



REPUBLIC OF TRINIDAD AND TOBAGO

REPORT TO PARLIAMENT

by

THE INTEGRITY COMMISSION

on its activities for the year

1991

*(Pursuant to section 10 of the Integrity in
Public Life Act, 1987)*

ANNUAL REPORT

OF THE

INTEGRITY COMMISSION

FOR THE YEAR 1991

FOURTH ANNUAL REPORT

INTEGRITY COMMISSION

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ANNUAL REPORT OF THE INTEGRITY COMMISSION FOR THE YEAR 1991

INTRODUCTION

The original commission of Dr. J. O'Neil Lewis expired on the 14th July, 1991, and that of Mr. Brian des Vignes on the 5th September, 1991; but in both instances the commissions were extended by His Excellency the President to the 31st March, 1994. The result is, therefore, that the life of the entire Commission will come to an end on the 31st March, 1994.

The Commission maintained its programme of weekly sittings during this year, as in previous years, and held in all 43 sittings, in most instances, with its full complement of members.

The level of compliance from "persons in public life" has continued in the main to be satisfactory, and declarants have shown a greater familiarity with their responsibility under the Act in the completion of Returns.

STAFF

There have been no changes in our clerical establishment. At this point in the life of the Commission, we do not wish to make any requests for any changes in our clerical arrangements as the staff have so far demonstrated that they are able to keep abreast of all the work of the Commission.

ACCOMMODATION

We wish once more to place on record that we await the provision of permanent accommodation for this Commission. Our tenure at the Hall of Justice was intended to be only on a temporary basis, and it has already been brought home to us that the Judiciary needs the space we occupy.

Before the General Elections in December 1991, our understanding was that some considerable progress had been made in that direction. It is now our hope that that initiative will soon continue to finality.

SUBMISSION OF RETURNS

While we can say that the general level of compliance in the submission of Returns has been satisfactory, yet we must point to a substantial level of tardiness by many persons in complying with the time frame laid down by law. In a number of cases, there have been persons who have been consistently ignoring the deadlines, and comply only after repeated reminders from the Commission.

The standard of compliance which the Commission is persuaded that the law requires is that -

- (a) the deadline fixed by law determines when the declarant would have satisfied his or her legal obligations, but
- (b) if for good reasons that deadline cannot be met, then the Commission, in its discretion, can extend the deadline.

Persons who fail to comply with the deadline or extended deadline should be reminded that they are in breach of the law, and are liable on prosecution to the penalties set out in the Act.

However, we must say that defaulters have complied, albeit tardily, with their requirement of submitting Returns, and of answering our queries.

At the end of 1991, our records show that the receipt and certification of Returns up to 31st December, 1991 was as follows:-

Declarations filed and certified	-	87
Declarations filed and not certified	-	10
Declarations not filed	-	5
Declarations not due by 31st December 1991	-	40

Since that date the record up to the time of filing of this Report is as follows:-

Declarations filed and certified	-	96
Declarations filed and not certified	-	05
Declarations not filed	-	07
Declarations not yet due	-	34

REGISTER OF PERSONS IN PUBLIC LIFE

As a result of the General Elections of December of 1991, there has come about a substantial change in our Register of Persons in Public Life, having regard to the influx of new members into Parliament. This has given rise to the large number of declarations not due by 31st December 1991.

So far as concerns those persons now making their first entry into Parliament, therefore, their obligation to file Returns is, in the first instance, in respect of their 1990 income, and then their obligation will accrue with the rest of the parliamentarians from the former government in respect of their 1991 income.

This result has come about having regard to the provisions of Section 15(1) of the Integrity in Public Life Act 1987 which provides that -

"A person in public life shall, on or before 31st May in each year, file in respect of **the year immediately preceding**, the declaration required of him under this Act." (Section 15(1)).

The declaration shall be filed irrespective of the fact that, during the year in respect of which the declaration is required **or in the following year**, the declarant ceased to be a person in public life otherwise than by death." (Section 15(2))

"A person who becomes a person in public life after the commencement of this Act shall, **not later than three months of his becoming a person in public life**, file a declaration in the prescribed form, with the Commission." (Section 15(4)).

In the result, therefore,

- (a) persons entering Parliament in December of 1991, will have the obligation of filing Returns with respect to their 1990 income in addition to their further obligation with regard to ensuing years; and
- (b) persons ceasing to be "persons in public life" after December 1991 will have a continuing obligation to file Returns with regard to their 1991 income."

