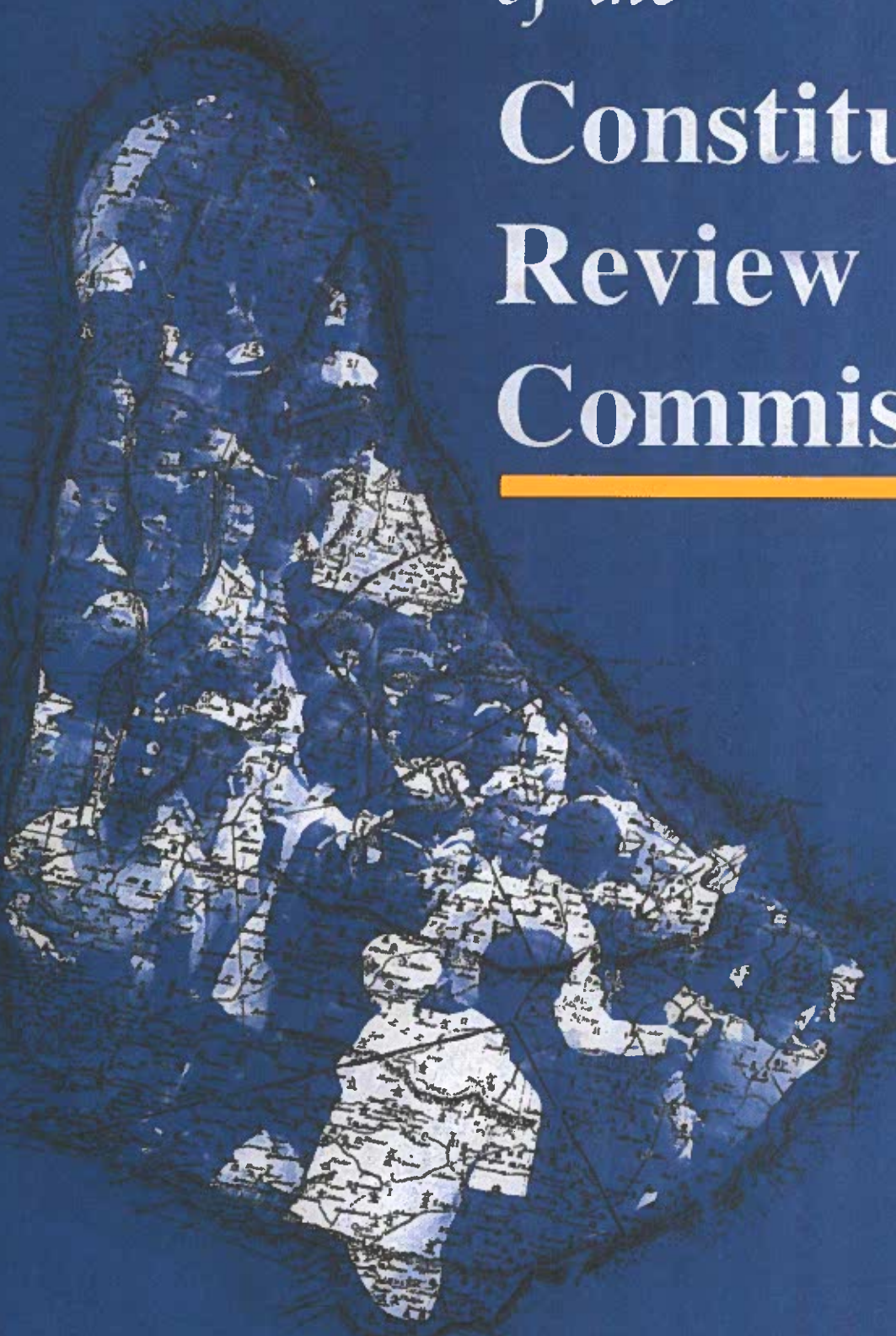




Report

of the

Constitution Review Commission



1998



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Constitution

Review

Commission

1998

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CONSTITUTION REVIEW COMMISSION
LAZARETTO BUILDING
BLACK ROCK
ST. MICHAEL

December 15, 1998

His Excellency
Sir Clifford Straughn Husbands, GCMG, KA
Governor-General of Barbados

Your Excellency:

By instrument dated October 29, 1996 issued by you under the provisions of section 3(1) of the Commissions of Enquiry Act, Cap. 112, we were appointed as a Commission to review the Constitution of Barbados. We subscribed to our oaths of office before you on the same day.

Our specific **Terms of Reference** were –

- to examine, consider and enquire into the Barbados Constitution and other related laws and matters;
- after due examination and study, to report in writing giving our opinions, making such recommendations, and providing for consideration any amendments, reforms and changes in the Constitution and related laws as are in the opinion of the Commissioners necessary and desirable for promoting the peace, order and good government of Barbados and in particular for;
- maintaining democratic institutions, and ensuring that parliamentary and multi-party democracy is given such constitutional protection as may be necessary and desirable;
- ensuring the elimination of gender discrimination in the Constitution;
- strengthening the accountability of parliamentary representatives to their respective constituents;
- encouraging a wider and deeper participation by the citizens of Barbados in the democratic processes of government, both at the parliamentary and other levels;
- maintaining and strengthening the independence of the judiciary at all levels;
- strengthening the independence and impartiality of the Public Service, having particular regard to the need for efficient and responsive administration of government business;

