

POLITICAL PARTY AND CAMPAIGN FINANCING IN ANTIGUA¹

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I. ELECTORAL SYSTEM OF THE COUNTRY AND GOVERNMENTAL STRUCTURE

The population of Antigua and Barbuda is 70,000. At the March 2004 elections the Antigua Labour Party (ALP) and the United Progressive Party (UPP) – each of which is aligned to a particular trade union - contested the elections in which the UPP was victorious in a landslide victory.

The electoral system is based on the first past the post system of voting under which “the winner takes all.” There are two bodies recognised by the Constitution to which reference will be made later – the Supervisor of Elections and the Boundaries Commission.

Antigua and Barbuda is a monarchical country within the Commonwealth and it follows the Whitehall pattern of government with the Queen of England as Head of State represented locally by a Governor-General who exercises executive authority either directly or through officers subordinate to him. (See section 68 of the Constitution). The Head of Government is the Prime Minister in whom executive powers reside, acting through a Cabinet of Ministers appointed by the Governor-General on the advice of the Prime Minister who is himself appointed by the Governor-General. That dignitary is normally the political leader of the Party who has the support of the largest number of elected representatives in Parliament.

Parliament comprises a House of Representatives and a Senate – there being seventeen members in each. The Senate is referred to as the Upper House (just as the House of Lords in England is so called) while the House of Representatives is styled the Lower House. The former is a nominated body as opposed to the latter which is an elected group. The Senate is chaired by a President and the House of Representatives by a Speaker.

In the sister island of Barbuda the principal instrument of policy is the Barbuda Council – recognized as such by the Constitution which stipulates that “the Council shall have such membership and functions as Parliament may prescribe” and Parliament has in fact prescribed them in the Barbuda Local Government Act 1976 (Cap. 44 of the Law of Antigua and Barbuda).

II. CAMPAIGN FINANCING

The research associated with the financing of recent elections in Antigua and Barbuda reveals that donations have always been made in secret. It has also been confidently stated that wealthy donors give to both the governing party and to the opposition party

¹ The opinions expressed in this document do not reflect the official position of the Organization of American States.

making sure to give more to the former than to the latter. Needless to say, up till the last General Elections – held in March 1999 – there has never been any legislative provisions regulating finance campaigning in any aspect, viz., it was not necessary for a candidate or a political party to state what donations or other favour in kind was received from any individual or organization or a fortiori in what quantum.

My investigations reveal a wide consensus that the governing party has always had a large group of prosperous businessmen who have traditionally contributed heavily in money to that governing party. But quite apart from that group, there is said to be a small number of very wealthy entrepreneurs who have consistently paid large sums of money towards the party's election expenses while at the same time contributing such services as public relations experts and specialists in other fields. It is said that the Opposition Party has never been able to rival the governing party in that respect and that accordingly it has always found itself at a disadvantage.

It is also asserted that since there is no limit on the total amount that a party or a candidate is permitted to spend, the disadvantage is all the greater. This common view was articulated by the Commonwealth Observer Group to the General Elections in Antigua and Barbuda (9 March 1999) who in their Report after the Elections made this comment on the matter:

We understand that there are no regulations governing the limits on the amount that could be spent on campaigning by parties at either the constituency or national levels (sic), nor any method for ensuring the transparency or probity of political donations. We heard many allegations that the governing party had at its disposal considerable resources due to the active support of the foreign investors. We observed lavish spending by both parties on sophisticated campaign materials and events, which made the disparities in the resources available between the candidates all the more marked.”

Examples were also given of the way the governing party made use at the last general elections of government funds – to repair roads previously neglected; to embark on construction projects at the particular time, so as to provide jobs for supporters and would-be supporters; to waive import duties on cars and other equipment; and to sell government lands to young people at specially low prices. This list, it should be stated, is not exhaustive.

In its Report, the Commonwealth Team politely stated that the government's response to the charges of bribery was that “the timing of these initiatives was coincidental.” Opposition members also claim that two very well-off members of government went as far as to pay utility bills for individuals and even to provide radios and refrigerators for them to secure their votes.

Although these may prima facie appear to constitute large bribes, four parliamentary candidates of the Antigua Labour Party who are known to be very wealthy were so anxious to get elected at the 2004 March general elections that they were prepared to spend any amount of money to attain that end. In this connection, it should be pointed out that these very wealthy candidates were also able to receive donations of large sums of money on an

individual basis. Some candidates from both parties secured heavy donations from their relatives or their wives' relatives. In this context all sorts of gifts are in turn handed out to supporters or to those being sought as supporters.

