

Our Ref: JL

26 June 2017

His Excellency the Governor
Mr John Rankin, C.M.G.
11 Langton Hill
Pembroke HM 13

Dear Your Excellency

Re: Open Letter to His Excellency The Governor of Bermuda

No citizen of this country, especially a Bermudian who has served his country, should be subject to a protracted and relentless investigation that now exceeds 6 years.

The Hon Dr Brown MD JP retired from politics in 2010 after 17 years in service. Dr Brown was the Premier of this country for 4 years from 2006 – 2010.

In June 2011, following a trial of David Bolden and his wife Antoinette, in which they were convicted of deliberately misleading the Bermuda Monetary Authority in relation to their affairs, the police instigated an official enquiry into the allegations that Mr Bolden made from the witness box that Dr Brown had sought a bribe.

John Barritt JP, the then leader of the newly formed OBA and later to sit on the Commission of Inquiry, is quoted as saying at the time that *"The allegations must be subject to an immediate and thorough Police investigation...Until the allegations are addressed, Bermuda's international reputation will suffer..."*

The Commissioner of Police, then and now, Michael DeSilva said, *"The Bermuda Police Service is aware of the allegations and, accordingly, we have commenced inquiries to determine whether any criminal offences have been committed."*

We anticipate that even John Barritt JP would not have contemplated, let alone condoned, an enquiry that would run in excess of six years and millions of dollars.

What has happened since this investigation began?

COOPERATION

1. First and foremost, is the simple fact that at no time in the ensuing six years have the police arrested Dr Brown. They have not asked him a single question or sought his cooperation, (though willingly offered), they have not asked him to produce any material, for them to consider from either his tenure as premier or his business practices since.

THE SHIFTING SANDS

2. What they have done instead, is to systematically harass Dr Brown's colleagues and friends, spending millions of taxpayer funds to search for evidence of some crime that they have failed in six years to find but that they are certain must exist. This began with chasing Bolden's lies, then turned to pursuing unsubstantiated rumours about bias in public contracting, and now has settled on allegations of fraud in the frequency with which Dr Brown's clinics prescribe diagnostic testing.
3. In this latest stage, the police seek to rely on a series of witnesses who are former disgruntled employees, having been dismissed from Bermuda Health Care Services for their own failings and who appear to have been disbelieved by all other agencies to whom they have complained.

THE ARREST OF DR REDDY

4. They have tried to force Dr Reddy from practice at the BHCS, he being the sole GP, knowing that would effectively close the surgery down by:
 - i. Harassing Dr Reddy as he has travelled through Bermuda airport and actively seeking the assistance of the US Homeland Security and Department of Justice in an unlawful attempt to get him to give evidence against his employer, Dr Brown. The Department of Justice have met with Dr Reddy's US lawyers and disavowed any interest in him.
 - ii. They have asserted that Dr Reddy is not qualified as a doctor even though the Bermuda Medical Council considered his application when he arrived in Bermuda in 2000 and have re-confirmed his bona fides after an exhaustive analysis in September 2016. The police will not accept the BMC findings even though they met with its chairman, the CMO and the Registrations Manager. It would appear that they have since asked the BHeC to become involved even though they have no such authority, no doubt to seek to put pressure on the BHCS and Brown Darrell clinic's licences.

- iii. They have summarily arrested Dr Reddy and searched his home in a May 2016 dawn raid recently declared unlawful by the Supreme Court.

THE COMMISSION OF INQUIRY

5. On 26 February 2016, the Premier Michael Dunkley, called for a Commission of Inquiry inter alia to consider projects that Dr Brown was responsible for during his tenure as Premier. The COI were required to refer any evidence of "possible criminal activity" they may identify to the DPP and the Police. Since it was clear to us, which has now been confirmed, that the projects they were enquiring into were the very ones the police were already engaged with it was quite impossible for Dr Brown to give any evidence before the Commission, not least because we asked if they had sought any of the evidence garnered by the police over the past 5 years: apparently, they had not.
6. The COI made recommendations to the DPP and the police in the following way "The Commission understands that these matters are the subject of extant police investigations and believes they should continue..." in relation to Dr Brown. That was in March of this year. It has apparently added nothing to the continuing investigation undertaken by the police since 2011.

SEARCH WARRANTS

7. On 11 February 2017 the police armed with search warrants for both the Brown Darrell Clinic and the BHCS Clinic raided and seized hundreds of patient files without giving any consideration to the confidentiality of the patients involved, until they were stopped by an injunction. These warrants are now the subject of a further Judicial Review.