- strengthening the fundamental and basic rights, liberties and freedoms of the individual and ensuring that there is no discrimination in the national life of the State;
- strengthening the relevant government machinery in order to ensure maximum transparency and strict accountability in the management of public funds, including appropriate sanctions for corruption;
- determining the necessity for retaining the monarchical system of government and making recommendations in respect of the executive form of government most suited to protect parliamentary democracy, the fundamental rights and freedoms of the citizens of Barbados and to achieve effective and efficient government so as to position Barbados to meet the challenges of the twenty-first century and beyond;
- to advise and make recommendations concerning the patriation of the Constitution so as to ensure that it draws its authority and validity from an Act of the Parliament of Barbados;
- to advise and make recommendations concerning the appropriateness or otherwise of maintaining Barbados' links with the British Crown;
- to advise and make recommendations concerning a structure for the executive authority of Barbados that is best suited to protect the independence and authority of Parliament and the fundamental rights and freedoms of its citizens;
- to examine the composition and structure of the nation's parliamentary institutions, and to make recommendations concerning
 - the retention or abolition of a second Chamber of the Legislature;
 - methods and means of increasing the representativeness of Parliament, not excluding such changes in the manner of electing representatives as may lead to a more equitable distribution of seats among political parties on the basis of votes received at general elections;
- to prepare and include in the written report, if the Commissioners so determine, draft legislation to effect any amendments, reforms or changes to the Constitution.

We were also mandated to:

consult widely with the citizens and organisations of Barbados whether in Barbados or abroad, by such manner and procedure as we determined;

receive and examine proposals from the general public;

prepare and disseminate such material as might be relevant so as to widen public knowledge and appreciation of the Constitution;

generate public interest in the subject matter by means of public meetings, radio "call-in" programmes, other public discussions, pamphlets and information kits, or any other methods of communication which the Commission deems appropriate; and

present our written report not later than one calendar year from the date of the appointment of the Commission.

The Commission

Membership of the Commission encompassed persons representing the political parties, the Social Partners, voluntary organisations, the Church, the youth and the citizens of Barbados in general. The Commission was chaired by Hon. H. deB. Forde, QC, MP (now Sir Henry). At our first meeting the Commission elected the Hon. Oliver Jackman, CHB, a former diplomat and presently a judge of the Inter-American Court of Human Rights, as its Vice-Chairman.

The other members of the Commission were :

Miss Norma Monica Forde	-	<i>Former Senior Lecturer in Law, University of the West Indies</i>
Mr. Daryll Jordan	-	<i>Former Principal, St. Lucy Secondary School</i>
Mr. Maurice A. King, QC	-	<i>Former Attorney-General and Minister of Foreign Affairs</i>
Mr. Ivan Lynton	-	<i>Former Public Servant</i>
Mr. Wendell McClean	-	<i>Senior Lecturer in Economics, University of the West Indies</i>
Miss Melanie Newton	-	<i>Graduate, McGill University and Caribbean Rhodes Scholar</i>
Mr. Thomas Roach	-	<i>Executive Director, Barbados Employers' Confederation</i>
The Rev. Leonard Rock	-	<i>Barbados Christian Council</i>

Regrettably, Mr. Thomas Roach died on November 9, 1997 after giving yeoman service as a member of the Commission throughout the original year of our appointment. His vast knowledge and experience influenced the recommendations of the Commission substantially. We acknowledge his sterling contribution to our deliberations. The sense of purpose and camaraderie which he brought to our meetings helped us to focus more intently on the achievement of our assignment.

On November 21, 1997, Mr. Roach was replaced as the representative of the Barbados Employers' Confederation by Sir John Goddard, KA, GCM. By this time the public meetings had been completed, but Sir John, who had already made a written submission and appeared in person before the Commission, assisted even further as we embarked on the finalization of our recommendations, including the fashioning of the draft Bill originally intended to accompany this Report.

Miss Melanie Newton left for Oxford University in early October 1997, but returned in January 1998 to contribute to the final recommendations. Although temporarily absent from meetings of the Commission, she kept constantly in touch with us, and was always available to bring a fresh approach to our work, highly representative of youth and the future of our country.

Mr. Keith Inmiss, then Senior Administrative Officer in the Ministry of Labour, was appointed Secretary to the Commission on September 23, 1996. Mrs. Coral Warner served as stenographer/typist from March 4, 1997 to November 7, 1997. She was replaced by Miss Patricia Wilson on November 17, 1997.

We were mandated to report within one calendar year from the date of our appointment. In retrospect, this date was optimistic. Although we tried to complete our task within the initial time stated, the vast scope of our Terms of Reference, the need to consult more widely than was at first envisaged, the imperative that we draw on the research and knowledge of specialists and the time required to produce a draft Bill which accurately represents our recommendations - all these made it inevitable that we required two extensions. We were therefore issued with further instruments extending the life of the Commission, first to March 31, 1998 and finally to December 15, 1998.

Methodology

Very early in our deliberations we were satisfied that, if we were to carry out our mandate effectively, we had to provide the public with information on the Constitution, even before we commenced our formal hearings. We also determined that we would consult as widely as possible, invite and receive written and oral submissions from the public at large and consult as well with specialists knowledgeable in constitutional law. We also considered it necessary to hold public meetings at strategic locations across the island, in addition to meeting privately with individuals, groups, organisations and associations representative of our society. We also determined that our consultations must extend to Barbadians across the wider diaspora and we held a number of private and public hearings in centres in England, Canada and the United States at locations in which large numbers of Barbadians reside.

(a) Dissemination of Information

To widen public knowledge and appreciation of the Constitution, and stimulate discussion thereon, copies of the Constitution, updated to 1996, were issued by the Government Printing Department and put on sale at the Government Printing Department and at the Commission's public hearings.

In addition, the Commission published a booklet entitled *The Barbados Constitution: Facts and Questions* in which the provisions of each Chapter of the Constitution were explained in simple

language. At the end of each Chapter questions relating to the provisions were listed. Our intention was that these questions would assist in focussing attention on the areas which could be reviewed, and would in turn lead the public to ask even more questions about the workings of the Constitution. Copies of the booklet, which was prepared for the Commission by Mrs. Velma Newton SCM, the Law Librarian, University of the West Indies, were available free of charge from the Government Printing Department, the Commission's Secretariat, and the country's overseas Missions. They were also distributed at the Commission's public hearings in Barbados and overseas. This booklet improved public knowledge of the details and workings of the Constitution and stimulated wider interest in the work of the Commission. There was so great a demand for this booklet that the first 5,000 copies printed were quickly taken up. We therefore published an additional 3,000 copies, and these too were rapidly taken by the public.

