

Status Update for PATI, ‘Boards and Committees etc. Reform,’ and the latter’s suggested Phase III “modernizing” Projection(s)

In respect of **both** Projects;

a) PATI, and

b) Boards and Committees (B’s n C’s) Reform

we have arrived at it appears, in respect of **a)** above, **PATI**; drafting **legislative amendments** and more **precise legal definitions** of/for the following **terms and standards etc.:**

i) **liability** (with appropriate legal standards/burdens of proof in particular),

ii) **reasonable search** (at various or categorized/scheduled time periods at least until **across-the-board** record management has been stabilized, standardized or brought under control)

iii) **bad faith** (taking into account, the legal degrees or standards of deliberateness of intent, inadvertence and circumstances/background etc. of each event on a case-by-case basis- e.g. is **bad faith** the **complete** opposite of ‘**good faith**’?) We elaborate, somewhat, on certain aspects of these matters below.

All of the last-mentioned definitions would have to (of necessity it is suggested) be **legislatively included** into the **interpretation section** of the PATI 2010 Act and (for cross-referencing purposes, continuity and completeness) in related primary, secondary legislation such as policies, schedules, appendices, Codes, regulations etc.

Moreover, constituent parts of the **above-named definitions**, may have to be further or more closely defined or refined to apply to specific ‘topics’ or circumstances as intimated above. For example, the definition of “**reasonable search**” is not, as we have sign-posted on numerous occasions, a definition that is/can be universally applied, and may as a result, require a ‘**schedule**’ which **categorizes** what “reasonable search” means in the context that it is expected to be applied. Matters such as ‘**time** and/or **difficulty of search**’ may determine the **applicability, or assessment**, of what is “reasonable under the **compartmentalized** circumstances”. The ‘**difficulty of search**’ of which we speak, is very much dependent upon the ‘**state and/or management**’ of the records in question, both materially and organizationally”. Tattered and/or archived or “**archival records**” may require a longer time-period constituting “reasonable search” in particular, and across government departments, ministries etc. generally.

Accordingly, whereas this exercise may not be immediately important on a ‘**micro-level**’ in order to prepare and complete a **Cabinet Paper for November 2018**; it is, nevertheless in my humble view, extremely important to have under control **before instructions** are sent off to the AG’s Chambers in respect of the completion and operational **legal and regulatory efficiency** of the ‘PATI’ project or initiative.

To be clear, the comments made thus far in relation to “**reasonable search**”, can also to a lesser degree be said about or applied to **liability** and **bad faith**.

To briefly elaborate on what was said earlier, **liability** is associated with a “**degree of deliberateness**”. Accordingly, in order to **protect the officer** in question from ‘unfairness’; we would **recommend** a standard of proof, with the burden of such proof on the requester (or ‘accuser’), at the ‘**criminal**’ standard of “**beyond all reasonable doubt**”, as opposed to the ‘**civil**’ standard of “**a preponderance of evidence**.”

In the last regard, **bad faith**, which also imports an element of ‘**deliberateness or intent**’, should also follow the path of **liability** when considering **standards and burdens of proof**. A ‘**good faith**’ definition, could be legally and legislatively drafted around the following principle, as an officer:

“...attempting to legally satisfy a given request by applying best practice, the rules and processes laid down for such purposes, to the best of one’s ability and training in this regard and to the end requested.”

Finally, in relation to PATI, we are essentially awaiting **final positions** on this initiative from Minister Foggo, DHOCS Whitter and the PSS in respect of what possible or further legislative amendments, if any, and/or legal definitions have been identified and may need to be addressed before a Cabinet Paper is finalized and subsequently, before matters move on by way of “**instructions**” to the AG Chambers.

As a footnote on this section; we are also considering to what extent, if any (and particularly on the issue of the “**protection of personal and confidential records**,” whether **PATI and PIPA** will/can or should be, **harmonized**.

Boards and Committees:

In the case of (**b**) above, the **Boards and Committees reform** etc.; a necessary and understandable **hiatus** has arisen until MCS reverts with a final list, and comments, in respect of possible further consolidation, merger or abolition of more B’s n C’s.

We think it is fair to say that in our various meetings, and deliberations, that the current exercise of “**consolidating, merging, abolishing, aligning and/or re-aligning B’s n C’s**” is **Phase I** of perhaps a II or III Phase approach to achieving “**maximal functional and symmetric efficiency**” throughout, and across-the-board (no pun intended) of the boards, committees etc.(departments and **even Ministries**). I believe too, that we accept that, unfortunately in the Bermudian context, the terminologies “**boards and committees**” have been used **synonymously; and interchangeably**, when in fact committees (and sub-committees) ought to serve, as handmaidens, **Boards**, in a vertical, and not a horizontal, or lateral manner, as is very often the present case.

Accordingly, once there has been a “**consolidation or truncation**” of an acceptable number of boards and committees in **Phase I**; there should be in my view (and modern reform demands as much), a **Phase II** that begins to “align” these B’s n C’s under the **appropriate departments and Ministries**. **Phase III**, with respect, ought to subsequently involve the **Premier, his/her Ministers, Head (s) of Civil Service and Cabinet or persons responsible** for such areas; to “**reform and re-structure**” how

ministries should be more optimally constructed, and managed; so as to yet again achieve the highest and maximal degree of **“symmetric functional efficiency”**, both in personnel, Ministers and structure of these given ministries etc., which also may from time to time be **“expanded, truncated or consolidated”** in order to achieve the **“efficiencies”** of which we spoke earlier. In my respectful opinion, **Phases I, II and III**, with professionalism and continuity, and given that **Phase I** is at an **advanced stage of completion**; could be **brought to fruition** over the next 12 to 18 months, tops. **Phase III**, is completely at the behest, pace and choice, of the Premier of the day and what he/she considers is the best way forward in this regard, to implement and ‘carry out’ his/her policies etc.

In summary, having broader, properly aligned Quangos, Boards etc., with subordinate and relevant, competent or appropriately staffed committees, subcommittees (ad hoc and standing); will create increased cross-pollination of ideas etc. across boards, committees, ministries etc. , greatly assist in **specific or technical areas** of work, and generally achieve greater **efficiencies of scale**, operational functionality and cost-savings to, and across, the **system as a whole**.

All of which is respectfully submitted:

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