



Review of the Integrity in Public Life Bill

Submission to the Select Committee of Parliament

UNITED PROGRESSIVE PARTY

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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.

ⁱ A similar responsibility exists for the Governor-General with respect to the Commission.