

# **ELECTORAL COMMISSION OF JAMAICA**



## **REPORT TO PARLIAMENT CAMPAIGN FINANCING**

NOVEMBER 2011

## **BACKGROUND**

Jamaica has made great strides in voter registration, in the identification of voters on Election Day to ensure one person one vote, in the application of technology to the electoral process and in the conduct of elections. The progress made is recognised by the people of Jamaica as demonstrated by the growing confidence that elections are free and fair, by the Commonwealth by being featured as an example of good governance in the conduct of elections, by the Organisation of American States as a hemispheric leader in the application of technology to the electoral process and by international organizations such as the Carter Centre and the United Nations.

Mindful of the progress that has been made but recognising that challenges still remains, the Electoral Commission consulted with leaders in the political arena and civil society and determined that the matters of the regulation of political parties, the financing of political parties and campaign financing were the next issues to be addressed. The Electoral Commission decided to link the registration and financing of political parties and separate both from the financing of election campaigns. Further, the Electoral Commission decided to adopt a two-stage approach. The first stage would address the Registration and Financing of Political Parties. The Commission's Report to Parliament on this first stage is dated July 2010. The Report was submitted to Parliament in August 2010 and accepted and approved by Parliament on November 2, 2010. The second stage would tackle the issue of Campaign Financing. This Report on Campaign Financing represents stage two.

The rationale for the two-stage approach is three-fold. Firstly, the Constitution of Jamaica guarantees all eligible residents of Jamaica the right to offer themselves as candidates to contest elections. However, the Constitution makes no mention of political parties. Secondly, Sections 55 to 61 of the Representation of the People Act address the matter of Campaign Financing but omits any references to the registration and financing of political parties. Recommendations concerning the registration and financing of political parties, therefore, require the enactment of new legislation while recommendations with respect to Campaign Financing require either amendment or replacement of existing legislation.

Thirdly, in all general and local government elections contested under the Constitution since political independence in August 1962 the vast majority of candidates have contested elections under the banner of political parties.

For example in the 2007 General Elections all 146 candidates ran under the banner of political parties: 120 from the two major political parties and 26 from the minor political parties. Setting a legislative framework for the registration and financing of political parties separate from that of campaign financing takes account of the contemporary context in which political parties operate and contest elections in Jamaica, while also facilitating the process of amending or replacing existing campaign financing legislation, thus maintaining the guarantees of the Constitution with respect to the rights of candidates, without affiliation to any political party.

## **THE ISSUE**

A strong democracy requires vibrant candidates competing for political office with not only the capacity to represent the citizenry but also the ability to provide viable policy choices that demonstrate the capacity to govern for the public good. Invariably, candidates need to access funds from other than their own resources, in order to contest elections. Financial support for election campaigns from other than the candidates who contest elections is, therefore, an inherent, essential and legitimate part of the electoral process.

Money for election campaigns is an important element in defining the quality of representation and how the citizens perceive their governments and standards of accountability and transparency. The ways, therefore, in which election campaigns are funded, have fundamental implications not only for the fairness of the electoral process but also for governance of the country.

The unregulated flow of money into campaigns oftentimes has negative consequences. Existing scholarship on the subject identifies four main risks that attend unregulated financing of election campaigns:

- (1) Co-opted candidates: the risk that those who donate funds will control the elected representatives they finance.
- (2) Tainted politics: the risk that dirty or illicit money will corrupt the system and undermine the rule of law.
- (3) Unequal access to office: the risk that those without money or access to money are prevented from running for office or getting meaningful representation.
- (4) Uneven playing field: the risk that large sums of money in election campaigns can give undue advantage to some candidates and constrain competition.