In addition, it is common knowledge that the ALP Government which was recently defeated at the polls was in the habit of making gifts of turkey and hams (imported for the purpose) to their supporters at Christmas time "as a seasonal gesture of good-will." But whether that motive was paramount when the gifts were lavished on supporters and undecided votes only weeks before a March election is open to some doubt.

With the best will in the world, it is impossible – without the aid of a large research team – properly to quantify in dollar term the amount of money spent on an election campaign in Antigua. Contributions are made in cash and in kind, and there is confidentiality surrounding transactions when cheques are the medium of donations. Any guess will therefore be wild and worthless. For instance, the new administration in Antigua recently revealed after being in office for only three weeks that in the six months leading to the general elections the Minister of Finance of the previous Government awarded the duty-free concessions on motor cars and other valuable imports to an unprecedented 1000 persons with a loss in revenue of millions of dollars. At the same time the new Minister conceded that it would take time to research the matter in order to discover how many of the concessions were genuine and how many were granted as bribes to induce the beneficiaries to cast their votes in favour of the former Minister. Another bribe granted by the outgoing Government was said to be the sale to supporters and prospective supporters of crown lands at peppercorn prices, as well as the promises of houses.

A) GENDER MATTERS AND CAMPAIGN FINANCE

Finance did not operate against women as a group in the campaign.

For the first time in the history of Antigua politics, a woman was elected to the House of Representatives in the 2004 general elections. There is a new women's group called P.O.W.A which in the past few years has been very active promoting women's affairs and which has no doubt had the effect of encouraging women to offer themselves as candidates – indeed there were four such women candidates among the 40 candidates contesting the 2004 elections. The sitting Government politician against whom the successful woman newcomer ran had not only the full machinery of Government at his command (he was the Minister of Sport and Youth Affairs) but more money than the new woman who was however most articulate and the holder of a Ph.Degree from McGill University. Her education and articulate advocacy won the day and she roundly defeated the ALP politician. There can be no doubt that women will in future make a name for themselves, especially if the quality of candidates continues to be as good as it was at the 2004 elections.

It was no doubt because the Commonwealth Observer team in 1999 foresaw the abuses to which campaign finance was subjected at the time of the March 1999 General Elections that it recommended an amendment to the then existing legislation to provide for

the keeping of records of monetary and other forms of contribution received at an election campaign, indicating the names and addresses of those who contribute more than \$25,000. The legislation eventually passed, pursuant to this recommendation, was the Representation of the People (Amendment) Act 2001 which, in addition to the above provisions, enacted by sec. 43 thereof:

- a. that every political party was under an obligation to refuse to accept more than \$5,000 unless its source could be identified;
- b. that every political party was under a duty to file within six weeks of the announcement of the results of the election details of contributions to the party made by entities and individuals.
- c. that every political party was required to grant access to the records and account books to all officers of the Electoral Commission on request.

One conclusion that can be drawn from the secrecy surrounding donations is that no one can be certain as to the quantum of money spent on the elections by either the governing party or the opposition party. Nor has it been possible to quantify the amount spent by individuals on either side of the divide. As pointed out later in this paper, the sanctions provided in the new legislation do not help in enforcing compliance with the law.

All that can be stated is that there are accusations that some members of the governing party at the 2004 general elections received hundreds of thousands of dollars from one investor and other not-so-large sums from others. These funds were used to give “hand-outs” to registered voters in an effort to secure their votes. It is also stated that certain members of the Opposition likewise received large donations from their local relatives for the same purpose. My investigations reveal that large unquantified sums in cash were provided by businessmen and other donors to assist candidates of both parties in providing elaborate signs, for example. Similar funds were provided by businessmen, supporters and well-wishers to pay for T-shirts and for the use of vehicles employed for campaign purposes. Trade unions were unable to make any contribution to either party since their finances are in a poor state: they not being able legally to collect dues from their members on the basis of agency shop fees.

It has therefore been quite impossible to make any sensible guess as to the quantum of campaign donations to either members of the Opposition or of the Government either on a party or on an individual basis.

