

ADDRESS BY JUSTICE MELVILLE BAIRD,

CHAIRMAN, INTEGRITY COMMISSION:

CRACKDOWN ON CORRUPTION – FACING THE REALITY

Why are we gathered here this morning? My answer: “to crackdown on corruption”. The theme of our conference has set the stage. It is a call to arms; it is a line drawn in the sand; it is a declaration of war.

In the past the doctrine would have been assiduously preached that corruption was an abominable evil; we would have railed against the deleterious effects that corruption was having on the economy and consequently on society; we would have called for action to bring about its neutralization. This was desirable and appropriate.

But now looking through the lens of the theme of the conference I say, the time has come for that action; the time has come for a crackdown on corruption. And in my presentation today I shall endeavour to take a tentative step in that realization.

In so doing I must acknowledge that I received no small amount of inspiration from Robert Klitgaard in his paper, “Public-private Collaboration and Corruption,” which formed his contribution to the Mark Pieth’s edition of “Collective Action: Innovative Strategies to Prevent Corruption”. I drew quite generously from Klitgaard’s paper as I formulated this presentation.

Ladies and gentlemen I present for your consideration the theory of Collective Action.

And what is Collective Action?

The World Bank Institute defined the concept of Collective Action¹ as a collaborative and sustained process of cooperation amongst stakeholders which increased the impact and credibility of individual action, brought vulnerable individual players into an alliance of liked-minded organisations and levelled the playing field between competitors.

It stated further that Collective Action should complement or temporarily substitute and strengthen weak local laws and anti-corruption practices.

Alexandra A. Wrage in her paper “Collective Action: a Compliance Case Study”,² considered that Collective Action was based on the principle that the combined efforts of an informed and motivated group, would have a greater impact at a lower cost than the scattered efforts of many actors.

Mark Pieth wrote that the promotion of Collective Action was a crucial element in a wider strategy of combatting corruption; it was about moving from talk to action³ – and that is the place to which I want to take us this morning.

Although Collective Action primarily serves big, international business – indeed Pieth was of opinion that its main significance was as a way out of serious dilemmas in international business⁴– I harbor the view that it could and indeed should be applied across the board from international to street level. Robert Klitgaard was convinced⁵ that business people, citizens, citizens groups and government officials could help diagnose, redesign and monitor corrupt systems.

¹ WBI 2008 “Fighting Corruption through Collective Action, a Guide for Business 2008”

² Collective Action : Innovative Strategies to Prevent Corruption, Mark Peith (ed)

³ Mark Peith: Collective Action and Corruption

⁴ Ibidem

⁵ Robert Klitgaard: Public-private Collaboration and Corruption

Commenting on collective action, Kingston stated⁶ “the citizens or firms dealing with a corrupt government official would all benefit from an agreement not to pay bribes, but each has an incentive to pay bribes to get preferential treatment.”

I was at one with these authors, in the views I expressed in my paper at a panel discussion at the Fourth Annual Conference of Commonwealth Caribbean Association of Integrity Commissions held in 2018 in the Turks and Caicos Islands. In my paper I stated inter alia, “if a citizen holds his ground and refuses to pay a bribe for certain goods and services, then that citizen must be supported by the rest of the community. Everyone must take a stand and refuse to pay a similar bribe for those goods and services. There must be solidarity in this effort; there must be no backsliding; there must be no viper in the nest, because if there is, then this would severely defeat the purpose of the exercise...”

The dynamism of Collective Action was illustrated by Transparency International in the pioneering of Integrity Pacts. Where firms are bidding on big contracts, each one signs a pledge in which each undertakes not to bribe. Each firm also pledges that, should any firm that is a signatory to that pledge think that any one of the other signatories did in fact bribe, then the suspected firm would open its books for inspection.

This would be empowering the firm to tell the corrupt official: “I would love to pay you, but the other firms would find out and I would be ruined”.

Klitgaard considered⁷ that civil society i.e. the people, have distinctive competencies in the fight against street level corruption. He identified one such competency as knowledge. Collectively, the people knew where corruption occurred amongst the various government officials and departments.

