

Public Procurement Priorities

8th January 2015

The [Public Procurement & Disposal of Public Property Bill](#) was passed by the Senate on Tuesday 16 December 2014, completing its [journey](#) through the legislative process. That is an historic achievement for our country, so it is essential that we take our bearings and properly record the moment.

This important new law to control transactions in Public Money was the objective of a long-term, collective campaign by the Private Sector Civil Society group (PSCS) of which JCC was a member. The JCC met with the leaders of the Peoples Partnership in April 2010, with one of the key promises emerging from that meeting being that new Public Procurement laws would be passed within one year of an election victory. It has taken four and a half years for the government to achieve that.

This achievement was only possible because of our collective efforts. Ours was a diverse group which resolved to campaign together for this critical reform of our country's laws to ensure effective control over transactions in Public Money.

The PSCS group which campaigned for this critical public policy reform comprises –

- Joint Consultative Council for the Construction Industry (JCC)
- Trinidad & Tobago Chamber of Industry & Commerce (The Chamber)
- Trinidad & Tobago Manufacturers' Association (TTMA)
- Trinidad & Tobago Transparency Institute (TTTI)
- American Chamber of Commerce (AMCHAM)
- Federation of Independent Trade Unions & NGOs (FITUN)
- Local Content Chamber

In response to the formation of a Joint Select Committee of Parliament in 2010 to examine the options for this new law and its invitation of submissions, the PSCS group submitted an entire [draft law – Public Procurement & Disposal of Public Property Bill](#) in December 2010. That Bill drew from the [2005 White Paper](#), the [2010 Uff Report](#) and international best practice, but it never attracted a positive response from any public official. The government decided to write its [own draft law](#).

There were many challenges, but our collective efforts persisted, due largely to the long-term and committed leadership of Winston Riley, my predecessor as JCC President. Riley first raised the alarm in [October 1979 \(!\) with his devastating critique of the emerging Government to Government Arrangements](#), then being promoted by the PNM government, under our nation's first Prime Minister Dr. Eric Williams. There were many heated debates, but many more enlightening ones, within the PSCS group on the complex and controversial issues at stake in this important new law. We must, out

of fundamental responsibility to history, record our sincere and deep appreciation to Winston for his deep grasp of the complex array of issues, his depth of commitment and the patient leadership he demonstrated in this long chapter of our country's history. Winston's is an example which we could only benefit from emulating.

It has been the considered view of the PSCS group that the new Public Procurement & Disposal of Public Property Bill (2014) is the most important law in our country, second only to our very Constitution.

That is how we got here, we now need to map-out where we are and where we need to go next.

PNM Paradox



Perhaps the most important episode in the entire saga of how this law got passed in our Parliament is the puzzling position taken by the PNM Senators, five of whom were part of [the historic 28-nil vote in support of this new law on Wednesday 11 June 2014](#). Three of those Senators were attorneys – Camille Robinson-Regis, Faris Al Rawi and Stuart Young – so it is very difficult to understand the PNM's subsequent objections in the Lower House. Even more puzzling is the abstention of the PNM's Senators when the identical Bill returned to the Senate for its [third reading on Tuesday 16 December 2014](#).

What is included?

The new law contains satisfactory provisions in three areas –

1. Public Money – The Interpretations clause at pg 6 of the Bill contains a solid definition of Public Money. That is fundamental to any attempt to curb the waste and theft of our nation's wealth.
2. Independent Regulator – Clause 13 (2) (b) states – “...(2) In the exercise of its functions, the Office shall...(b) not be subject to the direction or control of any other person or authority in the performance of its functions, but shall be accountable to the Parliament...”. An Independent Regulator is critical to the success of these new arrangements.
3. Complaints Procedure/Whistleblower – Clause 40 contains provisions for the protection of persons

providing information on a confidential basis. Whistleblowers are very effective at detecting and reporting corrupt practices, so it is critical that they are protected.

What was excluded?

The PSCS group noted two serious concerns in its [13 June 2014 Press Release](#) –
“...Whilst very pleased with the progress to date and while not having sight of the amended bill we note two areas that remain of serious concern; the Role of civil society and the acquisition and disposal of public property...“.

The PSCS group’s proposals would have included an independent view and reporting from Civil Society in this new set of arrangements. We now have a new law which has located Civil Society within the Office of Procurement Regulation, which will impose certain limits on the potential whistleblowing role of those critical organisations.

There are also valid concerns over the fact that it remains possible for a government to either dispose of public property via Government to Government Arrangements, or use wasteful and corrupt land acquisition procedures which unjustly enrich landowners from whom the State is buying. These issues were more fully covered in ‘[None so Blind](#)’, published in this space on 18 July 2014.

What needs to happen now?

Three things need to happen for the new law to be properly implemented –

- 1.Presidential Assent – The Bill has been passed by Parliament, so it must now be assented to by the President.
- 2.Appointments – Persons with the required education and experience need to be appointed to the Office of Procurement Regulation. This is an area which requires our collective, continued vigilance.
- 3.Regulations – The new law is a framework intended to control transactions in Public Money occurring in a wide variety of ways, so proper regulations are needed to give effect to its intentions. This is another area which will require informed and committed engagement if we are to get it right.

What do we need to be alert for?

We recognise this new law as significant progress, which was only possible because of concerted lobbying over a long time and the current confluence of political forces. What might be called ‘ a tide in the affairs of men’, so to speak.

The point being that tides change and national elections are virtually upon us. If there is a decisive shift in the political tide we could be witness to attempts to reverse these gains by our elected rulers. That is the reason we need to maintain our vigilance to ensure that these new laws are effectively implemented and these gains entrenched for the benefit of this and future generations.