

October 18, 2011

The Clerk of Parliament
Parliament Building
Heroes Square
BRIDGETOWN

Dear Sir,

Re: Submission On Prevention of Corruption Bill, 2010 to Joint Select Committee of Parliament

I submit this Memorandum pursuant to the invitation of the abovementioned Committee of Parliament. I now write as follows:-

1. CONSTITUTIONALITY OF LEGISLATION

Out of an abundance of caution, any legislation relating to disclosure of personal financial affairs should expressly declare that it applies even although it is inconsistent with the Protection of Rights and Freedoms Section (s) of our Constitution. The Trinidad and Tobago Integrity in Public Life Act adopts this position.

Such a provision of course means that the Act would need to be passed by a two-thirds majority of both of our Houses of Parliament. This ought not to be a hindrance, since both political parties have in the past publicly expressed their commitment to have such legislation on our statute books.

2. METHOD OF APPOINTMENT OF PREVENTION OF CORRUPTION COMMISSION

I do not believe that any Commission members ought to be appointed by the Head of State on the advice of either the Prime Minister or of the Leader of the Opposition, as is the case (two members in each instance) being proposed by the existing Bill. I believe that three members of the Commission (i.e. those other than the Chairman, Deputy Chairman, The ICAB recommendee and the BBA recommendee) ought to be appointed by the Governor General acting in his own discretion.

In fact, there is precedent for this position since in Antigua and Barbuda all three members of the Commission are appointed in such manner.

I also believe that the Commission ought to have seven members only, rather than eight. An even numbered Commission can result in the Chairman having a casting or second vote which, in my submission, is not in the full interest of democracy.

3. **DECLARATION OF AFFAIRS**

Section 12 ought, in my submission, to be amended to make it clear that the assets, income and liabilities mentioned consist of those both inside and outside of Barbados.

4. **REQUEST FOR INFORMATION FROM DECLARANT**

The person to be appointed as examiner under Section 14(3) ought also to be appointed in the Governor General's sole discretion and not by the Governor General after consultation with the Prime Minister and Leader of the Opposition.

5. **DECLARATION BY POLITICAL PARTIES**

Section 17 of the Bill, which speaks to this issue, is impractical in its present form. To mandate the two political parties in Barbados to file declarations stating the name and address of every financial contributor to them is not realistic and is unworkable. A more sensible approach would be to mandate such where the contribution is over a certain threshold, for example \$50,000.00.

Other challenges to such legislation are how would you value truthfully a contribution which is in kind rather than in money, what happens where the contribution is given to an election candidate who does not win his/her seat and who does not fall within the definition of "a person in public life" and what happens where the contribution is made to a political foundation created to financially assist the election candidate or Member of Parliament.

This Section, in my submission, definitely needs more thought. This issue ought perhaps to be dealt with by Campaign Financing legislation rather than by Integrity legislation.

6. **PRIVATE SECTOR CORRUPTION**

In my submission, legislation creating the post of Contractor General, similar to that existing in Jamaica for example, ought to be also enacted in order to give efficacy to Parts V and VI of this Bill. Without such an Official overseeing the award of contracts by

Government or Quasi-Government departments or Statutory Boards which are over a particular amount, these provisions will be to a large extent toothless and ineffective.

7. DEFINITION OF “PERSONS IN PUBLIC LIFE”

I do not believe that the President and Chief Executive Officers of registered trade unions per se should be included in this definition. It is, in my submission, both impractical and unnecessary to include trade union representatives within the ambit of this legislation. Additionally why should they be included when there is no proposal to similarly include the high echelons of private sector and employer organizations?

I also believe that ordinary members of Statutory Boards and of Government-Controlled Companies ought to be excluded. Only the Chairman and his Deputy need to be included.

However the definition needs to be widened to include not only Heads of Government Departments and public officers at the level of Permanent Secretary but also the following:-

- (a) Deputy Permanent Secretaries and Chief Technical Officers of Ministries;
- (b) Police Officers of the rank of Inspector and above;
- (c) Deputy Comptroller of Customs and Senior Customs Officers;
- (d) Deputy Commissioner of Inland Revenue, Senior Inland Revenue Officers, Auditors of the Inland Revenue Department and Senior Tax Compliance Officers;
- (e) Deputy Chief Immigration Officer and Senior Immigration Officers;
- (f) Heads and Deputy Heads of Divisions of Statutory Boards;
- (g) Deputy Commander of the Defence Force;
- (h) Deputy Head of the Coast Guard and Senior Coast Guard Officers;
- (i) Heads and Deputy Heads of Diplomatic Missions;
- (j) Chief Officers of the Prisons;
- (k) Members of the Tenders Board by whatever name called;
- (l) Deputy Auditor General and
- (m) Deputy Accountant General.

An examination of the Antigua and Barbuda legislation would reveal that all these categories of persons are included within its ambit.

The definition ought also to make it clear that General Managers and Managing Directors of Statutory Boards and Government-controlled Companies are included within the phrase “Chief Executives”.

8. **PUBLICATION OF NAMES OF OFFENDERS**

Any Barbados legislation ought, similarly to the Trinidad and Tobago legislation, to provide for the publication after a reasonable period, say six months, of the names of persons in the Official Gazette and in the daily newspapers who fail to file declarations within the stipulated time and without reasonable cause and who are required to so file.

Such a provision will, quite frankly, give more effect to this legislation.

The Barbados Parliament ought to also provide for the Commission at any time after such publication to apply to Court ex parte for an Order directing such persons to comply.

9. **CERTIFICATE OF COMPLIANCE**

Provision ought to be made for the issue of a certificate of compliance by the Commission to a person in public life on satisfactory compliance with the legislation, if so required by such a person.

10. **EXEMPTION FROM LIABILITY**

Our legislation ought, similarly to that of Trinidad and Tobago's, to exempt the Commission and its members from liability from any action or suit for any matter or thing done under the Act or within the course of their duties.

CONCLUSION

It is generally believed that corrupt practices have added significantly to the cost of conducting business with the public sector and government in a substantial number of countries. Barbados needs to ensure that the legislative framework exists to eliminate as much as possible such a notion and to enhance transparency and accountability in our Country's political and administrative governance. There is no doubt that our Country requires legislation of a similar nature to that being proposed by this Bill. Similar proposed legislation was first brought to Parliament some 30 years ago. Its enactment is now long overdue.

Parliament must still, as the legislative body of a small developing state which needs to maximize all its possible human resources, not make the criteria so onerous that persons with worthy contributions to make in public life are deterred from so serving. On

the other hand, Parliament also needs to ensure that certain categories of persons holding public office in the Country are brought within the purview of the legislation.

I respectfully commend these suggestions to the Joint Select Committee and trust that they would receive its due consideration.

Yours faithfully,

EDMUND G. HINKSON