The demand for this booklet and the response to some of the public hearings convinced us that public knowledge of the provisions of the Constitution was limited. Therefore, one of our recommendations is that study of the Constitution should be included in the schools' curriculum as part of a course in Civics. Updated copies of the Constitution should be made readily available at reasonable cost on an on-going basis. Both the Government Information Service and the public media should routinely seek to inform the public about the provisions of the Constitution and particularly their impact on the day-to-day lives of our citizens. The tertiary institutions, particularly the Cave Hill Campus of the University of the West Indies and the Barbados Community College, should expand their teaching on this subject and, by use of modern technology, bring into the homes of each citizen information concerning the document which contains the supreme law of the land. In this way the citizen's knowledge is expanded and rational debate and criticism will increase, thereby improving the workings and performance of civil governance.

(b) Public Notices

By notice published in two daily newspapers - *The Barbados Advocate* (on December 20, 22, 27 and 29, 1996 and January 3 and 5, 1997) and the *Daily Nation* (on December 27 and 29, 1996 and January 3 and 5, 1997) the public was informed of the appointment of the Commission and invited to send written submissions to the Commission's office and make oral submissions at public hearings (see **Appendix 2**). The dates and venues of the public meetings (see **Appendix 3**) were announced in the *Daily Nation* and the *Sunday Sun* of January 24; February 16, 28; March 9 and 21, 1997, and in the *Barbados Advocate* of January 19; February 14; March 2, 7 and 23, 1997.

The Commission also published notices of discussions of **special topics** relating to the Barbados Constitution which were led by Consultants. Information on the dates and venues of these discussions was submitted for publication in 1997 in the *Daily Nation* and *Barbados Advocate* of May 14, 16, 18, 23, 25 and 30; June 6, 13, 15 and 22; August 8, 10, 13, 15 and 17 (see **Appendix 4**).

(c) Public Hearings (General)

(i) Barbados

As shown in Appendix 3, five public hearings at which the Commission heard submissions on general constitutional matters were held in Barbados: at the Sherbourne Convention Centre, the Alexandra School, the Dover Convention Centre, the Alleyne School and the Princess Margaret School. In addition, we met with secondary school children at the Sherbourne Conference Centre on March 26, 1997 and were pleased by the number and quality of the submissions made.

Each meeting commenced with a prayer for God's blessing and guidance. The Chairman then introduced each member of the Commission and made an opening statement. The public hearings usually commenced at 7 p.m. and ended at 10 p.m.

(ii) Overseas

Members of the Commission visited London (Brixton) and Birmingham in the United Kingdom; Boston and New York (Brooklyn) in the United States of America and Ontario (Toronto) and Quebec (Montreal) in Canada to conduct public hearings and receive written and oral submissions from Barbadians living in these centres.

Barbadians who attended these meetings were delighted by the fact that the Government and the Commission had included them in the consultation process. Several had made considerable effort to familiarize themselves with the details and workings of the Constitution, and even in those cases where knowledge was scanty, every effort was made to supplement it by way of questions and requests for information from the Commission.

As was expected, some persons expressed anxiety concerning the manner in which changes to the Constitution would affect their status as residents or citizens of the countries in which they were residing. All who contributed, either orally or in writing, stressed the importance of maintaining the principle of dual nationality for citizens of Barbados born in Barbados or descended from citizens of Barbados. The dates of the meetings and the number of persons who made oral presentations are given in **Appendix 5**.

(iii) Special Topics (Barbados)

Once the general public hearings were completed, we held six public hearings at which special topics were discussed (**see Appendix 5**). These topics were: Fundamental Rights, Right of Recall of a Member of Parliament, Parliament and the Executive, the Role and Powers of the Head of State and of the Ombudsman, Strengthening of the Judiciary, Local Government and the Public Service (**see Appendix 4**). The Consultants who led the discussions were: Professor Ralph Carnegie of the University of the West Indies; Professor Telford Georges, a former Chief Justice of the Bahamas and of Zimbabwe and a former Law Professor at the University of the West Indies; Mr. George Brancker CBE, Clerk of Parliament in Barbados; Dr. Sonia Richards, a former Senior Crown Counsel who is currently Legal Counsel of the Central Bank; Mrs. Velma Newton SCM, the Law Librarian of the University of the West Indies and Mr. Alwyn Howell, former Local Government Commissioner.

(d) Submissions

The deadline given for receipt of written submissions was originally February 28, 1997 (see **Appendix 2**). However, the Commission did not think that it ought to adhere to that deadline, particularly when some of the oral submissions intended for presentation at public hearings would have exceeded the time allowed for making those submissions. By a public notice published in the daily newspapers on August 1, 3 and 8, 1997 the deadline was extended to August 15, 1997. Despite this deadline, the Commission accepted submissions received after this date and both oral and written submissions were made to the Commission as late as March 1998.

Seventy five (75) oral submissions were made at the public hearings in Barbados which addressed general matters relating to the Constitution and ninety-eight (98) at similar hearings overseas. At the discussions on **special topics** held in Barbados, forty-two (42) oral submissions were made. Several of those who made oral presentations also made written submissions which contained the same material as their oral presentations, or were expanded versions of those submissions. **Altogether, a total of two hundred and sixty-five (265) submissions were received by the Commission. Appendix 5** contains a summary of the number of submissions made at the general and special hearings, both locally and overseas. **Appendix 6** lists the two hundred and nine (209) persons who made submissions.

