



Solving Problems that are Hindering Barbados' Development.

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5th September 2018

Clerk of Parliament
Parliament Buildings
Heroes Square
BRIDGETOWN

Attention: Clerk of Parliament

Re: Integrity in Public Life Bill

Dear Sir:

Thank you for the opportunity to appear before the joint committee on Friday 7th September 2018. It is a mark of political maturity to allow the public to comment on bills that may affect them, before they are passed into law.

It is important that legislation does what is intended, and prevents what is not intended, but which may be inadvertently allowed. To this end, the Integrity in Public Life bill was scrutinised to determine how vulnerable it was to having:

- a) the Commission, the Investigative Officer and/or Tribunals being politicised;
- b) guilty persons being protected and going unpunished;
- c) innocent persons being persecuted;
- d) whistle-blowers being discouraged from reporting evidence of corruption; and
- e) persons being discouraged from serving in public life.

The following recommendations are made with a view to eliminating or reducing these vulnerabilities. For your convenience, both the Section references and page numbers are provided.

Section 4.1a (Page 14): The Commission should record gifts not only forward as stated, but forwarded and received by persons in public life. Therefore, it should read “*gifts forwarded and received by persons in public life*”.

Section 4.2 (Page 15): The Commission should, at all times, be independent and not be under the direction and control of any person or political party. Therefore, “*the Commission may*

*not be subject to the direction and control” should read “the Commission **shall** not be subject to the direction and control”.*

Section 8.2 (Page 17): Since the consultants hired by the Commission are unlikely to be selected through public tender, a specified remuneration cap should be specified to prevent overcharging, which has happened in the past. Where there is no public tendering, the rates paid to consultants should be the same as those paid to public workers in the schedule of Personal Emoluments.

Section 9.1 (Page 17): Since the scope of the Investigative Officer’s authority is very broad and deep, and he/she must rely on his/her discretion, it is important that the qualifications of such a person be specified. To reduce the risk of abuse by another administration, it is recommended that he/she be a chartered professional at the grade of Fellow (expert level).

Fellows of professional bodies are normally invested in their professions and have complied with their Code of ethics for over a decade. Therefore, they are more likely to act in a fair, independent and unbiased manner. There is precedent for this. The government already specifies posts that require qualifications to the grade of Fellow of internationally recognised professional bodies (for example, the post of Actuary in the Exempt Insurance Act - CAP 308A).

Section 10.3 (Page 18): The Commission is not restrained by the rules of the Evidence Act which were designed to protect all of us. While it is reasonable that opinion evidence may be relied upon during the investigation phase of the process, the Bill should state that the Commission must not rely on any “*opinion evidence*” to determine someone's guilt.

Section 11.1 b (Page 19): This section appears to entitle a summoned person to be compensated for expenses, as if he had been summoned to attend the Supreme Court on a criminal trial. However, the person can only be paid whenever and however the Minister of Finance decides (Section 11.2). The Commission can also decide to simply not allow the summoned person to claim any expenses whatsoever (Section 11.3).

The common trend when persecuting political competitors is to attempt to bankrupt them, which can automatically disqualify them from being candidates. To have a person continually attend hearings for weeks can accomplish this aim, which is why the Evidence Act entitles innocent summoned persons to be reimbursed for both their **time and expenses**. This is natural justice since a person cannot refuse to appear when summoned, without consequences.

The Evidence Act appears to be carefully designed to protect innocent persons from political abuse. Section 11.1 b should entitle a person to time and expenses, to be paid within 3 months from the Consolidated Fund, as granted to the Commission’s staff in Section 33.5 b. Therefore Sections 11.2 and 11.3 should be omitted from the bill.

Section 11.4 e (Page 20): If a person insults a member of the Commission, then he is liable to be fined \$10,000 and imprisoned for 6 months. A person who is subjected to obvious unfair

treatment for as long as a politically compromised Commission decides, knowing that he will not be reimbursed for his time, is vulnerable to objecting improperly.

Further, a politicised commission can entrap and frustrate an innocent person. The penalty for insulting a member should be reduced to \$500, which should be enough to bring the offender to his/her senses, which should be the Commission's aim.

