

TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO**

H.C.A. NO. S-1445 OF 2004

**IN THE MATTER OF AN APPLICATION BY MR. CHANDRESH SHARMA,
MEMBER OF PARLIAMENT, FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW IN THE PUBLIC INTEREST PURSUANT TO THE PROVISIONS OF
THE JUDICIAL REVIEW ACT 2000**

AND

**IN THE MATTER OF THE CONTINUING OMISSION AND FAILURE BY
AND/OR REFUSAL OF THE REGISTRAR OF THE INTEGRITY
COMMISSION TO COMPILE AND/OR ALLOW THE APPLICANT TO
INSPECT THE REGISTER OF INTERESTS, PURSUANT TO SECTION 14 OF
THE INTEGRITY IN PUBLIC LIFE ACT, 2000 (“THE SAID ACT”)**

AND

**IN THE MATTER OF THE FAILURE BY AND/OR REFUSAL OF THE
INTEGRITY COMMISSION TO PRESCRIBE REGULATIONS UNDER
SECTION 41 (A) AND/OR (B) AND/OR (C) AND/OR (F)**

AND

**IN THE MATTER OF THE ILLEGAL ULTRA VIRES DECISION OF THE
INTEGRITY COMMISSION CONTAINED IN A NOTICE PUBLISHED IN
DAILY NEWSPAPERS ON THE 19TH DAY OF MAY, 2004 TO EXEMPT
PERSONS IN PUBLIC LIFE FROM HAVING TO FILE DECLARATIONS OF
INCOME, ASSETS AND LIABILITIES AND STATEMENTS OF REGISTRABLE
INTERESTS FOR THE YEAR 2002**

BETWEEN

CHANDRESH SHARMA

Applicant

AND

**THE REGISTRAR TO THE INTEGRITY COMMISSION
AND**

THE INTEGRITY COMMISSION

Respondents

Before The Honourable Justice R. Narine

Appearances:

Dr. F. Ramsahoye S.C. and Mr. Anand Ramlogan for the Applicant.
Mr. R. Martineau S.C. and Mrs. D. Peake for Respondents

JUDGMENT

By a Notice of Motion filed on 2nd September 2004, the Applicant seeks the following relief:

- (a) **A declaration that the Applicant and/or any member of the public is entitled to inspect the Register of Interests pursuant to Section 14 (2) of the Integrity in Public Life Act 2000;**
- (b) **An order of mandamus directing the Registrar to allow the Applicant to inspect the said Register of Interests;**
- (c) **In the event no Register of Interests exists, a declaration that the inaction and/or omission of the Registrar to compile same is unlawful as being in contravention of Section 14 and an order to mandamus directing him to compile same;**
- (d) **A declaration that there has been unreasonable delay on the part of the Integrity Commission in making Regulations for the matters contained in Regulation 41 (a) and/or (b) and/or (c) and/or (f) of the said Act;**
- (e) **An order of mandamus compelling the Integrity Commission to prescribe the necessary Regulations for the aforesaid matters under Regulation 41 (a), (b), (c) and (f) of the said Act;**
- (f) **An order of certiorari to remove into this Honourable Court and quash the decision of the Integrity Commission to exempt persons in public life from having to file declarations of income assets and liabilities and statements of registrable interests for the year 2002.**
- (g) **A declaration that this purported retroactive exemption is ultra vires, illegal, null and void and of no legal effect;**
- (h) **A further declaration that persons in public life are required to file declaration and statements with the Integrity Commission for 2002;**
- (i) **Costs;**
- (j) **Such further relief orders directions or writs as the Court might consider just and/or appropriate as the circumstances of the case warrant;**

The relief sought at paragraphs (a), (b), and (c) was not pursued at the hearing having regard to the matters disclosed at paragraph 3 in the affidavit of Albert Alkins, the Registrar of the Integrity Commission, filed on 12th October 2004. Mr. Alkins deposed that he complied a Registrar of Interests sometime after 20th April 2004, and he put special arrangements in place to accommodate inspection of same by members of the public.

