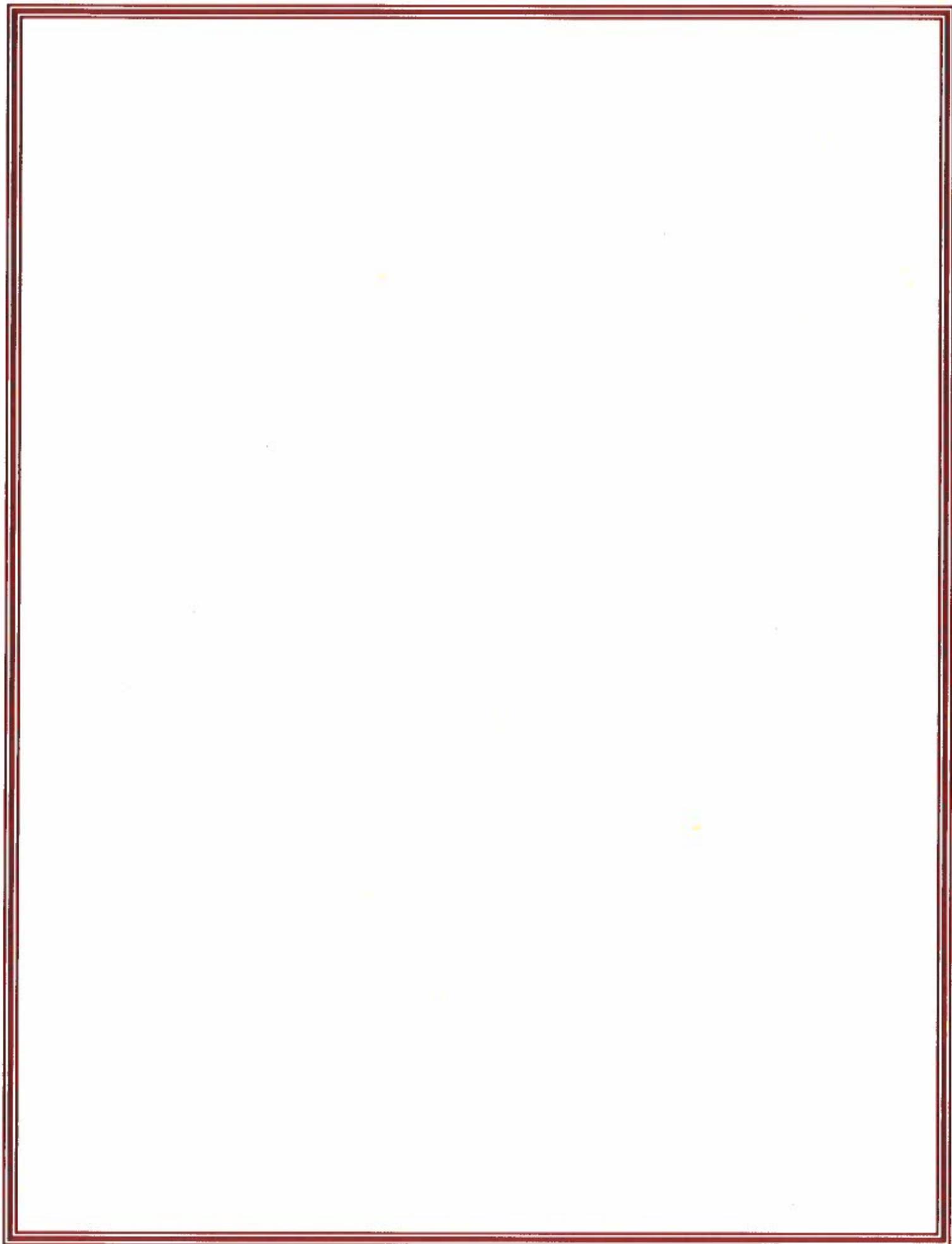
Hon. W. A. ABRAHAMS: Attorney General, I just want to say for the record, sometimes it makes your head dizzy the amount of legislation that has come down in the last year and a half. I know it cannot be easy for you and to be honest sometimes when I act for you and I see the number of things that are thrust in front of me to sign, I feel very sorry for you. Even if I was not feeling sorry enough for myself, I will feel even sorrier for you, but I just want to commend you on the sterling work that you have done as an Attorney-General. These are not small and insignificant things, we have done some nation-changing legislation that is going to endure for quite a while, so I just wish to put on the record that I commend you on behalf of the Committee. This has been a tough job, and I am very happy to see the back of it, and I commend your leadership in this process. I thank you.

Mr. CHAIRMAN: Modesty would not allow me to say anything other than thank you.

(microphones were silenced at this point)

Hon. C. Y. FORDE: Mr. Chairman, I also would wish to express our gratitude to the staff here at Parliament who have served this Committee and to express our gratitude for their professionalism and making us feel comfortable in these environs. I take this opportunity to wish them all a blessed Christmas. I thank you.

The meeting was therefore adjourned at 1:10 p.m.



2019-12-03

OBJECTS AND REASONS

This Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption, alter the *Constitution* to the extent necessary for the purpose and provide for related matters.

Arrangement of Sections

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MISCELLANEOUS

50. Commissioner of Police to assist Commission etc.
51. Confidentiality of information
52. Conflicts of interest
53. Protection from suit
54. Oaths
55. Amendment of Second and Third Schedules
56. Regulations
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58. Commencement

FIRST SCHEDULE
INTEGRITY COMMISSION

SECOND SCHEDULE
SPECIFIED PERSONS IN PUBLIC LIFE

THIRD SCHEDULE
FORMS FOR PARTS III, IV AND IV

FOURTH SCHEDULE
CODE OF CONDUCT FOR PERSONS IN PUBLIC LIFE

FIFTH SCHEDULE
FORM OF OATHS

BARBADOS

A Bill entitled

An Act to establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption, alter the *Constitution* to the extent necessary for the purpose and provide for related matters.

ENACTED by the Parliament of Barbados in accordance with section 49 of the *Constitution* as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Integrity in Public Life Act, 2019*.

Interpretation

2. In this Act,

“appointed day” means the day on which this Act comes into operation;

“assets” means all property, including any right or interest in property, held by a person in Barbados or elsewhere;

“benefit” includes any property, service or advantage, whether direct or indirect;

“Chairman” means the chairman of the Commission appointed in accordance with the *First Schedule*;

“child”, in relation to a person, means any child of the person and includes a stepchild and an adopted child and, in respect of a man, includes a child

(a) in respect of whom the man has been adjudged the father by a court of competent jurisdiction; or

(b) who the man has acknowledged to be his child;

“Code of Conduct” means the Code of Conduct for Persons in Public Life referred to in section 25;

“Commission” means the Integrity Commission established by section 3;

“declaration” means a declaration filed or required to be filed pursuant to section 11 and includes any statement or other information filed or required to be filed with such a declaration;

“dependent child” means any child of a person, whether a minor or not, who is unmarried and is being maintained by the person;

“disclosure order” means an order made under section 42(1);

“document” includes

- (a) anything on which there is writing;
- (b) a map, plan, drawing or photograph; and
- (c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from the information so recorded or stored;

“Head of Department” has the meaning assigned to it by section 2 of the *Public Service Act, Cap. 29*;

“income” includes

- (a) money or money’s worth derived from whatever source or acquired in Barbados or elsewhere, whether directly or indirectly; and
- (b) all receipts by way of salary, fees, wages, requisitions, profits, grants, emoluments, rents, interest, commissions, bonuses, pensions, annuities or benefits;

“investigative officer” means a person designated as such under section 10(1);

“liabilities” means all the obligations of a person to pay money or to provide goods or services in Barbados or elsewhere;

“Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency” means the agency established by section 4 of the *Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency Act, 2019* (Act 2019-);

“member of the House of Assembly or the Senate”, as the case may be, shall be construed to include, in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House

of Assembly is held, a person who was a member of the House of Assembly or the Senate, as the case may be, before the dissolution of Parliament;

“Permanent Secretary” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“persons exercising public functions” includes

- (a) all specified persons in public life;
- (b) public officers;
- (c) members, chief executive officers, managers, directors and employees of state-owned enterprises; and
- (d) all other persons who hold a legislative, executive, administrative or judicial office in the Government of Barbados, whether appointed or elected, permanent or temporary or paid or unpaid,

but does not include a judge of the Supreme Court;

“privileged material” means

- (a) communications between an attorney-at-law and his client, or any person representing his client, made in connection with the giving of legal advice to the client;
- (b) communications between an attorney-at-law and his client, or any person representing his client, or between such an attorney-at-law or his client, or any such representative, and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) material enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the communications or material are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

“prohibited interest” means an interest in a contract with the Government or a state-owned enterprise, the acquisition of which by a specified person in public life is prohibited by rules made under section 22;

“property” includes money and all other property whether real, personal or things in action;

“public officer” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“Register of Interests” means the register established pursuant to section 19;

“senior officer” means an employee of the Commission who is at or above the rank of Secretary to the Commission;

“specified person in public life” means a person who holds an office listed in Part I of the *Second Schedule*;

“spouse”, in relation to a specified person in public life, means a person

- (a) to whom the specified person in public life is married; or
- (b) with whom the specified person in public life is in a union other than marriage;

“statement of registrable interests” means a statement described in section 18(1);

“state-owned enterprise” means

- (a) a company within the meaning of section 2(1) of the *Companies Act*, Cap. 308; or
- (b) a statutory board,
listed in Part II of the *Second Schedule*;

“union other than marriage” has the meaning assigned to it by section 39 of the *Family Law Act*, Cap. 214.