We note that a strict adherence to the letter of this law has caused some resentment in persons who happen to serve for very brief periods in posts scheduled under the Act; and we consider that this difficulty can be overcome by an amendment to the effect that -

"the requirement to file a Return would devolve upon any person who performs the duty of an office scheduled under the Act for a continuous period in excess of sixty days in a calendar year."

This provision is borrowed from Section 101 of the Ethics in Government Act, 1978 of the United States.

We should point out that the staff of our Commission stands ready to assist any person who requires any explanation as to his or her obligations in the submission of Returns.

In previous reports, we included in some detail, matters which we considered to be projections for integrity legislation; and these matters drew largely upon sources abroad in the experience of other countries.

We do not consider that the matters raised in our Reports are in any way definitive of integrity legislation, and we do not propose to advert to them in this Report in any detail.

We consider, nonetheless that we might now summarize our recommendations especially having regard to the influx of new members into Parliament.

DECLARATION OF ASSETS

This provision we consider to be fundamental to all integrity legislation.

Persons entering public life should make known their financial standing at the outset, so that any sudden and unexplained accretions of wealth can be monitored.

The financial scandals in public life that have plagued countries throughout the world have come about because of the ease with which dishonest persons in public life have been able to amass with impunity great fortunes at the expense of the public exchequers or through dishonest and unethical practices in their public dealings.

We consider that the existing provisions of our law in this regard, should stand.

PUBLIC DISCLOSURE STATEMENT

We support the existing provisions of law which require that the financial affairs of declarants should be confidential. To provide otherwise would act as a discouragement to some persons to come forward for public service.

However, we consider that where there are areas of financial activity which could impinge upon a member's impartiality in dealing with public affairs, such dealings should be made public in a Public Disclosure Statement.

We consider that the Act should define such for public disclosure as

- Non-government employment.
- Trade, profession or vocation.
- Gifts and their donors in excess of \$500.00.
- Real property (other than property that is owner-occupied).
- Personal property (other than property used for family transportation, educational, recreational, social or aesthetic purposes)
- Directorships of Companies: public or private.
- Associations in any partnerships, joint ventures or other business enterprises.
- Financial interests in any Companies, partnerships, joint ventures, or business enterprise.
- Interests in any trust whether beneficial or not.
- Institutions and/or individuals to whom a liability in excess of \$10,000 is incurred at any time during the year

Any interest or involvement of the declarant or of his spouse or minor children in the above, should be disclosed, whether any income or benefit is derived or not.

We recommend that the Public Disclosure Statement should be prepared by the Commission from the declaration submitted by the declarant, outlining the details and extent of the financial involvement of the declaration on any of the above matters. We do not consider that the public's right to know should extend to the details of the declarant's private fortune, so therefore the amounts of a declarant's income and assets should not be disclosed.

PERSONS IN PUBLIC LIFE

We consider that the present provisions of law in this regard are not sufficiently wide so as to safeguard public integrity. The principle we seek to enunciate is that all those persons who are within the decision making process in public affairs should be brought within the provisions of the Act. Under this definition the following categories of persons together with their spouses and minor children would be brought under integrity legislation:

- Members of the House of Representatives
- Ministers of Government
- Members of the Tobago House of Assembly
- Members of Local Government bodies
- Full time Consultants and Advisers to Ministers, not being holders of public office.

OFFENCES UNDER INTEGRITY LEGISLATION

The Act now categorizes certain offences which attract the penalties of fine and imprisonment. These offences are concerned mainly to ensure the proper working of the machinery of the Act; and we support the continuance of these safeguards.

There are, however, certain other offences which now attract no penalties of the law, but which go to the root of honest administration, and these we would categorize as matters which should now be made illegal, and subject to new penalties declared by the Act. These, we list as matters of

- Conflict of Interest.
- Using information gained in public office for private gain.
- Using the influence of public office to further private interest.
- *Accepting benefits connected to public office, carrying on business incompatible with public office.*
- *Accepting office in the private sector immediately after retirement involving confidential information obtained as to government policies while in public office.*

These are matters which we would categorize as Misconduct in Public Office and we consider that the Commission should be given a supervisory *jurisdiction, and be empowered to make the following orders -*

That assets be

- placed in a Blind Trust;
- placed with the Public Trustee (until the person has ceased to be a person in public life);
- disposed of;
- forfeited to the State;
- otherwise dealt with.

Such orders should be registrable by the Director of Public Prosecutions as Orders of the High Court and be enforceable under the Rules of the Supreme Court.