## **THE PROCESS**

The process employed by the Electoral Commission in developing this Draft Report on Campaign Financing included the following:

- i) Hosted the Organisation of American States (OAS) Caribbean Regional Meeting on Political Party and Campaign Financing on September 2 and 3, 2010 at which representatives of the OAS presented its Model Legislation for Political and Campaign Financing and representatives from the Caribbean shared status reports of this subject in their respective countries.
- ii) Publicised the contents of the Report on the Registration and Financing of Political Parties. Commissioners participated in numerous forums on radio, television and in the press where this Report was discussed.
- iii) Invited citizens and organizations to submit suggestions to the Commission on Campaign Financing.
- iv) Invited political representatives of the major political parties and Returning Officers who meet monthly in the 60 constituencies to submit suggestions and recommendations on Campaign Financing.
- v) Held a meeting with representatives of the minor political parties at which the Report on the Registration and Financing of Political Parties was shared and the representatives invited to submit suggestions and recommendations on Campaign Financing.
- vi) Held meetings with representatives of civil society organizations including Citizens Action for Free and Fair Elections (CAFFE), the Presidents' Council of the Private Sector Organization of Jamaica (PSOJ), Jamaica United for Sustainable Development (JUSD), the Bar Association of Jamaica, the Press Association of Jamaica, the Umbrella Group of Churches, Women's Resource and Outreach Centre (WROC), the Women's Political Caucus, National Integrity Action Forum, the Jamaica Coalition of Civil Society and the Bankers Association of Jamaica.

- vii) Held meetings with the Contractor General, the Political Ombudsman, the Chairman of the Broadcasting Commission and Director of the Financial Services Commission.
- viii) Held Town Meetings in Montego Bay and Mandeville at which the public was invited to discuss the issue of Campaign Financing and to make their suggestions and recommendations. The Director and members of the Friedrich Ebert Stiftung Foundation, Jamaica and the Eastern Caribbean facilitated these Town Meetings, collate the responses and submitted the same to the Commission.
- ix) Collated and considered the inputs from the sources identified in i) to viii) and constructed the First Draft with Options.
- x) Considered the First Draft with Major Inputs from the Nominated Commissioners, which took account of the First Draft with Options and reflected the views of the leadership of the two major political parties.
- xi) Considered the First Draft with Major Inputs from the Selected Commissioners, which took account of all previous reports.
- xii) Discussion of the Commission of the five points of difference that had to be reconciled between the Report with Major Inputs from the Nominated Commissioners and the companion Report of the Selected Commissioners.

It should be noted that in the consultative process outlined above some stakeholders and actors raised issues that are important but outside the remit of campaign financing. These issues are listed here but not taken up in this Report. These issues were:

- A fixed election date.
- A 'Fit and Proper' Questionnaire with respect to eligibility to be a candidate that should be administered by political parties to all candidates named by the party, a copy of which should be submitted to the Electoral Commission.
- Representation of civil society groups, all registered political parties and increased representation of women on the Electoral Commission.
- Research on gender equity and capacity building on gender and development

- Reducing the number of signatures on the petition seeking recognition of political parties for state funding from 50,000 to 20,000.
- Imposing sanctions on political parties for overpromising during elections, taxpayers funding grandiose schemes and government lathering constituencies with projects just prior to election. It should be noted that the latter matter is partially addressed in the Report on the Registration and Financing of Political Parties.

## **DEFINITION**

### **1. Campaign Period**

The term “campaign period” means the period of time which commences ninety days before the day of the official announcement of an election date and lasting until the day on which the poll is taken or, where no such official announcement is sooner made, the period of time which commences on the day immediately following the expiration of a period of four years and six months of the current term of office of the Government and lasting until the day on which the poll is taken.

### **2. Contribution**

A contribution is any donation or gift of money (whether wholly or in part) or non-monetary resources (goods, services, or use of facilities or equipment), or any loan of funds that is made or provided to a candidate or political party or affiliated group, or organization, or to any other person or entity for the purpose of supporting or opposing the candidature of another person or for the purpose of influencing an election.

### **3. Donation**

A donation is:

- Any gift of property to a candidate or political party;
- Any sponsorship provided in relation to a candidate or political party;

- Money spent otherwise than by, or on behalf of, a candidate or political party in paying any expenses incurred directly, or indirectly, by a candidate or political party.

#### 4. **Electoral Commission**

“Electoral Commission” means Electoral Commission of Jamaica.

#### 5. **Subscription**

- Any charge or other fee paid for affiliation to, or membership in, a political party.