PART II

INTEGRITY COMMISSION

Establishment of Integrity Commission

- 3.(1) There is established a body corporate to be known as the Integrity Commission.
- (2) Section 21 of the *Interpretation Act*, Cap. 1 applies to the Commission.
- (3) The *First Schedule* has effect with respect to the constitution of the Commission and otherwise in relation thereto.
- (4) The members of the Commission are entitled to such remuneration and allowances as the Minister responsible for Finance determines.
- (5) Subject to this Act, the Commission may regulate its own procedure and may make rules for the purpose.

Functions of Commission

- 4.(1) The functions of the Commission are
- (a) to receive, keep on record, examine and inquire into all declarations, statements of registrable interests and reports of gifts filed under this Act;
- (b) to request such information and conduct such investigations and inquiries as may be necessary to verify or determine the accuracy of all such declarations, statements of registrable interests and reports of gifts;
- (c) to investigate, on its own initiative or upon receipt of a complaint
- (i) any alleged contravention of this Act or the Code of Conduct;
- (ii) any acquisition by any specified person in public life of a prohibited interest; and

- (iii) any alleged offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission;
 - (d) to examine the practices and procedures of public authorities to determine whether such practices and procedures are likely to facilitate the occurrence of acts of corruption and to recommend appropriate changes in such practices and procedures, except where there is a statutory duty on any other person to perform such functions; and
 - (e) to perform such other functions as may be required by this Act or any other enactment.
- (2) In the discharge of its functions, the Commission shall not be subject to the direction or control of any person or authority.
- (3) The Governor-General may in writing require the Commission to inquire into or investigate any matter within the scope of its functions.

Consultation

5. The Commission may consult with any person in the discharge of its functions, including in the conduct of an investigation or inquiry.

Agreements and exchange of information with law enforcement agencies

6.(1) The Commission may enter into such written agreements, arrangements or memoranda of understanding with a law enforcement agency as the Commission considers necessary or desirable for the discharge of its functions.

(2) The Commission shall be treated as a law enforcement agency for the purpose of receiving disclosures of information which are relevant to its functions from any law enforcement agency.

(3) Subject to section 51, the Commission may disclose to a law enforcement agency any information disclosed to the Commission.

(4) The Financial Intelligence Unit referred to in section 9(1) of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23) and foreign financial intelligence units, by whatever name called, shall be treated as law enforcement agencies for the purpose of this section, regardless of whether they operate as enforcement or administrative entities.

(5) In this section “law enforcement agency” includes a foreign law enforcement agency.

Funds of Commission

7.(1) The Commission shall have such funds as may be voted by Parliament.

(2) The Commission shall keep proper accounts of its receipts, payments, assets and liabilities and those accounts shall be audited annually by the Auditor-General.

Annual reports

8.(1) The Commission shall, before the commencement of each financial year, prepare and forward to the Prime Minister a report of its activities during the previous financial year, including a statement of its accounts audited in accordance with section 7(2).

(2) A copy of the report, together with the Auditor-General’s report, shall be laid in Parliament.

Staff of Commission

9.(1) The Commission may employ such staff and retain the services of such persons as it requires for the discharge of its functions, on such terms and conditions as it determines appropriate.

(2) The *Statutory Boards (Pensions) Act, Cap. 384* applies to employees of the Commission with such modifications and adaptations as may be necessary.

Investigative officers

10.(1) The Commission may designate such staff as it determines appropriate as investigative officers and may issue to such officers an identification card, which shall be *prima facie* evidence of the designation of the officers.

(2) An investigative officer may conduct an investigation into any matter, whether or not involving an alleged offence, in respect of which the Commission discharges functions under this Act or any other enactment.

(3) Notwithstanding subsections (1) and (2), the Commission may, where it considers it appropriate to do so, require the Major Organised Crime, Anti-Corruption and Anti-Terrorism Agency to conduct an investigation on its behalf.

PART III

DECLARATIONS

Declaration of financial affairs

11.(1) A person who

- (a) is a specified person in public life shall, within 90 days of the appointed day and on or before the biennial anniversary of the appointed day;
- (b) becomes a specified person in public life shall, within 90 days from the date on which he becomes a specified person in public life;
- (c) ceases to be a specified person in public life shall, within 90 days from the date on which he ceases to be a specified person in public life,

file in accordance with subsection (3), a declaration containing the particulars set out in subsection (5).

(2) Notwithstanding subsection (1)(a), a person who files a declaration under subsection (1)(b) in a particular year is not required to file another declaration in the same year.

- (3) A specified person in public life shall file his declaration with
 - (a) the Commission, where he is not a member or senior officer of the Commission; and
 - (b) the Governor-General, where he is a member or senior officer of the Commission.
- (4) The Commission may, in exceptional circumstances, grant to a specified person in public life required to file a declaration with it, an extension of the period for filing the declaration of up to 6 months, beginning on the day that the declaration is required to be filed.
- (5) A declaration shall be in the Form 1 set out in the *Third Schedule* and shall give full, true and complete particulars of
 - (a) the income, assets and liabilities of the specified person in public life; and
 - (b) the income, assets and liabilities of his spouse and dependent children.
- (6) A declaration may be accompanied, where a specified person in public life so desires, by a statement giving details of his income, assets and liabilities, certified by an accountant.
- (7) Where a specified person in public life dies, there is no obligation on the personal representative of his estate to file the declaration which the specified person in public life would have been required to file, had he lived.
- (8) For the avoidance of doubt, this Part applies to a person who ceases to be a specified person in public life but is required to file a declaration pursuant to subsection (1)(c) as it applies to any other specified person in public life.
- (9) The Governor-General has, in respect of a specified person in public life who is required to file a declaration with him and any declaration so filed, the same functions that the Commission has in this Act in respect of a specified person in public life who is required to file a declaration with it and any declaration so filed.

Full disclosure

12. A specified person in public life shall disclose in his declaration such details in respect of his income, assets and liabilities and those of his spouse and dependent children as, by the exercise of reasonable care, should be known to him including

- (a) any benefit accruing to his income and assets and those of his spouse and dependent children; and
- (b) any income, assets and liabilities acquired, held or incurred by any other person as agent or on behalf of himself and his spouse and dependent children or any of them.

Trust property

13. Where a specified person in public life holds any money or other property in trust for a person who is not his spouse or child or another specified person in public life, he shall so state in his declaration but he shall not be required to disclose the terms of the trust.

Blind trusts

14.(1) A specified person in public life may place all or part of his assets in a blind trust for the purpose of this Act and file a copy of the trust deed with

- (a) the Commission, where he is not a member or senior officer of the Commission; or
- (b) the Governor-General, where he is a member or senior officer of the Commission.

(2) Where the Commission has reasonable grounds to believe that a specified person in public life who is required to file a declaration with it is likely to

contravene or has contravened this Act, the Commission may direct the person to

- (a) place all or part of his assets in a blind trust on such terms and conditions as the Commission considers appropriate; and
 - (b) file a copy of the trust deed in accordance with subsection (1).
- (3) Where a specified person in public life places assets in a blind trust, he shall not be required to provide in his declaration more particulars of the assets than the amount and description of the assets and the date they were placed in the trust.
- (4) Notwithstanding any other law relating to the duties of trustees, a qualified trust company which manages the assets of a specified person in public life by way of a blind trust shall reply fully to any inquiries of the Commission relating to the nature and management of the assets.
- (5) A blind trust is created where a specified person in public life enters into an agreement with a qualified trust company whereby
 - (a) all or any part of his assets or those of his spouse or his children are conveyed to the qualified trust company for the management, administration and control thereof, in its absolute discretion without recourse or report to the person beneficially entitled to the assets;
 - (b) income derived from the management of the assets is to be distributed, in accordance with the agreement, to him, his spouse or his children until he ceases to be a specified person in public life; and
 - (c) after he ceases to be a specified person in public life, proper and full accounting is to be made to him, his spouse or his children as the circumstances of the management of the trust require.

- (6) For the purpose of this section
- (a) a trust company is a qualified trust company where
 - (i) it is incorporated in or outside Barbados and is carrying on business in Barbados;
 - (ii) no more than 5 per cent of the stated capital in the trust company or its affiliate is held or controlled by the specified person in public life who enters into an agreement referred to in subsection (5) with it, or by any other person associated with him; and
 - (iii) neither the specified person in public life nor his spouse nor any of his children hold any directorship or office in the trust company or its affiliate;
 - (b) a company is an affiliate of another company where it holds more than 5 per cent of the stated capital in that other company or where that other company holds more than 5 per cent of the stated capital in the first mentioned company;
 - (c) a person is associated with another where that other person is
 - (i) the spouse or child of the person;
 - (ii) the partner of the person in a profession, trade or commercial undertaking; or
 - (iii) a corporation, and the first mentioned person or any person mentioned in subparagraph (i) controls the corporation, its holding corporation or a corporation affiliated with either.

Examination of declarations

15.(1) The Commission shall examine every declaration it receives in order to determine whether the declaration is a complete and accurate statement of the financial affairs of the specified person in public life who filed it.

- (2) Where the Commission
- (a) is satisfied that the declaration
- (i) has been fully made and all questions satisfactorily answered; or
 - (ii) is incomplete but the specified person in public life cannot reasonably obtain the information required to complete it,
- the Commission shall forward to the specified person in public life a certificate of compliance in the Form 2 set out in the *Third Schedule* and, at the request of the person, publish a statement regarding its satisfaction with the declaration in the *Official Gazette* and in a daily newspaper in general circulation in Barbados; or
- (b) is not satisfied with any aspect of the declaration, the Commission may report the matter to the appropriate Service Commission, board or other authority and to the Director of Public Prosecutions, setting out such details as it considers appropriate.

