

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