(e) Private Hearings

At the private hearings, the Commission requested that presentations should be as open as possible, with the proviso that if any contributor wished a particular submission to be treated with confidentiality then the Commission would respect this request. As a result, the private sessions were frank and informative. The Commission was particularly pleased to learn from the hands-on experience of those members of the Public Service who had to administer the day-to-day functioning of the Constitution. The Commission also had the benefit of submissions from those categories of persons to whom the Constitution and specific laws have given special roles and functions as well as special protection in an effort to maintain their independence. In this regard, submissions were made by members of the Judiciary, the Director of Public Prosecutions, the Auditor General, the Public Service Commission, the Commissioner of Police, the Chief of Staff of the Defence Force, and others.

We also met in private with representatives of the political parties, civic organisations, the trade unions, senior civil servants (past and present). Most of the private sessions were held at the National Insurance Conference Room. The Commission held one private session at the Supreme Court of Judicature, and another at the George Street Auditorium.

Appendix 7 lists the organisations to which invitations were sent. Meetings scheduled with the persons nominated to speak on behalf of some of these organisations and with individuals specially invited to appear before the Commission are listed in **Appendix 8**. All persons invited appeared before the Commission.

(f) Consideration of the Preamble

The Preamble is an important part of our Constitution. Under our Terms of Reference, we were obligated to consider its relevance and whether or not there was any justification for amending it. Very early in our deliberations, in accordance with our mandate, we determined that we would involve the ordinary citizen in this part of our work. As a result, we invited the public to make written submissions to us for improving, keeping or amending the Preamble. This excited some adverse public comment. Our decision to involve the public has proved to be invaluable, as is shown by the comments and the reasons which appear later in this Report under the specific Chapter on the Preamble.

(g) In-House Meetings of Commission Members

In-house meetings of the Commission took two forms. As the need arose, sub-committees were appointed to deal with specific aspects of our work and various administrative matters. These sub-committees dealt with planning, public relations and legislative drafting. The full Commission met on 112 occasions to conduct its business, consider its recommendations and approve the Report. Generally, meetings of the Commission were held weekly.

(h) Documents Examined

We examined a large number of documents which included:

- the Cox Commission Report and working papers available to that Commission;
- the Report of the 1966 Constitutional Conference held in London;
- debates on the Constitution;
- amendments to the Constitution and related laws, as published in the Barbados Hansard and as supplements to the Official Gazette;
- a collection of constitutional cases decided in the law courts of Barbados since Independence;
- information on the constitutions of other countries with a similar historical background, including the other Commonwealth Caribbean countries (independent and non-independent) Australia, Canada, Great Britain, India, the Irish Republic, New Zealand, South Africa, Uganda and the United States of America;
- international human rights treaties;
- research papers prepared by the Consultants;
- information from international organisations such as the Commonwealth Secretariat, the Commonwealth Parliamentary Association, the United Nations;

- publications in learned journals and other publications pertaining to constitutions, government and electoral matters;
- notes prepared by members of the Commission; and
- all the submissions made by Barbadians.

We recommend that this vast body of information be preserved not only as part of our historical records, but as an important research collection. We have also decided to edit and publish the minutes of the Commission and the verbatim records of the public and private hearings.

(i) Drafting of Proposed Amendments

The Commission was authorised to receive all necessary assistance from the office of the Chief Parliamentary Counsel. The Attorney-General, the Hon. D.A.C. Simmons, Q.C. assigned the Hon. Mrs. Elizabeth Bourne-Hollands, Legal Consultant in the Attorney-General's Office, to assist us in preparing the draft text of proposed amendments to the Constitution. Mrs. Bourne-Hollands attended meetings from October 31, 1997 until April 8, 1998, even though her term of office as Consultant ended in November 1997. Her vast experience proved of inestimable value to the Commission. In March, 1998 Mrs. Bourne-Hollands was replaced by Mr. George Griffith, Legal Consultant to the Chief Parliamentary Counsel, but she maintained strong interest in our task.

Mr. Griffith's contribution has been outstanding. His knowledge, expertise and professionalism have enabled us to resolve several issues. This made our assignment easier. As a result, we were able to advance the preparation of the draft legislation to give effect to the recommended amendments, reforms and changes to the Constitution. We had hoped to have finalised the draft for inclusion as an Appendix to this Report. However, because of the exigencies of government business Mr. Griffith's services were required elsewhere and it has not been possible to complete the final draft in time for transmittal with this Report.

The Commission and a sub-committee thereof have spent several hours considering two preliminary drafts of the revised Constitution. Outside of the membership of our Commission we have had the benefit of the advice of the consultants on these drafts. Work is continuing to finalise the draft in accordance with the recommendations of the Commission. We are available for any further consultation required of us in respect of the final draft.

We are of the opinion that even if all of the recommendations which we have made are accepted it will still be necessary to consult further on the draft final text and in particular to obtain the views of the members of the Public Service and the Judiciary before the final Bill can be made available for legislative action.

It has not been part of our Terms of Reference to advise on the procedure to be followed for wider consultation after our Report has been handed to Your Excellency. This is a matter essentially for the Government. No doubt the widest possible consultation with the political parties, the social partners and with Parliament is necessary, particularly since it is unlikely that constitutional reform will be attempted again for some decades.

(j) Acknowledgments

In a task of this magnitude, there will inevitably be several persons who have given assistance to the Commission. It is usually considered invidious to single out any specific individual. We therefore thank

all those - and there were many - who gave so freely of their time and expertise to assist us in carrying out our mandate. However, everyone will understand if mention is made of our Secretary, Mr. Keith Inniss, and the recorders, Mrs. Cynthia Hunte and Mrs. Anne Martindale, for their special contribution in undertaking those tasks so very necessary in an exercise of such tremendous importance to the people of Barbados.

In the same vein we acknowledge the contribution of the consultants who clarified the difficulties that confronted us and suggested solutions to remove those problems.