Any attempt to quantify the expenditure will be guess work. But in order to decide whether an election is fair it is important that an investigator should be in a position to make up his mind as to whether voters voted voluntarily and according to their individual consciences or whether they were influenced by bribes and promises of further gain. Nor is it ever certain where the funds utilised for such gifts come from. Once again it is futile to speculate. There is no doubt that it is only if candidates are honest and public spirited that they will make proper declarations.

One final flaw will be illustrated. Section 83(2) of the revised Act stipulates that no political party shall accept monetary or other contributions exceeding five thousand dollars “unless it can identify the source of the money or other contribution to the Commission”.

First, does this mean that no record will be kept if X receives in his bank account \$2,500 from A and at the same time receives \$2,500 from A's wife? What if a political party maintains company bank accounts in Barbados, Bermuda, The Bahamas, The Cayman Islands, The Turks and Caicos Islands, Anguilla, British Virgin Islands, Toronto, New York, Washington, Miami, London, Paris, Geneva, and Brussels: and Mr Y owns off-shore companies in the first seven of these jurisdictions into which he regularly pays his contributions to the particular political party which owns all the shares beneficially, while his daughter-in-law (with a different surname) pays in funds to the same companies in the last eight locations for the same beneficiary? Will the Electoral Commission have the staff or the expertise to trace these funds? Even if it did, the funds could not be traced.

In a case such as that described in the immediately preceding paragraph, a political party can easily defeat the purpose of the legislation which gives authority to an officer of the Commission "to access and examine the records and account books kept by the political party." As regards the sanction for breach of the terms of the Act, if a candidate or his political party can receive millions of dollars and cheat the Commission by refusing to record the existence of the funds, he is likely to consider a mere \$2000 a day as a mere slap on his wrist. But even so, there is no indication as to what would trigger the sanction. One is therefore left to wonder from what event or time is the offender liable to begin paying the daily fine? The provision, though a step in the right direction, has only "scratched" the surface and will hardly act as a deterrent to a candidate or political party that is minded to defy the law. It can fairly be said that this type of sanction for failing to declare financial or other contributions towards election expenses is not likely to have the effect which was intended. Parties will continue secretly to receive donations of the amount prescribed without recording them and a governing party, wielding the levers of power, is always likely to be in the ascendancy in this regard.

Campaign financing was given a degree of priority at a time in Antigua and Barbuda when an election was "behind the corner" and because the Opposition United Progressive Party (UPP) contended that the governing Antigua Labour Party (ALP) had failed to implement the recommendations of the Commonwealth Observer Group of 1999, though both parties had announced their acceptance of the recommendations at the time. The particular recommendation of the group bear full quotation:

"We recommend the development of regulations on the amount spent on campaigning at constituency and national level, and a mechanism by which the transparency and probity of political donations could be measured. This we offer as a means of mitigating the marked disparities in the resources available to candidates for campaigning purposes which we observed, and which we were told by a number of interlocutors placed independent and women candidates at a particular disadvantage."

It was no doubt on this account that then Prime Minister Bird in the year 2000 commissioned his Attorney-General to hold consultations throughout Antigua and Barbuda with the various stakeholders and with the public at large regarding an Electoral Reform Bill that was then before Parliament.

After full consultation accordingly the Attorney-General submitted a Report dated 12 March 2001 in which he stated that “it was generally felt that some provision should be made in the Bill to at least require political parties to give an account after each general election of various monies received by the party as campaign contributions. Others thought that the Bill should go further and limit the quantum of monies that candidates could receive in the form of campaign contributions.” This restraint was not imposed.

In a volume published by Douglas W. Payne as Vol X: Study 4 of the Centre for Strategic and International Studies, the writer at p.30. quoted the Prime Minister of the country as admitting that “thanks to the support of investors and local business the ALP was able to spend about \$2 million on the campaign.” Payne continued: “The Opposition estimated that the ruling party spent that much alone on its elaborate high-tech final rally, millions more on the mass distribution of imported hams, turkeys and other give-aways, and as much as \$10 million overall. Even if one goes by Lester’s \$2 million figure it would mean that the ALP spent about \$30 per capita in its 1999 campaign.” In the 1996 presidential election in the United States each party spent \$60 million, or a little more than \$4 per capita.

B) ILLEGAL ACTIVITIES?

It has never been established in Antigua and Barbuda that electoral contributions are derived from illegal activities, asset laundering, corruption or drug trafficking. Opposition members to whom I spoke have strong suspicions that there is much corruption in the financing process. They point to the serious revelations of corruption by ministers and civil servants uncovered by the McIntyre Commission of Inquiry into the Medical Benefits Scheme and state that the same degree of manipulation of senior civil servants which the Commission found has always up to now taken place in the course of general elections in Antigua and Barbuda.

