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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

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| 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. | |
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| 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> |
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| 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...'. | 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). |

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| 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 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. | |

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| 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 | |

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| 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 do</u> (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'. | |

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| 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. |
