

## VIRTUAL CONFERENCE

### **COMPLIANCE UNDER THE INTEGRITY IN PUBLIC LIFE ACT.**

**A paper by Mr. Justice Melville Baird,  
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It falls to my pleasurable lot this morning to provide some insight into the mechanics of Sections 11 (1), 13 (1) and 14 (1) of the Integrity in Public Life Act and also to provide a grain or two of elucidation of the architecture of the compliance that those sections demand.

The Integrity in Public Life Act No. 8 of 1987 (“the Act”) was assented to on 11<sup>th</sup> May 1987; this brought into effect section 138 of the Constitution of the Republic of Trinidad and Tobago which provided for the establishment of an Integrity Commission (“the Commission”).

The independence of the Commission is guaranteed by section 5 (2) of the Act which provides:

“In the exercise of its powers and performance of its functions under this Act, the Commission-

- (a) Shall not be subject to the direction or control of any other person or authority; ...”

The language of the section is pellucid and unambiguous and admits of no further comment.

The members of the first Commission took the oath of office before the President on 7<sup>th</sup> January 1988 and thereafter began sitting in the Hall of Justice in accommodations which consisted of three (3) Judges’ Chambers on the second floor and an ante chamber. The Commission held fifty (50) sittings for the year 1988 and in its report was able to state that there had been no instance of failure to file declarations in the preceding year. The Commission was at the Hall of Justice until March 1995 when it removed to the Furness House. After two years at Furness House, the Commission was then based for two (2) years at the Industrial Court. It was then housed at the Unit Trust Corporation Building from 2000-2015 and finally came to rest at the International Waterfront Centre, Tower D, Level 14.

As I embark on the main subject of my presentation, I consider it desirable that I outline the provisions of these three sections.

Sections 11 (1), 13 (1) and 14 (1) fall under Part III of the Act- Financial Disclosures.

Section 11 (1) provides:

“A person shall, within three (3) months of becoming a person in public life, complete and file with the Commission in the prescribed form, a declaration of income, assets, and liabilities that exceeds ten thousand dollars (\$10,000.00) in value in respect of the previous year and, thereafter, the 31<sup>st</sup> of May in each succeeding year that he is a person in public life, he shall file further declarations of his income, assets and liabilities.”

Section 13 (1) provides:

“The Commission shall examine every declaration that is filed and ensure that it complies with the requirements of the Act, and may request from a declarant, any information or explanation relevant to a declaration made by him and which would assist in its examination.”

Section 14 (1) provides:

“A person in public life shall file with his declaration under section 11, an additional statement of registrable interests in the prescribed form which shall contain the information required by subsection 3. The information required by subsection 3, very compendiously, is: particulars of any directorships, any contracts made with the state, any political, trade or professional association to which the person belongs, any sources of income, a concise description of any trust to which the person is a beneficiary or trustee, any fund to which the person contributes and any other substantial interest whether of a pecuniary nature or not, which he considers may appear to raise a material conflict between his private interests and his public duty.

At this juncture, I consider it worthy to state and to stress that although the Act is applicable to both a person in public life and a person exercising a public function (section 3) only a person in public life is caught up by sections 11 (1), 13 (1) and 14 (1); these sections make no mention of a person exercising a public function. Put another way, a person exercising a public function is under no obligation to file an annual declaration of income, assets and liabilities and a statement of registrable interests. It is noteworthy that the group comprising “persons exercising public functions” (section 2) includes all persons holding office under the Public Service, Judicial and Legal Service, Police Service, Teaching Service and Statutory Authorities’ Service Commission, as well as members of the Diplomatic Service and Advisers to the Government. This is by no means a small amount of people. Arguably, the possibility of having thousands of persons in this group, file declarations along with the hundreds of persons in public life already having to file declarations might have proved to be a daunting prospect.

It is only when we come to Part IV of the Act: “Code of Conduct” and Part V: “Power of Investigation” that persons exercising public functions are mentioned alongside persons in public life.

The chrysalid years of the Commission were hesitant and tentative, as it formulated policy, practice and procedure. In currency during that period of plasticity was the notion - and to my mind not an unreasonable one - that the Commission could have relied on the sense of responsibility of persons in public life that they would come in and file their declarations without the need for drastic sanctions. And so the Commission urged and encouraged persons in public life to come in and file their declarations.

Although in the early life of the Commission the number of non-compliant declarants was small, with the march of time that number exponentially increased; as did the number of appointed persons in public life. A culture of disobedience and refractoriness gradually took shape and flourished. And this intolerable situation was aggravated by the fact that quite a number of those non-compliant declarants were persons holding positions that made them exemplars in society.

