



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.

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

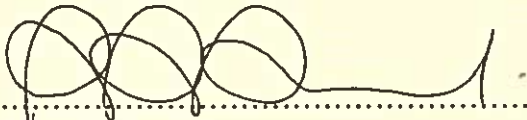
Serious consideration should be given to making political financing transparent. By way of example, the United Kingdom Political Parties Elections and Referendums Act, 2000 which arose out of the Neill Committee established to consider how to make politics more transparent, provides not only for monies 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