(k) Conclusion

After hearing all the submissions and listening to the consultants, the Commission came to the conclusion that the Constitution of Barbados is basically sound and has worked reasonably well. However, like our predecessors the Cox Commission, we agreed that it has exhibited a number of deficiencies which should be remedied. In many respects we agreed with the conclusions of the Cox Commission, but there have been significant areas of difference. In some cases our decisions were not unanimous, and this has been indicated in the text and in the summary of our recommendations which appears at Chapter 15 of this Report.

The Chairman thanks his colleagues on the Commission for giving unstintingly of their time and ideas, and altogether making the Constitution review exercise one which was a rewarding and invaluable learning exercise.

We now have the honour to submit to Your Excellency the Report of our enquiry.

H. Forde

Sir Henry Forde, KA, QC, MP

N. Forde

Norma Monica Forde

J. Goddard

Sir John Goddard, KA, GCM

O. Jackman

Hon. Oliver Jackman, CHB

D. Jordan

Daryll Jordan

M. A. King

Maurice A. King, QC

I. Lynton

Ivan Lynton

W. McClean

Wendell McClean

M. Newton

Melanie Newton

L. Rock

Rev. Leonard Rock

CHAPTER 1

INTRODUCTION

SUMMARY OF CONSTITUTIONAL REFORM SINCE 1966

The 1966 Constitution

- 1.1. Barbados was granted independence by an Act of the British Parliament - the *Barbados Independence Act, 1966* (Act 1996-37 U.K.). The Constitution was originally the Schedule to the *Barbados Independence Order* (S.I. 1966, No. 1455 (UK)) made under the authority of the Act.
- 1.2. The Constitution is similar to those of other Commonwealth Caribbean countries which achieved independence during the 1960s and 1970s. These constitutions, which have been described as written versions of the constitutional arrangements which evolved in the United Kingdom over many centuries, establish the organs of the State and delineate the relations between them. They also define relations between the State and citizens in that they contain chapters on fundamental rights and freedoms or bills of rights as they are sometimes called.
- 1.3. Under the Barbados Constitution of 1966 - which remains structurally unchanged thirty-two years later - the Island continues to be governed under a monarchical system, with the Queen as Head of State, represented locally by a Governor-General. In twelve chapters, the Constitution sets out the framework of government providing, *inter alia*, for a two-chamber Parliament in which legislative power is exercised and which comprises the Governor-General, Senate and House of Assembly; a Cabinet in which executive power is vested and which comprises the Prime Minister and other Ministers of government; the judicature; the public service; services commissions; citizenship; the fundamental rights and freedoms guaranteed each citizen, and government finance.

Need for Review of Constitutions

- 1.4. Many of our citizens feel that the Constitution contains certain undesirable, anti-democratic provisions. We were told that there is too much centralization of government and too great a concentration of power in the hands of the Prime Minister; too little accountability, both by public officials and parliamentarians; a pressing need to shore up the citizens' basic rights, to strengthen the independence of the judiciary and to isolate the public service from political interference. Most of these arguments sprang from the obvious disenchantment with the constitutional amendments made in 1974. If correct, these arguments in themselves provide sound grounds for change.
 - 1.5. Most countries review their constitutions periodically to ensure that the institutions of government function efficiently and that the guaranteed rights and freedoms are in keeping with their citizens' aspirations and expectations. Without review and reform, a constitution, far from remaining a thing of unchanging beauty, may become so unresponsive to changing needs that it fails to satisfy the wider interests of good government.
-

- 1.6. While piecemeal amendments may sometimes be desirable, changes of this nature are very often made without proper consideration and usually to satisfy a short-term interest of the government of the day. By contrast, it is not desirable to undertake drastic reform at every sign of public dissatisfaction, particularly if a constitution is basically sound and is working well. "If it ain't broke, don't fix it" was a recurring theme among a significant number of those making submissions before us.
- 1.7. The fact that twice in 20 years a government appointed a commission to consider constitutional reform also underscores the need for change. A decision to do so can be justified in the terms used by the Wooding Commission of Trinidad & Tobago in the Introduction to its 1972 publication *Thinking Things Through*:

"A democratic constitution is a body of basic rules by which the people of a country agree to govern themselves....But a Constitution should not be a strait-jacket. It is intended to operate in a world of movement and change. Its major purpose is so to distribute functions that the right of the people to govern themselves through the institutions which it sets up will not be disregarded."

Post 1966 Amendments to the Barbados Constitution

1974 Amendments

- 1.8. The first set of amendments to the Constitution made in 1974 by the *Barbados Constitution (Amendment) Act 1974-34* evoked considerable public debate. Some of the amendments were of a minor nature, for example substituting "attorney-at-law" for "barrister" in sections 13, 22 and 27.

The major amendments:

- 1.8.1. lowered the age for registration as a citizen of Barbados from 21 to 18 years (section 3);
- 1.8.2. stipulated that for a person to be appointed as a Senator that person must be a Barbadian, instead of a Commonwealth citizen who is a person ordinarily resident in Barbados for the twelve months immediately preceding the appointment (section 37); and deleted the provision then in section 44 (1) (c) whereby a "clerk in holy orders or other minister of religion" was not qualified to be elected to the House of Assembly.
- 1.8.3. provided that the appointment of all judges, including the Chief Justice, should be made by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition (section 81);
- 1.8.4. conferred on the Attorney-General the power to give to the Director of Public Prosecutions general or special directions in relation to the prosecution of the offences of piracy, publications calculated to interfere with the peaceful relations of Barbados with foreign states, treason and related offences, sedition, official secrets, mutiny, trading or otherwise dealing in slaves, unlawful oaths and any other offences relating to a right or obligation of Barbados under international law (section 79A);

- 1.8.5. provided for the establishment of a Teaching Service Commission consisting of a chairman and not less than three nor more than five other members appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. This provision has not been promulgated;
- 1.8.6. provided for an increase in the number of offices to which the Governor-General would make appointments on the recommendation of the appropriate Service Commission after consultation with the Prime Minister. The offices added were: Solicitor General, Director of Finance and Planning, Chief Training Officer, the chief or deputy chief professional or technical adviser or officer in a Ministry of Government and head or deputy head of a department of Government (section 99(2)).
- 1.8.7. These amendments, other than that relating to the establishment of a Teaching Service Commission, were brought into force on February 1, 1975.

