

REPUBLIC OF TRINIDAD AND TOBAGO
MAGISTRACY
ST. GEORGE WEST

CASE Nos. 12401-3/2002

IN THE MATTER OF THE COMPLAINTS OF:

*SENIOR SUPERINTENDENT
WELLINGTON VIRGIL*

- *COMPLAINANT*

V

BASDEO PANDAY

- *DEFENDANT*

APPLICATION FOR A STAY OF
PROCEEDINGS FOR ABUSE OF PROCESS

Appearances:

Sir Timothy Cassel QC, Ms. Renuka Rambhajan, Ms. Anju Bhola for the Prosecution

Mr. David Aaronberg QC, Mr. Anand Beharrylal, Ms. Mickela Panday for the Defendant

Background

1. The Defendant, Mr. Basdeo Panday, is before the Court for knowingly making false declarations under the Integrity in Public Life Act No.8 of 1987 for the years 1997, 1998 and 1999 in that he failed to declare moneys held in account number 39036189 at the National Westminster Bank PLC, London, England in the name of himself and Oma Panday, contrary to section 27(1)(b) of the Integrity in Public Life Act, 1987. These Complaints were laid on September 18, 2002.

2. Mr. Panday was, during these years, the Prime Minister of the Republic of Trinidad and Tobago and was required to file with the Integrity Commission a declaration of his income, assets and liabilities in respect of each of the said years. Mr. Panday did file declarations for these years, which are in evidence as 'AA3', 'AA8' and 'AA13' respectively.
3. By letter dated the May 2, 2002 (exhibit 'AA26'), Mr. Karl T. Hudson Phillips QC, forwarded to the then Director of Public Prosecutions, Mr. Mark Mohammed SC, a document headed "Schedule of Transactions by The Undermentioned Public Officials prior to and post 6th November, 2000." The Schedule set out various deposits made over the period November, 1997 to October, 2001 into an account in the name of Mr. Panday and his wife, Mrs. Oma Panday, at the National Westminster Bank, Wimbledon, London. At the time of the writing of the letter, Mr. Hudson-Phillips was an advisor to the Anti-Corruption Bureau which was engaged in certain criminal investigations. By letter dated 6th May, 2002 (exhibit 'AA26') Mr. Mohammed forwarded a copy of this correspondence to the Chairman of the Integrity Commission for his urgent attention.
4. By three letters, all dated May 21, 2002 (exhibits 'AA15-17'), the Integrity Commission wrote to Mr. Panday informing him that he appeared to be a joint owner of the bank account which is the subject of these proceedings. Mr. Panday was called upon to provide the Commission with an explanation as to why the amounts which stood to the credit of this account did not form part of his declarations for the years 1997, 1998 and 1999 respectively. Mr. Panday was thereby given fourteen (14) days to respond to the Commission either in writing or in person or by Counsel.
5. On May 29, 2002 Mr. Panday replied to the Integrity Commission asking for an extension of time to make a comprehensive response (exhibit 'AA18'). The Integrity Commission, by letter of June 4, 2002, granted Mr. Panday a further fourteen (14) days to respond (exhibit 'AA19').

