



REPUBLIC OF TRINIDAD AND TOBAGO

REPORT TO PARLIAMENT

by

THE INTEGRITY COMMISSION

on its activities for the year

1995

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

THE EIGHTH ANNUAL REPORT

OF THE

INTEGRITY COMMISSION

OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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ANNUAL REPORT
OF THE
INTEGRITY COMMISSION
OF THE REPUBLIC OF TRINIDAD AND TOBAGO

FOR THE YEAR 1995

INTRODUCTION

This Report, for the year 1995, is the Eighth Annual Report to be submitted to Parliament by the Integrity Commission in accordance with the requirements of Section 10 of the Integrity in Public Life Act, No. 8 of 1987, enacted as provided by section 138 of the Constitution.

Constituted under the authority of the President, this Commission took office on the 7th January, 1988, and has now functioned under three successive parliamentary administrations. Its current term of office is due to expire on the 31st March 1997.

ACCOMMODATION

It will be recalled that, on our assumption of office in 1988, the Commission, through the kind courtesy of the Chief Justice, took up temporary residence at the Hall of Justice; and that in March of 1995 we moved into premises at the Furness Building on Independence Square which we are expected to occupy for the next two years. It is hoped that, by March 1997, the construction operations now in progress at the site of the new Industrial Court Building will have been completed and that the premises earmarked for the permanent home in that Building for this Commission will be ready for our occupation.

STAFF

Miss Jean Rudder, Executive Secretary, retired from the public service on April 18, 1995. As a consequence, Miss Lenore Hewitt has been appointed to act as Executive Secretary, and Miss Virginia George has been appointed to act as Clerk Stenographer III. Miss Ann Sylvester was also appointed as a Part-time Maid from April 24th 1996. She replaced Miss Theodora Baptiste.

THE WORK OF THE COMMISSION

Register of Persons In Public Life

As a result of the General Elections of November 1995, which saw a new administration coming into power, many new "persons", within the meaning, in the Integrity in Public Life Act, of the term "***persons in public life***", are now caught within the ambit of the relevant provisions of that Act. As a consequence, not only has our Register of such persons been altered to reflect this event, but the number of registrable persons has markedly increased.

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 1994 income, and then their obligation will accrue with the rest of the parliamentarians from the former government in respect of their 1995 income.

This result has come about having regard to the provisions of Section 15 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 reason of 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 November of 1995, will have the obligation of filing Returns with respect to their 1994 income in addition to their further obligation with regard to ensuing years; and*
- (b) persons ceasing to be "persons in public life" after November 1995 will have a continuing obligation to file Returns with regard to their 1995 income.*

To the newcomers (and, indeed, to all "persons" under the Act), our Commission offers the assurance of our readiness to provide any assistance they may need to enable them to fulfil their obligations as required by the Act.

Submission of Returns

Under the Act, it is our duty to satisfy ourselves that the "income, assets and liabilities" of each declarant are accurately and faithfully reflected in each declaration filed. To this end, we have from time to time considered it necessary to exercise our powers under section 14 to require of declarants further particulars of their financial affairs. We are pleased to acknowledge that we have received full co-operation from all persons concerned in that exercise; and in all cases there has finally been no need for any further investigation as permitted by the Act.

We regret to have to report however, that the obligation, laid down under section 15(1) of the Act, requiring declarations to be filed "on or before 31st May in each year", continues to be more honoured in the breach than in the observance. The norm now seems to have become established that the majority of declarations trickle in well after that date, and often only after repeated reminders to defaulting declarants.

It may be appropriate, therefore, to remind "persons in public life" of the provisions of section 22 of the Act which says that -

"Where a person who is required to do so fails to file a declaration in accordance with this Act or without reasonable cause fails to furnish particulars under section 14, the Commission shall publish the fact in the Gazette."

The sanctions set out at section 27 should be noted, as follows:

A person who -

(a) fails, without reasonable cause, to furnish to the Commission a declaration or further particulars thereof which he is required to furnish in accordance with the provisions of this Act,

is guilty of an offence, and liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for a term of two years....."