In this connexion, it has been stated that the electoral officers have been in the past hand-picked by the political arm of Government and that the processes leading to the elections have been totally flawed in favour of the governing party.

Indeed, the Commonwealth team gave expression to this flaw in the following statement made with regard to the Voters’ Register:

“The conventional wisdom in Antigua and Barbuda estimates that the country’s total population is now at least 69,000 persons. Everyone with whom we met, and on both sides of the political divide recognised that the voter’s register which stood at 52,348 could not therefore be an accurate reflection of the country’s demography, given that some 40% of the population are below voting age.”

III. ACCESS TO THE MEDIA

A) FREE POLITICAL BROADCASTING

Under the Representation of the People (Amendment) Act 2001 (hereafter RPA 2001) Section 36(1) the Electoral Commission is required, upon the issuing of the writ for an election, to consult with all electronic and print media operating in Antigua and Barbuda to draw up a timetable for political broadcast and access to the print media for political parties and candidates to promote their views through the electronic media and to have their messages printed in the newspapers circulated in Antigua and Barbuda.

Also under section 36(2)(a) provision is made for the Electoral Commission to make rules governing the procedure for the use of the electronic and print media during an election.

No Rules have yet been published.

B) CONTRACTING OF TIME SLOTS

Under the RPA 2001, section 36(2)(b) the Electoral Commission is mandated to make rules requiring owners of electronic and print media to provide equitable allocation of time and space in a non-discriminating manner to enable political parties and candidates to carry their messages in accordance with guidelines established by the Commission. No Rules have yet been published.

On the matter of campaign financing Rule 63 of Schedule I is to the following effect:

In its report to the Minister required by section 83 of the Act in accordance with section 6 (5) (b) of the Act, the Commission shall comment on any incomplete report submitted under sub-section 83(3) and on any penalty imposed under subsection 83(6).

The Government relies on two radio stations, viz., one owned by the Bird family called ZDK and the other ABS owned by the Government. As far as the newspapers are concerned, there are three – one owned and run by the Observer Group of Companies; (the same entity that owns the Observer Radio Station); one called the Outlet owned by a private group; and a third called The Sun owned by the Stanford Group of Companies.

The part played by the media in the political scene in Antigua and Barbuda has been set out in great detail by Douglas Payne in his Policy Paper on the Americas of Governance already referred to at pages 31 to 34. The following provides a synopsis of that account.

IV. HOW THE GOVERNMENT STATION TREATS NEWS FROM THE OPPOSITION

This is how the Policy paper deals with that subject:

When there is nothing negative to report on the UPP, ABS news programmes generally ignore the party's press conferences, public meetings and statements, or edit video footage and audio tapes in such a way as to make the party look bad. It is the same approach the media aligned with the ruling party in Mexico used against the Opposition there until the Mexican government began to govern in a less authoritarian manner.

In 1997 a High Court judge ruled that ABS refusals to allow Baldwin Spencer to respond to broadcast statements by the Prime Minister ‘contravened the Opposition leader’s right of equality of treatment guaranteed him under the Constitution.’ Since then, however, little has changed. Although Lester tells visiting journalists and observers that ‘Spencer has equal time every time I make a major broadcast’ Spencer has kept a log of the numerous occasions that he has been denied by James ‘Tanny’ Rose, ABS Chief Information Officer and prominent ALP whip who, according to Spencer has told the opposition leader ‘you don’t have the right to respond to everything the PM says.’ P. 32

On the matter of the operation of another radio station and newspapers Douglas Payne at pp 32/33 writes as follows:

Following the 1994 elections, Winston Derrick and Samuel Derrick, editor and publisher of the *Daily Observer*, applied for a licence to operate a radio station. After more than two years they finally obtained a permit under the Business Licence Act. The day after their station went on the air, police raided the premises, seized equipment, and arrested the Derricks on a charge of operating a station without fulfilling all licensing requirements. The Derricks lost the initial round in the courts. Their appeal, originally scheduled for 1998, still had not been heard by the time of the vote in 1999.