The two issues which remain for determination are:

1. Whether there has been unreasonable delay on the part of the Respondent in making regulations for the matters contained in section 41 of the Integrity in Public Life Act 2000 (hereinafter called “the Act”), and,
2. Whether the Respondent’s decision to exempt persons in public life from having to file declarations of income, assets and liabilities and statements of registrable interests for the year 2002 is ultra vires, illegal, null and void, and of no effect.

Before the Court embarked on hearing the arguments, Mr. Martineau applied to strike out several paragraphs in the affidavit of the Applicant filed on 3rd August, 2004 and refiled on 2nd September 2004, and in a further affidavit of the Applicant filed on 29th October, 2004. The basis of Mr. Martineau’s application was essentially that the matters contained in these paragraphs were opinion and/or argument and/or submission and/or interpretation of law.

Dr. Ramsahoye responded that the Applicant was at the material time a Member of Parliament and a Member of the Cabinet. He was therefore in a position to testify to the matters contained in his affidavit, and to express his own opinion as to the purpose of the legislation and his interpretation of the scope and effect of same. The Court is not bound to accept any of the opinions expressed by the Applicant on these matters.

I agree. I have looked at the offending paragraphs. I do not see in these paragraphs any matters that are scandalous, irrelevant or otherwise oppressive. I decline to exercise my power to strike out the paragraphs. However, in my view, whether the paragraphs are

struck out or not, would make absolutely no difference to the facts of this case, which are really not in dispute.

THE FIRST ISSUE - The Regulations.

The Integrity Commission was first introduced into this jurisdiction by Section 138(1) of the Republican Constitution of 1976. The first Commission was established by the Integrity in Public Life Act No.8 of 1987 assented to on 11th May 1987. The 1987 Act was replaced and repealed by the Integrity in Public Life Act 2000, which was assented to on 27th October 2000, and proclaimed by the President on 6th November 2000.

Section 41(1) of the Act provides that the Commission may make Regulations prescribing –

- (a) the manner in which enquiries may be carried out and any matters incidental to or consequential upon such enquiries;**
- (b) the standard or criteria for the initiation of such enquires;**
- (c) the manner in which information received from the public would be assessed and verified;**
- (d) the form of declaration to be submitted and any additional forms which have been prescribed or which may become necessary;**
- (e) the period within which any information or document required by the Commission should be furnished or produced;**
- (f) the fees that are payable by members of the public in respect of a certified copy of a public declaration statement and the manner in which such statements may be made available;**
- (g) any matter or thing in respect of which it may be necessary to make Regulations for carrying this Act into effect.**

The Regulations made under Section 41(1) are subject to the affirmative resolution of Parliament : Section 41(2).

According to paragraph 18 of the Alkins affidavit, after the coming into force of the Act, the Commission decided to make Regulations pursuant to Section 41, which were considered urgent and necessary to give effect to the Act and took steps to engage the

services of consultants to assist in drafting of other Regulations. Requests for proposals have been invited by the Central Tenders Board and the process of engaging consultants will be completed shortly. This affidavit was sworn on 12th October 2004.

On 7th August 2001 the Regulations which the Commission considered were urgent and necessary to give effect to the Act were made by the Commission and forwarded to the Chief Parliamentary Counsel to be laid in Parliament for affirmative resolution.

The Regulations were laid in the House of Representatives on 7th September 2001. Parliament was dissolved on 13th October 2001 and the Regulations lapsed.

General elections followed the dissolution of Parliament. The elections resulted in an equal number of seats in the Lower House being won by the two main political parties. On 24th December 2001, a new government was installed. Since neither party controlled a majority of seats in the Lower House, no speaker of the House was elected. As a result, no business was conducted in the House from 13th October 2001 to 17th October 2002.

It appears that the Chief Parliamentary Counsel redrafted the Regulations which were submitted by the Commission. According to Mr. Alkins, on 15th November 2002 the Chief Parliamentary Counsel requested the Commission to consider and approve draft 2002 Regulations. The Commission made revised Regulations which were forwarded on 24th December 2002 to the Chief Parliamentary Counsel for transmission to Parliament.