6. On June 18, 2002 Mr. Panday wrote to the Integrity Commission informing that he was still awaiting a reply from the bank at which the subject account stood (exhibit 'AA20'). Mr. Panday explained that he believed the account was that of his wife and that the moneys in it were for the education of his children. He said that his name was added to the account to ensure that the children's education would be uninterrupted should anything happen to his wife. He stated further that he never used funds from the account for his personal use. He then pointed out that he did not declare the account as part of his Assets because he did not regard them to be such. He stated that the moneys were being held on trust for his children and that he was not the beneficial owner of the funds in the account.
7. By letter dated June 25, 2002 (exhibit 'AA21') the acting Registrar of the Integrity Commission, Mr. Albert Alkins informed Mr. Panday that he had not responded to the Commission's letter of April 9, 2001 (exhibit 'AA27'), which had requested clarification on certain discrepancies in an account with a local bank and statements in a life assurance policy and units at the Unit Trust Corporation. The acting Registrar therein informed Mr. Panday that "should no further correspondence in this regard be received from you by 5th July, 2002, the Commission shall proceed as it sees fit". This deadline could reasonably be seen to refer to the information requested in the 2001 letter ('AA27') and not the subject declarations.
8. On July 2, 2002 the Integrity Commission wrote to Mr. Hudson-Phillips about the information he had provided them on the subject bank account (exhibit 'AA29'). This information was given under "SECRET" cover in Mr. Hudson-Phillips letter of May 15, 2002. This letter is not in evidence. The Integrity Commission therein noted that the cover note from the (UK) "Metropolitan Police Fraud Squad suggests that more enquiries may be made concerning that account, as well as full details of the various credits and debits by cheque and CHAPS transfer." The Commission therein asked for any up to date information in that regard.
9. By letter dated July 9, 2002 ('AA30') Mr. Hudson-Phillips informed the Commission that he had already made a Supplemental Request "with respect to the

source of funds transferred to the referenced account and, in particular, the items mentioned in yours.” Mr. Hudson-Phillips then assured the Commission that as soon as he received the relevant information he would share it with the Commission. There is no further correspondence in evidence from Mr. Hudson-Phillips in this regard.

10. By letter dated July 1, 2002 (exhibit ‘AA22’) Mr. Panday informed the acting Registrar that he received correspondence from the bank at which the subject account stood and pointed out that he was mistaken in his recall of the history of the account. He said that he and his wife were traveling to London July 4 to 8, 2002 in an effort to obtain further information on the matter.
11. On July 15, 2002 Mr. Panday again wrote to the acting Registrar giving the history of the subject account (exhibit ‘AA23’). He stated that the account was opened in 1989 at National Westminster Bank, Waltham-on-Thames in the joint names of him and his wife, Oma Panday. The account was opened to deposit moneys to pay for his open heart surgery.

In April 1993 Mrs. Panday transferred the account to the Wimbledon branch and thereafter she managed and controlled the account. He maintained that his name remained on the account as a mere convenience and that since then he was not a beneficial owner of the account. He therefore did not regard the moneys in the account as part of his assets.

12. By letter dated July 18, 2002 (exhibit ‘AA31’) the Chairman of the Integrity Commission wrote to Mr. Geoffrey Henderson, the then Director of Public Prosecutions on the subject “Re: Mr. Basdeo Panday, M.P.” The pertinent parts of this letter are hereunder set out:

“The above mentioned Member of Parliament did in fact file the said declarations for the years 1997, 1998 and 1999 and the Commission verified the same for 1997 and 1998. However, as a result of information received from the former Director of Public Prosecutions, the Commission conducted an investigation into the said declarations. The findings of this investigation disclosed that certain sums of money in account No. 39036189 at the National Westminster Bank, P.C. 16

Wimbledon Hall, London SW 197 ZD of which the said Member of Parliament appears to have been joint owner with his wife Mrs. Oma Panday, were not disclosed as part of his assets. The declarant was given every opportunity to be heard as to the reason why he failed to disclose this asset.

The said investigation having been completed, the Commission is satisfied that there are reasonable grounds for suspecting that offences have been committed under the former Act, and respectfully makes this report to you, Mr. Director, under the provisions of Section 34(5) of the present Act, the Integrity in Public Life Act, 2000 (No. 83 of 2000).”

13. On the same day, July 18, 2002, the Integrity Commission informed Mr. Panday that their investigation was complete and that a report had been made to the Director of Public Prosecutions under section 34(5) of the 2000 Act (exhibit ‘AA24’). The Commission made the referral as it was of the view “that there are reasonable grounds for suspecting” that offences have been committed in that regard.
14. The Director of Public Prosecutions thereupon on July 22, 2002 wrote to the Commissioner of Police submitting the file concerning the matters raised by the Chairman of the Integrity Commission to the Police Commissioner for his further investigation and action. By memorandum to the Commissioner of Police dated September 17, 2002 the Director of Public Prosecutions directed that Mr. Panday be charged as within stated. On September 18, 2002 the Director of Public Prosecutions gave his written consent to the laying of three complaints against Mr. Panday. These correspondences are contained in the bundle disclosed by Order of this Court on June 24, 2011 and collectively exhibited as ‘SJ1’. These are the charges now before the Court.

