

## POLICE SERVICE COMMISSION

10 June, 2013

His Excellency  
Sir Elliott Fitzroy Belgrave, G.C.M.G., K.A  
Governor General of Barbados  
Government House  
Government Hill  
St. Michael

His Excellency,

### Re: Recommendation of Retirement of the Commissioner of Police

This correspondence is to recommend the retirement of the Commissioner of Police pursuant to your powers conferred by section 11(1) (a) of the Pensions Act, Cap. 25 of the Laws of Barbados. The Commissioner has reached the age of 63 years and has therefore passed the age at which His Excellency may exercise the powers conferred by the relevant provision.

As we understand it, this authority need not be supported by any misconduct on the part of the person to be retired. Although there is an abundance of evidence that the Commissioner has engaged in conduct which is worthy of censure, and which we feel duty bound to draw to your attention, we do not believe that such conduct is a requirement for the exercise of this power.

The Commission believes that the information in its possession provides strong evidence of criminal activity by the Commissioner. We also believe that he has engaged in conduct that is worthy of disciplinary censure. However, we believe that pursuing these matters would embroil the Commission and the Commissioner in prolonged controversy which is not in the interest of either party or the public. We recommend this course of action, therefore, because it is not disciplinary, would protect the Commissioner's

pension rights in a way that some dishonourable termination may not, and would allow both offices to quickly move on with serving the interest of the public. Our only considerations in making this recommendation are the age of the Commissioner, the interest of the Royal Barbados Police Force and the public interest. We are, therefore, recommending the retirement of the Commissioner of Police pursuant to section 11 (1) (a) of the Pensions Act, Cap 25.

Section 11 (1) (a) of Cap. 25 provides as follows:

**“Subject to section 13B, the Governor General may require an officer to whom this section applies to retire from the service of the Crown in a civil capacity at any time after he attains the age of 55 years.”**

Section 13B falls under PART IIIA (Grant of pensions to officers appointed after commencement of this Part and to other officers who opt) and does not affect our recommendation here. It places the age of compulsory retirement at 60 years, an age which the Commissioner has already passed, even if this Part applied to him.

Civil capacity bears explanation in light of the fact that the subject of this discourse is the Commissioner of Police and in certain considerations the police force is regarded as paramilitary. That paramilitary designation does not affect our findings, as it is clear that the office of Commissioner of Police is a civil capacity office for the purposes dealt with here.

Service in a civil capacity means civil service or public service as opposed to military service. Military service refers to service in the Barbados Defence Force and does not refer to service in the Royal Barbados Police Force. Persons occupying offices established under the Defence Act, Cap. 159, are not serving in a civil capacity. Persons occupying offices established under the Civil Establishment Act, Cap. 21, or the Public Service Act, are serving in a civil capacity.



The office of Commissioner of Police is established as an office in the civil service and not a military office. Part 1 of the Eighth Schedule of the Public Service Act lists the office of Commissioner of Police as an office which is included in the description of Permanent Secretary. This is an office of a civil capacity for the purposes of the Pensions Act.

Subsection (2) of section 11 provides that the power conferred upon the Governor-General by subsection (1) shall be exercised by him, in the case of any officer other than a member of his personal staff, acting in accordance with the advice of the appropriate Service Commission. The Police Service Commission is authorised to give the advice and make the recommendation contained in this paper.

Subsection 4 of section 11 states that "The officers to whom this section applies are all public officers except a Judge, the Director of Public Prosecutions and the Auditor-General."

Having carefully considered this matter, we believe that our recommendation is sound in law and is not ultra vires our authority or that of the Governor General.

#### **Procedure**

We recommend the following procedure:

1. The Police Service Commission recommends to the Governor General that the Commissioner of Police be retired under section 11 (1) (a) of the Pensions Act, Cap. 25, providing reasons for its recommendation.
2. The Governor General considers the recommendation of the Commission.
3. The Governor General gives the Commissioner notice of the Commission's recommendation as well as a copy of supporting evidence; notice of his right to respond to that recommendation within 28 days; notice of immediate

suspension from performance of duties in the public interest until his response is considered and a decision is made concerning the recommendation.

4. The Governor General considers the response of the Commissioner and makes a determination on the recommendation, giving the Commission and the Commissioner written notice of that decision.

### **Conclusion**

The course we advise would not deprive the Commissioner of any of his pension benefits. Given the fact that he has already passed the age of 60, this course would not disadvantage him, but would offer tremendous relief to the Force.