### **RECOMMENDATIONS**

The emerging wisdom on Campaign Financing is that there is no perfect or permanent legislation that can be formulated. Whatever measures are put in place, efforts will be made to circumvent them and to find loopholes, thus requiring new measures to be put in place subsequently. Prudence demands that acceptable, workable and effective measures are enacted subject to appropriate adjustments in the future.

Further, the emerging wisdom is that workable and effective measures on Campaign Financing must at a minimum include elements dealing with disclosure, state funding, monitoring and enforcement. The measures proposed in this Report include these three elements and three others. Given the relatively small size of Jamaica and, therefore, its vulnerability to external influences of various origins, the element of Sources and Permissible donor is included. Bearing in mind that Jamaica is a lower middle income country and, therefore, constrained by limited resources and that the greater the amount of financing consumed in elections the greater the risks of corrupting the system by undue influence, the element of limits on contributions and expenditure is also included. Taking into consideration the deregulation that has taken place in media in Jamaica, the explosion of the availability of cable television and the shift to the electronic media in campaigning, the element of campaign advertising is included. The considered judgment is that these six elements, taken together, will represent a considerable



advance in regulating Campaign Financing compared to the measures currently outlined in Section 55 to 61 of the ROPA.

Based on the submissions resulting from the process of consultation outlined above and after due consideration the Electoral Commission hereby sets out its recommendations concerning Campaign Financing. These recommendations are put forward to replace Sections 55 – 61 of the Representation of the People Act. This document is cognate to the Electoral Commission’s recent submission to Parliament on the registration and financing of political parties.

The specific recommendations are set out under the following headings:

1. *Sources of Contributions and Donations.*
2. *Impermissible donors.*
3. *Limits on Contributions to Candidates and political parties.*
4. *Limits on Election Expenditure of Candidates and of Political Parties.*
5. *Disclosure by Candidates and Political Parties.*
6. *State Funding of Election Campaigns.*
7. *National Campaign Fund.*
8. *Campaign Advertising and Political Broadcasts.*
9. *Monitoring and Enforcement.*
10. *Additional Capacity for Electoral Commission.*

### **Sources of Contributions and Donations**

Legal entities, natural persons, State Funds and a National Election Campaign Fund to be established and operated by the Electoral Commission may give contributions and make donations to candidates and/or political parties. This National Election Campaign Fund may be replenished by individuals, legal entities and Jamaican Diaspora groups wishing to support the democratic process in Jamaica but not desiring to contribute directly to a particular candidate or named political party.

## **Impermissible Donors**

In order to minimize or regulate influence peddling, as well as obviate the possibility of the state and its policies being hijacked and dictated by narrow interest groups and in seeking to prevent malevolent forces from undermining the Rule of Law the following are banned from making donations to campaigns for political office:

- (a). Foreign or Commonwealth Governments or their Agents or Agencies, whether directly or indirectly.
  - i. No political party, member of a political party, or candidate, shall accept any donation from Foreign or Commonwealth State whether directly from the donor, or, indirectly, through a third person (natural or legal).
  - ii. Any donation accepted by a member of a political party shall be deemed to be accepted by the political party, unless the member wilfully fails to disclose to the political party, in which case the member shall be liable for prosecution.
  - iii. A political party, or member of a political party, or candidate, shall be deemed not to have accepted a donation if within thirty days of receiving the donation, the party, or member, or candidate, returns the donation to the donor.
- (b). Public institutions, statutory bodies, government and quasi-government organizations or any company with government capital shares regardless of the size of such shares.
- (c). Private companies performing a public service pursuant to a contract with a Government body or public office, whether as principals or sub-contractors, in circumstances where such contracts came into force within a period of one year prior to, or within a period of one year subsequent to, the making of a donation unless such donation is made subject to full disclosure.
- (d). Enterprises and other organizations exercising public authority;
- (e). Legal entities with due but unsettled payments to public revenue (i.e. companies and other entities that are not tax compliant).

- (f). Donations passed through an intermediary or falsely reported in the name of another person or entity.
- (g). Unregulated Financial Institutions.

A legal or natural person providing services or selling a product to a candidate or political party shall make out an invoice, showing the market value of the services or product, to that candidate or that political party, regardless of who is liable for payment for the services or product or whether the services were provided or the product given free of charge.