The Application for a Stay

15. The trial is at the stage where the Defendant has been called upon to answer the charges. Mr. Aaronberg QC, lead counsel for Mr. Panday, is asking the Court to stay the proceedings on the basis that to continue would offend the Court’s sense of justice and propriety having regard to all the circumstances of the case. Queen’s

Counsel acknowledges that the Defence will have to prove this on a balance of probabilities (*Attorney General's Reference No. 1 of 1990* [1992] 95 CAR 296) and says that the circumstances which give rise to the abuse are:

Political Involvement

- (a) Mr. Panday was the Prime Minister when secret investigations began into the subject account. After General Elections in December 2001 were declared an '18/18 deadlock' Mr. Panday was not called upon by the President to sit as Prime Minister but his political opponent, Mr. Patrick Manning, was made Prime Minister. Mr. Panday became the Leader of the Opposition and General Elections were imminent as there was a "hung Parliament".
- (b) The Central Authority and the Anti Corruption Bureau were then set up under the Office of the Attorney General, Mrs. Morean-Phillips, a member of the ruling political party. The Central Authority obtained information on the subject account from the Central Authority in the UK. The Central Authority reported directly to the Attorney General.

Conduct of the Integrity Commission

- (c) Information so gathered by the Central Authority was leaked to the daily press in April 2002. This was before the Integrity Commission and the Director of Public Prosecutions were formally informed by the Central Authority of the findings of its investigations. By letter of April 24, 2002 (exhibit 'SJ1') the Integrity Commission told the Attorney General that they learned about the subject account from an Express newspaper report of April 14, 2002 and that details of the account are contained in a "Report that was handed over to the Government of Trinidad and Tobago." The Integrity Commission asked the Attorney General for a copy of that Report. The Director of Public Prosecutions was only formally informed of these investigations and the findings on May 2, 2002 by letter under hand of Mr. Hudson-Phillips, Special Adviser to the Anti Corruption Bureau (exhibit 'AA 26').

- (d) Thereafter there was a series of newspaper articles revealing details of the confidential investigations being conducted by the Central Authority and the Anti Corruption Bureau. The Integrity Commission, while claiming not to be the source of the 'leaks', made no effort to cause a cessation of these 'leaks' to the newspapers. This remained so even after Mr. Hudson-Phillips expressed his great dismay to the Integrity Commission about these 'leaks'. Mr. Alkins admitted this in his evidence.

Integrity Commission's failure to review all relevant information

- (e) By letter of July 2, 2002 the Integrity Commission requested of Mr. Hudson-Phillips further details of the subject account (exhibit 'AA29'). The Commission however failed to await his response, even though Mr. Hudson-Phillips requested further time to supply same (exhibit 'AA 30'). The Integrity Commission referred Mr. Panday to the Director of Public Prosecutions on July 18, 2002 without the benefit of the information they had requested from Mr. Hudson-Phillips.

Inequality of treatment by the Integrity Commission

- (f) Section 27 of the Integrity in Public Life Act 1987 made it offences, carrying the same penalties, for persons under the Act to fail to furnish declarations and or to furnish false declarations. The Integrity Commission reported to Parliament for the years since its establishment up to the time of its referral of Mr. Panday that several persons failed to furnish their declarations as required by the Act. No enquiry into any of these breaches was ever conducted nor were any of these delinquent persons ever reported to the Director of Public Prosecutions.