For confidentiality purposes, this paper was prepared by the Commission without the assistance of support staff.

### **History**

We have reviewed the information in the possession of the Commission surrounding the rampant reports of phone tapping. The information provides irrefutable evidence of illegal phone tapping, but also paints a picture of circular communications and an unwillingness of persons in authority to take responsibility for dealing with this matter. Up to now, the Commission has been trying to have the reports of tapping properly investigated by pushing on every door from behind which a solution may be found, but receiving no useful response.

On receiving information that the telephones of members of the Commission were tapped, as well as those of other persons in the country who were not known to be suspected of any criminal activity, in the absence of any known authority for such procedure, the Commission was duty-bound to have these reports investigated. It moved to have such an investigation carried out.



As part of its investigation, the Commission secured responses from senior members of the Royal Barbados Police Force. Among those responses was one from the then Deputy Commissioner of Police, Bertie Hinds, who stated that the matter of phone tapping was "cause for great concern and distress throughout the Force and amongst officers' families". He stated that his family was among those suffering in this way. Mr. Hinds also said that he was of the firm belief that tapping was happening and would continue. This information was provided under a confidential memorandum dated December 13, 2010. By a similar memorandum of the same date, Mr. Hinds stated that he was informed that both his residential telephone and his cellular phone may be tapped. He was also informed that telephone conversations between him and another senior officer were secretly recorded.

Without more, it is an extremely serious and dangerous development when the Deputy Commissioner of any police force is concerned that his private telephones may be tapped. This merited an urgent investigation, but, the efforts of the Commission notwithstanding, this has not been the approach taken.

By memorandum dated 9 December, 2010, then acting Assistant Commissioner, Morgan Greaves, stated that he had heard rumours, in the Force and elsewhere, that the telephones of certain police officers, as well as those of other Government officials, had been tapped. He also stated that he had been privately informed that both his private and office telephones had been tapped. According to him, he was told that recordings of conversations between him and Bertie Hinds were made.

The Commission had audiences with a number of persons who gave first hand accounts of the Commissioner's phone tapping activities and other matters of concern. These persons provided direct evidence of events.

Assistant Superintendent Lila Boyce met with the Commission on 22 July, 2011. She gave an account of a meeting she attended with the Commissioner of Police and Inspector

Anderson Bowen, during which meeting the Commissioner manipulated his lap top computer and played a recording of a telephone conversation between Inspector Bowen and another person. She said that she heard nothing in that conversation that implicated Inspector Bowen in any unlawful activity. Two other officers provided compelling personal accounts.

Sergeant Paul Lynch informed the Commission that he had been attached to the Special Branch of the Force and was aware of telephone tapping. He said that Commissioner Dottin gave instructions to use the facilities to tap the telephones of five senior officers, namely Bertie Hinds, L. Brome, Glen Bradshaw, Graham Archer and Joy McConney. It should be noted that Glen Bradshaw was the driver of the current Prime Minister and Joy McConney was the former driver of former Prime Minister, Owen Arthur. It seems that these tapings were politically motivated. Sergeant Lynch also stated that there was a secret section of these operations called "Political".

Constable Erwin Bradshaw, a former intelligence officer, corroborated the information provided by Sergeant Lynch. He told the Commission that intelligence gathering equipment which was donated to the Force to intercept phone calls and internet traffic associated with the illegal activity "was instead used by the Commissioner to listen into calls by certain public officials, including senior members of the Police Force, Magistrates, and members of the Police Service Commission."

It is probably instructive that the Commissioner has not provided a direct answer to the question of his involvement in the tapping of telephones. This notwithstanding, one of the police officers deployed to tap telephones by the Commissioner, provided the Commission with a compact disc of two recorded conversations which the Commission has had transcribed. Transcription 1 is of a conversation between Bertie Hinds (Deputy Commissioner) and Morgan Greaves (Senior Superintendent) and the second is of a conversation between Glen Bradshaw (Prime Minister's security officer) and Bertie Hinds (Deputy Commissioner of Police). A copy of these transcripts is enclosed for your information.



