Grenada's Constitution: Parliamentary Approval and the GRENLEC Transaction
By Laurel Theresa Bain

It is common knowledge that the purchase of the WRB shares in GRENLEC by the Government of Grenada occurred without Parliamentary approval. However, during the debates on the legality of the repurchase transaction, it was publicly pronounced that the transaction conformed with all legislative requirements. This article highlights the legislative requirements for effecting such transactions and explores whether the repurchase transaction conformed with the legislative requirements.

The provisions for financial management are embedded in the Constitution which is the supreme law of the land. All Acts of Parliament must be in conformity with the Constitution. The Public Finance Management Act gives practical effect to the constitutional provisions for financial management. To strengthen financial management and introduce fiscal discipline, Parliament approved the Public Finance Management Act [2015], the Debt Management Act [2015] and the Fiscal Responsibility Act [2015]. The Audit Act remained in effect for ensuring accountability of the Executive to Parliament. For effective public financial management, all the relevant Acts of Parliament must be consistent with each other and most importantly with the Constitution. Financial management practices must also comply with the legislation.

In the sitting of Parliament on 15th January 2021, the repurchase transaction was described by the Government as a judgement debt; and was therefore not subjected to Parliamentary approval. The pronouncement in Parliament did not comprehensively, and hence accurately, reflect the full provisions of subsection 42 of the Public Finance Management Act. Subsection 42[2] is equally relevant. As explained in a previous article "GRENLEC Transaction Derails National Budget":

"*The classification of the transaction as a judgement debt does not exempt the process from Parliamentary scrutiny and approval. The Public Finance Management Act (PFM) 2015 authorizes the Minister to settle claims against the government out of the Consolidated Fund on the advice of the Attorney General, the Accountant General and the Director of Audit, but it states clearly at Article 42 (2) that no payments shall be made out of the Consolidated Fund for claims against the government that is in excess of amounts available* ***in the appropriation for the purpose****. The qualification at Article 42(2) means that payment out of the Consolidated Fund to settle judgement claims against the government is only permissible if the amounts had been approved/appropriated by Parliament and secondly the amount of the claim settled cannot exceed the approved amount.*"

The WRB transaction clearly does not meet the conditions set out in Subsection 42 (2).

At this point, it is important to examine the legislative provisions governing public expenditure and the reallocation of funds in the Budget. As stipulated by the Constitution, the Executive must seek Parliamentary approval for all expenditures for the fiscal year through the Annual Appropriation Bill. It is recognized that the need for unplanned expenditure may arise during the implementation of the budget. This occurs because the budget is a forecast and developments in the economy could differ from what was forecasted. There could be human errors during the

preparation of the budget or the emergence of unforeseen events. The Constitution makes provision for Parliamentary approval of expenditures not included in the annual Appropriation Bill through provisions for Supplementary Appropriation and Contingencies. This ensures that there is Parliamentary approval for all expenditures. It is therefore clear that the repurchase of the WRB shares which was not covered by any of the provisions governing public expenditure in the Constitution, did not have Parliamentary approval.

The Government explained that the WRB repurchase transaction was made possible by the reallocation of savings from the capital account in the 2020 Budget. While uncertainties persist on the availability of savings in the capital budget, the reallocation of funds must be guided by the relevant legislation.

It is understandable that the Executive [Cabinet] needs a degree of flexibility in the management of the approved budget. This flexibility is achieved through granting the Executive the authority to transfer and reallocate funds. This is an international practice with countries adopting different approaches. The fundamental principles that inform the transfer and reallocation of funds are that such adjustments should not undermine the credibility of the budget and the authority of Parliament. This is achieved through an integrated and comprehensive legislative and regulatory framework. In this context the reallocation of funds in the budget to undertake the WRB repurchase transaction is examined for conformity with the legislative provisions.

In Grenada, the transfer and reallocation of funds in the national budget are governed by subsections 36 and 37 of the Public Finance Management Act [2015]. Subsection 36 provides for the virement of funds, that is, the transfer of funds among programmes within Votes and among Votes as follows:

36.—(1) "Subject to subsection (2), if, in the opinion of the Accountable Officer, the exigencies of the service render it necessary or expedient to vary the amount assigned to any programme within an expenditure vote as shown in the annual or supplementary estimates of expenditure for a financial year, the Accountable Officer may, subject to any order of the Minister under subsection (3), direct by means of a virement warrant under the Accountable Officer's hand, that savings arising from an item in an expenditure vote contained in the annual or supplementary estimates approved by an Appropriation Act or a Supplementary Appropriation Act be applied in aid of another item in the expenditure vote contained in the annual or supplementary estimates if the amount of the appropriation in the vote is not thereby exceeded."

Subsection 36 is not applicable to the repurchase transaction as it specifically states that these expenditures must be within Votes and must be approved by an Appropriation Bill or Supplementary Appropriation Bill.

Subsection 37 of the Public Finance Management Act makes provision for the reallocation of funds from approved budget, but this is less precise and not written with clarity and seems to be in conflict with the provisions of the Constitution. According to subsection 37(1):

"Subject to subsection (2), the Minister may by means of a reallocation warrant under the Minister's hand, direct the Accountant General that savings arising from an expenditure vote

approved by an Appropriation Act or a Supplementary Appropriation Act be applied in aid of any item in any other expenditure vote in those estimates or **in aid of any new item of expenditure and the amounts to be applied shall be deemed to have been appropriated for that purpose."**

The lack of clarity is associated with the term "*or in aid of any new item of expenditure and the amounts to be applied shall be deemed to have been appropriated for that purpose*".

If new expenditure here means that funds can be allocated to expenditure not approved by Parliament, this undermines the credibility of the budget and the efficiency of financial management and is in direct conflict with the Constitution. The accountability of the Executive to Parliament will be completely eroded. In situations of ambiguity in the interpretation of laws and conflict between Acts of Parliament and the Constitution, the Constitution prevails.

A review of the WRB transaction in the context of the legislative framework governing public financial management in Grenada leads to the conclusion that (1) the manner in which the WRB transaction was effected cannot stand up to scrutiny under Subsections 42 [1] and 42[2] of the Public Finance Management Act which makes provisions for settling judgement debts; (2) it was not approved by Parliament as part of the Annual Appropriation Bill , Supplementary or Contingency expenditure as provided for in the Constitution; and (3) any application of Subsection 37 of the Public Finance Management Act for the reallocation of approved funds to purposes unauthorized by Parliament will be in direct conflict with the provisions of the Constitution. It must be noted that even if compliance with the Public Finance Management Act was achieved, the Executive [Cabinet] has an obligation to ensure that the provisions conform with the Constitution. The Attorney General, as the legal adviser, provides such assurance to the Executive [Cabinet]. In all decisions, the Constitution is always supreme.

It is important that all Acts of Parliament are clear and precise and conform with the Constitution. This will allow for efficient public financial management and transparent fiscal policy.

"Knowledge is power, and experience is the greatest teacher."

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5 February 2021