Failure by the Integrity Commission to follow Proper Procedure

- (g) The Integrity Commission investigated Mr. Panday under section 34 (5) of the 2000 Act as was stated by the Chairman in his letter to the Director of Public Prosecutions ('AA31'). Mr. Alkins confirmed this in his evidence before the Court.

- (h) By the terms of this Act the report to the Director of Public Prosecutions should not have been made until Mr. Panday had been given notice pursuant to section 38 affording him the full opportunity to be heard either in person or by an Attorney-at-Law. Mr. Alkins admitted in evidence that when Mr. Panday was informed that he had been reported to the Director of Public Prosecutions ('AA 24') he was not given a full opportunity to be heard in person or by an Attorney-at-Law nor was he given an opportunity to make representations as to why he should not be reported.
- (i) The Integrity Commission is a "constitutional body with important obligations and duties and extensive powers ... which ought to act independently pursuant to its constitutional and statutory powers and duties." per Rajnauth-Lee J. *Keith Rowley v. The Integrity Commission* HC 185/2007 para. 33 and 45. In failing to present Mr. Panday with the findings of its investigation and allowing him the full opportunity to be heard before reporting him to the Director of Public Prosecutions the Integrity Commission was "recklessly indifferent" as to whether its "conduct was illegal" (see *Rowley*) and by acting as it did committed the tort of misfeasance in public office. It also failed to afford Mr. Panday his constitutional right to protection of the law. This should so offend the Court's sense of propriety that the Court should stay these proceedings.

Conduct of the Investigating Officer

- (j) The Complainant conducted his investigations in a blinkered and biased manner. He failed to follow specific instructions given to him by the Director of Public Prosecutions and so did not gather all relevant information. He did not gather information on the subject account that could have shown that the claim made by Mr. Panday that he did not have a beneficial interest in the account had any credibility. He failed to obtain information from the bank that could have shown that Mr. Panday may not have given contradictory information to the Integrity Commission or at least not deliberately so and that Mr. Panday was being truthful when he

said that the moneys at the account were for the education of his children. The Complainant was convinced that Mr. Panday was guilty and did not give him a fair hearing at the interview.

- (k) The Complainant's findings, which he presented to the Director of Public Prosecutions, were therefore incomplete and misleading as to the nature and strength of the evidence against Mr. Panday.

Conduct of the Director of Public Prosecutions

- (l) The Director of Public Prosecutions directed the Complainant to conduct specific investigations into the subject account. The Complainant did not conduct his investigations in the manner as directed. The Director of Public Prosecutions' decision to proceed against Mr. Panday therefore was based on a wholly misguided investigation which would have failed the Evidential Test propounded by the Director had he had all the details he had sought in his directions to the Complainant. (see DPP letter to IC dated September 19, 2002 in 'SJ1').
- (m) The decision to lay these charges was reached three weeks after the declaration for General Elections of 2002 was made. In these elections Mr. Panday was again seeking to become Prime Minister. These charges were laid on September 18, 2002, which was three weeks before the holding of those general elections.

Defendant's Circumstances

- (n) Mr. Panday is 79 years old. These charges have been before the courts for the past 11 years. Mr. Panday accepts that some of this time was spent by his previous counsel making a "misconceived initial constitutional challenge" (see *Panday v Virgil* PC 50 of 2007 para. 37).
- (o) The State has engaged "expensive London Counsel" and Mr. Panday has reasonably sought equality of arms and has so incurred substantial expense in his defence.

Conduct of the State Post-Charge

- (p) Mr. Panday has faced two trials for these offences which had to be stopped for apparent bias: *Panday v Virgil* PC 50 of 2007 and *Panday v Her Worship Ejenny Espinet* HC 4133 Of 2007.
- (q) The State has contributed to unconscionable delay in bringing this case to trial before an independent and fair tribunal. In particular, the State has unreasonably refused to disclose material which would have assisted the Defence and has thereby attempted to suppress information which was ultimately obtained through orders of the Court.