The extract from the minutes of the Commission taken on 11 April 2011, of Constable Bradshaw's testimony before the Commission, reveals the following troubling information:

**"He (Bradshaw) reported on a particular incident whereby Commissioner Dottin had had a false document prepared to show that Deputy Commissioner Bertie Hinds was corrupt and had presented the report at an overseas conference but when the allegations were investigated they were proven to be false."**

If true, this is highly unethical behaviour. The Commission regards this as most damning for a person of such high office. This characteristic speaks volumes above and beyond this particular incident. In our view, this seems to suggest that all persons of whom the Commissioner disapproves may be in danger of one kind or another. The Commission is unwilling to dig for further proof of this for fear of the ancillary damage it could cause, but the members who heard Constable Bradshaw are fully persuaded of the veracity of his account.

### **National Security**

The Commission is of the view that these events have national security implications and should, therefore, be dealt with forthrightly and urgently. In this regard, we have noticed that some persons have sought to avoid acting on this matter by suggesting that it should be referred to the National Security Council.

There are two important issues here. First, as far as we know, the Commissioner sits as part of the National Security Council. This undermines any possibility of transparency or confidence in that body as far as this matter is concerned.

Secondly, the National Security Council has no statutory or any other role to play in the investigation or other resolution of a matter of this nature. The involvement of the National Security Council in this matter would be unlawful and without authority.

### **Criminal Offences**

At least three serving members of the Royal Barbados Police Force have provided information to the Commission that they were deployed by the Commissioner of Police to tap the telephones of a number of citizens or were otherwise aware of evidence of this activity. According to the information provided to the Commission, these eavesdropping decisions were not necessarily informed by suspicion of criminal activity.

Phone tapping is in contravention of the Telecommunications Act, Cap. 282B. Section 82 of that Act provides,

- 82. (1) A person who knowingly**
- (a) obstructs or interferes with the sending, transmission, delivery or reception of any communication;**
  - (b) intercepts or procures another person to intercept, without the authorisation of the provider or user, or otherwise obtains, or procures another person to obtain, unlawful access to any telecommunication or copies or causes to be copied any telecommunication;**
  - (c) uses the content of any communication, or having reason to believe that such content was obtained through interception or access in contravention of paragraph (b); or**
  - (d) manufactures or sells any network, equipment, card, plate or other device, or produces, sells, offers for sale or otherwise provides any account number, mobile identification number or personal identification number, for the purpose of**



fraudulent use of or access to any telecommunications service, commits an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 3 years or to both and, in the case of a continuing offence, to a further fine of \$10 000 for each day that the offence continues after conviction.

(2) Paragraphs (b) and (c) of subsection (1) do not apply in relation to the Royal Barbados Police Force acting in the lawful execution of its duties in accordance with any law or enactment.

Subsection (1) (a) is contravened by any person who engages in the conduct described therein. We believe that the tapping of the telephone communications of any person is an interference with a communication as contemplated by that provision.

Subsection (2) exempts the Royal Barbados Police Force from the application of subsections (1) (b) and (c) where it is "acting in the lawful execution of its duties in accordance with any law or enactment." To the best of our knowledge, there is no enabling law or enactment to facilitate such an act, therefore, the decision to tap the telephones of innocent citizens was not done pursuant to any lawful duty which was supported by any law or enactment. In the circumstances, such conduct was not in execution of any lawful duty and, therefore, could not be exempted from legal sanction and was a contravention of these provisions. As such, this conduct would amount to a criminal offence.

An offence under this provision carries a penalty of \$250,000 or 3 years imprisonment. This reflects the serious nature of this offence. The Public Service Act, 2007-41, under the Third Schedule, Code of Discipline in the Public Service, at paragraph 2, defines misconduct of a serious nature as conduct that warrants dismissal of the offending person. Among dismissible offences is a conviction of a criminal offence punishable by a term of imprisonment. Given the fact that the subject of this correspondence is the Commissioner of Police who is the person in Barbados to commence criminal prosecutions, it is unlikely that such proceedings can be commenced, far less a conviction

obtained, while the incumbent remains in office. In essence, if the Commissioner remains in office, he is unprosecutable and may continue to disregard the law as he pleases.

### **Negative Leadership**

The Commissioner of Police has embarked on a path of resistance to the Commission and institutional authority. His attitude has been one of open defiance and the use of every possible mechanism to obstruct the will of all but his.

This is demonstrated in his role in the law suit which is now before the court in which a number of officers have brought an action to stop promotions made by the Governor General on the recommendation of the Police Service Commission. That suit names the Commissioner as a Defendant, but a reading of his Affidavit leads to the conclusion that he is part of the team of claimants. A copy of that Affidavit is enclosed for your information. The circumstances of the Commissioner's role are instructive.