1980 Amendment (1980-2)

- 1.9 Sections 103 and 104 of the Constitution were altered by section 3 of the *Expatriate Pensions Act* to give effect to the agreement between the Governments of Barbados and the United Kingdom that the payment of expatriate public officers' pensions would no longer be a charge on the Consolidated Fund of Barbados.

1981 Amendment (1981-24)

- 1.10. The *Barbados Constitution (Amendment) Act, 1981-24* implemented a recommendation of the Cox Commission Report of 1979 by inserting new sections 41A-E under which an Electoral and Boundaries Commission was established.
- 1.11. Provision was also made in section 42(2) for the Governor-General, on the advice of the Commission, to make regulations for election of members of the House of Assembly and the conduct of these elections.
 - 1.11.1. The amending Act came into force on April 1, 1985.

1989 Amendments (1989-16)

- 1.12. The *Constitution of Barbados (Amendment) Act, 1989-16* amended:
 - 1.12.1. Section 41E of the Constitution by providing *inter alia* that the election of a member of the House of Assembly can be called into question on the ground that the conduct of that election is inconsistent with the law providing for the election of members of the House;
 - 1.12.2. Section 42 by providing in a new subsection that any law regulating the election of members of the House of Assembly should contain provisions for the division of Barbados into constituencies, for ensuring that as far as practicable persons qualified to vote have a reasonable opportunity to do so, and for permitting or restricting political broadcasts and the allocation of broadcasting time to political parties.

1990 Amendments (1990-17)

- 1.13. These amendments were necessitated by the establishment of a Court of Appeal comprising its own judges rather than a panel of judges drawn from the High Court.

The most important changes were:

- 1.13.1. the deletion from a number of sections of the words "puisne judge" and substituting therefor "judge";
- 1.13.2. deletion of subsection 80(2) which stated that the judges of the Supreme Court were the Chief Justice and such number of puisne judges as may be prescribed by Parliament, and substituting therefor "the Chief Justice and such number of Justices of Appeal and Judges of the High Court, as may be prescribed by Parliament."
- 1.13.3. the provision, at section 84, that a person holding the office of High Court Judge other than Chief Justice shall vacate office at 65 years, and the Chief Justice or a Justice of Appeal at 70 years. However, provision was made for the Governor-General, acting on the recommendation of the Prime Minister, to permit a High Court Judge to continue in office until he reaches 67, and the Chief Justice or a Justice of Appeal until 72, and for a former judge to sit as a judge to deliver a judgment or do anything in relation to proceedings which had commenced before him prior to his attainment of the extended age limit, his retirement or resignation.

1992 Amendments (1992-18)

- 1.14. The *Barbados Constitution (Amendment) Act, 1992* (Act 1992-18) amended some of the sections dealing with disqualifications for membership of the Senate and of the House of Assembly. It amended sections 38(1)(d), 39(3) and 45(2)(a) by substituting "any" for "felony or of any other". The amendments were consequential to the abolition in the general law of the terms felony and misdemeanour to denote degrees of criminality mainly set out in the *Criminal Law (Arrestable Offences) Act, 1992* (Act 1992-17).

1995 Amendments (1995-2)

- 1.15. In 1991 the Government had invoked its powers under the *Civil Establishment Act* of 1949 (a pre-1966 "existing law" saved by section 26 of the Constitution) to reduce the salaries and wages paid to public officers and public employees not protected by section 112 of the Constitution. This decision was held to be valid by the Privy Council in the case of *King v. The Attorney-General* 45 W.I.R. 50 on the ground that the 1948 Act had been saved by section 26 of the Constitution.
- 1.16. The *Constitution (Amendment) Act, 1995* (Act 1995-2) inserted a section 112A which provided that the salaries and allowances payable to the holders of offices established under the *Civil Establishment Act, Cap. 21* and the *Defence Act, Cap. 159* could not be altered to their disadvantage.

Most Recent Initiative for Constitutional Change

- 1.17. The preceding summary clearly shows that constitutional reform in Barbados has been spasmodic. This is not surprising, given the short life of the Constitution and the general reluctance to engage in fundamental change of the Supreme Law before the workings of the Constitution over a significant period of time have clearly convinced the citizens of that need.
- 1.18. The one attempt to effect fundamental change came with the establishment of the Cox Commission. That Commission performed a valuable task and its report has been a useful guide for us in our deliberations. Much of what was said in that Report is still pertinent and applicable today and for that reason we have included a summary of its recommendations at **Appendix 9**. We do not speculate on the reasons for, nor do we pass judgment on, the failure to date to implement any more than 3 of their 64 recommendations.
- 1.19. The membership of our Commission appears to be more representative of the political parties and the citizens of the country than the Cox Commission may have been. All political parties and many groups and citizens have made serious submissions to us. We hope that these factors will therefore hasten the implementation of such of our recommendations as are acceptable to Parliament and the people.