Conclusion

- (r) It would then be unconscionable to permit this case to continue as the Court cannot be satisfied that this matter was fully and fairly investigated by the Integrity Commission and the Director of Public Prosecutions before these charges were laid.
 - (s) Having regard to these several instances of abuse of executive power the Court's sense of justice and propriety would inevitably be offended and it must stop this trial.
16. Sir Timothy Cassel QC, for the Prosecution, submitted that the Defence has presented no justifiable allegation of abuse of process within the definition laid down by the courts. No evidence was advanced that would show that Mr. Panday was deprived of any of his rights in law. There was no suggestion that Mr. Panday would not get a fair trial. Further, there was no evidence that Mr. Panday would not be before the Court but for misconduct on the part of the authorities. In fact, there was cogent evidence against Mr. Panday and the Court has called upon him to answer the charges. In the circumstances, the decision to prosecute Mr. Panday was not taken in bad faith nor was it oppressive or vexatious.
 17. Sir Timothy noted that this application falls under the principles laid down in *R v Horseferry Road Magistrates' Court ex. p. Bennett* (1994) AC 42. Bennett was brought to the UK to stand trial as a result of collusion between South African and

British police in disregard to extradition procedures. The House of Lords held by a majority of four to one that in those circumstances the English court should refuse to try the defendant.

18. Further, the Privy Council's position on an application for a stay for abuse of process brought under *Bennett* is summarized at para. 28 of the *Panday* case as follows: "It will readily be seen that the factor common to all these cases, indeed the central consideration underlying the entire principle, is that the various situations in question all involved the Defendant standing trial when, but for an abuse of executive power, he would never have been before the court at all." Queen's Counsel submitted that none of the complaints made by the Defence falls within the *Bennett* principles because there is no evidence the Executive, either individually or collectively, caused Mr. Panday to be before the Court when but for them he would not have been before the Court at all.

The Law

19. The principles in *Bennett* were summarized by Warner JA in *Panday v Virgil Mag.* App. 75 of 2006 at para. 124 as follows: "the House of Lords held that a court had discretion to stay criminal proceedings on the ground of abuse of process in two categories:
 - i. Where it would be impossible to give the accused a fair trial; and
 - ii. Where it would amount to a misuse of process because it offends the court's sense of justice and propriety.
20. The Privy Council in *Panday* endorsed this statement and made it clear that the trial court is the proper forum for an abuse of process application. The Board stated (at para. 35) that "It is to be noted in this connection that in *Sharma v Browne-Antoine and others* [2007] 1 WLR 780 all five members of the Judicial Committee took the view that the Chief Justice's complaints – involving not least an attack on the decision to prosecute him as being politically motivated or influenced, could and

should properly be resolved within the criminal process itself rather than by way of judicial review challenge.”

21. In the recent Privy Council case of *Warren and others v Attorney General of the Bailiwick of Jersey* [2011] UKPC 10, the principles to be applied in applications for stays for abuse of process were reviewed and re-stated. Lord Dyson (in the leading judgment) at para. 21 and 22) said:

Some of the leading authorities on the abuse of process jurisdiction in cases of prosecutorial misconduct were reviewed by the Supreme Court of the United Kingdom in *R v Maxwell* [2010] UKSC 48; [2011] 1 WLR 1837...

Sir John Dyson SCJ said:

13. It is well established that the court has the power to stay proceedings in two categories of cases, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will 'offend the court's sense of justice and propriety' (per Lord Lowry in *R v Horseferry Road Magistrates' Court, Ex p Bennett* [1994] 1 AC 42, 74G) or will 'undermine public confidence in the criminal justice system and bring it into disrepute' (per Lord Steyn in *R v Latif* [1996] 1 WLR 104, 112F).