According to paragraph 21 of the Alkins affidavit, a new Commission was appointed on 13th August 2003. The new Commission reconsidered the Regulations and forwarded them on 12th September 2003 to the Chief Parliamentary Counsel for transmission to Parliament. The Regulations were eventually approved in the Senate on 26th November 2003, and in the House of Representatives on 5th December 2003. The Regulations were published by Legal Notices Nos. 215 and 216 of 2003, dated 12th December. 2003.

Legal Notice No. 215 of 2003 published The Integrity in Public Life (Furnishing of Information) Regulations 2003, which prescribed a period of 14 days for providing any

information or document requested by the Commission, pursuant to Section 41(e) of the Act.

Legal Notice No.16 of 2003 published prescribed forms for the Declaration of Income Assets and Liabilities, the Statement of Registrable Interests, and the Oath of Secrecy referred to in Sections 11(1), 13(3) and 20(4) of the Act. These Regulations were made pursuant to Section 41(d) of the Act.

No Regulations have been made to date pursuant to paragraphs (a), (b), (c), (f) and (g) of Section 41(1) of the Act. Paragraph (f) deals with prescribed fees payable by members of the public for certified copies of public declaration statements. This is no longer relevant having regard to Act No. 88 of 2000 which repeals and replaces section 35 of the Act. The records of the Commission are not to be disclosed except for the purpose of proceedings under the Act, the Prevention of Corruption Act or any written law.

Paragraph 41(g) of the Act empowers the Commission to make regulations prescribing any matter or thing necessary for carrying out its functions under the Act.

Mr. Martineau has submitted that Section 41(1) empowers the Commission to make regulations. Such power may be exercised by the Commission as the occasion requires. There is no evidence in this case that such an occasion has arisen. Therefore there is no need for the Commission to make regulations.

At first blush the submission appears to be quite attractive. Why make regulations the need for which has not arisen? However, when one looks more closely at paragraphs (a), (b), and (c) of Section 41(1) of the Act, it is clear that the matters contained therein are matters which are necessary for the day to day functioning of the Commission.

Paragraph (a) deals with the manner in which enquiries may be carried out and any matters incidental thereto. Paragraph (b) deals with the standard or criteria for the initiation of such enquiries. Paragraph (c) involves the manner in which information received from the public would be assessed and verified.

These are all matters of extreme importance not only to the functioning of the Commission, but also to persons in public life whose financial affairs are under scrutiny, and to the public who have an interest in the proper functioning of the Commission.

It may well be that the Commission has devised procedures to deal with these matters, hence they have not moved with urgency to have these regulations made and published. However, it is important from the perspective of persons in public life, and the public to have these regulation in place.

Persons in public life have a right to know the manner in which enquires are to be carried out and the standard and criteria for the initiation of such inquiries, and the manner in which information received from the public would be assessed and verified. The Act prescribes very serious penalties for non-compliance. It is therefore of vital importance that the practice and procedure of the Commission in relation to these matters should be standard, uniform and predictable and should be known to persons in public life and to the public. Those who may be subject to criminal liability should have the assurance that their affairs will be handled in accordance with established and predictable practices and procedure. The absence of published regulations in relation to these matters may open the Commission to allegations of arbitrary conduct and unequal treatment of persons in public life. Allegations of this kind must be avoided at all costs. The public must have confidence in the Integrity Commission itself. Loss of confidence in the Commission, in my view, would defeat the very purpose of establishing the Commission in the first place.

As noted above, the Act came into operation on 6th November 2000. The Commission proceeded to devise regulations in respect of paragraphs (d) and (e) of Section 41(1). These regulations were eventually approved by Parliament in December 2003. Taking into account the absence of a functioning Parliament for an entire year, there was a delay of two (2) years in making these regulations after the Act was passed. There does not seem to have been a great deal of urgency in having these regulations made. However, the declaration sought by the Applicant is in respect of the other regulations referred to in Section 41.