### **Limits on Contributions/Donations to Candidates and Political Parties**

1. The total amount of contribution/donation given by a donor shall not exceed in a single campaign period an amount of \$1 million to a single candidate, or an amount of \$1 million multiplied by the number of constituencies being contested by a political party, provided that the total amount given to all candidates and all political parties does not exceed \$10,000,000.
2. Any contribution/donation that is made by a permissible donor shall be regarded as a tax deductible expense.
3. Any contribution/donation made by a donor must be accompanied by a declaration to the candidate or political party stating the full name, address, occupation or nature of business and that the donor qualifies to make a donation under the regulations. A person, whether legal or natural, who knowingly, or recklessly, makes a false declaration commits an offence.
4. A political party, or a candidate, shall not accept any contribution/donation from an impermissible donor.
5. A person who knowingly makes a contribution/donation to a candidate or political party which includes a contribution from an impermissible donor shall commit an offence.

6. A contribution/donation is accepted by a candidate if it is received and retained by the candidate for the purposes of his or her campaign activities and cannot be used for personal, family or business expenses.
7. A contribution/donation is accepted by a political party if it is received and retained by the political party for campaign expenses and cannot be used for the regular operations of the party.
8. Where a contribution/donation is accepted, the political party, or the candidate, shall issue a receipt for the donation to the donor in the form prescribed by the Electoral Commission.
9. Where in relation to a political party or a candidate –
  - (a) money is lent otherwise than on commercial terms; or
  - (b) any property, services or facilities are provided otherwise than on commercial terms, the value of the donation shall be taken to be the amount representing the difference between the actual cost and the cost that would have been incurred by the political party, or the candidate, as the case may be, had the loan been made, or the property, services or facilities been provided on commercial terms.
10. Where a contribution/donation is received by a political party, or a candidate, and it is not immediately clear that the political party should refuse the contribution/donation, all reasonable steps shall be taken without delay by, or on behalf of, the political party or candidate to verify or ascertain -
  - (a) the identity of the donor;
  - (b) whether the donor is a permissible donor; and
  - (c) if the donor is a permissible donor, all such details in respect of the donor as may be required by the Electoral Commission to be received and given in respect of the donor in the donation report.

11. Where a political party or a candidate receives a contribution/donation from an impermissible donor, the donation or an equivalent amount must be returned within 30 days.
12. Any contribution/donation received whose donor is anonymous or unidentifiable shall:
  - (a) if the donor has used a facility provided by an identifiable financial institution, be returned to that financial institution; or, otherwise,
  - (b) be sent to the Accountant General for lodgement to the Consolidated Fund.
13. Where a contribution/donation which is disallowed has been knowingly accepted by a political party or candidate and not timely returned in accordance with paragraph 10 above, the Electoral Commission may, in addition to any other penalty that may be imposed by a Court of law, order the forfeiture of such contribution/donation.
14. Every political party and each candidate shall submit separately to the Electoral Commission during a campaign period monthly reports of contributions/donations received giving all such details in respect of each donor as may be required by the Electoral Commission.
15. A candidate contesting an election shall, within six weeks of Election Day, submit to the Electoral Commission a consolidated report, in the prescribed form, detailing all contributions/donations received within the campaign period. In addition every candidate shall submit to the Electoral Commission a declaration in the prescribed form stating that, to the best of his or her knowledge and belief –
  - (a). No contribution/donation from a person who is not a permissible donor has been accepted by him or her during the campaign period.
  - (b). No anonymous contributions/donations have been accepted by him or her during the campaign period.

16. Upon receipt of a contribution/donation report and declaration the Electoral Commission shall no later than 21 days issue the candidate concerned with a certificate stating that the person has complied.
17. The interpretation of the word “donor” as used in the context of these provisions is intended to accord with the definition of the term “connected persons” as used in the Banking Act and also with the definition of the word “affiliated” as used in the Companies Act.
18. Submission of this report does not relieve a candidate of the responsibility to submit an election expense report within eight weeks after Election Day.