Publication of failure to file declaration or furnish information

16. Where a person who is required to do so fails to file a declaration in accordance with this Part or to furnish particulars or other information or documents in accordance with section 31, the Commission shall

- (a) publish that fact in the *Official Gazette* and in a daily newspaper in general circulation in Barbados; and
- (b) report the matter to the appropriate Service Commission, board or other authority and to the Director of Public Prosecutions, setting out such details as it considers appropriate.

Offences in respect of declarations

17.(1) A person who

- (a) without reasonable cause, fails to file a declaration that he is required to file;

- (b) knowingly files a declaration that is incomplete or false in any material particular; or
- (c) without reasonable cause, fails to comply with a direction given under section 14(2) within the time specified therefor, or knowingly gives any false or incomplete information in a trust deed filed under section 14,

is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 or to imprisonment for one year or to both.

(2) Where an offence referred to in subsection (1)(a) or (b) involves the non-disclosure, by a specified person in public life, of property, which should have been disclosed in a declaration, the magistrate shall order the specified person in public life to make full disclosure of the property within a specified period.

(3) Where a specified person in public life fails to comply with an order made under subsection (2) within the specified period, the offence shall be deemed to be a continuing offence and the specified person in public life shall be liable to a further fine of \$3 000 for each day on which the offence continues.

PART IV

REGISTRABLE AND PROHIBITED INTERESTS

Filing of statements of registrable interests

18.(1) Every member of the House of Assembly and of the Senate shall file with the Commission, in addition to his declaration, a statement that contains the following information in respect of the member, his spouse and his children:

- (a) particulars of any directorships held in any company or other body corporate;
- (b) particulars of any contract made with the Government or a state-owned enterprise;

- (c) the name and description of any company, partnership or association in which the person is an investor;
 - (d) a concise description of any trust in respect of which the person is a beneficiary or trustee;
 - (e) any beneficial interest held in land;
 - (f) any fund to which the person contributes;
 - (g) particulars of any political, trade or professional association to which the person belongs;
 - (h) particulars of any sources of income; and
 - (i) any other substantial interest, whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty.
- (2) Every member of the House of Assembly and of the Senate shall file his statement of registrable interests in the Form 3 set out in the *Third Schedule* within 90 days after
- (a) the day on which he becomes a member, in respect of his interests on the day on which he becomes a member; and
 - (b) the 31st day of December in each year during any part of which he is a member, in respect of his interests on the 31st day of December in that year.
- (3) Notwithstanding subsection (2)(b), a member who files a statement of registrable interests in the period of 6 months preceding the 31st day of December in a particular year is not required to file another such statement for that same year.
- (4) Where a member dies, the personal representative of his estate is not required to file the statement of registrable interests which the member would have been required to file, had he lived.

- (5) Nothing in this section shall be taken to require disclosure of the actual amount or extent of any financial benefit, contribution or interest.
- (6) The Commission shall examine every statement of registrable interests it receives in order to determine whether it is complete and accurate.

Register of Interests

- 19.(1) The Commission shall keep a register, to be called the Register of Interests, containing all information furnished by members of the House of Assembly and of the Senate under this Part.
- (2) Every member of the House of Assembly and of the Senate shall notify the Commission of any change which occurs in his interests, or those of his spouse or children, within 6 weeks of the change.
- (3) The Commission shall make the Register of Interests available for public inspection.

Offences in respect of statements of registrable interests

- 20.(1) A member of the House of Assembly or the Senate who
 - (a) without reasonable cause, fails to file a statement of registrable interests that he is required to file; or
 - (b) knowingly files with the Commission a statement of registrable interests that is incomplete or false in any material particular,

is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 or to imprisonment for one year or to both.

- (2) Where an offence referred to in subsection (1)(a) or (b) involves the non-disclosure, by a member of the House of Assembly or the Senate, of information which should have been disclosed in a statement of registrable interests, the magistrate shall order the member to make full disclosure of the information within a specified period.

(3) Where a member of the House of Assembly or the Senate fails to comply with an order made pursuant to subsection (2) within the specified period, the offence referred to in subsection (1) shall be deemed to be a continuing offence and the member shall be liable to a further fine of \$3 000 for each day on which the offence continues.

Disqualification of member from holding public office

21. A member of the House of Assembly or the Senate who is convicted of an offence under section 17 or 20 is liable, in addition to any other penalty prescribed by law, to be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

Prohibited interests

22.(1) The Commission shall make rules prescribing the circumstances in which the acquisition by a specified person in public life of an interest in a contract with the Government or a state-owned enterprise is prohibited.

(2) The Commission shall not issue a determination that a specified person in public life has acquired a prohibited interest where the person notifies the Commission of the interest and the Commission is of the opinion that the interest

- (a) is unlikely to affect the person's obligations under the Code of Conduct; or
- (b) is likely to affect the person's obligations under the Code of Conduct but that the person, his spouse or child, as the case may be, has divested himself of the interest or has placed it in a blind trust on such terms and conditions as the Commission considers appropriate.

PART V

GIFTS

Reports on gifts

23.(1) A specified person in public life, other than a member or senior officer of the Commission, who receives a gift worth more than \$2 500, or whose spouse or child receives such a gift, shall make a report of that fact to the Commission in the Form 4 set out in the *Third Schedule* and shall state in the report

- (a) the name and address of the donor;
- (b) the description and approximate value of the gift; and
- (c) whether, in the opinion of the recipient, the gift is a personal gift or an official gift.

(2) A specified person in public life who is a member or senior officer of the Commission shall, in the circumstances referred to in subsection (1) make the report referred to in that subsection to the Governor-General.

(3) This section does not apply to a personal gift received by a specified person in public life from a relative or friend.

(4) A specified person in public life who is unsure whether a gift received from a relative or friend is a personal gift or an official gift may apply to the Commission seeking an opinion as to the proper classification of the gift.

(5) A specified person in public life shall make a report or an application under subsection (1), (2) or (4) within 30 days of the receipt of the gift.

(6) The Commission shall determine whether the gift is a personal gift or an official gift and such decision shall be final.

- (7) Where the Commission finds that
- (a) a gift was given to a specified person in public life personally and
 - (i) was trivial; or
 - (ii) was not trivial but was not intended to be a motive or reward for doing or forbearing to do anything in the course of the discharge of his official functions or for causing any other person to do or forbear from doing anything,
 the Commission shall allow the specified person in public life to retain the gift; or
 - (b) a gift was not of the kind described in paragraph (a), the Commission shall in writing direct the specified person in public life to deliver the gift or its value to the Minister responsible for Finance within a specified period not exceeding 30 days, and the specified person in public life shall comply with the direction within the time so specified.
- (8) Nothing in this Part shall be taken to alter any law, rule or decision which prohibits a particular specified person in public life or class of specified persons in public life from receiving gifts in the course of discharging official functions.
- (9) The Governor-General has, in respect of a specified person in public life who is required to make a report to him under subsection (2) and any report so made, the same functions that the Commission has in this Act in respect of a specified person in public life who is required to make a report to it under subsection (1) and any report so made.

Offences in respect of gifts

- 24.(1)** A specified person in public life who
- (a) without reasonable excuse, fails to comply with section 23(1) or (2), as the case may be;
 - (b) knowingly makes a report pursuant to section 23(1) or (2) that is incomplete or false in any material particular; or

- (c) without reasonable excuse, fails to comply with a direction given under section 23(7),

is guilty of an offence and is liable, on summary conviction, to a fine, which shall not be more than three times the value of the gift involved in the commission of the offence, or to imprisonment for 6 months or to both.

- (2) No prosecution for an offence under subsection (1) shall be instituted after 5 years from the date when the person alleged to have committed the offence ceased to be a specified person in public life.

PART VI

CONDUCT IN PUBLIC LIFE AND CONTRAVENTIONS OF ACT

Code of Conduct

25.(1) Every person exercising public functions shall comply with the Code of Conduct for Persons in Public Life set out in the *Fourth Schedule*.

(2) The Commission shall, where it has reasonable grounds to suspect, or it receives a complaint, that the Code of Conduct has been contravened, inquire into or investigate the matter.

(3) Where the Commission determines that a person has contravened the Code of Conduct, it may include in its report any recommendations as to punishment or disciplinary measures that it considers appropriate.

(4) Subsection (1) does not derogate from the obligations of a public officer under the Code of Conduct and Ethics established by section 11 of the *Public Service Act*, Cap. 29.

Complaint to Commission regarding contravention of Act

26. A person who has reasonable grounds to believe that another person has contravened this Act may make a complaint to the Commission stating

- (a) the particulars of the contravention;
- (b) the nature of the evidence that he proposes to produce in support of the complaint; and
- (c) such other particulars as may be prescribed.

Duty of persons exercising public functions to report contravention of Act

27.(1) A person exercising public functions who knows or suspects that another person has been, is or is likely to be engaged in a contravention of this Act shall report his knowledge or suspicion to the Commission.

(2) A person exercising public functions who, without reasonable excuse, fails to report his knowledge or suspicion as required by subsection (1) is guilty of an offence and is liable, on conviction on indictment, to a fine of \$50 000 or to imprisonment for one year or to both.