CHAPTER 2

PATRIATION OF THE CONSTITUTION

- 2.1. Although the Constitution of Barbados is a Schedule to the *Barbados Independence Order* (S.I. 1966 No. 1455 (UK)) and the Order itself was made by Her Majesty-in-Council, pursuant to the *Barbados Independence Act, 1966*, an Act of the United Kingdom Parliament, the legal power to amend the Barbados Constitution firmly resides in the Parliament of Barbados.
- 2.2. In theory, however, it is still technically possible for the British Parliament to repeal the *Barbados Independence Act* which granted Her Majesty-in-Council the power to make the Barbados Independence Order. This may never happen. To the extent that such legal power remains theoretically possible, it is our view that this detracts from the people's belief in their national identity and sovereignty.
- 2.3. The patriation of the Barbados Constitution is both an emotional and a legal issue. In relation to the first issue, the people of Barbados in their submissions to us made clear their deep feeling that our Supreme Law has to be, in every sense of the word, indigenous and autonomous. There is undoubted consensus that the Constitution should be a product of the Barbados Parliament and completely Barbadian. This would rid our Supreme and Basic Law of any trace of the colonial format, remove any possible judicial or theoretical doubt about the power of the British Parliament to legislate further in relation to the Barbados Constitution and clearly signal that we are in all respects "firm craftsmen of our fate".

Recommendation

- 2.4. **The Commission recommends, as did the Cox Commission, that the Order-in-Council to which the present Constitution of Barbados is a Schedule be replaced by a statute enacted by the Parliament of Barbados.**

CHAPTER 3

THE PREAMBLE

- 3.1. Some Constitutions have no Preamble. Preambles are generally not considered to be essential. Where they exist, their purpose is to underscore a sense of national identity and to express the basic tenets, values and principles of the State and its people. They are therefore essentially inspirational and exhortatory and provide a useful link between periods of history, mirroring the development of the nation. The Preamble to the 1966 Constitution sought to achieve these objectives.
- 3.2. None of the submissions made to us questioned the place of a Preamble in the Constitution. The existing Preamble was, however, severely criticised by members of the public mainly on the following grounds:
 - 3.2.1. there is no reference to the historical fact of slavery, a central element of the evolution of the Barbadian polity;
 - 3.2.2. it commences with a blatantly anti-historical claim that “the love of free institutions and of independence has always strongly characterised the inhabitants of Barbados”;
 - 3.2.3. the reference to the “supremacy of God” may plausibly be interpreted as excluding non-Christians from the purview of the Constitution.
- 3.3. Nonetheless, there was a clear reluctance among many to change the wording of the Preamble. They described it as a historic document reflecting some of the thinking or spirit of the people at the time. They argued that change would be seen as a partisan attempt to withdraw recognition from the framers of the Constitution.
- 3.4. We agree that a Preamble should stress the common identity and common values of all Barbadians. It should clearly reflect the historical context - political, economic, religious and social - in which it is enacted. However, as part of the Constitution it is, like any other provision open to change and amendment. Our mandate obligated us to give consideration to all provisions of the Constitution within the overall objectives of our Terms of Reference. While therefore we appreciate the sentiments of those who would make no change, we considered that the opportunity for patriation of the Constitution should include a new look at the Preamble.
- 3.5. The main argument for a new Preamble is the fact that, if Parliament accepts the recommendations of the Commission, the reformed Constitution will be a new and authentically Barbadian Constitution, the product of an Act of a Barbadian Parliament. A new Constitution requires a new Preamble.
- 3.6. It is within this context that we invited the public to make submissions for changes to the Preamble. Our faith in the public’s constitutional acumen was mirrored in the quality of the submissions made and we were delighted to give due consideration to all of them and to accept the recommendation of the Special Committee which selected five of the submissions for special mention and awards. We have made use of these submissions which are reflected in the

Preamble set out hereafter. We have sought to retain the main features of the 1966 version. The new Preamble maintains the essential political nature of a Preamble, but its language avoids divisiveness. Instead, it seeks to recognise the ideals and aspirations of all Barbadians and to reflect our deeply held cultural, political, social and spiritual values and heritage.

3.7. The Commission recommends as the Preamble to the reformed Constitution the following text:

“WE, THE SOVEREIGN PEOPLE OF BARBADOS,

Salute the Founders of the Independent State of Barbados for the patriotic spirit, wisdom, and foresight which are the hallmarks of the Constitution which was settled in the United Kingdom at the Court of Buckingham Palace on the 22nd day of November, 1966;

Acknowledge the civic and political progress which has been made possible through the application and evolution of that Constitution in the intervening years;

Honour the earlier Barbadians who settled a Parliament in the year 1639 and concluded with the representatives of the Commonwealth of England in the year 1652 the Articles of Agreement known as the Charter of Barbados;

Pay special tribute to the National Heroes of Barbados as foremost among the many who have struggled through the centuries against oppression, racism and slavery for the achievement of social justice, human dignity and National Independence;

Recognise the profound changes which have taken place both in Barbados and in the outside world since the settling of the Independence Constitution of 1966, and the consequent need for a new instrument of government which takes the fullest cognisance and advantage of the many virtues of that Constitution and of the valuable lessons obtained from its use and application;

Reaffirm that the sovereignty of the People and the Nation of Barbados is founded upon principles that acknowledge the dignity and worth of the Human Person, the fundamental rights and freedoms of the Individual, the central role of the Family in a free society and the supremacy of God;

Rededicate ourselves to the building of a democratic society founded upon respect for moral and spiritual values and upon the Rule of Law, in which the powers of government spring from the will of the People as expressed in periodic free and fair elections conducted on the basis of universal adult suffrage;

Resolve that the social and economic life of the Nation shall be so ordered as to promote the general welfare by an equitable distribution of the Nation's resources, by humane and just conditions under which all persons labour and by a proper regard for ability, integrity and merit;

Declare that our own Barbadian Nationhood is nourished by our roots in the wider spiritual and cultural reality of the Caribbean People, and undertake to seek the closest forms of community with our sisters and brothers in the Caribbean;

Pledge to cooperate with other nations in the quest for international peace and security and the promotion of universal respect for human rights and freedoms;