THE ALLEGATION AGAINST LAHEY

8. Within days, on 14 February 2017, the AG of Bermuda filed a law suit against the Lahey Clinic in Massachusetts in which unsubstantiated allegations were made against Dr Brown which, for the same reasons as in the Commission of Inquiry, he is unable to answer. We understand that US authorities were not interested in pursuing these allegations, hence the law suit.
9. The allegations in the law suit allege the grossest wholesale fraud over a twenty-year period. The pleadings go further in that they allege that Dr Brown had deliberately ordered MRI and CT scans of patients that were wholly unnecessary, thereby placing them at risk. This allegation is such an extravagant lie that we are bound to ask if the author of it (the AG) has some personal animus toward Dr Brown. Our client is supported in that belief when one

considers that the AG considered it necessary to issue a press statement reinforcing these allegations at the same time as the law suit via a publicity agency, Liberty Square.

10. If there is evidence of that allegation why has it not been reported to the BHeC who are responsible for licensing of the clinics? Why has it not been reported to the BMC who can remove Dr Brown and any of his employed staff from the medical register? Why has it not been reported to the immigration authorities that have to grant work permits for those employed by him? In these institutions the burden and standard of proof is so much less than the criminal courts. If the AG has evidence to support these allegations, for God's sake let's see it!!
11. The fact is there is no evidence to support the allegations.

BREACH OF MLAT

12. There is a serious question as to whether the Mutual Legal Assistance Treaty has been breached by the AG in that material gathered under the MLAT cannot be used by the AG in a civil suit. The MLAT specifically states "...is not intended to provide to private persons a means of evidence gathering, nor is it intended to extend generally to civil matters".

BREACH OF CONSTITUTION

13. There is a further issue: as the Attorney General is a serving Member of Parliament, the Bermudian constitution and well-established constitutional convention, prevent him from having any knowledge of, or involvement with, criminal investigations. We would find it difficult to believe that the Lahey suit could have been framed without the benefit of material and information gathered during the course of the ongoing criminal investigation into Dr Brown.

UNILATERAL SLASHING OF DIAGNOSTIC IMAGING FEES BY BERMUDA HEALTH COUNCIL

14. Most recently the BHeC has, we believe wholly without merit slashed the fees payable in respect of MRI and CT scans. The Bermuda Hospitals Board has reviewed the fees payable in respect of these scans and, without consulting the service providers have imposed swinging cuts, in some cases up to 85%. The idea that it is possible to carry out these scans at such reduced rates defies belief: we are concerned not only for the viability of the Clinics that has provided such a valuable service to thousands of patients across the whole of Bermuda but how is it possible for the hospital themselves to make ends meet?

15. If the fees payable no longer cover the cost of a scan (or so close as to make it non-viable), will the people of Bermuda suffer by the effective removal of this diagnostic tool?
16. What is disturbing is that this appears to be deliberately targeted on the businesses which Dr Brown operates. Is it yet another attempt to drive him out of business? "If we can't get him one way, we will get him another" seems to be the approach that the state is taking.

In July of last year the police confirmed following a PATI request that between 2013 and 2016 they had spent \$2.2 million dollars investigating the allegations utilising a dedicated police team. This takes no account of the costs between 2011 and 2013, or the costs since June of 2016 to date, nor does it take into account the costs of a COI, defending the proceedings arising from the unlawful arrest of Dr Reddy and the searches of the clinics, the proceedings in the US against the Lahey Clinic and the associated engagement of the publicity agents Liberty Square, or the misguided attempt to reduce the fees payable for diagnostic imaging.

There can be no doubt that the Bermudian state has now spent millions of dollars investigating everything that Dr Brown has done over the past 20 years and come up with nothing after six years. The time has come to find out if this investigation is, in fact, a persecution rather than a prosecution, whether it is borne of personal animus rather than a genuine inquiry into suspected criminal conduct, whether this is politically driven rather than independently investigated.

It is our view that the endless "investigation" into Dr Brown is an abuse of executive power subjecting him to intolerable strain and inflicting a degree of suffering that no citizen in a civilised country should have to endure.

It seems to us the only way to discover the answers to those questions is to invite Your Excellency, to instigate a Commission of Inquiry under the powers granted to you by S1 of the Commission of Inquiry Act 1935 to look into the conduct of the Bermuda Police Service, they being a public service within the meaning of the Act, and the Attorney General's Department, for the benefit of the public welfare again within the meaning of the act.

Yours faithfully

A handwritten signature in purple ink, appearing to be 'Jerome Lynch', with a long horizontal line extending to the right.

Jerome Lynch QC
Trott and Duncan Limited