According to the Alkins affidavit, after the Act came into force, the Commission proceeded to make those regulations which it considered to be urgent and necessary to give effect to this Act, and took steps to engage consultants to draft the other regulations. More than four years have passed since the Act came into operation. No further regulations have been made. They have not yet been drafted and submitted to the Commission. Assuming that the earlier procedure is followed, that is, forwarding to the Chief Parliamentary Counsel, then back to the Commission, then to Parliament, then to a Select Committee, then to the Senate, then to the Lower House, one is left to wonder how many more years will elapse until they are finally approved and published.

The delay of more than four years in making regulations pursuant to Section 41(1) of the Act is in my view inordinate and unreasonable having regard to the circumstances. It is difficult to comprehend why the drafting of regulations dealing with the matters contained in Section 41(1) (a), (b) and (c) should take such a long period of time. There is no evidence in the affidavit of Mr. Alkins, as to what has transpired since the Commission took steps to enlist the assistance of consultants to draft the regulations. There is no evidence that the Commission took any further steps to facilitate or speed up the process. There is no evidence that the Commission has acted with any urgency with a view to having the regulations made and placed before Parliament.

Accordingly, I find that there has been unreasonable delay on the part of the Respondent in making regulations under Section 41(a), (b), and (c). I will grant the declaration sought in paragraph (d) of the Notice of Motion filed on 2nd September 2004. I will further grant an order of mandamus pursuant to paragraph (e) of the Motion, that the Commission take such steps as are necessary to lay the regulations before Parliament within three (3) months of the date hereof.

The Second Issue

Section 11 of the Act provides:

11(1) A person shall, within three months of becoming a person in public life, complete and file with the Commission in the prescribed form, a declaration of his income, assets and liabilities in respect of the previous year and,

- thereafter, on 31st May in each succeeding year that he is a person in public life, he shall file further declarations of his income, assets and liabilities.
- 11(2) **Notwithstanding the provisions of sub-section (1), the Commission may, in any particular case, for good cause, extend the time for the furnishing of a declaration for a period not exceeding six months.**
- 11(3) **The declaration shall be in such form as the Commission may from time to time prescribe and may be accompanied, if the declarant so wishes, by a statement relating to his net worth as indicated by details of his income, assets and liabilities.**
- 11(6) **Where a person who is required to do so fails to file a declaration in accordance with this section or without reasonable cause, fails to furnish particulars in accordance with section 13 or fails to file the statement of registrable interests under section 14, the Commission shall publish such fact in the Gazette and at least one daily newspaper in circulation in Trinidad and Tobago.**
- 11(7) **The Commission may, at anytime after the publication referred to in section (6), make an ex parte application to the High Court for an order directing such person to comply with the Act and the Court may, in addition to making such an order, impose such conditions as it thinks fit.**

As noted earlier, the Regulations prescribing the form of declaration under the Act were not approved by Parliament and published until December 2003. By letter dated 12th March 2004 the Commission informed persons in public life that it had extended the time for filing declarations and statements of registrable interests for the years 2002 and 2003 to 15th August 2004. A public notice to the same effect was published in the daily newspapers.

According to paragraph 28 of the Alkins affidavit, the Commission subsequently received a communication from an unnamed person in public life challenging the position taken by the Commission and pointing out that the Commission had no power to extend time for filing of the declaration for 2002 beyond six months from 31st May 2003, that is, beyond 30th November 2003.

The Commission sought advice of Senior Counsel on the issue, which it considered, and came to a similar conclusion. By letter dated 21st May 2004, the Commission informed

the Applicant that he was not required to file a declaration of income and a statement of registrable interests for the year 2002.

Mr. Martineau sought to persuade the court, that since the Commission could not extend the time for filing declarations for 2002 beyond 30th November 2003, it had no power to call upon persons in public life to file declarations for 2002 or to receive such declarations after that date, since to do so would be tantamount to extending the deadline by a period greater than six months.