In an endeavor to deal with recalcitrant declarants, section 11 (6) provides for the name of a person in public life who is in breach of section 11 (1), section 13 (1) or section 14 (1) to be published in the Gazette and in at least one daily newspaper in Trinidad and Tobago. Should that declarant persist in his obduration after his name has been published and fail to file his declaration then there is section 11 (7).

Section 11 (7) empowers the Commission to make an *ex parte* application to the High Court for an order directing such person to comply with the Act.

Failure to obey the order of the High Court amounts to an offence punishable on conviction with a fine of one hundred and fifty thousand dollars (\$150,000.00) [section 11 (8)].

The first publications of the names of non-compliant declarants in the newspapers took place in September 1998, when eight (8) names were published. There then followed a hiatus of eight (8) years - the reason for this interruption could not have been ascertained - and in 2006, twenty-two (22) names were published.

As the formation of the Commission progressed, it was greatly disadvantaged in two (2) crucial areas: 1. its support staff was woefully inadequate, and 2. it did not have a legal unit of its own. These hindrances contributed substantially to the fits and starts with which the Commission functioned for years. When therefore, the Commission decided to activate section 11 (7) and to take non-compliant declarants to the High Court, it was constrained to outsource to legal firms in order that those firms could file the *ex parte* applications in the High Court. During the period 2006- 2014 thirty-nine (39) such applications were made to the High Court.

The Commission finally received its Legal Unit in September 2015, but the first *ex parte* applications made by the Unit was in 2017. The decision of the Commission for this lapse of almost two (2) years is covered by the confidentiality section of the Act. Five (5) applications were filed.

I was sworn into office by the President of the Republic on December 14<sup>th</sup>, 2017 and assumed duties on January 8<sup>th</sup>, 2018. On March 12<sup>th</sup>, 2018 a backlog of names of eight hundred and seventy-one persons (871) in public life who had failed to file their declarations for the years 2011-2016, was published in the newspapers. Be it admitted that after publication of their names, a significant number of persons in public life came in and filed their declarations; some however remained unrepentant.

Concerned by both the large number of non-compliant declarants and the conduct of those persons in not filing their declarations after publication of their names, in the very 2018, my first year in office, I moved against non-compliant declarants by way of High Court proceedings.

Cabined and confined however, by circumstances which I shall detail later in my presentation, the Commission could not have filed more than twenty-nine (29) *ex parte* applications in the High Court for orders against non-compliant declarants. The orders were all made by the Court.

In my public speeches, on several occasions, I expressed my determination to bring all non-compliant declarants to compliance. And so, in 2019 we had two (2) sets of publications of names of persons in public life who had failed to file their declarations.

The first publication was on 18<sup>th</sup> June, 2019 when eight hundred and forty-one (841) names of persons who had not filed declarations for the year 2018 by the statutory period 31<sup>st</sup> May 2019, were published.

This attracted nationwide media attention and occasioned some commotion of the public mind. Several persons were called upon to give reasons for their failure to file their declarations; some were interviewed on radio, television and the print media. This unfavorable glare of publicity instilled the liveliest apprehensions in the hearts of other non-compliant declarants, galvanizing them into action; this resulted in a quantum leap in the compliance rate which, at the end of December 2019, was sixty-five percent (65%).

The second publication was on 15<sup>th</sup> August 2019; this was for the period 2015-2017 in respect of which five hundred and sixty-eight (568) names were published.

Attention is drawn to the fact that in March 2018, the names of persons who had failed to file their declarations for the years 2011-2016 were published; this obviously included the years 2015 and 2016. The second publication in 2019 was in respect of the years 2015-2017. And again, this included 2015 and 2016. It behoves me now to explain why the years 2015 and 2016 were included in the publications of 2018 and 2019.

When a person receives an appointment which makes him a person in public life, the administrative head of the government department or ministry to which that person has been appointed is required to furnish the Commission with the name, date of appointment and other relevant particulars of that person. On receipt of those particulars, the Commission will include them in a database and would check at the appropriate time to see whether that person has filed his declaration. If he has not, then his name will be included in the next publication conducted by the Commission.

Notwithstanding the urgings of the Commission, some of these administrative heads are very remiss in sending, in a timely manner, the necessary information concerning newly appointed persons in public life attached to their department or ministry. The unfortunate result of this lapse, is that there could be persons in public life obligated to file their declarations but the Commission would know absolutely nothing about them and accordingly would be unable to publish their names in the publication of names immediately following, should they fail to file their declarations.