We repeat our recommendation of our 1990 Report that

"After a finding by the Commission of Misconduct in Public Office or conviction at law for a breach of the Act, the Parliament, or other (local government) body would be empowered to make the following orders, on the recommendation of the Commission -

- (a) That a member be reprimanded,
- (b) That a member be required to vacate his office,
- (c) The member's seat be declared vacant.

With regard to the declaration at (c) where a member's seat is declared vacant, we would add however that when this drastic sanction is applied, the member concerned should have the right to offer himself at the polls again, thus making the electorate the final arbiter as to his qualification to hold office.

MEMBERS OF STATE ENTERPRISES

We have thought it fit to recommend that members of State Enterprises should not be required to submit Returns on the ground that such persons are all nominated to office, and so are accountable to their appointers, (who would have an inherent right to remove them) and also they fall under the supervision of the Public Accounts (Enterprises) Committee.

Such persons would, however, in our recommendation, fall under the supervisory jurisdiction of the Commission so far as concerns the offences of Misconduct in Public office.

PUBLIC OFFICE

We note that Public Officers now fall under the jurisdiction of the Public Service Commission so far as concerns (inter alia) the exercise of disciplinary control (section 21(1)); and it is our view that the more effective role which our Commission can discharge towards this category of persons might be in the exercise of a supervisory jurisdiction with regard to matters of Misconduct in Public Office, rather than in the monitoring of Returns of their finances.

For instance, a public officer who has the responsibility of advising a Minister, might well wish to seek the guidance of the Commission as to whether he is in a situation in which there would arise a Conflict of Interest in a matter in which he is acting officially or the Minister might himself wish to be so guided on the matter. The Commission's response on the matter would then provide some safeguard against any adverse repercussions in the ensuing action.

If any question of unjust or illegal enrichment should arise against such officers, then the ordinary provisions of the criminal law should, take their course.

THE DISTINCTION BETWEEN PERSONS IN PUBLIC LIFE AND PUBLIC OFFICERS

So far as concerns the necessity for the filing of Returns with our Commission, the distinction which we seek to draw that should relieve public officers from this requirement is that

- (a) Public Officers are not policy makers, but rather are merely executors of the policies of government; and
- (b) The whole conduct of their office is already subject to the exclusive jurisdiction of the Public Service Commission which can make any regulations it considers necessary to safeguard the proper conduct of persons under their purview.

Under our proposed supervisory jurisdiction, we would add that the Public Service Commission should be empowered to refer any matter to our Commission for its investigation and report, if that Commission should so think fit.

THE TRUE ROLE OF THE INTEGRITY COMMISSION

We have been at pains to point out in our previous Reports, that we do not consider that the role of this Commission is to function as a Crime Commission at all, and we are fortified in this conclusion by our observation of other like Commissions abroad.

The detection of crime and the prosecution of infractions properly fall, in our view, within the purview of the existing law enforcement agencies; and the strengthening of any perceived inadequacies in our law in this regard should properly engage the attention of those concerned with the general reform of our law.

We would define our true role to consist in

- (a) Seeking to provide a forum for the establishment of ethical standards in public life by counselling, admonition and educating.
- (b) Safeguarding the integrity of legislation by the exercise of its supervisory jurisdiction in the giving of opinions and ordering corrective action.
- (c) Reporting infractions of the law to the proper authorities with our recommendation as to the proper sanction that might be imposed.

OUR RELATIONSHIP WITH THE LAW ENFORCEMENT AGENCIES

We emphasize our previous recommendation that we do not seek to be provided with any investigatory arm of our own, but we consider that we should be empowered to call upon any of the law enforcement agencies to investigate and report to us on any matter which we should refer to them for their enquiry.

The corollary of that already exists in the Act whereby, when a matter is before the Court, an order for the production of a declaration may be made

What we would urge now is that having regard to what we perceive to be a general consensus that integrity legislation should be updated (starting with the Report of the Constitution Commission; and followed by the unequivocal pronouncements by all the major political parties in that regard) the time is now ripe for some indepth study of the subject, to be followed by a proposal for new integrity legislation to reflect that general consensus.

Our Commission would be happy to co-operate in any initiative that may be mounted in this regard.

SUBMITTED TO PARLIAMENT

this 30th day of March, 1992

GEORGE COLLYMORE
Chairman

J. O'NEIL LEWIS
Deputy Chairman

JOHN MARTIN
Member

JOHN OTTLEY
Member

BRIAN DES VIGNES
Member