Oral complaints to be put into writing

28. The Commission shall ensure that any oral complaint it receives is put into writing by one of its employees.

Examination of complaints

29. The Commission may, upon examination of a complaint

- (a) reject the complaint where it considers that the complaint is frivolous or does not relate to a matter the Commission is empowered to address;
or
- (b) conduct an inquiry into the complaint.

Offences in respect of false complaints

30. A person who knowingly makes a false allegation or maliciously provides false information related to a contravention of this Act is guilty of an offence and is liable

- (a) on conviction on indictment to a fine of \$100 000 or to imprisonment for two years or to both;
- (b) on summary conviction to a fine of \$50 000 or to imprisonment for one year or to both.

PART VII

POWER TO REQUIRE FURTHER INFORMATION AND TO CONDUCT
INQUIRIES

General powers of Commission to investigate or inquire

31.(1) The Commission may, where it considers it necessary in order to determine whether

- (a) a declaration is a complete and accurate statement of the financial affairs of the specified person in public life who filed it;
- (b) a statement of registrable interests is complete and accurate;
- (c) a specified person in public life has acquired a prohibited interest;
- (d) a gift given to a specified person in public life is a personal gift or an official gift;
- (e) a person exercising public functions has contravened the Code of Conduct; or
- (f) a person has otherwise contravened this Act,

take any action specified in subsection (2).

- (2) For the purposes of subsection (1)(a) to (f), the Commission may
- (a) make such independent inquiries as it considers appropriate;
 - (b) in writing request any specified person in public life or other person exercising public functions involved to furnish such further particulars or other information or documents as it considers appropriate; or
 - (c) conduct an inquiry and require the person involved to attend before it to answer any questions and to be heard on any matter relating to the subject of the inquiry.
- (3) A person who receives a request pursuant to subsection (1)(b) shall comply with the request within the time the Commission specifies.

Conduct of inquiries

32.(1) The Commission shall conduct inquiries in private.

(2) A person whose conduct is the subject of an inquiry or who is in any way implicated or concerned in a matter under inquiry

- (a) is entitled to be represented at the inquiry by an attorney-at-law or such other person as he chooses, and any other person who desires to be so represented may, by leave of the Commission, be represented in that manner; and
- (b) may require the Commission to summon witnesses in relation to the inquiry,

and the Commission shall not take an adverse decision against such a person without giving the person an opportunity to be heard.

(3) An inquiry shall not be commenced after 5 years from the date on which a person ceases to be a specified person in public life or other person exercising public functions, as the case may be.

Commission's powers to summon and examine witnesses

33.(1) The Commission shall, in respect of an inquiry, have the powers of a judge of the Supreme Court to summon witnesses and to call for the production of documents.

(2) A summons to attend an inquiry to give evidence or to produce documents

(a) shall be

(i) in such form as the Commission may determine;

(ii) issued under the hand of the Chairman or another member of the Commission; and

(iii) served on a person by handing it to, or leaving it with, the person, or in such other manner as the Commission may direct to ensure that it is brought to the attention of the person; and

(b) may be served by a person authorised by the Commission for the purpose.

(3) The Commission may

(a) require that any facts, matters or things relating to the subject of an inquiry be verified or otherwise ascertained by the oral examination of witnesses; and

(b) cause any witnesses and parties concerned to be examined on oath.

(4) The Chairman or the Secretary of the Commission may administer an oath for the purpose of subsection (3).

(5) The Commission may, if it thinks fit, receive oral or written evidence, but it is not bound by the rules of evidence in the *Evidence Act*, Cap. 121, and it may take into account opinion evidence and such facts as it considers relevant and material.

Duty of witnesses summoned

34.(1) A person summoned to attend to give evidence or to produce documents at any sitting of the Commission is bound to obey the summons served upon him as fully in all respects as witnesses are bound to obey subpoenas issued from the Supreme Court.

(2) A person who

- (a) without sufficient cause, refuses or omits to attend at the time and place mentioned in the summons served on him;
- (b) attends but leaves the Commission without the permission of the Commission;
- (c) without sufficient cause, refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Commission;
- (d) without sufficient cause, refuses or omits to produce any document in his possession or under his control and mentioned or referred to in the summons served on him; or
- (e) at any sitting of the Commission, wilfully insults a member of the Commission or the Secretary of the Commission,

is guilty of an offence and is liable, on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both.

(3) A person who gives evidence before the Commission shall

- (a) notwithstanding subsection (2), not be compellable to incriminate himself; and
- (b) in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by the witness before the court.

Witness expenses

35.(1) A person summoned to attend to give evidence or to produce documents at any sitting of the Commission shall, where the Commission allows him expenses

- (a) be entitled to the same expenses as if he had been summoned to attend the Supreme Court on a criminal trial;
- (b) be paid
 - (i) at such time and in such manner as the Minister responsible for Finance may direct; and
 - (ii) as far as possible, by the same procedure as that for the payment of witnesses before the Supreme Court.

(2) The Commission may disallow the whole or any part of the expenses of a person referred to in subsection (1) in any case where the Commission thinks fit.

Marshals to attend Commission

36. The Chief Marshal may, where so required by the Commission, assign marshals to

- (a) attend proceedings of the Commission to preserve order;
- (b) perform such other duties as usually pertain to their office when in attendance upon the Supreme Court;
- (c) serve summonses on witnesses; and
- (d) perform such other duties as the Commission may direct.

Inquiry reports etc.

37.(1) The Commission shall prepare a written report of its findings and determinations in respect of each inquiry it conducts and send a copy of the report,

together with copies of any complaint and material documents submitted during the inquiry

- (a) to the person whose conduct was the subject of the inquiry; and
 - (b) where that person is,
 - (i) a public officer, to the Head of the Public Service, the appropriate service Commission and the Governor-General;
 - (ii) a member of the House of Assembly or the Senate, to the Governor-General and the Speaker of the House of Assembly or the President of the Senate, as the case may be;
 - (iii) the Head of the Public Service, to the Governor-General; and
 - (iv) concerned with any state-owned enterprise, to the state-owned enterprise and the Minister with responsibility for the enterprise; and
 - (c) to the Director of Public Prosecutions, where the Commission considers that an offence may have been committed.
- (2) Where a person is exonerated following an inquiry into an alleged contravention of this Act, the Commission shall
- (a) in writing inform the person who made the complaint and the person alleged to have contravened this Act of the finding of the inquiry; and
 - (b) at the request of the person whose conduct was the subject of the complaint, publish the finding of the inquiry in the *Official Gazette* and in a daily newspaper in general circulation in Barbados.

Action by Director of Public Prosecutions

38.(1) The Director of Public Prosecutions shall, as soon as practicable after receiving any complaint, report and other documents pursuant to this Act, in any

case in which he considers that a person ought to be prosecuted for an offence, institute and undertake criminal proceedings against the person and inform

- (a) the Commission of any action taken following the receipt of the information;
- (b) the appropriate Service Commission, where the complaint relates to a public officer; and
- (c) the appropriate board or other authority with which the person alleged to have contravened this Act is employed or in respect of which he is a member.

(2) Where criminal proceedings are commenced against a person exercising public functions, no disciplinary procedures shall be instituted pending the determination of the criminal proceedings.

(3) The Director of Public Prosecutions may authorise any person having an official duty under this Act to furnish information to any officer of the court or member of the Police Force or any other person the Director of Public Prosecutions specifies.

Offences in respect of requests for information and inquiries

39. A person exercising public functions who

- (a) without reasonable cause, fails to comply with a request made under section 31(2)(b) within the time specified therefor or knowingly gives any false or incomplete information pursuant to such a request;
- (b) without reasonable cause, fails to attend an inquiry when summoned to do so; or
- (c) knowingly gives false or incomplete information at such an inquiry,

is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 or to imprisonment for one year or to both.

Governor-General to appoint tribunal to perform functions

40.(1) The Governor-General shall, after consultation with the Prime Minister and the Leader of the Opposition, appoint a person who has held the office of judge in a superior court of record in any part of the Commonwealth as a tribunal to discharge the functions of the Governor-General under this Act on his behalf.

(2) Without prejudice to the generality of sections 11(9) and 23(9), sections 11(4), 14(2) and (4), 15, 16, 22(2), 23(4) to (7), 25(2) and (3), 26, 28, 29 and 31 to 38 apply to the Governor-General and a specified person in public life required to file a declaration with or make a report to him under section 11(3)(b) or 23(2), with such modifications and adaptations as may be necessary, as those sections apply to the Commission and other specified persons in public life, and the Governor-General has the same functions as the Commission in those sections.

PART VIII**INVESTIGATIONS***Powers of Investigative Officers***Power of arrest**

41.(1) An investigative officer has, in carrying out his functions, the powers of a constable to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment under this Act or any other enactment that assigns responsibility for investigations to the Commission.

(2) An investigative officer shall, after making an arrest, deliver the person arrested to the custody of a member of the Police Force who shall immediately bring the person before a magistrate.

Disclosure orders

42.(1) Where on an application made by an investigative officer, a judge in Chambers is satisfied that each of the requirements set out in subsection (3) is fulfilled, the judge may make an order authorising the officer to give to any person the officer considers has relevant information, notice in writing requiring the person, with respect to any matter relevant to the investigation for the purposes of which the order is sought, to

- (a) answer any question, either at a time specified in the notice or at once, at a place so specified;
- (b) provide any information specified in the notice, by a time and in a manner so specified;
- (c) produce any document, or any documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(2) An application for a disclosure order shall be made without notice and shall state that a person specified in the application is subject to an investigation under this Act or any other enactment that assigns responsibility for investigations to the Commission.