22. At para. 28 Lord Dyson said that “The significance of the ‘but for’ factor was considered by the Supreme Court in *R v Maxwell*. In that case, the majority considered that the fact that the confessions on which the retrial would be based would not have been made but for the prosecutorial misconduct was not determinative of the question whether there should be a retrial. This was no more than a relevant factor. Lord Brown, dissenting, thought that this feature of the case meant that it “[could] be seen to come within the same category of ‘but for’ situations as the wrongful extradition and entrapment cases” (para 102). Having set out the passage in Professor Choo’s book referred to at para 24 above, he said at para 108 that in the ‘but for’ cases, even though it would be possible to try (or retry)

the defendant fairly, it would “usually” be inappropriate to do so. It would be inappropriate

“essentially because, but for the executive misconduct, either there would never have been a trial at all (as in the wrongful extradition and entrapment cases) or (as in the present case) because the situation would never have arisen whereby the all important incriminating evidence came into existence (which is not, of course, to say that the ‘fruit of the poison tree’ is invariably inadmissible). Obviously this is not an exhaustive definition of the ‘but for’ category of cases and, as the word ‘usually’ is intended to denote, whether in any particular case a trial (or retrial) has in fact become inappropriate may still depend in part on other considerations too. Essentially, however, it is the executive misconduct involved in this category of cases which, I suggest, most obviously threatens the integrity of the criminal justice system and where a trial (or retrial) would be most likely to represent an affront to the public conscience.”

23. In assessing the impact of the *Warren* case it seems clear that the ‘but for’ argument is only but one of the relevant factors to weigh in balancing all the evidence. The Privy Council held that cases where a stay application was based on the affront to the court’s sense of justice and propriety, it was important to remember the rationale for such a stay; which was to maintain public confidence in the criminal justice system. There were two conflicting aspects of the public confidence here: (1) the importance in prosecuting suspects for serious crimes and (2) the importance of preventing executive misconduct in investigating crimes. This is a delicate balancing exercise in which adhering to rigid classifications is undesirable (per Lord Dyson at para. 26). However, the primary objective of the exercise is to safeguard the integrity of the criminal justice system.
24. This Court had refused a plea in bar on issues of unfair and oppressive practices of the Prosecution and ruled that these issues be addressed properly within the trial. This was on the ground that the Court then had no evidence before it to assess the alleged conduct of the Executive in bringing Mr. Panday before the courts. The Court now has evidence before it and can properly look into the allegation that there was an abuse of executive power leading to the prosecution of Mr. Panday.

Assessment of the Evidence

25. Mr. Panday was charged under section 27 of the Integrity in Public Life Act, 1987 (“the 1987 Act”). This Act was repealed by section 43 of the Integrity in Public Life Act, 2000 (“the 2000 Act”) which came into force by Legal Notice 265 of 2000 dated November 6, 2000. Section 44 of the 2000 Act gives the Integrity Commission authority to carry out and complete anything commenced under the 1987 Act. This Court has already ruled, based on the evidence, that the Integrity Commission had investigated Mr. Panday under the 2000 Act.
26. The Integrity Commission by its letters dated May 21, 2002 to Mr. Panday (‘AA 15-17’) referred Mr. Panday to his declarations duly filed by him under the 1987 Act for the years 1997-99 and requested that he explain “why the amounts which stood to the credit of the above named account, did not form part” of his declarations for those years. A request for an explanation concerning a declaration made under the Act can only be made under Section 13, following an examination of the declaration. Section 13 provides as follows:

13. (1) 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.

(2) The Commission may require that—

- (a) a declarant furnish such particulars relating to his financial affairs as may be considered necessary;
- (b) a declarant or his duly appointed agent attend at the offices of the Commission in order to verify his declaration;
- (c) a declaration be certified by a chartered or certified accountant.

(3) Where, upon an examination under subsection (1), the Commission is satisfied that a declaration has been fully made, it shall forward to the person in public life, a Certificate of Compliance.

27. The Integrity Commission, by letter of June 4, 2002 (‘AA19’), considered it necessary to give Mr. Panday an extension of time to furnish particulars relating to his financial affairs in respect of his filed declarations. This extension could only have been made pursuant to its powers under section 13(2). It is clear that at the

end of the time allowed to Mr. Panday the Integrity Commission was not satisfied that Mr. Panday's declarations were fully made as they did not forward to him a Certificate of Compliance under Section 13(3). In fact, the Integrity Commission was satisfied that the said declarations were not fully made out and made a report to the Director of Public Prosecutions "in accordance with Section 34(5) of the 2000 Act"('AA24').