The *Daily Observer* and *Outlet* therefore remained the sole media through which the opposition could regularly and freely make its case to the electorate. Still, as Sanders noted, the two newspapers had “succeeded in harassing the Government and creating an agenda to which the Government has been forced to react,” which was why he urged that “the Government invest in putting them out of business.” Tim Hector pointed to that line in the Sanders memo, as well as to Sanders’ recommendation to take a more “virulent” approach toward the opposition press, after a substantial portion of the *Outlet* printing plant was destroyed by arsonists on November 19, 1998. Days earlier, the paper had published an expóse on a large cache of arms purchased and brought secretly into the country by the government. Lester pledged to seek the assistance of Scotland Yard to investigate the fire, but nothing ever came of it and, to date, the crime has not been investigated. *Outlet* eventually was resurrected, with the newspaper being printed overseas but published only once a week rather than twice.

In dealing with how the UPP is further denied access to the media, this is what Payne had to say at pp. 33:

In the 1994 campaign the ALP barred the UPP from purchasing time in the media by strictly enforcing the 1975 electoral law which prohibited broadcast of any item “for the purpose of promoting or procuring the election of any candidate or of any political party.” Meanwhile, the ruling party filled the airways with political advertising thinly disguised as news about the government.

On February 8, a month before 1999 elections, the ALP abruptly amended the electoral law to allow for paid political ads in the broadcast media. Almost immediately, television

and radio were awash with ALP propaganda, including a nightly half-hour program, “Big Story”, produced by a Trinidadian media consulting firm. The amendment, passed by the ALP majority in one day and with little parliamentary discussion, gave the ALP a decided edge. Not only had it prepared its media advertising well in advance, forcing the ruling party to exploit its substantial funding advantage.

However, there are new arrangements (mentioned above) which effectively govern broadcasting. See pp 9-10 above. One can only express the hope that Rules will soon be forthcoming to give teeth to the arrangements.

V. DISCLOSURE

Up till now there has, as I have explained above, been no culture of disclosure in the country on the matter of campaign financing and it is hoped that future contributors come forward with declarations to that effect - a most unlikely prospect.

VI. AUDITING AND MONITORING OF FINANCIAL REPORTS

The law as it now stands makes no provision for auditing the financial reports made to the Commission. All it does is to require the party within six weeks of the announcement of the result of the election to file a report of the contributions made by individuals and entities to the party whereafter the party is required (by sec. 83(4)) to

“grant to any officer of the Commission (i.e. the Electoral Commission) authorised in writing access to examine the records and account books kept by the political party in accordance with this section and, on request, (to) give all such information as may be requested in relation to all contributions received by or on behalf of the party.”

This is an ad hoc non-permanent arrangement which operates only at election time. Such an arrangement is far from rigorous. It is permissive and if the Commission does not make a request for information, the political party is not required to do more than file the report of the contributions received – within six weeks of the date of the elections.

It is important to emphasize that these arrangements were only introduced by statute in 2001 and that they have not yet been put to the test since the last general election was held in 1999 and the next one is to be held either in late 2003 or early 2004.

VII. EFFECTIVE APPLICATION

It will be seen from what is stated in this article that political financing has only been regulated by statute for the first time since 2001 and that the law has not yet had time to be implemented.

However, because of the consultations carried out by the former Attorney-General, Dr. Errol Cort, into the workings of the electoral process in 2000 and 2001, the public has become sensitized about the need for disclosure in the matter of campaign financing, if for no other reason than to discover whether one party has had an unfair advantage over another – and generally whether rival parties have operated in a level playing-field.

VIII. REFORM OF THE LAWS CONCERNING CAMPAIGN FINANCE

The law affecting campaign finance passed in 2001, as has been pointed out above, carries a penalty of \$2000 a day if convicted of a breach thereof. Take a hypothetical case of a governing minister receiving, say, two million dollars as contribution and concealing it, as a result of which he wins the election and becomes Prime Minister. If all he has to pay is even \$50,000 for 25 days, he would be happy to pay such an amount which may even be paid from the balance of the contribution.

The penalty should be much more severe. It is suggested that a breach of the Act or of the rules made thereafter should carry a penalty of \$100,000 and a sentence of imprisonment amounting to no less than one year. Alternatively, the convicted defendant should be debarred from seeking political office for at least ten years after being convicted of the offence.

If the offender commits two separate offences under the Act he should be banned from political office for life.

As has been shown, political broadcasting has by statute been put on a much more equitable basis and it is to be hoped that the rules referred to in this Article governing the allocation of time for broadcasting by the Opposition will be passed and obviate cause for concern on their part at any future General Election.

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