(3) The requirements referred to in subsection (1) are that there are reasonable grounds for

- (a) suspecting that the person specified in the application has committed an offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission; and
- (b) believing that
 - (i) information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and

- (ii) it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(4) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

(5) A person who

- (a) without reasonable excuse, fails to comply with a requirement imposed on him under a disclosure order; or
- (b) in purported compliance with a requirement imposed on him under a disclosure order
 - (i) makes a statement which he knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

(6) An offence under subsection (5) is punishable upon summary conviction by

- (a) a fine of \$10,000 or imprisonment for 2 years, or both, where the offender is an individual;
- (b) a fine of \$50,000, where the offender is a body corporate.

(7) Subject to subsection (8), a statement made by a person in response to a requirement imposed by a disclosure order may not be used in evidence against the person in criminal proceedings.

(8) Subsection (7) does not apply in the case of

- (a) proceedings for contempt of court;
- (b) a prosecution for an offence under subsection (6);

- (c) a prosecution for an offence under the *Perjury Act*, Cap. 142; or
 - (d) a prosecution for another offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (7).
- (9) A statement may not be used by virtue of subsection (8)(d) against a person unless
- (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

(10) A disclosure order has effect notwithstanding any obligation as to confidentiality or any other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

(11) For the purposes of subsection (1), “relevant information” is information, whether or not contained in a document, which the investigative officer considers to be relevant to the investigation.

(12) Sections 145 and 148 of the *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17) apply in respect of a disclosure order made under this section as those sections apply to a disclosure order made under that Act and for the purpose of this Act, any reference in section 145 of that Act to a police officer shall be construed to include an investigative officer.

Search and seizure warrants

43.(1) Where on an application made by an investigative officer, a judge in Chambers is satisfied of the circumstances set out in subsection (3), the judge may issue a warrant authorising the officer to

- (a) enter and search the premises specified in the application for the warrant; and

- (b) seize and retain any material found on the premises which is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the application is made.
- (2) An application for a search and seizure warrant shall
 - (a) specify the person subject to investigation;
 - (b) state that the warrant is sought for the purposes of the investigation;
 - (c) specify the premises in respect of which the warrant is sought; and
 - (d) specify the material in respect of which the warrant is sought or, where the material cannot be identified at the time of the application, state that there are reasonable grounds for believing that there is material on the premises that
 - (i) relates to the person specified in the application or the question whether that person has committed an offence under this Act or any other enactment that assigns responsibility for the investigation of offences to the Commission; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought.
- (3) The circumstances referred to in subsection (1) are that
 - (a) a disclosure order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
 - (b) there are reasonable grounds for suspecting that the person specified in the application for the warrant has committed an offence under this Act or any other enactment that assigns responsibility for investigations to the Commission and
 - (i) the conditions specified in subsection (4) are fulfilled; or
 - (ii) the conditions specified in subsection (5) are fulfilled.

- (4) The conditions referred to in subsection (3)(b)(i) are that
- (a) there are reasonable grounds for believing that
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (b) it would not be appropriate to make a disclosure order because
 - (i) it is not practicable to communicate with any person against whom the disclosure order could be made;
 - (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) the investigation might be seriously prejudiced unless an investigative officer is able to secure immediate access to the material.
- (5) The conditions referred to in subsection (3)(b)(ii) are that
- (a) there are reasonable grounds for believing where the material cannot be identified at the time of the application, that there is material on the premises specified in the application for the warrant that
 - (i) relates to the person specified in the application or the question whether he has committed an offence under this Act or any other enactment that assigns responsibility for investigations to the Commission; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and

- (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (c) one of the following applies:
 - (i) it is not practicable to communicate with any person against whom a disclosure order could be made;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation might be seriously prejudiced unless an investigative officer arriving at the premises is able to secure immediate entry to them.
- (6) A search and seizure warrant does not confer the right to seize privileged material.

Obstruction of investigative officer

44. A person who resists or obstructs an investigative officer in the execution of his duty is guilty of an offence and is liable, on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both.

Complaints regarding Investigative Officers

Complaints concerning conduct of investigative officers

45.(1) A person may address a complaint in writing to the Commission in respect of the conduct of an investigative officer in the discharge of the officer's functions where the person

- (a) has been personally affected by the conduct;
- (b) has witnessed the conduct;
- (c) has a substantial and direct interest in the complaint; or

- (d) has been authorised by a person referred to in paragraph (a), (b) or (c) to make a complaint in that person's name.
- (2) The Commission shall refer a complaint made under subsection (1) to a panel appointed under section 46.

Appointment of complaints panel

- 46.** The Governor-General may appoint an *ad hoc* panel consisting of
- (a) a judge or magistrate or a retired judge or magistrate, who shall be the chairman;
 - (b) the Commissioner of Police, who shall hold office *ex officio*; and
 - (c) a person, other than a member or former member of the Police Force, to represent the public,

to hear and adjudicate a complaint made under section 45.

Disposal of complaint without formal investigation

- 47.(1)** A panel appointed under section 46 may direct that no investigation of a complaint be carried out where in its opinion
- (a) the complaint is trivial, frivolous, vexatious or made in bad faith; or
 - (b) having regard to all the circumstances, an investigation or further investigation is not necessary or reasonably practicable.
- (2) Where no direction is given under subsection (1), the panel and the Commission shall
- (a) consider whether the complaint can be disposed of informally; and
 - (b) with the consent of the complainant and the investigative officer whose conduct is the subject matter of the complaint, attempt to dispose of the complaint informally before a formal investigation is undertaken.

(3) Where a complaint is disposed of informally, the panel shall prepare and send the following documents to the complainant, the investigative officer and the Commission:

- (a) an overview of the facts that gave rise to the complaint;
- (b) the name of the person who conducted the informal disposition;
- (c) a statement of the manner in which the complaint was disposed of; and
- (d) evidence of agreement to the disposition of the complaint by the complainant and the investigative officer.

Formal investigation of complaint

48.(1) Where a complaint is not disposed of informally, the Commission shall investigate the matter and send a complaint resolution report to the panel, the complainant and the investigative officer whose conduct is the subject matter of the complaint.

(2) The complaint resolution report shall contain

- (a) a summary of the complaint;
- (b) the results of the investigation;
- (c) a summary of any action that has been or will be taken with respect to resolution of the complaint; and
- (d) a statement that the complainant may refer the complaint to the panel for review within 28 days of the receipt of the complaint resolution report where he is not satisfied with the disposition of the complaint by the Commission.

(3) A complainant who is not satisfied with a direction given under section 47(1) or with the disposition of his complaint by the Commission under subsection (1), may refer the complaint to the panel in writing within 28 days after the date on which he receives notice of the direction or the complaint resolution report, and the panel shall review every complaint so referred.

Review of complaints by panel

- 49.(1)** Where, after reviewing a complaint, the panel
- (a) is satisfied with the disposition of the complaint by the Commission, the panel shall send to
 - (i) the Commission, a complaint review report to that effect setting out such findings and recommendations with respect to the complaint as the panel sees fit; and
 - (ii) the complainant and the investigative officer whose conduct is the subject matter of the complaint, a report of the conclusion of the review together with any finding or recommendation referred to in subparagraph (i); or
 - (b) is not satisfied with the disposition of the complaint by the Commission or considers that further inquiry is warranted, the panel may take any or all of the following measures:
 - (i) send a report to the Commission indicating the reasons for its dissatisfaction;
 - (ii) request the Commission to conduct a further investigation into the complaint;
 - (iii) make such inquiries as it deems necessary in the circumstances;
 - (iv) investigate the complaint further;
 - (v) institute a hearing to inquire into the complaint.
- (2) The panel shall, on completion of any further investigation, inquiry or hearing that it orders under subsection (1)(b) send to
- (a) the Commission, a complaint review report setting out
 - (i) such findings with respect to the complaint as the panel sees fit; and

- (ii) such recommendations, including any disciplinary measures to be taken with regard to the investigative officer, as the panel sees fit; and
 - (b) the complainant and the investigative officer, a report of the conclusion of the review, together with any finding or recommendation referred to in paragraph (a).
- (3) The Commission shall give effect to any recommendations in a complaint review report sent to it.

PART IX

MISCELLANEOUS

Commissioner of Police to assist Commission etc.

50. The Commissioner of Police shall provide to the Commission such assistance as it requests in connection with the discharge of its functions.

Confidentiality of information

51.(1) Any information received by any member or employee of the Commission, in the discharge of the functions of such person under this Act, including information contained in any document received by that person by virtue of this Act, shall not be divulged by any such member or employee, except where the information is required to be produced for the purpose of complying with any other enactment or an order of any court or for the purpose of prosecution for an offence.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years.

(3) Any person who receives any information or anything contained in any document described in subsection (1), knowing or having reasonable ground to

believe at the time when he receives it, that it is communicated to him in contravention of this section, unless he proves that the communication to him of the information or anything contained in such document was contrary to his desire, is guilty of an offence and is liable, on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years.

(4) Every member of the Commission and every person performing any function in the service or as an employee of the Commission shall treat all records, and information relating to declarations, as secret and confidential and shall not disclose or communicate the text of any record, information or declaration to any unauthorised person or allow any unauthorised person to have access to any records, information or declarations.

(5) A person who contravenes subsection (4) is guilty of an offence and is liable, on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years or to both.

(6) This section applies to a person appointed as a tribunal by the Governor-General under section 40, as it applies to a member of the Commission.