28. Further, in respect of declarations made under the Act, Section 15 declares as follows:

15. Where upon the examination referred to in section 13, 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 or more of its members to conduct an enquiry to verify the contents of the declaration or the statement filed with the Commission.

29. It is also clear from the Integrity Commission's referral of the matter to the Director of Public Prosecutions that the Commission was of the opinion that it should enquire further into the said declarations to ascertain whether there was full disclosure. That being the case the Commission was bound to advise the President to appoint a tribunal in accordance with Section 15. The use of the word "may" in this section appears to allow for a discretion on the part of the Integrity Commission to adopt another course of action to enquire into whether full disclosure was made in a declaration. However, no other provision is made in the Act for an enquiry into a filed declaration other than that provided in Section 15. The appointment of a tribunal by the President in this regard therefore is mandatory. It should be noted that the 1987 Act, under which these charges were brought, also provides at section 23 for the establishment of a tribunal to enquire into the accuracy or fullness of a filed declaration.

30. In addition to the provisions dealing with declarations, the 2000 Act introduced a Code of Conduct under Part IV. This Part related to persons in public life and persons exercising public functions. It gives directions as to the use of public office by these persons in acquitting their public duty with impartiality, fair treatment, propriety, confidentiality and integrity. Part V of the Act gives the Commission

powers to investigate complaints of breaches of any of the provisions set out in Part

IV. Sections 33 and 34 set out these powers as follows:-

33. The Commission—

(a) may on its own initiative; or

(b) shall upon the complaint of any member of the public, consider and enquire into any alleged breaches of the Act or any allegations of corrupt or dishonest conduct.

34. (1) In carrying out its function under section 33, the Commission may—

(a) authorise an investigating officer to conduct an enquiry into any alleged or suspected offence;

(b) require any person, in writing, to produce, within a specified time, all books, records, accounts, reports, data, stored electronically or otherwise, or any other documents relating to the functions of any public or private body;

(c) require any person, within a specified time, to provide any information or to answer any question which the Commission considers necessary in connection with any enquiry or investigation which the Commission is empowered to conduct under this Act;

(d) require that any facts, matters or documents relating to the allegations or breach, be verified or otherwise ascertained by oral examination of the person making the complaint;

(e) cause any witness to be summoned and examined upon oath.

(2) Where, in the course of any enquiry the Commission is satisfied that there is a need to further expedite its investigations, it may exercise the following powers:

(a) require any person to furnish a statement in writing—

(i) enumerating all movable or immovable property belonging to or possessed by him in Trinidad and Tobago or elsewhere, or held in trust for him, and specifying the date on which each such property was acquired and the consideration paid therefore, and explaining whether it was acquired by way of purchase, gift, inheritance or otherwise;

(ii) specifying any monies or other property acquired in Trinidad and Tobago or elsewhere or sent out of Trinidad and Tobago by him or on his behalf during a specified period;

(b) require any person to furnish, notwithstanding the provisions of any other written law to the contrary, all information in his possession relating to the affairs of any suspected person being investigated and to produce or furnish any document or true copy of any document relating to the person under investigation and which is in the possession or under the control of the person required to furnish the information;

(c) require the manager of any bank, or financial institution, in addition to furnishing information specified in paragraph (b), to furnish any information or certified copies, of the accounts or the statement of accounts at the bank or financial institution of any person being investigated.

(3) A person who fails or refuses to disclose any such information or to produce any such documents, commits an offence and is liable to a fine of one hundred and fifty thousand dollars and imprisonment for a term of three years.

(4) Any person who knowingly misleads the Commission, or an investigating officer of the Commission, by giving false information, commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars and imprisonment for a term of five years.