In Mr. Martineau's submission, this would be an exercise of a power that the Commission does not have.

It is to be noted at this time that the form of declaration under the Act was approved and published in December 2003, mere days after 30th November 2003.

Mr. Martineau's submission is based on a restrictive interpretation of "prescribed form" in section 11. Mr. Martineau interprets "prescribed form" to mean a form prescribed by regulations made under the Act. In his submission, persons in public life could not be called upon to file their declarations for 2002, since the form prescribed by the 2000 Act, became available after the extended deadline had passed. That being the case, the Commission had no power to call upon them to file their declaration after this form became available.

In response to this argument Dr. Ramsahoye submits that there were prescribed forms in existence under the 1987 Act, which could have been used by persons in public life for the purposes of compliance with their obligations under the Act.

In support of his submission Mr. Ramsahoye referred to section 29(3) of the Interpretation Act which reads as follows:

(3) Without prejudice to subsection (2), where a written law repeals or revokes a written law and substitutes another written law therefore by way of amendment, revision or consolidation -

(a) all statutory instruments or statutory documents made, issued, confirmed or granted under the old law and all decisions and authorizations, directions, consents, applications, requests or things made, issued, given or done thereunder shall, in so far as they are in force at the commencement of the written law so substituted, and are not inconsistent therewith, have the like effect and the like proceedings may be had thereon and in respect thereof as if they had been made, issued, given or done under the corresponding provision of the written law so substituted;

Section 43 of the Act expressly repeals the 1987 Act. From a reading of the Act, it clearly substitutes the 1987 Act. In my view, section 29(3) of the Interpretation Act is applicable in these circumstances. The prescribed forms under the 1987 Act, could have been used by the Commission to ensure compliance with the Act by persons in public life. There is nothing in the form declaration contained in the Second Schedule of the 1987 Act which is inconsistent with the provisions of section 11 of the Act. It was therefore open to the Commission to call upon persons in public life to file their declarations using the existing prescribed form made under the 1987 Act.

However, Mr. Martineau's submission goes further. He argues that since the time for filing has expired beyond the Commission's express power to extend its (i.e. in this case 30th November 2003), the Commission could not lawfully call for or receive declarations for 2000, beyond that extended deadline.

In Mr. Martineau's submission, if the extended deadline passes, then the penal provisions of the Act are triggered. At this time, the Commission's hands are tied. They can no longer call for, or receive declarations, since they are creatures of statute and must have express power to call for or receive declarations after the extended deadline.

I have given careful consideration to Mr. Martineau's submission. With the greatest respect to Senior Counsel for whom the Court has the highest regard, the submission does not bear close scrutiny.

Where a person in public life for good reason fails to file his declaration, the Commission, may under section 11(2) grant an extension of 6 months without the person in public life attracting any sanctions under the Act.

Under section 6 where a person fails to file a declaration pursuant to section 11(1), the Commission “shall” publish that fact in the Gazette, and at least one daily newspaper. Under section 7, the Commission may then apply ex parte to the High Court for an order directing such person to comply with the Act.

It follows then, that after the extended deadline has passed, the Commission has the power to ensure compliance with the obligation of persons to file declarations.

In this case, the Commission having wrongly concluded that persons were not obliged to file declarations for 2002, , it was open to it to proceed under sub-sections 6 and 7 of section 11 to enforce compliance.

However, in my view, the Commission did not have to resort to this means of enforcing compliance in the first instance. The Commission could, if it held the view that the new forms must be used, simply request that persons in public life file their declarations, having regard to the fact that the forms were approved and published mere days after the extended deadline.

It seems to me as a matter of common sense and simple expediency that the Commission must have the implied power to call for and receive declarations after the extended deadline. After the extended deadline, the person in public life, becomes liable to sanctions under the Act. However, in a case where the Commission is of the view (as in this case) that there is no wilful non-compliance, it cannot be bound to trigger the penal provisions of the Act. It must have a discretion to act reasonably, as the occasion requires. If Mr. Martineau’s submission is taken to its logical conclusion then all persons in public life are no longer required to file declarations for 2002, but must be prosecuted for non-compliance. This clearly cannot be the case.