In the matter under consideration, there were two (2) non-compliant persons in respect of the year 2015 and three (3) in respect of the year 2016. Their names, date of appointment and other particulars were received in the Commission from the heads of their respective departments and ministry after the March 12<sup>th</sup> publication of 2018. Those persons could not have been included in that publication therefore, because at the time, the Commission was unaware of their existence. The Commission however, did not think that these persons should slip through the cracks and so it included their names in the publication of 15<sup>th</sup> August 2019 which was one of the two (2) publications the Commission conducted in 2019. Also included in that publication, were the names of persons who had requested an extension of time to file their declarations for the year 2018 but had failed to so file by the time given them by the Commission.

Without doubt though, the names of non-compliant declarants for the year 2017, who had failed to file their declaration by 31<sup>st</sup> May 2018, formed the bulk of the August 2019 publication.

This second publication also resulted in a substantial increase in the compliance rate for the year 2017. Persons also came in and filed for the years 2015 and 2016.

By December 31<sup>st</sup>, 2019 sixty- seven percent (67%) of persons in public life had complied with the Act for the year 2017.

As a final word on this subject, I must say that human error resulted in the year 2017 being treated after the year 2018.

The Commission was also relentless in its campaign of *ex parte* applications and in 2019 made fifty-eight (58) such applications to the High Court for orders directing non-compliant declarants to file their declarations. The orders were all granted.

By way of clarification, let me state that it was not the case that no person in public life, at all, was filing his declaration. Not so. Dutiful persons were filing, but it would appear that others needed to be prodded.

As I mentioned in my country paper the number of *ex parte* applications, when set against the number of non-compliant declarants might appear to be incongruous. A tyranny of circumstances brought about this unfortunate situation. First of all, the Commission was disinclined to inundate the High Court with a great number of *ex parte* applications all at the same time and risk the danger of overburdening the already heavy lists of the court; added to this, was the insufficiency of staff- the very problem that bedeviled the earlier commissions, though somewhat improved, still remains. And lastly, but of commensurate importance, the inadequacy of funds.

The Commission was in the course of preparing an even larger number of *ex parte* applications to the High Court when the Covid- 19 pandemic struck and work had to be suspended. I must asseverate however, that it is the intent of the Commission to file *ex parte* applications against all non-compliant declarants at one time or another. I am firm in this resolve.

Let me take this occasion to assert that the Commission painstakingly evolved guidelines which would govern its selection of non-compliant declarants against whom *ex parte* applications to the High Court would be made. And it would be instructive to note that no small amount of work and resources go into the preparation and filing of one *ex parte* application to the High Court.

In the interests of completeness, let me say that there is another section of the Act which the Commission can employ to bring uncooperative declarants to heel; this is section 21.

It provides:

21 (1) A person in public life who-

- (a) fails, without reasonable cause, to furnish to the Commission a declaration, or further particulars which he is required to furnish in accordance with the provisions of the Act;
- (b) .....
- (c) .....
- (d) .....

is guilty of an offence, and liable on summary conviction of a fine of two hundred and fifty thousand dollars (250,000.00) and to imprisonment for a term of 10 years.

At the present time we prefer the three tiered approach of sections 11 (6), 11 (7) and 11 (8) to the approach of section 21.

First, section 11 (6): publication. After the jolt and embarrassment of publication many persons in public life come in and file their declarations.

Second, section 11 (8): *ex parte* applications and Court order. If they persist in their failure to file after publication we then have the *ex parte* application and order of the High Court. After a High Court order to file their declarations, there is almost total compliance. Few persons would want to cross swords with the High Court.

Third, section 11 (8): prosecution. It is only if there is deliberate failure to obey the order of the Court that the Commission will send the matter to the Director of Public Prosecution (DPP) for prosecution.

Another important reason why the Commission, pro tempore, uses section 11 over section 21 is that the Commission does not have a prosecution department in its Legal Unit: It must rely on the DPP to prosecute. The mountainous workload with which the DPP is burdened could challenge the expeditious handling of a section 21 prosecution - a situation that would not obtain when we have our own prosecution team.

It must be understood though that in the final analysis the principal aim of the Commission is to have declarants file their declarations. And to ensure this, it would use all the statutory powers at its disposal at one time or another.

Over and above all this however, is the consideration that the Commission is not intent on seeing non-compliant declarants before the criminal courts; it is not our aim to see non-compliant declarants go to prison; we do not want blood; we merely want persons in public life to file their annual declarations.