⁶ Kingston, 2004

⁷ Robert Klitgaard: Public-private Collaboration and Corruption

The business people, the lawyers, the accountants were all better qualified to know the workings of corruption in their respective environments. Citizens would be aware of the manner in which corruption affects them e.g. in getting their driver's permit or receiving other public services.

The challenge however, lay in the extraction of the knowledge that these stakeholders possessed without exposing them to danger.

In my estimation this could prove to be a very delicate exercise. But it can be done and it could very well be that first step in the ultimate demolition of corruption. We cannot lose sight of our goal however; we must stay the course, we must remain focused.

In this context of staying focused, permit me to say a few words by way of clarification of a notion that is exponentially gaining currency, that is, that there have been no convictions under the Prevention of Corruption Act or Integrity in Public Life Act, notwithstanding flagrant breaches. Could it be that the Integrity Commission is losing its focus? I do not think so.

I am now in the position of Chairman of the Integrity Commission for a period of one year and two months.

It could have been naiveté; it could have been inordinate trust, it could have been credulity, it could have been all of the above, but ladies and gentlemen, as I began my tenure of office I really thought that in my public speeches I could have induced persons in public life to do the correct thing and file their declarations of income, assets and liabilities, notwithstanding dismal past performances.

I was convinced that I could have appealed to their sense of responsibility, to their civic mindedness, to their commitment to country; I was convinced that I could have caused a patriotic chord to resonate and move them to file their declarations.

And so in my various speeches I encouraged them to do the right thing. I stressed that this call for filing of declarations was not the product of some misguided idiosyncrasy of mine; I did not sit and pull it out of the ether. It was the law of the land.

After months of trying, my efforts proved to be, in the main, unsuccessful.

I was driven therefore, to adopt a more coercive approach - legal action.

In September 2018, the Commission made ex parte applications to the High Court for orders against persons who had failed to file their declarations, directing them to do so under pain of criminal prosecution. The orders were all made and all those persons who had been served with orders have complied therewith, bar one. The Commission will be making a further application to the High Court for action under section 11 (8) of the Integrity in Public Life Act in respect of that one.

In my message on the occasion of International Anti-Corruption Day on December 2018, I asserted: "...if legal action is the only way in which compliance with the Integrity in Public Life Act would be assured, then I will take legal action...."

Last month, February 2019, the Commission made further ex parte applications to the High Court for orders against persons who had not filed their declarations. I am closely observing the attitude of those persons in respect of whom orders have been made. If they obey the orders, no charges would be laid and so the question of convictions under the Integrity in Public Life Act would not arise.

I should add that the number of ex parte applications we make to the High Court is dictated by available resources.

I will also be closely monitoring the situation where persons in public life are required to file their declarations by 31st May of this year and there is a very strong possibility that failure to so file could result in names being sent to the DPP for prosecution under section 21 (1) of the Integrity in Public Life Act.

Failure to comply with the order of the High Court would amount to an offence punishable with a fine of \$150,000.00 and failure to file a declaration by 31st May would amount to an offence punishable with a fine of \$250,000.00 and to imprisonment for 10 years.

If persons in public life would prefer to pay lawyers hundreds of thousands of dollars to represent them in court on these charges with the possibility that they might still have to pay the fines mentioned above, or even go to prison ... if they prefer to go that way rather than file a simple declaration form, then so be it.

Let me conclude these remarks on this aspect of the focus of the Integrity Commission with a coda, if I might be permitted a musical term.

The Integrity Commission is a creature of the Integrity in Public Life Act; we derive our power and jurisdiction from that Act. When therefore we have done all that that Act requires us to do in any given situation and the Act then mandates us to refer the matter to another entity for action by that entity, our jurisdiction over the matter terminates on referral to that entity.

In this context matters have been referred to the DPP under both the Integrity in Public Life Act and the Prevention of Corruption Act.

Ladies and Gentlemen, in our opposition to corruption there is one avenue which members of the public can adopt in order to make reports of corruption i.e. the Integrity in Public Life Act. Indeed the Integrity Commission has recommended amendments to the Integrity in Public Life Act that would give it more and sharper teeth. These amendments are now before Cabinet and we are holding our breath as we await word of their fate.