(5) Where after the conduct of an investigation, the Commission is satisfied that there are reasonable grounds for suspecting that an offence has been committed, it shall make a report to the Director of Public Prosecutions who may take such action as he thinks appropriate.

31. In looking at the course of action taken by the Integrity Commission in respect of its dealings with Mr. Panday and his declarations in this case, it is apparent that the Integrity Commission proceeded as if it were investigating allegations or complaints made by a member of the public of corrupt or dishonest conduct by Mr. Panday under Part IV of the Act. Indeed, the Integrity Commission, in its letter to the Director of Public Prosecutions ('AA31'), knew that it was proceeding in this way and not in the way prescribed in the Act for dealing with declarations. The Commission therefore failed to follow the provisions of the Act which specifically deal with filed declarations.

Should the trial be stayed?

32. Is the failure by the Integrity Commission to comply with its own statutory mandate to establish a tribunal to enquire into Mr. Panday's declarations sufficient for the Court to order a stay of proceedings? To answer this question the Court must weigh in the balance (i) the public interest in ensuring that those that are charged with grave crimes should be tried; (ii) the competing public interest in ensuring that

executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute; and (iii) that the discretion to stay proceedings is not a disciplinary jurisdiction and ought not to be exercised in order to express the court's disapproval of official conduct.

33. The Integrity in Public Life Act 2000 was enacted to provide for “the prevention of corruption of persons in public life by providing for disclosure; to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions.” The Act regulates a relatively small class of persons – persons in public life.
34. Section 13 of the Act is inconsistent with sections 4 and 5 of the Constitution – which recognize, declare and protect an individual's rights and freedoms. Persons regulated by the Act are deprived of the protection of their constitutionally enshrined rights and must comply with its provisions or face criminal charges. The Act also provides a strict procedure to be followed by the Commission in respect of these persons who, being deprived of their constitutional rights, are required to file declarations under the Act.
35. In cases of false declarations made under the Act, the Integrity Commission plays a ‘pre-prosecution’ role in that only after it has conducted its due process can it refer persons to the Director of Public Prosecutions. For these purposes, the Integrity Commission is a critical part of the Executive which makes the decision to prosecute.
36. The Integrity Commission failed to comply with the provisions of the Act under which it is constituted when it did not advise the President to appoint a tribunal to enquire into Mr. Panday's declarations. Mr. Panday was not given the opportunity, to which he was entitled, to be heard by a properly constituted tribunal. The referral of Mr. Panday's declarations to the Director of Public Prosecutions was therefore ill-conceived and it matters not that the Director of Public Prosecutions found that there was sufficient evidence to lay the charges. In the Court's view, failing to accord Mr. Panday due process under the Act amounts to misconduct on the part of the Integrity Commission.

37. The case for a stay then is of considerable weight. The misconduct by the Integrity Commission was very serious. The substance of these charges was the ‘fruit of the poison tree’ which was the product of the Integrity Commission’s misconduct. Furthermore, without the product of the misconduct these proceedings would not have arisen.
38. Here, the Court takes notice of the warning sounded by Lord Hope in *Warren* (at para. 62) that “any abuse of state, or police, power must always be taken very seriously. It may lead the court to conclude that, however strong the evidence may appear to be against him, the defendant cannot have a fair trial or that, even if he can, it would be an affront to the public conscience to allow the proceedings to continue.”
39. It is the Court’s view that the misconduct of the Integrity Commission was so serious that it would undermine public confidence in the criminal justice system and bring it into disrepute. The Court therefore is compelled to stop these proceedings to protect the integrity of the criminal justice system. In the result, these proceedings are now stayed.
40. In conclusion, I wish to place on record my profound appreciation to Queen’s Counsel on both sides for their meticulous presentations and cogent arguments. Any failure here to refer to every point or nuance of learned Queen’s Counsel’s arguments does not mean that they were not duly considered.

Marcia Murray
Magistrate
St. George West

June 26, 2012