Conflicts of interest

52.(1) Where a member of the Commission is interested in a matter before the Commission or in a person who is a party to proceedings before the Commission, the member so interested shall disclose the nature of his interest to the Commission and shall not participate in its sittings in relation to the matter or person.

(2) Where a person appointed as a tribunal by the Governor-General is interested in a matter before the tribunal or in a person who is a party to proceedings before the tribunal, the person so interested shall disclose the nature of his interest to the Governor-General and shall not participate in its sittings in relation to the matter or person.

(3) Where, in the opinion of the Governor-General or of the Commission, a member of the Commission is interested in a matter before the Commission or in a person who is party to proceedings before the Commission, the Governor-

General or the Commission, as the case may be, shall direct the member not to participate in the sittings of the Commission in relation to the matter or person.

Protection from suit

53. No member or employee of the Commission shall be liable to any action or suit for any matter or thing done by him in good faith as a member or employee of the Commission or in the exercise of his functions or the course of his employment, as the case may be.

Oaths

54.(1) Every member of the Commission and every person appointed as a tribunal by the Governor-General under this Act shall, before assuming the functions of his office, take before the Governor-General the applicable oath of office and oath of secrecy in the forms set out in Parts I and III, respectively, of the *Fifth Schedule*.

(2) Every person performing functions in the service of or as an employee of the Commission shall, before assuming the functions of his office, take before the Chairman, or in his absence, another member of the Commission, the applicable oath of office and oath of secrecy set out in the forms in Part II of the *Fifth Schedule*.

Amendment of Second and Third Schedules

55. The Minister may by order

- (a) amend Part II of the *Second Schedule*;
- (b) after consultation with the Commission, amend the *Third Schedule*.

Regulations

56. The Minister may make Regulations generally for giving effect to this Act and, in particular, for any matter

- (a) required to be prescribed by this Act; and

(b) related to any report, investigation or inquiry under this Act.

Alteration of *Constitution*

57. Section 112 of the *Constitution* is amended to the extent necessary to give effect to this Act.

Commencement

58. This Act shall come into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE*(Sections 2 and 3)***INTEGRITY COMMISSION****Members of Commission**

1. The Commission shall consist of
 - (a) a person who has held the office of judge in a superior court of record in any part of the Commonwealth, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition;
 - (b) an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the *Legal Profession Act*, Cap. 370A, appointed by the Governor-General, after consultation with the Council of the Barbados Bar Association;
 - (c) a chartered or certified accountant of at least 7 years' standing appointed by the Governor-General after consultation with any body which in his opinion represents chartered or certified accountants in Barbados;
 - (d) a member of the clergy, appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition;
 - (e) a person appointed by the Governor-General on the advice of the Prime Minister; and
 - (f) a person appointed by the Governor-General on the advice of the Leader of the Opposition.

Disqualification from membership

2. A person who
 - (a) is a member of the House of Assembly or the Senate;

- (b) would be disqualified in accordance with section 38 or 44 of the *Constitution*, as the case may be, from being a member of the House of Assembly or the Senate;
- (c) has, at any time during the period of 5 years preceding the proposed date of his appointment, held office in a political party; or
- (d) has, at any time during the period of 3 years preceding the proposed date of his appointment, been a public officer,

is not qualified to be appointed as a member of the Commission.

Tenure of office

- 3.** A member of the Commission shall
- (a) be appointed by instrument in writing;
 - (b) subject to paragraphs 2, 5 and 6, hold office for a period of 3 years; and
 - (c) be eligible for re-appointment.

Appointment of Chairman

- 4.(1)** The Governor-General shall, acting in his discretion, appoint a member of the Commission to be the Chairman.
- (2) The Chairman shall preside at all meetings of the Commission at which he is present.
- (3) Where the Chairman is absent from any meeting, the members present and forming a quorum shall elect one among them to preside at the meeting.

Vacancy in membership of Commission

- 5.(1)** The office of a member of the Commission shall become vacant
- (a) at the expiration of the term specified in the member's instrument of appointment;

- (b) where he notifies the Governor-General in writing of his intention to resign his office, and the resignation shall take effect when the letter of resignation is received by the Governor-General;
 - (c) on the death, retirement or removal of a member; or
 - (d) on the absence of a member from 3 consecutive meetings of the Commission, unless such absence is approved by the Governor-General.
- (2) Where any vacancy occurs in the membership of the Commission, the vacancy shall be filled by the appointment of another person from the categories of persons in paragraph 1.

Removal of member

- 6.(1)** A member of the Commission may be removed from office by the Governor-General for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour, and shall not be removed except in accordance with this paragraph.
- (2) A member shall be removed from office by the Governor-General where the question of his removal is referred to a tribunal appointed under sub-paragraph (3) and the tribunal recommends to the Governor-General that the member should be removed for inability to discharge the functions of his office or for misbehaviour.
- (3) Where the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of removing a member ought to be investigated, the Governor-General shall appoint a tribunal to inquire into the matter, report on the facts thereof to him and recommend to him whether the member should be removed.
- (4) The tribunal referred to in subparagraph (3) shall consist of
- (a) a judge of the Supreme Court;

- (b) an attorney-at-law with at least 10 years' standing whose name appears on the Roll of Attorneys-at-law pursuant to the *Legal Profession Act*, Cap. 370A; and
 - (c) one other person of high integrity and appropriate qualifications.
- (5) The tribunal shall give the member an opportunity to be heard as to why he should not be removed.
- (6) Where the question of removing a member is referred to a tribunal, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the member from the exercise of the functions of his office.
- (7) A suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect where the tribunal recommends to the Governor-General that the member should not be removed.

Proceedings and meetings

- 7.(1) Subject to subparagraph (4), the Commission shall meet at such times as it considers necessary or desirable for the discharge of its functions.
- (2) A quorum of the Commission shall be four.
- (3) The proceedings of the Commission shall not be affected by a vacancy among its members or a defect in the appointment of a member.
- (4) The Governor-General may in writing request the Commission to meet at such times as he thinks fit.

Secretary to the Commission

- 8.(1) There shall be a Secretary to the Commission.
- (2) The Secretary shall
 - (a) attend the meetings of the Commission;.

- (b) record the proceedings of the Commission and keep the minutes of each meeting in proper form; and
- (c) generally perform such duties connected with the work of the Commission as the Commission may require.

Publication in the *Official Gazette*

9. The appointment, resignation and revocation of appointment or death of a member of the Commission shall be published in the *Official Gazette*.

SECOND SCHEDULE

(Sections 2 and 55)

SPECIFIED PERSONS IN PUBLIC LIFE

PART I

1. Members of the House of Assembly and the Senate
2. Members of the Cabinet
3. Permanent Secretaries
4. Heads of Departments within the Public Service and holders of public offices in the same grade as that of such Heads of Department
5. Chairpersons of the state-owned enterprises listed in Part II
6. Chief Executive Officers, General Managers and other executive heads of the state-owned enterprises listed in Part II
7. Magistrates
8. Director of Public Prosecutions
9. Auditor-General
10. Members and senior officers of the Commission

PART II

1. Air Transport Licensing Authority
2. Barbados Accreditation Council

3. Barbados Agency for Micro-Enterprise Development Ltd.
4. Barbados Agricultural Credit Trust Ltd.
5. Barbados Agricultural Development and Marketing Corporation
6. Barbados Agricultural Management Co. Ltd.
7. Barbados Cane Industry Corporation
8. Barbados Conference Services Ltd.
9. Barbados Community College
10. Barbados Defence Force
11. Barbados International Business Promotion Corporation
12. Barbados Investment and Development Corporation
13. Barbados National Oil Co. Ltd.
14. Barbados National Standards Institute
15. Barbados National Terminal Ltd.
16. Barbados Port Inc.
17. Barbados Revenue Authority
18. Barbados Tourism Investment Inc.
19. Barbados Tourism Marketing Inc.
20. Barbados Tourism Product Authority

21. Barbados Vocational Training Board
22. Barbados Water Authority
23. Caribbean Aircraft Handling Co. Ltd.
24. Caribbean Airways International Ltd.
25. Caribbean Broadcasting Corporation
26. Caves of Barbados Ltd.
27. Child Care Board
28. Community Legal Services Commission
29. Cultural Industries Authority
30. Enterprise Growth Fund Ltd.
31. Fair Trading Commission
32. Financial Services Commission
33. Grantley Adams International Airport Inc.
34. Gymnasium Ltd.
35. Hotels and Resorts Ltd.- Gems of Barbados
36. Kensington Oval Management Inc.
37. National Assistance Board
38. National Conservation Commission

39. National Council on Substance Abuse
40. National Cultural Foundation
41. National Housing Corporation
42. National Insurance Board
43. National Petroleum Corporation
44. National Productivity Council
45. National Sports Council
46. Needham Point Development Inc.
47. Needham Point Holdings Ltd.
48. New Life Investment Company Inc.
49. Queen Elizabeth Hospital
50. Resolution Life Assurance Company Ltd.
51. Rural Development Commission
52. Sanitation Service Authority
53. Southern Meats Inc.
54. Student Revolving Loan Fund
55. Technical and Vocational Education and Training Council
56. Transport Authority

- 57. Transport Board
- 58. Urban Development Commission

THIRD SCHEDULE

(Sections 11,15, 18, 23 and 55)

FORMS FOR PARTS III, IV AND V

CONFIDENTIAL



Form 1

*Integrity in Public Life Act, 2019
(Act 2019-)*

**DECLARATION OF INCOME, ASSETS AND LIABILITIES
FOR THE YEAR ENDED 31ST DECEMBER, 20...**

(Pursuant to section 11 of the Integrity in Public Life Act, 2019)

(If there is insufficient space for the items falling under any PART of this Form, additional information may be provided on separate sheets.)