As we consider the manner in which we could extract knowledge from stakeholders in the fight against street level corruption however, what we need with some measure of immediacy is the facility for stakeholders and members of the public to report their experiences with corruption, easily, quickly and anonymously, in order for us to effectively gather vital information about the causes, courses and ultimately defeat of corruption.

As if in anticipation of this paper today, in a presentation at the very conference in the Turks and Caicos in 2018, I said: “Citizens must be prepared to trade their experiences of corruption with one another and to share suggestions and ideas as to how their mistakes could be avoided in the future.”

Is it possible therefore that placed as we are in this situation we could have a website where members of the public could describe their experiences with corruption to each other?

Further, could we encourage members of the public who have managed to avoid paying bribes, to share through the website, the ways in which they overcame that obstacle - in other words, how they succeeded in neutralising corruption in their daily living?

Klitgaard presented⁸ a scenario that constituted a clear resolution to these questions. He identified the website aptly named “Ipaidabrike.com” which was brought online in India by Swati and Ramesh Ramanathan along with Sridar Ayengar.

The website urged contributors not to report names, stating that their aim was to change processes, not target individuals. Members of the public could go to that website using SMS, Twitter or Facebook and report acts of corruption e.g. how much did you have to pay to ‘succeed’ in the driving examination you never took? How much did you pay to obtain your driver’s permit?

Ipaidabrike focuses on crowd sourced reports of retail corruption and bribery. These reports then become the bedrock of a body of valuable and vital data about bribery.

What I find particularly exciting about this website is that it takes individual reports and generates tables and maps showing where corruption is occurring and the cost of various transactions and in so doing, enabling stakeholders to arm themselves in the fight against corruption.

One of the several stories about the success of Ipaidabrike is in the Indian State of Karnataka. There, the Commissioner of Transport, using data from Ipaidabrike, pushed through reforms to the Motor Vehicle Department. Amongst other things, licenses are now applied for online and driving tests are automated.

The concept of Ipaidabrike has gone stratospheric. At least twenty countries have apps that are variations on that main theme. I strongly advocate that Trinidad and Tobago should get on board with our own variation of the Ipaidabrike motif.

⁸ Ibidem

We do not have to slavishly reproduce the original idea atom by atom; we can adopt the concept and adapt it to our circumstances, putting our own spin on it. Who knows? This could be the beginning of a definitive crackdown on corruption.

Now, should the project get off the ground, it would not be unreasonable to imagine that it might be abused. It might be abused by those with a flawed sense of humour; it might be abused by those who are constitutionally incapable of being responsible and at the same time, are absolutely untouched by enlightenment; it might be abused by those with their own agenda.

Let us not be deterred by these ruminations. To do so would be tantamount to raising the white flag before the opening of hostilities; throwing in the towel before the first bell of the opening round.

If a scintilla of practicability could be found in this proposal, then I say let us go forward. Let us take that pivotal first step and as we progress we could develop techniques to deal with the negativity. We could also seek advice from those countries in which the system is fully functioning and which would have encountered similar drawbacks.

Now, ladies and gentlemen, what logistics can we employ as we approach and address this conception so that it becomes viable and utilitarian, alive to the fact that the extirpation of corruption must be a prolonged process. It cannot be an event.

It is not disputed that setting up this website would be an expensive exercise; further, resources, human and otherwise would be needed for the day to day operations.

Additionally, at some point we would have to move on from this initial watchdog role to practical solutions.

Ipaidabrike in India was very well funded; several other social network sites however, were not that fortunate. There was the extreme case where Ipaidabrike in Kenya was funded from the founder's own pocket.

It would be a dream come true, if our project could be funded by government; but dreams do not always come true, and so we might have to resort to other sources such as NGO's and companies. But let us do something.

I might add that Crimestoppers and whistleblowing though employing different approaches, would share the same goal as Ipaidabrike and would certainly complement our efforts.

Ladies and gentlemen, I put forward this idea and set it afloat as an exploratory step in the crackdown on corruption. It is my sincere hope that it would attract favourable attention and that whatever configuration it eventually assumes, it would go on to serve as a template for the ultimate obliteration of corruption in our society.