

## **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.