### **Limits on Expenditure by Candidates and Political Parties**

Democracy is premised on the belief that all should have equal opportunity to compete for political office. Arising from this belief, democracies have always sought to establish mechanisms to regulate the flow of money into politics and control spending limits. In the Westminster parliamentary models most countries tend to establish spending limits for individual candidates.

It is therefore widely recognized that to achieve a fair and competitive system a country should create a level playing field in which any political actor can participate. Allowing unfettered campaign spending enables well-financed candidates to drown out the voices of their opponents reducing the overall quality and diversity of debate. In the present political landscape, the past few years have been characterized by massive spending on election campaigns, such that there is heightened public perception that the scope for corruption and improper influence as a corollary to big spending has increased at an alarming rate.

Currently, the Representation of the People Act allows for a candidate to spend up to \$3 million in promoting his candidature. This limit was set in 1997. The consensus among candidates is that this limit is not in keeping with contemporary realities.

There is, therefore, the strong support for the Electoral Commission to be legally empowered to prohibit certain types of expenditure in order to limit the undue impact of money in the democratic process and the outcome of an election. It should also be empowered to ensure that proper election expenses returns are submitted on time by individual candidates and political parties, to inspect party accounts and to oblige individual candidates, political parties and affiliated groups to submit properly audited and verified financial statements.

It is, therefore, recommended as follows:

1. Where a registered political party contests one or more constituencies in a Parliamentary General Election, Local Government Election or National Referendum the limit applying to campaign expenditure which is incurred by, or on behalf of, a party during the campaign period shall be \$10 million multiplied by the number of constituencies contested by that party, at least one-half of which shall be spent in constituencies in which it has candidates.
2. Where at an election a candidate stands for election in any constituency on behalf of a registered party, or as an independent candidate, the limit applied to campaign expenditure shall not exceed \$10 million. This amount is inclusive of any amount received from any political party, or the National Election Campaign Fund, or the State.
3. During a campaign period, each candidate and each political party shall submit to the Electoral Commission, Interim and Final Campaign Expenditure Reports. The Interim Report shall cover the period from the commencement of the campaign period to the day on which the election is announced and shall be submitted to the Electoral Commission not later than eight days after Nomination Days. The Final Report shall cover the entire campaign period and shall be submitted by a candidate not later than eight weeks after Election Day and by a political party not later than twelve weeks after Election Day. Both the Interim and Final Reports should be submitted to the Electoral Commission in the prescribed form and must show every donation received, whether in cash or kind, and detail all expenditure, loans, advances, goods and services received and debts and liabilities incurred during the campaign period.

4. Where a report is not submitted to the Electoral Commission within the time specified, the candidate, or in the case of a political party every member of that Executive of the political party, each commits an offence and shall be liable to a fine not exceeding five thousand dollars for every day beyond the prescribed deadline. In the case of a continuing offence, a further fine not exceeding one hundred thousand dollars for every day, or part thereof, during which the offence continues after conviction shall be payable by such a person in default.
5. Any candidate or party official who makes a false declaration shall commit an offence and shall be liable on conviction therefore to a fine not exceeding five million dollars or in default of payment to a term of imprisonment not exceeding three years.
6. The Electoral Commission shall have the power to require disclosure. This power shall apply to the following organizations and individuals:
  - a. A registered party i.e. the accounting unit or responsible accounting officer;
  - b. A regulated donor, that is, organization, group or individual.
  - c. A candidate at an election.
  - d. The Election agent of such a candidate.

The Electoral Commission may give a disclosure notice to a person who is, or has been at any time during the period of five years immediately preceding the day on which the notice is given, the treasurer or any other officer of a political party, or group, to which the above paragraph applies.

A disclosure notice is a notice requiring the person to whom it is given to produce for inspection by the Electoral Commission or its agents, any document which:

- (i) relates to the income and expenditure of the organization or the individual in question and is reasonably required by the Electoral Commission for the purpose of carrying out its auditing functions; or
- (ii) may provide the Electoral Commission, or its agents, with any



information or explanation which relates to income and expenditure and is reasonably required by the Electoral Commission for purposes of identifying sources of political finance.

A person to whom a disclosure notice is given shall comply with such notice within the time specified in the said notice.