## **PRACTICE**

The subject of compliance is targeted under Part III of the Act; and the Compliance Unit of the Commission oversees and reviews compliance by a person in public life with the pertinent provisions of the Act.

Section 2 of the Act defines a “person in public life” as meaning a person referred to or listed in the Schedule. The Schedule of the Act sets out the persons in public life. Interestingly, item eight (8) is: “Judges and Magistrates appointed by the Judicial and Legal Service Commission”. At the outset therefore, Judges and Magistrates were subject to the Act. A judgement of the High Court in 2007 however, declared that Judges and Magistrates were not in fact subject to the Act (See No. HCA 1735 of 2005). This judgement has not been appealed.

The Act having set out basic parameters in respect of compliance did not go into minutiae regarding all that would have been required to be done; and so we had to fill up spaces left open by the Act as we proceeded to enforce its provisions on compliance. This we have been doing over a period of years to the extent that we now have in place a system that is at once, omnibus and functional. The work continues however, and we await the ultimate passing of the amendments to the Act that we have submitted to Cabinet.

It goes without saying that the Commission of Trinidad and Tobago is willing to assist the Integrity Commission of any other member country which considers that we might be of assistance in any way as they deal with the question of compliance, or indeed, any other question that might touch and concern their Integrity Commission.

## **EXAMINATION OF DECLARATION FORMS (A and B)**

In the Commission carrying out its examination under Section 13 (1) of the Act of the declaration of a person in public life, (Form A), and the examination of the statement of registrable interests under section 14 (1) (Form B), the objectives of the Commission are:

- a. to verify the accuracy of the information declared by the person in public life;
- b. to determine whether any change in the net assets of the person in public life in relation to his declaration of his income, assets and liabilities are consistent with his legitimate income;
- c. to delete and prevent conflict of interests

In order to arrive at a decision whether or not to provide a certificate of compliance to a person in public life, who has completed and filed his declaration, the Commission has set up and maintained a procedure to be followed for the examination of his completed declaration form; the Commission must ensure that the declaration is complete, accurate, timely and consistent.

A declaration is deemed to be complete when all the information required by the Act has been provided to the Commission in adequate detail and with enough precision to be easily examined and confirmed.

A declaration is deemed to be accurate when the information provided is a true reflection in all material particulars of the financial position of the declarant at the specified date required by the Act.

A declaration is deemed to be timely when the information provided is submitted in the approved forms on or before the date required by the Act.

A declaration is deemed to be consistent when the information on the declaration of income, assets and liabilities corresponds with the declaration of the previous year and if any, the statement of registrable interests.

**The examination is comprised of three (3) phases.**

### **Phase 1: Preliminary Review**

The preliminary review is the first part of the examination process and is undertaken against a checklist of compliance. This is to ensure that the person in

public life has provided the required information for an examination of his declaration of income, assets and liabilities and statement of registrable interests. The checklist contains seven (7) points of varying lengths. This would preclude treatment as time is the enemy this afternoon.

As part of this phase of the examination process, the Commission would assess the timeliness of the submission of the declaration and the consistency of disclosures to detect material omissions, by comparing the information received on the declaration of income, assets and liabilities against the statement of registerable interests. Should the Commission discover that material information has not been disclosed in forms A and B, it would write the person in public life requiring information or explanation. This information must be provided within fourteen (14) days of receipt of the request of the Commission.

### **Phase 2: Analysis**

Once the information requested at phase one (1) has been provided by the declarant, an analysis of the contents of that declaration will then follow. This analysis is required to ensure that the information disclosed in the declaration, and/or responses provided by the declarant with respect to his spouse, his dependent children where applicable or himself, is accurate and complete.

Verification Procedures- This process is intended to test the accuracy of information provided by the person in public life with respect to his declaration of income, assets and liabilities and would involve the following methods:

- Interview: The Commission may request that a person in public life or his duly appointed agent should attend a meeting at the office of the Commission in order to discuss, review or verify the contents of the declaration and/or discuss information or documents which have been requested.
- Certification: The Commission may request that a declaration be certified by a Chartered Accountant or a Certified Accountant.
- Totaling: The Commission may verify the mathematical accuracy of the figures disclosed in the declaration based on the sourced documents and written responses provided by the declarant.

From time to time during the course of our fortnightly meetings the view has been expressed that verification of a declaration should be a necessity in the assessment of that declaration. I am happy to announce that the Integrity Commission of Trinidad and Tobago has been employing the verification practice from as far back as 2006, or even further.

### **Phase 3: Computational Analysis through use of indirect methods**

In addressing phase three (3) the Commission drew on the work of Edmund Biber-“Revenue Administration: Taxpayer Audit - Use of Indirect Methods” and applied material therefrom, *mutatis mutandis* to the matter under consideration.