We have refrained, however, from invoking the provisions of the Act strictly, and have sought instead to enlist the co-operation of persons to comply with its provisions, which, in the main has been achieved, but sometimes only after inordinate delays. We wish to exhort the persons concerned, therefore, to emulate the example of those others who have been punctilious every year in the discharge of this public duty.

Record of Returns

For the year ending 31st December 1995 our record of the receipt and certification of Returns is as follows:

Declarations filed as at 31st May, 1995	13
Declarations filed as at 30th September, 1995	70
Declarations filed as at 31st December, 1995	83
Declarations due and not filed by 31st December, 1995	18
Declarations not due by 31st December 1995	21 (New Members)

Since 31st December, 1995, our record is as follows:

Declarations filed	101
Declarations filed and certified	99
Declarations due at 31st May, 1995 and still outstanding	6
Other declarations now due and not filed	14 (New Members)

The influx of new members into Parliament has given rise to the large number of declarations not due by 31st December 1995, and those now due but not filed.

Blind Trusts

We adverted to this subject in our 1988 and 1993 reports, and we feel it incumbent on us to do so once more, having regard especially to the expanded number of "*persons in public life*".

The Integrity in Public Life Act does not lay down any requirement on any person to place his assets in a blind trust but says merely:

"A person in public life may place his assets or part thereof in a blind trust for the purposes of this Act and file a copy of the trust deed with the Commission." Section 21(1)

The device of a blind trust was created so that persons coming into public life with financial dealings in business or professional life should be able to discharge their public functions

- (a) without the distractions that would come about when the demands of their financial dealings would detract from the time and energy necessary to devote to their public functions; and

- (b) to guard against any possibility of a conflict of interest between their financial interests and their responsibility towards the interests of the State.

Basically, what the provision sets out is that a person may place his assets in the hands of trustees, who would manage his affairs in their sole discretion, and without reference to him during the time that he holds public office.

This is a provision that has so far been but sparsely used by persons coming under the Act, and if the letter of the law had made it obligatory that persons within its ambit should create such a trust, there would have been felt a greater compunction upon persons to have access to its provisions. In other countries where wider powers are exercised by ethics commissions, such a power is a normal feature of their legislation.

For ease of reference, we cite the rest of section 21 as follows:

- "(2) Where the assets of a person in public life are placed in a blind trust, he need not in his declaration give more particulars of those assets than the amount and description of the assets placed in that trust and the date of so doing.*
- (3) Notwithstanding any other law relating to the duties of trustees, a trust company managing assets of a person in public life by way of a blind trust shall reply fully to any inquiries of the Commission relating to the nature and management of the assets in the blind trust.*
- (4) A blind trust is created when a person in public life enters into an agreement with a qualified trust company whereby -*
 - (a) all or any part of his assets are conveyed to the trust company for its management, administration and control, in its absolute discretion without recourse or report to the persons beneficially entitled to those assets;*
 - (b) income derived from the management of the assets is to be distributed to him as agreed;*
 - (c) should the assets be converted into other assets, that fact is not to be communicated to him, until he ceases to be a person in public life; and*
 - (d) after he ceases to be a person in public life proper and full accounting is to be made to him, as the circumstances of the management of the trust require.*

- (5) *A trust company is a qualified trust company where -*
- (a) *it is incorporated in Trinidad and Tobago and is carrying on business in Trinidad and Tobago;*
 - (b) *no more than five percent of the issued shares in the trust company or its affiliate is held by the person in public life entering into an agreement with it, or by any other person associated with him; and*
 - (c) *the person in public life holds no directorship or office in the trust company or its affiliate.*
- (6) *A company is the affiliate of another where it holds more than five percent of the issued shares in that other or where that other holds more than five per cent of the issued shares in it.*
- (7) *For the purposes of this section, a person is associated with another where that other is -*
- (a) *the spouse or child of the person; or*
 - (b) *the partner of the person in a professional, trade, or commercial undertaking; or*
 - (c) *a corporation and any person mentioned in paragraph (a) or (b) controls the corporation, its holding corporation or a corporation affiliated with either.*
- (8) *In subsection (7) -*
- (a) *"child" means a child whether of full age or not and includes a child of the family within the meaning of the Matrimonial Proceedings and Property Act;*
 - (b) *"control" shall be construed in accordance with rule 3 of the Third Schedule of the Corporation Tax Act."*

It would seem clear from a reading of section 21 in particular, and of the general purposes of the Act, that the intention of the Legislature, if not its specific language, was that all persons coming into public life whose previous financial dealings could impinge upon their public duties *should* avail themselves of the provisions for the setting up of a Blind Trust over their private affairs. We feel, therefore, that every person so placed that the management of his personal affairs might conceivably impinge upon his public responsibilities should avail himself of the provisions of section 21.