WARNING: Under section 17 of the *Integrity in Public Life Act, 2019* it is an offence punishable by a fine of \$25 000 or imprisonment for 18 months or both to knowingly file a declaration that is incomplete or false in any material particular.

Third Schedule - (Cont'd)

PART I
IDENTIFICATION SECTION

1. DECLARANT

NAME OF DECLARANT (*Surname, Other Names*)

DATE OF BIRTH OF DECLARANT (*yyyy/mm/dd*)

POSITION HELD

HOME ADDRESS OF DECLARANT

OFFICE ADDRESS OF DECLARANT

DECLARANT'S CONTACT INFORMATION

(a) Telephone _____ (Home) _____ (Office) _____ (Mobile)

(b) Email _____

(c) Fax _____

Third Schedule - (Cont'd)

3. DECLARANT'S SPOUSE

NAME OF DECLARANT'S SPOUSE (Surname, Other Names)

DATE OF BIRTH OF DECLARANT'S SPOUSE (yyyy/mm/dd)

HOME ADDRESS OF DECLARANT'S SPOUSE

OFFICE ADDRESS OF DECLARANT'S SPOUSE

SPOUSE'S CONTACT INFORMATION

(a) Telephone _____(Home) _____(Office) _____(Mobile)

(b) Email _____

(c) Fax _____

NOTE: Under section 2 of the *Integrity in Public Life Act, 2019* "spouse" includes a person with whom the declarant is in a union other than marriage as defined by section 39 of the *Family Law Act, Cap. 314*.

Third Schedule - (Cont'd)

2. INCOME FROM TRADE, PROFESSION OR VOCATION
(Please state Net Income—after deduction of expenses)

Name and Address of Business	Nature of Business	Recipient's Name (Declarant/Spouse/Dependent Child)	Annual Net Income \$

3. INCOME FROM PROPERTY
(Please state Net Income—after deduction of expenses)

Address and Description of Property	Tenant's Name	Recipient's Name (Declarant/Spouse/Dependent Child)	Annual Net Income \$

Third Schedule - (Cont'd)

4. INTEREST INCOME

Name and Address of Organisation/ Persons from whom Interest Received	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Annual Income \$

5. DIVIDED INCOME (*from shares and stock*)

Name and Address of Organisation from which Dividend Received	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Annual Income \$

Third Schedule - (Cont'd)

6. GAINS/PROFITS

Description of Any Assets Sold	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Purchase Price and Additional Capital Expenditure <i>(a)</i> \$	Expenses Relative to Sale <i>(b)</i> \$	Proceeds of Sale <i>(c)</i> \$	Gains/Profits <i>[c - (a + b)]</i> \$

7. OTHER BENEFITS FROM EMPLOYMENT *(including Housing, Travelling)*

Name and Address of Employer	Recipient's Name <i>(Declarant/Spouse/Dependent Child)</i>	Description of Benefit	Value \$

Third Schedule - (Cont'd)

(b) COMPANY SHARES AND STOCK (Unquoted)

Name and Address of Company	Nature of Business	Stock Units/ Shares Held	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Estimated Value \$

7. INVESTMENT IN PARTNERSHIPS, JOINT VENTURES AND OTHER BUSINESSES

Name and Address of Company or Business	Nature of Business	Percentage Ownership	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Investment as at Dec. 31, 20.... \$

Third Schedule - (Cont'd)

(c) GOVERNMENT AND CORPORATE BONDS

Issuing Organisation	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Date of Purchase	Interest Rate	Maturity Date	Face Value \$

(d) CREDIT UNIONS

Name and Address of Credit Union	Type of Account <i>(Shares/Savings/ Fixed Deposit)</i>	In Whose Name Held <i>(Declarant/Spouse/Dependent Child)</i>	Account Number	Balance as at Dec. 31, 20... \$



Form 2

Integrity in Public Life Act, 2019
(Act 2019-)

CERTIFICATE OF COMPLIANCE

(Pursuant to section 15 of the Integrity in Public Life Act, 2019)

This is to certify that the declaration required under section 11 of the *Integrity in Public Life Act, 2019* has been submitted by _____ and has been satisfactorily made.

Dated this _____ day of _____ 20_____.

Chairman of the Integrity Commission/Governor-General

NOTE: The statement of registrable interests required under section 18 of the Act has/has not*been filed.

* Delete as applicable.



Form 3

Integrity in Public Life Act, 2019
(Act 2019-)

STATEMENT OF REGISTRABLE INTERESTS FOR THE YEAR ENDED 31ST DECEMBER, 20...

(Pursuant to section 18 of the Integrity in Public Life Act, 2019)

Complete this Form and file it together with the Declaration of Income, Assets and Liabilities which you are required to file with the Integrity Commission under section 11 of the *Integrity in Public Life Act, 2019*.

NOTE: There is no requirement to disclose in this Statement the actual amount or extent of any financial benefit, contribution or interest. Please notify the Secretary to the Commission of any change which occurs in your interests as set out in this Statement within 6 weeks of the change occurring.

(If there is insufficient space for the items falling under any section, additional information may be provided on separate sheets.)

WARNING: Under section 20 of the *Integrity in Public Life Act, 2019* it is an offence punishable by a fine of \$50 000 or imprisonment for 2 years or both to knowingly file a statement of registrable interests that is incomplete or false in any material particular.

Third Schedule - (Cont'd)

2. I/MY SPOUSE/MY CHILD HAVE (HAS) MADE OR AM (IS) A PARTNER IN A FIRM OR A DIRECTOR OR MANAGER OF A COMPANY THAT HAS MADE CONTRACTS WITH THE STATE AS FOLLOWS:

Date of Contract	Particulars of Obligations Undertaken

3. I/MY SPOUSE/MY CHILD HAVE (HAS) INVESTMENTS IN THE FOLLOWING COMPANIES, PARTNERSHIPS OR ASSOCIATIONS:

Name of Company/Partnership/Association	Address

Third Schedule - (Cont'd)

10. I/MY SPOUSE/MY CHILD HAVE (HAS) THE FOLLOWING OTHER SUBSTANTIAL INTERESTS WHICH MAY APPEAR TO RAISE A MATERIAL CONFLICT BETWEEN MY PRIVATE INTEREST AND MY PUBLIC DUTY:

Name of Interest (Pecuniary or Non-Pecuniary)

Dated this _____ day of _____ 20_____.

Signature of Declarant: _____

CONFIDENTIAL



Form 4

Integrity in Public Life Act, 2019
(Act 2019-)

REPORT OF GIFT

(Pursuant to section 23 of the Integrity in Public Life Act, 2019)

WARNING: Under section 24 of the *Integrity in Public Life Act, 2019*, it is an offence punishable by a fine or imprisonment for 3 months or both, to knowingly make a report pursuant to section 23 that is incomplete or false in any material particular.

Third Schedule - (Concl'd)

NAME OF DECLARANT (*Surname, Other Names*)

POSITION HELD

DESCRIPTION AND VALUE OF GIFT (\$)

IN YOUR OPINION, IS THE GIFT (*Tick one*) A PERSONAL GIFT AN OFFICIAL GIFT

NAME OF RECIPIENT (*Surname, Other Names*)

RELATIONSHIP TO DECLARANT (*Tick one*) SPOUSE CHILD N/A

NAME OF DONOR (*Surname, Other Names*)

ADDRESS OF DONOR

Dated this _____ day of _____ 20_____.

Signature of Declarant: _____

FOURTH SCHEDULE*(Section 25)***CODE OF CONDUCT FOR PERSONS IN PUBLIC LIFE****Use of office**

- 1.** A person exercising public functions
 - (a)* shall
 - (i) ensure that he performs his functions and administers the public resources for which he is responsible in an effective and efficient manner;
 - (ii) be fair and impartial in exercising his public functions; and
 - (iii) afford no undue preferential treatment to any person;
 - (b)* shall not
 - (i) use his office for the improper advancement of his own or his family's personal or financial interests or the interest of any other person;
 - (ii) engage in any transaction, acquire any position or have any commercial or other interest that is incompatible with his office, function and duty or the discharge thereof;
 - (iii) use or allow the use of public property or services for activities not related to his public functions;
 - (iv) directly or indirectly use his office for private gain; and
 - (v) use his official influence in support of any scheme or in furtherance of any contract or proposed contract with respect to which he or a member of his immediate family has an interest.

Use of information

2. A person exercising public functions shall not for his personal advantage, benefit or gain, communicate to anyone or make use of any information or the contents of any document acquired in his official capacity, which is not in the public domain.

Private interests and conflicts of interest

3.(1) A person exercising public functions shall not allow his private interest to conflict with, or interfere with the proper discharge of, his public functions or improperly influence his conduct in the discharge of his public functions.

(2) A conflict of interest is deemed to arise if a person exercising public functions were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of a member of his family or of any other person associated with him.

(3) Where there is a possible or perceived conflict of interest, the person exercising public functions involved shall disclose his interest in accordance with such procedures as may be appropriate and disqualify himself from any decision-making process.

FIFTH SCHEDULE

(Section 54)

FORM OF OATHS

PART I

MEMBERS OF INTEGRITY COMMISSION



Form 1

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF OFFICE

I _____ do swear/affirm that I will exercise the functions of member of the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) without fear or favour, affection or ill-will according to the Laws of Barbados. So help Me God.

Dated this _____ day of _____, 20__ .