Section 11.5 a (Page 20): A person shall not be compelled to incriminate himself. However, according to Section 11.4, he is liable to be fined \$10,000 and imprisoned for 6 months, if he does not turn over documents. It should be clarified whether he can be compelled to turn over documents that can incriminate others, who in-turn will likely incriminate him.

Also, what prevents a person from answering every question with the sentence: "I cannot answer that question because it may incriminate me"?

Section 12 a (Page 20): While the Commission **may** require matters to be verified and witnesses to be examined under oath for preliminary inquiries, the Commission **must** do these things when determining someone's guilt. The Bill should specify this,

Section 14 d (Page 21): The Commissioner of Police must provide constables to do whatever the Commission directs. To give guidance to inexperienced constables who may be ordered to do something unlawful, and think that they can simply give the excuse that they were just following orders, it should read: "*perform such **lawful** duties as the Commission shall direct*".

Section 12.2 (Page 21): "*An investigative officer shall, after making an arrest, deliver the person to the custody of a member of the Police Force*". However, to reduce the risk of rendition, it should read "*An investigative officer shall, **immediately** after making an arrest, deliver the person to the custody of a member of the Police Force*".

Section 17.3 (Page 24): To address the seizure of computers and other information critical to the functioning of an accused person's legitimate business, the accused person should be allowed to retain copies, made under the supervision of the Investigative Officer. Therefore, a new item should be added (Section 17.4) to suggest the following.

"Where the material to be seized is, in the opinion of the owner, critical to the operation of his business, he shall be allowed to retain copies, made under the supervision of the Investigative Officer, before it is seized."

Section 19.2 (Page 25): To reduce the risk of unnecessary delays, a time limit should be specified for which the Commission must refer a complaint to a panel. We suggest within one month.

Section 21.1 a (Page 26): Trivial, frivolous, vexatious and bad-faith are subjective assessments that should not be provided to the panel as an excuse to avoid pursuing an investigation. A person complaining about seized documents may seem trivial to a lay panel,

but not to a Contractor whose critical documents were seized, and is liable for liquidated damages of \$50,000 per week on a construction project.

Section 21.1 b (Page 26): A lay panel may determine that an investigation may be deemed not necessary, since the seized documents may have been returned. But what about the quantifiable losses due to the Contractor whose documents were seized, and whose contract was terminated as a consequence. If members of the panel are not knowledgeable in the field being disputed, then the bar should be set low for an investigation to proceed.

Section 32.5 (Page 35): Once a person has retired from public life for 2 years, then he cannot be investigated. This is a glaring loophole for persons who have already retired. Also, persons can easily walk over this low hurdle by directing that bribes be paid to them 2 years after their retirement.

It can take over a decade for evidence of corruption to be uncovered by responsible junior staff. If a limit is to be specified, then the minimum should be the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 33.1 (Page 35): The Governor General should appoint a minimum of 2 persons to the tribunal, rather than the stated one person, and they should be Fellows of professional institutions for the reasons previously stated in Section 9.1.

Section 33.3 (Page 35): If a limit is to be specified on when an inquiry cannot commence, then the minimum should be the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 33.5 b (Page 36): The innocent person should be reimbursed for both time and expenses, not just expenses.

Section 35.2 (Page 37): The \$20,000 fine is too easily affordable for those who intend to pay someone to reveal declaration records. It should be at least \$200,000.

Section 36.3 (Page 38): What happens if a person simply refuses to pay the fine? Perhaps there should be an imprisonment provision for such blatant refusals.

Section 43.1 (Page 42): The \$15,000 fine and one year imprisonment is too lenient to be an effective deterrent. With such affordable consequences, a person can take the chance of not disclosing information, knowing that he can afford the fine. A minimum fine of \$150,000 and/or a 3-year prison sentence is an effective deterrent.

Section 45.4 (Page 43): Since relatives and friends can also offer bribes, this clause (Section 54.4) should be omitted. Every substantial gift should be reported like in Section 46.1.

Section 48 (Page 45): This loophole for persons who have already retired should be closed by specifying a period of the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 54 (Page 49): There is normally some sort of collusion with corruption. Therefore, every participant should benefit from the same deterrent, by facing the same penalty as accessories as shown below.