It is not every "person in public life" who would need to create such a trust, and it is to be hoped that in future legislation, this Commission should be empowered to establish guidelines for the regulation of this matter.

GREEN PAPER ON INTEGRITY

In August of 1994, the Senate of Parliament resolved that there should be set up a Working Party to do a review of the current integrity legislation with a view to making proposals for the strengthening of its provisions; and to this end the Honourable Mr. Justice Guya Persaud, the Chairman of the Law Commission, was appointed Chairman of this Working Party, which included representatives of the Integrity Commission, the Public Service Commission, the Office of the Ombudsman, the Auditor General, the Ministry of Finance and the Ministry of Trade and Industry.

The Working Party completed its Report in December of 1995, but in the meantime, a new administration was voted into office, and this report was forwarded to the then Attorney General, Mrs. Kamla Persad-Bissessar on December 13th 1995.

We have studied this Report, and we are pleased to record our respectful agreement with its findings.

In broad and general terms, what this Commission would propound is that:

- I. In a democratic society, no person, however exalted his station in life, is above the law, and, in the case of persons exercising public functions, all such persons are answerable to their fellow man for the due performance of their duty.
- II. Under our Constitution, the Parliament is supreme within its sphere of operations, and as such, parliamentarians must be free from any restraints other than such restraints which Parliament itself may impose upon its members.
- III. The role of an Integrity Commission, therefore, can be seen only as an adjunct in the service of Parliament, when any breach of integrity standards which Parliament itself may lay down may be inquired into by this Commission under powers granted in integrity legislation for the investigation of such breaches.

- IV. The duty of the Integrity Commission, therefore, would be to proceed upon such inquiry at the command of the Parliament, and to report back to Parliament on its findings, with its recommendation as to how the matter should be dealt with.
- V. The responsibility would thereafter rest with Parliament to accept, reject or amend that recommendation in its sole and absolute discretion.
- VI. In the case of Municipal Corporations and Statutory Corporations, all persons so placed as to be in a position to make policy decisions which affect the public weal should be categorized as "persons in public life" within the meaning of the integrity legislation, so as to be subject to the scrutiny of the Integrity Commission under like procedures as apply to parliamentarians; except that persons who are merely nominated to service on statutory boards should not be subjected to the requirement of having to submit Returns of their financial affairs.
- VII. The statutory boards which should be subject to integrity legislation should be determined by Parliament by Order under the Integrity legislation.
- VIII. In the case of persons falling under the various Commissions under the Constitution, (including the Statutory Authorities Service Commission) a record of their financial dealings which might impinge upon their public responsibility should be maintained by these Commissions; and also appropriate regulations should be enacted so as to exercise disciplinary control over their members. There should be recourse to the Integrity Commission for its Report on any breach of integrity standards only if requested by the appropriate Commission.

CONCLUSION

We are convinced that the message that came out of our Symposium in 1993 is that the public is clamouring to be satisfied that there will be put in place mechanisms to establish ethical standards on the part of all persons called upon to perform public functions; and we as a Commission are of the opinion that the time is now ripe for these mechanisms to be established.

Trinidad and Tobago is fortunate in this respect, that we now have the experience of those countries of the world which have taken the lead in this matter; and we feel that when we join those ranks, we would establish for ourselves the repute which would enhance our standing among the nations of the world.

Our Report is respectfully submitted to Parliament this *28th* day of MARCH 1996.

GEORGE COLLYMORE
Chairman

JAMES O'NEIL LEWIS
Deputy Chairman

JOHN MARTIN
Member

JOHN OTTLEY
Member

BRIAN DES VIGNES
Member