7. The Commission is further recommending that the nomination deposit paid by candidates on Nomination Day be increased to ten thousand dollars (\$10,000.00) and the Section 23 Sub-section 4 Paragraph (b) of the ROPA be amended to reflect the said increase.
8. All the limits and fees prescribed above shall be subject to review and adjustment by the Electoral Commission from time to time.

### **State Funding for Candidates and Political Parties**

The Commission agrees with the general principle of state funding for election campaigns whether such funding is provided directly or indirectly. The latter is any subsidy, grant, waiver, or access to services or reduced cost given to political parties to promote election activities and/or to promote individual candidature.

The Commission recognises that state funding may act as a valuable tool in protecting political equality of opportunity and electoral competition thus creating a level playing field by enabling new and small parties and persons of modest means to offer themselves as candidates and compete with parties or candidates who are dominant and, perhaps, are more financially viable.

Further, the Commission is of the view that state funding can act as a mechanism to restrict or limit the influence of money from illegal sources and its potential for corrupting and ultimately distorting the democratic process. State funding can serve as a hedge against candidates feeling obliged to turn to illegal sources or becoming obligated to certain permissible donors. State funding also allows for greater demands for transparency and accountability from candidates and as a result enhances confidence in the electoral and governance process.

State funding should be provided based on set eligibility criteria and a prescribed formula. Accordingly, state funding should only be granted to:

- Candidates of political parties that meet the requirements of Section 12 of the ROPA
- Independent Candidates who received at least five per centum (5%) of votes cast in the previous election.
- Political parties and candidates who poll at least five per centum in the election

In addition state funds shall only be disbursed upon certification by the Director of Elections that the candidate is in compliance with the relevant provisions of Representation of the People Act (ROPA) and also upon certification by the Political Ombudsman that the candidate and/or relevant political party is in compliance with the Political Code of Conduct for elections.

Qualified candidates should be reimbursed from state funding to an amount not exceeding 40% of total election expenditure within the prescribed limits. State funding should be disbursed to a particular candidate on a basis of the votes cast for that candidate multiplied by the total amount of state funding provided, divided by the aggregate amount of votes cast in the elections.

### **The National Campaign Fund**

The Commission accepts that there may be permissible donors who desire to contribute to election campaigns in order to support the general democratic process but have no preference for any particular candidate or political party. Accordingly, the Commission will establish a National Election Campaign Fund to be funded from these sources.

All moneys standing to the credit of the fund will be deposited in a separate banking account to be opened by the Commission. Subject to the directions of the Commission, the Chief Electoral Officer shall be responsible for the management and administration of the fund and is the chief Executive Officer of the Fund.

The deadline for contributions to be made to the National Election Campaign Fund shall be the day designated as Nomination Day. The total amount in the fund for each election period shall be equally divided among constituencies.

The National Campaign Fund should be used for the purposes of:

- The development of the political will of the people
- Inspiring and furthering political education
- Promoting active participation of the citizen in the electoral process.

The Fund should be disbursed to candidates on the basis of the votes cast for a particular candidate multiplied by the total amount of the National Fund provided, divided by the aggregate votes cast in the elections.

The amount in the fund shall be disbursed upon certification by the Political Ombudsman that the candidate is in compliance with the Political Code of Conduct for elections.

The total reimbursement to qualified candidates from the National Election Campaign Fund plus funds from the State must not exceed 40% of total election expenditure permitted within the campaign period.

### **Disclosure of Candidates and Political Parties**

The foregoing recommendations can only be effective if there are adequate rules for disclosure and enforcement.

Disclosure emerges as a sine-qua-non for any system of public control of political finance. It is widely accepted that financial disclosure contributes to an overall transparency of the electoral process and that requirements to disclose sources of funding are likely to cause political actors to raise and also spend their financial resources in ways that are acceptable to a majority of voters and which do not provoke political scandals.

Disclosure refers to the timely dissemination of information about political parties and candidates' receipts and expenditure of material resources.

The Electoral Commission is of the firm belief that political parties and candidates should be guided by principles of financial transparency and credible accounting and in this regard is hereby proposing the following:

1. Political Parties, affiliate groups and or organizations, (e.g. Youth Arm) shall submit an annual report to the Electoral Commission on the amount and nature of all contributions, expenditure, liabilities and assets. Contributions may be cash, cheques, credit card based or in kind. In kind contributions consist of goods and services. The cash values of such contribution should be reported at current market value.