Computational Analysis is undertaken to evaluate the financial information and to explore the relationship of the different components in the declaration. This analysis is designed to ascertain whether any change in the net assets of a person in public life (his spouse and dependent children where applicable) in relation to the declaration of income, assets and liabilities, is consistent with his legitimate income or can be supported thereby. The most common method employed in this species of analysis is the “net worth”. This method uses evidence of sources of income such as asset accumulation, liability reduction, expenditure and other financial data to establish whether the income reported is sufficient to support the movements in the assets and liabilities reported in the declaration.

The following are the steps in the net worth analysis:

1. Details of the total assets and liabilities in respect of the declarant, his spouse and dependent children disclosed in the current year are compared with that of the previous year to compute the change in net worth. The change in net worth computed would include the cumulative totals of the cash and non - cash variants between the two years.
2. In order to ensure a fair representation of the cash accretion/reduction in the value of net worth, the non-cash items are eliminated. This is done by excluding from the net worth, the non - cash changes in the value of items held as at the second year end (for example, depreciation and fair value adjustments) and results in an adjusted net worth.
3. The adjusted change in net worth is then compared to the total income disclosed, to determine whether the income can support the accretion in net assets.
4. Where the income is sufficient to support the change in net worth, a report is then compiled and presented to the Commission for its consideration and approval.
5. If the income is insufficient to support the accretion in the net assets disclosed, the Commission will write the declarant in accordance with section 12 (5) of the Act to provide an explanation in the matter. This explanation must be supported with relevant documentary evidence. On receipt of the requested documents a revised net worth analysis would then be carried out.

6. Once the Commission is satisfied that a declaration is fully made, and the adjusted change in the net worth is adequately supported by the income disclosed, a certificate of compliance is issued to the declarant in accordance with section 13 (3) of the Act.

If the Commission is of the opinion that it should enquire further into any declaration so as to ascertain whether there has been a full disclosure, it may advise the President to appoint a tribunal of two (2) or more of its members to conduct an enquiry to verify the contents of the declaration or the statement filed with the Commission. (Section 15)

## CONCLUSION

An examination of the three (3) sections 11 (1), 13 (1) and 14 (1) would reveal that their provisions are not that abstruse or onerous. To a degree however, they are intrusive and this I apprehend, is one of the factors which speak potently for the failure on the part of some persons in public life in filing their declarations of income, assets and liabilities. It is the gravamen against some of these delinquent declarants that they espouse the ill -conceived idea that should they reveal their private and personal affairs in their declarations, somehow this personal information would meander into the public domain.

Ladies and gentlemen, this sort of thinking is rooted in blind paranoia. I will tell you and you can take it from me, that we in the Commission are zealous in our endeavor to assure not only persons in public life, but the public of Trinidad and Tobago in general, that confidentiality in the Commission is an article of faith inspired by section 35 (1) and (2) of the Act. And I declare with pride, that the staff of the Commission discharge their weighty duties with an abiding sense of responsibility and a profound cognition of probity.

I shall add that in my public speeches, I constantly remind persons in public life that they did not assume the positions that made them persons in public life, under duress. They accepted their appointments willingly and fully cognizant of their obligations under the Act. It was therefore disingenuous to say the least, now that they were performing their functions, for them to deliberately and obstinately refuse to comply with the requirements of the Act.

It is with no small amount of gratification that I can say today however, that the efforts of the Commission are starting to bear fruit and there is a marked increase in the number of persons in public life who are now complying with the Act and filing their annual declarations, indeed, the compliance rate for the two years 2018 and 2019 has shown remarkable improvement over the compliance rate of the previous years. There is work still to be done however, and the Commission will continue in its labors: educating, encouraging, spurring on, even threatening.

We are optimistic that our staff would be strengthened; we are optimistic that we would have more funds at our disposal to pay the court fees for the filing of the *ex parte* applications. With these tools and with an eye on the lists of the Court we shall file many more applications and much more frequently.

And we are optimistic that the stars would so align that in the not too distant future we shall have our own prosecution department and the staff to man it.

Compliance with the Act on the part of persons in public life is mandatory; it is not discretionary.

One facet of the *raison d'être* of compliance under the Act is transparency. Compliance therefore can be considered a window to the souls of persons in public life through which could be seen qualities such as commitment, dedication, sincerity.

It is the singular and perpetual consideration of the Commission therefore, that compliance under the Act should always be seen for what it infallibly is - a prudent necessity.