Section 54.1 a (Page 49): The fine should be a minimum of \$500,000.

Section 54.1 b (Page 49): The fine should be a minimum of \$500,000.

Section 54.2 a (Page 49): The fine should be a minimum of \$500,000.

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Section 54.3 a (Page 49): The fine should be a minimum of \$500,000.

Section 54.3 b (Page 50): The fine should be a minimum of \$500,000.

Section 56 a (Page 50): This loophole allows a person charged with corruption to be found innocent if he can claim that he had no knowledge of the circumstances giving rise to the act of corruption. Therefore, a person can simply reverse-engineer the corrupt activity to be able to claim that he had no knowledge, not of the corrupt act, but the circumstances giving rise to the act.

This clause places too much uncertainty and doubt before the adjudicator. Therefore, it should not be a specified defence to bind the adjudicator.

Section 59 (Page 51): “*Maliciously*” is too subjective an offence since anything can be misinterpreted as malicious. A better description of an offence that can be better measured is “**knowingly**”. It was used in similar circumstances in Section 36.1 e.

Section 60.1 (Page 52): To reduce the risk of whistle-blower victimization, especially when there is no monetary reward, anonymous reporting should be allowed.

It should be noted that anonymous reporting and financial incentives are proven main ingredients of an effective whistle-blower program, which the Bill does not contain. In the US, their highly successful Securities Exchange Commission’s program allows whistle-blowers to report anonymously, and rewards them with up to 30% of the amounts recovered. Anonymous reporting and financial incentives should be a part of the whistle-blower program.

Section 63 (Page 53): To prevent unnecessary delays, a 3-month time limit for the prosecutor to act should be specified.

Section 65.4 (Page 54): This loophole for persons who have already retired should be closed by specifying a period of the longer of 10 years after the person ceased to be in public life, or 5 years after the date that the Commission became operational.

Section 76.1 (Page 61): The affordable \$15,000 is not an effective deterrent for this offense. A minimum \$150,000 fine is an effective deterrent.

Section 77.2 (Page 62): This section contains a grammatical error. It should read “*contract of employment includes an agreement*”.

Section 79.2 (Page 63): The penalty should be the same as recommended for Section 35.2, namely a \$200,000 fine and/or 3 years imprisonment.

Section 79.3 (Page 63): Both givers and receivers of confidential information should face the same deterrent sentence of a \$200,000 fine and/or 3 years imprisonment.

Section 81 (Page 63): The person should be liable for the consequences of actions done in bad-faith, and the bill should specify that. For example, if the Investigative Officer would not allow an accused person to retain copies of his commercial documents, resulting in quantifiable damage to his business, then the Investigative Officer should be liable.

First Schedule (Page 65)

Section 1 a (Page 65): The chartered accountant commission member should be at the grade of Fellow, for the reasons explained in Section 9.1.

Section 1 b (Page 65): To reduce the vulnerability of selecting someone who is not sufficiently invested in their profession to act in a fair and independent manner, the clergyman commission member should have a minimum of 10 years of pastoral responsibility. Therefore; he/she would most likely have ministered to persons who support both established parties.

To further reduce the vulnerability of a partisan appointment, the person should be recommended by the Barbados Evangelical Association or a similar representative body, that would not want their reputation tarnished by recommending a known partisan priest.

Section 1 e & f (Page 65): To reduce the risk of unfair and biased decisions, the Governor General should appoint a Chartered professional at the grade of Fellow for the reasons explained in Section 9.1.

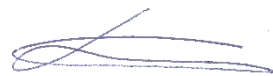
Section 2b (Page 66): Any person appointed by a Minister should be disqualified from membership of the Commission, since they are likely to remain loyal to the one who appointed them.

Section 2c (Page 66): Any person who was a Minister should be disqualified from membership of the Commission, since there is the obvious appearance of bias and politicization of the Commission.

We trust that meaningful consideration will be given to our recommendations, and where there is disagreement, discussion will be allowed to facilitate possible convergence of views.

Yours respectfully,

SOLUTIONS BARBADOS



Grenville Phillips II
President