Circumstances may arise in which compliance within the extended deadline may become difficult or impossible. One could think of serious illness, personal bereavement or in an extreme case, natural disaster, or a state of emergency occurring just before the extended deadline. In such a case, it cannot be that the Commission is powerless to call for or receive a declaration after the extended deadline. The Commission must have a discretion to act reasonably, having regard to the intent and scope of the Act.

I might add, again following Mr. Martineau's reasoning, that the Commission has no express power under the Act, not to require persons to file declarations. By the same token, the decision not to require persons to file declarations, must be ultra vires its powers.

I might add as well that at the hearing, I inquired of both Counsel whether persons in public life had complied with section 11(1) in respect of the income year 2001. I did not get a clear response from Counsel. However, it seem to me, that if there was compliance for the year 2001, then the forms prescribed under the 1987 would have been used and accepted by the Commission. There has been no suggestion in this case that any exemption for 2001 has been granted by the Commission.

It seems to me that the primary function of the Commission is to receive and examine declarations and statements regarding the financial affairs of persons in public life, and to take follow-up action where necessary, by way of enquiry or prosecution. This is the very *raison d'être* of the Commission. To make a decision not to require persons to file declarations on the misapprehension that a new form was required, is unreasonable, and in direct contradiction of the very purpose for which the Commission was set up.

The unreasonableness of the decision is patent when one considers the vital role the institution plays in the context of the politics of Trinidad and Tobago, where the issue of corruption occupies center stage. In such a context, the Commission must be seen to be politically neutral and independent. It must not appear to be making decisions which favour or are convenient to any particular party. In the case at hand, the income year for which the purported exemption was granted was a year in which there was a change of

government and persons would have entered public life for the first time. It is important in these circumstances for the Commission to carry out the constitutional functions for which it was created.

The Commission in fact derives its existence from the constitution itself. Section 138(1) of the Constitution creates the Commission. Section 138(2) charges the Commission with the duty of receiving declarations in writing of the financial affairs of persons in public life, the supervision of and monitoring of standards of ethical conduct prescribed by Parliament to be observed by such persons, and the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.

Section 139 of the Constitution expressly empowers Parliament to make provision for such matters as the procedure of the Commission, conferring powers on the Commission as are necessary to enable the Commission to carry out its functions effectively and generally to give effect to section 138. In other words, the framers of the constitution envisaged that Parliament has an important role in empowering the Commission so that it could carry out its functions effectively. If Parliament does not act, or acts slowly where legislative action is required, that may result in a toothless Commission, unable to perform its functions effectively. Having regard to the facts of this case, it appears that neither the Commission nor Parliament has acted with the urgency contemplated by the Constitution to put regulations and prescribed forms in place so that the Commission could effectively carry out its constitutional role. This has led to the absurd result in this case where the Commission decided not to require persons to file declarations for the year 2002, thus nullifying the very function that it was created to carry out.

THE ORDER

In the result the Applicant succeeds in this action.

I will grant the following relief:

1. A declaration that there has been unreasonable delay on the part of the Integrity Commission in making regulations for the matters contained in section 41(1) (a), (b), and (c) of the Act.

2. An order of mandamus compelling the Integrity Commission to take such steps as are necessary to lay before Parliament the regulations under section 41 (a), (b), and (c) of the Act within three (3) months of the date hereof.
3. An order of certiorari to remove into this Honourable Court and quash the decision of the Integrity Commission not to require persons in public life to file declarations of income assets and liabilities and statements of registrable interests for the year 2002.
4. A declaration that this purported retrospective exemption is ultra vires, illegal, null and void and of no legal effect.
5. A declaration that persons in public life are required to file a declaration and statement for the year 2002.
6. Costs to be paid by the Second Respondent to the Applicant fit for Senior and one Junior Counsel.

(Stay of execution in 28 days)

Dated this 20th day of April 2005.

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Rajendra Narine
Judge.