Signature

Fifth Schedule - (Cont'd)

PART I - (Concl'd)

MEMBERS OF INTEGRITY COMMISSION



Form 2

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF SECRECY

I _____ member of the Integrity Commission do swear/affirm that I shall treat all declarations filed with the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such record, information or declaration. So help Me God.

Dated this _____ day of _____, 20_____.

Signature

Fifth Schedule - (Cont'd)

PART II

EMPLOYEES AND OTHER PERSONS PERFORMING FUNCTIONS
IN THE SERVICE OF THE INTEGRITY COMMISSION



Form 3

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF OFFICE

I _____do swear/affirm that I will exercise my functions (in the service of/as employee of) the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) without fear or favour, affection or ill-will according to the Laws of Barbados. So help Me God.

Dated this _____ day of _____, 20_____.

Signature

Fifth Schedule - (Cont'd)

PART II - (Concl'd)

EMPLOYEES AND OTHER PERSONS PERFORMING FUNCTIONS
IN THE SERVICE OF THE INTEGRITY COMMISSION



Form 4

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF SECRECY

I _____employee/performing a function in the service of the Integrity Commission do swear/affirm that I shall treat all declarations filed with the Integrity Commission under the *Integrity in Public Life Act, 2019* (Act 2019-) and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such record, information or declaration. So help Me God.

Dated this _____day of _____, 20____.

Signature

Fifth Schedule - (Cont'd)

PART III

PERSONS APPOINTED AS TRIBUNALS



Form 5

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF OFFICE

I _____ do swear/affirm that I will exercise my functions as a tribunal under the *Integrity in Public Life Act, 2019* (Act 2019-) without fear or favour, affection or ill-will according to the Laws of Barbados. So help Me God.

Dated this _____ day of _____, 20_____.

Signature

Fifth Schedule - (Concl'd)

PART III - (Concl'd)

PERSONS APPOINTED AS TRIBUNALS



Form 6

Integrity in Public Life Act, 2019
(Act 2019-)

OATH OF SECRECY

I _____appointed as a tribunal under the *Integrity in Public Life Act, 2019* (Act 2019-) do swear/affirm that I shall treat all declarations filed with the Governor-General and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such record, information or declaration. So help Me God.

Dated this _____day of _____, 20____.

Signature

INTEGRITY IN PUBLIC LIFE BILL, 2019

EXPLANATORY MEMORANDUM

The Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption and provide for related matters.

PART I - PRELIMINARY

- Clause 1:** provides the short title.
- Clause 2:** defines the terms used in the legislation, including the term “specified person in public life”, which is any person listed in the *Second Schedule* including a Member of Parliament.

PART II - INTEGRITY COMMISSION

Establishment and Functions of Commission

- Clause 3:** provides for the establishment of the Integrity Commission, the constitution of which is set out in the *First Schedule*.
- Clause 4:** sets out the functions of the Commission.
- Clause 5:** empowers the Commission to consult with any person in the exercise of its functions.
- Clause 6:** provides for the Commission to enter into written agreements, arrangements or memoranda of understanding with law enforcement agencies.
- Clause 7:** provides for the funds of the Commission and mandates the Commission to keep proper accounts.

- Clause 8:** requires the Commission to produce annual reports on its activities.
- Clause 9:** provides for the Commission's staff.
- Clause 10:** empowers the Commission to designate persons to be investigative officers.

PART III - DECLARATIONS

- Clause 11:** requires all persons in public life specified in the *Second Schedule* to file, every 2 years, declarations of their financial affairs with the Commission, or, in the case of members and senior officers of the Commission, with the Governor-General.
- Clause 12:** stipulates that the declaration must contain details of the income, assets and liabilities of the person in public life and those of his spouse and dependent children.
- Clause 13:** exempts a person from declaring certain trust property in detail.
- Clause 14:** permits a person in public life to place his assets in a blind trust, and, where he does so, exempts him from the requirement to declare details of those assets.
- Clause 15:** provides for the receipt and examination of declarations and explains the steps the Commission must take in relation to both satisfactory and unsatisfactory declarations.
- Clause 16:** imposes a duty to publish the name of any person who fails to file a declaration or to furnish further information concerning his declaration, in the *Official Gazette* and in a daily newspaper.

Clause 17: makes it an offence, among other things, to fail to file a declaration or to give false or incomplete information in a declaration.

PART IV - REGISTRABLE AND PROHIBITED INTERESTS

Clause 18: requires every member of the House of Assembly and of the Senate to file a statement of registrable interests with the Commission with details, for example, of any directorships held and any associations to which the person belongs.

Clause 19: provides for the Commission to maintain a register, to be called the Register of Interests, in which must be recorded all information furnished by members of the House of Assembly and of the Senate concerning their statements of registrable interests and which would be available for public inspection.

Clause 20: makes it an offence to fail to file a statement of registrable interests or to give false or incomplete information concerning such a statement.

Clause 21: disqualifies a member of the House of Assembly or the Senate who is convicted of an offence related to his declaration or statement of registrable interests from holding any public office for a period of 5 years from the date of conviction for the offence.

Clause 22: provides for the Commission to make rules regarding the circumstances in which a specified person in public life would be prohibited from acquiring an interest in a contract with the Government or a state-owned enterprise.

PART V - GIFTS

- Clause 23:** requires every specified person in public life who receives a gift worth more than \$2500 to report that fact to the Commission or, in the case of a member or senior officer of the Commission, to the Governor-General, for determination as to whether the gift is a personal or official one, and requires the person in public life to deliver any gift that is not personal to the Minister of Finance.
- Clause 24:** makes it an offence, among other things, to fail to report a gift or to comply with a direction to deliver a gift to the Minister of Finance but places a limitation period of 5 years from when a person ceases to be a person in public life for the institution of proceedings.

PART VI - CONDUCT IN PUBLIC LIFE AND CONTRAVENTIONS OF ACT

- Clause 25:** establishes a code of conduct for persons exercising public functions and provides for the Commission to investigate alleged contraventions of the code. The code is set out in the *Fourth Schedule*.
- Clause 26:** provides generally for complaints to be made to the Commission in relation to contraventions of the legislation.
- Clause 27:** imposes a duty on persons exercising public functions to report suspected contraventions of the legislation.
- Clause 28:** requires that any oral complaint that the Commission receives be put in writing.
- Clause 29:** provides for the Commission to examine each complaint and to reject any that is frivolous or outside its jurisdiction.

Clause 30: makes it an offence to knowingly make a false allegation or provide false information relating to a contravention of the legislation.

PART VII - POWER TO REQUIRE FURTHER INFORMATION AND TO CONDUCT INQUIRIES

Clause 31: empowers the Commission to make independent inquiries and request further information for several purposes including to determine whether any declaration or statement of registrable interests is complete and accurate and whether any person has contravened the Code of Conduct or otherwise contravened the legislation.

Clause 32: addresses the conduct by the Commission of formal inquiries.

Clause 33: gives the Commission the power of a judge to summon and examine witnesses.

Clause 34: outlines the duties of witnesses summoned by the Commission and makes non-compliance an offence.

Clause 35: provides for the expenses of witnesses.

Clause 36: provides for the Chief Marshal to detail marshals to preserve order at proceedings of the Commission.

Clause 37: provides for the Commission to prepare written reports of each inquiry it conducts.

Clause 38: speaks to action by the Director of Public Prosecutions upon receipt of information from the Commission.

Clause 39: makes it an offence, among other things, to fail to furnish information requested by the Commission or attend an inquiry, without reasonable cause.

Clause 40: provides for the Governor-General to appoint a person as a tribunal to discharge her functions on her behalf.

PART VIII - INVESTIGATIONS

Powers of Investigative Officers

Clause 41: gives an investigative officer the same power of arrest as a constable where he reasonably suspects that a person has committed an offence under the legislation.

Clause 42: allows an investigative officer to obtain a disclosure order from a judge in Chambers for the purpose of obtaining material relevant to his investigation.

Clause 43: provides for an investigative officer to obtain a search warrant.

Clause 44: makes it an offence to obstruct an investigative officer in the execution of his duty.

Complaints regarding Investigative Officers

Clause 45: provides a procedure for complaints about the conduct of an investigative officer to be made.

Clause 46: requires the Governor-General to appoint a panel to hear and adjudicate such complaints.

Clause 47: permits the panel to dispense with trivial complaints and to dispose of complaints informally.

Clause 48: provides for the complaints to be investigated formally by the Commission in certain cases.

Clause 49: requires the panel to review the Commission's disposition of a complaint and report thereon.

PART IX - MISCELLANEOUS

Clause 50: provides for the Commissioner of Police to assist the Commission in connection with the discharge of its functions where the Commission so requests.

Clause 51: imposes, among other things, a general duty of confidentiality on members and employees of the Commission with respect to information received in the discharge of their functions.

Clause 52: provides for the manner in which conflicts of interest are to be addressed.

Clause 53: protects members and employees of the Commission from suit for acts done in good faith in the exercise of their functions.

Clause 54: provides for an oath of office and of secrecy to be taken by members and employees of the Commission and other persons performing specified functions under the legislation. The forms of the oaths are set out in the *Fifth Schedule*.

Clause 55: empowers the Minister to amend Part II of the *Second Schedule* and the *Third Schedule*.

Clause 56: provides for the Minister to make regulations to give effect to the legislation and empowers the Commission to make rules for its procedure.

Clause 57: provides for the amendment of section 112 of the *Constitution*.

Clause 58: provides for the commencement of the legislation by Proclamation.