The report shall detail the full identity, address and occupation of each contributor. Where permissible organizations/corporations make donations/contributions, the identity, address and industry of the entity shall be provided.

2. The report shall include all spending over ten thousand dollars (J\$10,000), the date of the expenditure and the person who incurred it. Expenditures shall also include debts and liabilities incurred.
3. The report shall disclose all loans and advances from whom (individual or organization) the loan was received, the date of the loan and the date of repayment.
4. The report shall disclose the assets of the parties. Assets consist of bank accounts, sizes of credit lines and values of capital investments including, but not limited to, real estate and vehicles.

Political parties and candidates are obliged to keep proper financial records to include:

- Copies of all cheques, money orders and credit card records appropriately signed.
- Written loan agreements and copies of the cheques, money orders, credit card records or receipts for cash connected to the receipt and repayment of loans.
- Copies of all bills, invoices and receipts for goods and services purchased.
- Copies of the cheques, money orders or credit card receipts used to pay for goods and services.
- Documentation of what services were provided in connection with the payment of wages and salaries.
- Billing statements for any debit or credit card used and corresponding receipts identifying the vendors of goods and services purchased.
- Declaration of donors.

5. Every candidate at an election, whether such candidate is contesting on behalf of a political party or is contesting as an independent candidate, shall submit to the Electoral Commission, a disclosure report (similar to report required in paragraph for political parties above) detailing income and expenditure, and all contributions/donations received within a campaign period. If a candidate did not receive any donation/contribution, or did not expend any resources, this should be declared.

Any person who makes a false declaration commits an offence and in addition to any penalty which the court may impose shall be liable to pay a monetary penalty to the Electoral Commission.

The Electoral Commission, having received Disclosure Reports, shall maintain records at its office and shall issue Reports disclosing the total contribution to each party and the number of contributors. Where the total contribution exceeds 1 million dollars such disclosure shall be made public.

Every Political party shall disclose to the Electoral Commission:

- a) A consolidated monthly statement of all contributions, gifts and donations received.
- b) A monthly statement listing all fund raising events held of its behalf including the date, place and sponsor(s) of the events and the amounts raised.
- c) An itemized monthly statement of all contributions in cash or kind, gifts and donations of a value of \$100,000 or more received for the purpose of campaigning inclusive of the name, address and TRN of the donor
- d) All expenditures made in conduct of an election campaign each month
- e) A consolidated total income and expenditure statement no later than three months after Election Day.

No Candidate or Political party may receive any contribution later than eight days after Nomination Day.

The Disclosure Committee of the Electoral Commission shall publish its findings within a period of eight weeks after receiving the Final Report of political parties.

## **Campaign Advertising and Political Broadcasts**

It must be noted that the Political Ombudsman now has the responsibility to monitor political broadcasts and campaign advertising and that the Broadcasting Commission has responsibilities in general matters related to broadcasting and advertising. It is not proposed that any of these responsibilities should be shifted to the Electoral Commission. However, the Regulations set out below would close existing gaps and loopholes, provide greater clarity to all stakeholders and actors and level the playing fields in ways that will enhance and strengthen the ability of the Political Ombudsman and the Broadcasting Commission to execute their responsibilities relating to election campaigns.

Accordingly, it is proposed as follows:

- a) A registered political party shall have a right of access to, and use of, State media, both print and electronic, on terms and conditions no less favourable than those offered to another political party.
- b) Programmes shall be offered on an impartial and non-discriminatory basis to all political parties and must be aired as far as possible at times when the broadcasts are likely to reach the largest audiences.
- c) State media shall have a duty to be fair and balanced in their reporting and not biased in favour of, or against, any one political party or candidate.
- d) Disproportionate use of State media by one political party or candidate to the disadvantage of other political parties or candidates shall be treated as a contribution from an impermissible donor or an ineligible promoter.
- e) Air time offered to any registered political party or candidate shall be made available on financial terms no different from that offered to any other political party or candidate.
- f) Amend Section 81 of the ROPA to include the cessation of political broadcasts and campaign advertisement 24 hours prior to Election Day.
- g) Prohibit the publication of any new opinion polling results or any unscientific opinion surveys 48 hours prior to Election Day.