The Police Service Commission made recommendations for the promotion of a number of officers to the Governor General who accepted those recommendations and appointed the recommended persons to their new ranks.

The Commission passed the information of the promoted persons to the Commissioner of Police with the instruction that the promoted persons should be notified of their promotions.

Instead of carrying out the instructions of the Commission, the Commissioner withheld those notifications which facilitated the filing of a law suit in the form of an injunction to stop those promotions. He then filed a supportive Affidavit in the process. The effect of this was that the Commissioner, although being named as a Defendant in the suit, is in fact supportive of the Applicants.



It should be borne in mind that this is not the first suit the Commissioner had brought against the Commission. There is still an injunction in place which the Commissioner filed in order to prevent the Commission from disciplining him for breaches of discipline.

Shortly, the Commission will conduct interviews for the post of Deputy Commissioner. Having discussed the Commissioner's method of dealing with the Commission, it is anticipated that a new legal challenge to the Commission will come from him if his chosen candidate for the office of Deputy Commissioner is not the choice of the Commission. His very recent actions disclose that he is preparing for such a challenge.

After displaying his usual difficult behaviour towards the Commission, having been given notice that the Commission was intent on proceeding without allowing his delaying tactics to retard its work, he suddenly provided documentation which would allow him to claim that he was willing to assist the Commission in the interview process. The Commission has lost confidence in the Commissioner and no longer trusts his motives. We are of the view that should the Commissioner remain in office, the work of the Commission would continue to be embroiled in controversy and court cases.

### **Beyond Discipline**

On a careful reading of the Code of Discipline in the Public Service, we are of the view that its provisions seem not to contemplate the interdiction and discipline of an officer at the level of a Permanent Secretary or the Commissioner of Police. The drafters of these provisions seem to expect such persons to be beyond reproach.

For example, paragraph 3 speaks to the interdiction of an officer who is under investigation in respect of an offence leading to criminal charges, by the Permanent Secretary or Head of Department.

Further, paragraph 4, which empowers the Commission to conduct an enquiry or depute a panel for the purpose of inquiring into an offence of serious misconduct, requires a

member of the panel to be at a grade higher than the officer against whom the charge is brought; but in any case shall not be below the level of senior personnel officer. That paragraph also contemplates a role for the Permanent Secretary which would be inappropriate where the person charged is the Commissioner of Police.

The Commissioner of Police has developed a practice of using the law courts to obstruct the decisions of the Commission, whether those decisions are in respect of him personally or in regard to decisions which are not pleasing to him. There is little doubt that he would seek to tie up any action against him in the courts while he continues to act to defeat the work of the Commission. While the Commissioner is entitled to protect his rights, the evidence in the possession of the Commission is overwhelming, but cannot be pursued because of the circumstances outlined above.

#### **Procedure Considered**

Although we are in no doubt about the substantive authority, we are conscious of the need for procedural correctness.

We have found no specific provision that governs the procedure for the removal of a Commissioner of Police in the circumstances under consideration herein or in any other circumstances. However, guidance may be had from other provisions and adherence to the principles of basic fairness consistent with the requirements of natural justice.

We have canvassed the Service Commissions (Police Service) Regulations, 1964, as well as the Service Commissions (Public Service) Regulations, 1978, none of which directly apply to the Commissioner of Police, but we have looked to them for general guidance regarding the treatment of other officers.

In both Regulations, persons who have been recommended for compulsory retirement must be given notice of that recommendation and granted the opportunity to state a defence in writing. The Commissioner can be accorded no less treatment and must be



given the right to be heard. However, while these Regulations may be silent on the time limit for a response, it is desirable that a specific time be instituted by which such a response should be provided. We recommend a period of 28 days from the date of service.

Given the nature of such proceedings, we propose the Commissioner's immediate suspension from duty on service of notice of this recommendation. Section 17 (1) of the Service Commissions (Police Service) Regulations, 1964, provides as follows:

**17. (1) Where**

- (a) any disciplinary proceedings or criminal proceedings have been or are about to be instituted against an officer; or**
- (b) the Commissioner is of the opinion that it is necessary or desirable in the public interest that the officer should forthwith cease to perform his functions as an officer, the Commission may recommend to the Governor that the officer be suspended from the performance of his functions.**

Section 27 (1) of the Service Commissions (Public Service) Regulations, 1978, provides as follows:

- 27. (1) Where a report against a public officer for misconduct is being investigated, or criminal proceedings have been or are about to be instituted against that officer, and the Commission is of the opinion that the public interest requires that the officer should forthwith cease to perform the functions of his office, the Commission may recommend his interdiction.**

In both instances cited here, there is recognition of the usefulness of removing an officer from active duty ahead of any finding of guilt. These provisions both speak to misconduct. Although misconduct is not identified as a necessary component of what triggers the Governor General's powers under the Pensions legislation, it is germane to this matter that there is significant evidence of misconduct, but the peculiar position of

the subject makes any procedure other than the intervention of the Governor General unhelpful. It is also reiterated, that these provisions are only intended to provide guidance and are not used as binding precedents.

The recommendation of relief from the performance of duties is made for officers who do not have the power for disruption of an investigation that rests in the bosom of the Commissioner. Having considered all the evidence provided in this matter and the significant powers associated with the office of the Commissioner of Police, we regard it as absolutely necessary that, on receiving notice of our recommendation, the Commissioner be forthwith suspended from the performance of his duties until his response has been considered and a determination made on his future.

We have considered whether we need to give notice to the Commissioner and give him the opportunity to tell us why we should not make such a recommendation, or whether we should make our recommendation to Your Excellency and have the Commissioner be given notice of that recommendation and given the opportunity to say why it should not be accepted. Our deliberations convince us that the latter course is the appropriate one.

We are conscious of the fact that the Commission is not the employer of the Commissioner and cannot dismiss or retire him. The provision of the Pensions Act under which we come gives the exclusive authority to retire an officer to the Governor General, although the recommendation is made by the Service Commission. Further, we believe that the power to suspend in this case complements the giving of notice of complaint or recommendation, and these can both properly be carried out by the Governor General, but not the Service Commission.

### **Concluding Observations**

We are of the view that Barbados is in a dangerous and untenable situation because, probably for the first time, we have a Commissioner of Police who is reasonably believed to be involved in unethical and criminal activity. These events have undermined the



confidence of upstanding citizens, making law abiding citizens afraid to use their telephones. Disturbingly, much of this activity seems to be politically motivated. This threatens to compromise the integrity of communications of Government officials and is a threat to our democratic way of life.

When the telephone of the driver and security officer of the Prime Minister is tapped, this compromises the Prime Minister's communications with this officer. This strikes directly at the heart of our authority structure and is a step in the wrong direction.

While the Commission in no way condones any illegal activity, we are not unmindful of the motivation that encourages the use of intelligence gathering technology in the fight against crime and terrorism. However, one would expect that information gathering methodologies such as phone tapping and the harvesting of electronic communications would be done in a controlled way and would be targeted exclusively at criminal or terrorist activity. Political tapings is not only unlawful, but has national security implications of the most sinister kind. The Commission believes that it cannot turn a blind eye to this development.


Further, it is the considered opinion of the Commission that the Commissioner is determined not to be directed by the Commission. In this regard, the Commission is careful to confine its activities to its Constitutional and statutory remit. The Commission is also aware that for it to be reduced to a rubber stamp for the decisions of others, is to hand over our legitimate authority to those others who have no lawful authority to operate in the areas they seek to act in. This would be an unlawful usurpation of the Constitutional and statutory role of the Commission. This seems to be the intention of the Commissioner, but the Commission is unwilling to accept this reversal of authority.

By virtue of his office, it is all but impossible to discipline or prosecute an incumbent Commissioner of Police. A rogue Commissioner is, therefore, an uncontrollable operative with immunity. Added to this, a pattern of legal gagging has emerged as a strategy employed by the Commissioner whenever an attempt is made to deal with him in

an effort to call him to account for his actions. These constraints make it impossible to deal with the Commissioner other than by the method proposed herein.

Of major concern for the Commission is the impact that the management style of the Commissioner and his vindictive attributes are having on the morale and performance of the Force. We are gravely concerned that even if the Commission were to condone the Commissioner's behaviour, it would do only harm to the work of the Force. In the circumstances, his immediate departure is advised.


R.E. Guyson Mayers

  
.....  
Chairman

The Very Reverend Dr. Frank Marshall, C.B.E.

  
.....  
Deputy Chairman

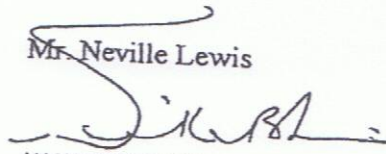
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