## **Monitoring and Enforcement**

The Electoral Commission shall be empowered to monitor and enforce the legislation and accompanying Regulations. Such powers shall be the direct responsibility of the Selected Commissioners and the Director of Elections. Accordingly, it is proposed as follows:

- a) For all offences involving contraventions of the regulatory provisions relating to Campaign Financing, the Electoral Commission shall have the power to impose sanctions and penalties on political parties and candidates. Such sanctions and penalties shall include, but shall not be limited to, public apologies, return of contributions, fines, being debarred from participating in elections whether temporarily for a fixed period of time or permanently, being disqualified from being a candidate, forfeiting contributions or donations, including donations to the National Election Campaign Fund, being suspended as a registered political party and being struck off the list of registered political parties.
- b) An imposition of a sanction or penalty by the Electoral Commission shall not preclude institution of criminal proceedings for contravening the campaign financing provisions.
- c) The Electoral Commission shall have the power to investigate any report it has reason to believe may be false.

If the Electoral Commission has reasonable grounds to believe that there are documents relating to the income and expenditure of a contributor (whether organisation or individual) and permission to inspect such documents has been requested by the Electoral Commission and has been unreasonably refused, the Electoral Commission may apply, or cause an application to be made, to the relevant authority for an inspection warrant authorizing inspection of the premises of such a contributor.

An inspection warrant is a warrant authorizing a member of the Electoral Commission's staff at any reasonable time to enter the premises specified in the warrant and, having entered the premises, to inspect documents.

An inspection warrant also authorizes the person who executes the warrant to be accompanied by such other persons as the Electoral Commission may consider are reasonably required for effecting the execution of the said warrant.

An inspection warrant shall remain in force for thirty days beginning with the day on which it was issued.

In carrying out its monitoring and enforcement functions the Electoral Commission should endeavour to work cooperatively and constructively with the Offices of the Contractor General, the Political Ombudsman, the Director of Public Prosecution, the Constituted Authority, the Financial Services Commissions, the Broadcasting Commission, the National Contracts Commission and any other public or private organization that can contribute to its effective operation.

#### **Additional Capacity of the Electoral Commission**

Further, pursuant to the additional responsibilities related to Campaign Financing and the Registration and Financing of Political Parties, the Electoral Commission shall establish a Political Party and Campaign Finance Office comprised of a Registry of Political Parties headed by a Registrar and an Audit Department headed by a Chief Auditor and comprised of two Units: a Political Party Financing Department and a Campaign Financing Department. The Electoral Commission should also have the authority to conduct forensic audits, where necessary, which should include the employment of temporary personnel to carry out the same.



**THE ELECTORAL COMMISSION OF JAMAICA**

**NOMINATED COMMISSIONERS**

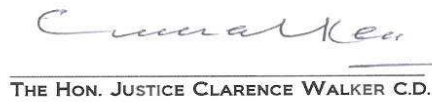
  
MR. PETER BUNTING

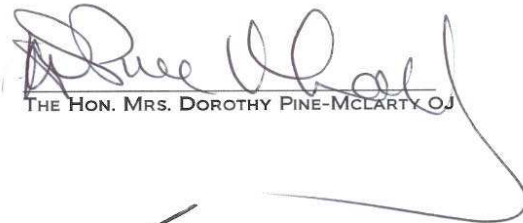
  
SENATOR AUNDRE FRANKLIN

  
DR. DONALD KEITH DUNCAN

  
SENATOR THOMAS TAVARES-FINSON

**SELECTED COMMISSIONERS**

  
THE HON. JUSTICE CLARENCE WALKER C.D.

  
THE HON. MRS. DOROTHY PINE-McCLARTY O.J.

  
DR. HERBERT THOMPSON C.D.

  
PROFESSOR THE HON. ERROL MILLER, O.J. CD  
CHAIRMAN

**DIRECTOR OF ELECTIONS**

  
MR. ORRETTE FISHER