Proclaim and promulgate the following provisions as the Constitution of Barbados:"

CHAPTER 4

SUPREME LAW OF BARBADOS

Introduction

- 4.1. The word “constitution” is normally used in two different senses - the abstract and the concrete.
- 4.2. In the abstract sense, the Constitution is a system of laws, customs and conventions which defines the composition and powers of organs of the State and regulates the relations of the various State organs to each other and to private citizens.
- 4.3. In the concrete sense, Constitution is the document in which the most important laws are authoritatively set out. As an over-arching legal document, the content of a written constitution must of necessity be limited to a selection of the governing legal rules. It does not necessarily contain the detailed rules upon which depend the workings of the institutions of government. It becomes the supreme law against which all other laws and state actions are tested for their validity and compliance as the fundamental law.
- 4.4. A written constitution such as that of Barbados emphasises the movement away from the historically accepted, traditional view of the supremacy of Parliament to the affirmation of the supremacy of the Constitution itself. The Supreme Law provision of the Constitution thus makes a factual statement and asserts that the Constitution is paramount to any other law and any other law inconsistent with it must be overridden.
- 4.5. Those citizens who gave evidence on this Chapter of the Constitution emphasised the necessity to retain the Supreme Law Clause, and to ensure its adequacy.
- 4.6. The Supreme Law Clause in the Barbados Constitution is noticeably similar to that in other Commonwealth Caribbean countries. The intent and substance are the same, even where formats vary. However, like the Cox Commission we are of the view that the Clause can be strengthened by expressly conferring on the courts the power to review legislation for conformity with the Constitution. There is no express provision in the Constitution to this effect, but the courts have so construed the Clause.
- 4.7. The insertion of such a provision would put the matter beyond doubt and strengthen the powers of enforcement of the provisions of the Constitution. We accept the recommendations set out at paragraphs 6 and 7 of the Cox Report, except to the extent that it was the view of a majority of Commissioners that a person should show a relevant interest to be able to initiate the necessary litigation to test the validity of the particular provision of the Constitution.
- 4.8. The Clause remains among the most deeply entrenched provisions in the Constitution and should be retained.

Recommendation

- 4.9. **The Commission recommends that the Supreme Law Clause be retained. It should also be strengthened by expressly conferring on the courts the power to review legislation to ensure its conformity with the Constitution. In this regard, paragraphs 6 and 7 of the Cox Report should be adopted and citizens given the right to mount constitutional challenges concerning the validity of any legislation which they consider may be *ultra vires* the Constitution. A person who alleges that a provision of the Constitution has been, is being or is likely to be contravened, should be permitted to apply to the High Court for a declaration or for redress or both, as the circumstances require. Such a person should have *locus standi* if acting in that person's own interest, or as a member of or in the interest of a group or class of persons, or on behalf of another person who cannot act in that person's own name. An association should be entitled to constitutional redress on behalf of its members.**

CHAPTER 5

FUNDAMENTAL PRINCIPLES AND RESPONSIBILITIES

- 5.1. In the course of our discussions on the reciprocal rights and responsibilities of Nation and State in a democratic society, the Commission examined the concept of “Directive Principles of State” or “Directives of Social Policy” which, over the years, have been incorporated in the Constitutions of several democratic countries including Austria, France, Germany, India, Ireland and Spain.
- 5.2. In the case of the Indian Constitution, for instance, the “Directive Principles” consist of a series of general statements of intent, e.g. “The State shall strive to promote...The State shall direct its policy towards...The State shall endeavour to provide...” The principles described in the text as “fundamental in the governance of the country” are nevertheless prefaced by the statement that “the provisions contained in this part shall not be enforceable by any court.” The non-enforceability feature of the Indian Constitution is present in the other Constitutions referred to.
- 5.3. Since the principles are declared to be not enforceable by the courts, some critics have regarded them as useless and as mere pious hopes or high-sounding phrases which, essentially, are used as vote-catching devices. They have been criticised too, on the basis that:
 - 5.3.1. it is not appropriate that a sovereign state should give directions to itself;
 - 5.3.2. they are couched in general language and are of limited value as guidelines;
 - 5.3.3. they repeat the inspirational and exhortatory views which are already expressed in the Preamble;
 - 5.3.4. it is inappropriate to have provisions in the Constitution which are not justiciable;
 - 5.3.5. to the extent that they identify enumerated unenforceable personal rights the rights should be included in the chapter which sets out the fundamental rights of the individual;
 - 5.3.6. they relate to conventional objectives of modern democracies and are often found in the published programmes of political parties where they set out the actions which parties propose to take in relation to such objectives. This makes their inclusion in the Constitution unnecessary or irrelevant.
- 5.4. It is noticeable that constitutions of most democratic countries generally place great emphasis on enshrining the fundamental rights of their citizens. Equally noticeable is their failure to stress the fundamental duties of citizens. Some may defend this on the basis that these duties are commonplace and well understood. However, they should not be taken for granted. The Commission is of the view that our democracy will benefit from a direct emphasis on those duties by giving them appropriate recognition in a reformed constitution.

- 5.5. The inclusion in the Constitution of Fundamental Principles and Responsibilities would:
- 5.5.1. provide strong guidance to Parliament on the generally accepted objectives of the Nation for the welfare of its citizens;
 - 5.5.2. remind each Government that its primary concern should be for the interests of all the people over partisan or sectoral interests;
 - 5.5.3. safeguard the interests and in particular the economic interests of the weaker elements of our society;
 - 5.5.4. give general recognition to those rights in the socio-economic field which should be implemented by state action whenever circumstances permit, even though they cannot be guaranteed as fundamental personal rights;
 - 5.5.5. provide a barometer by which the people may judge the performance of a government and be a benchmark against which to measure the proposed programmes of a party aspiring to form a future government;
 - 5.5.6. ensure that the judiciary keep them in mind while construing the law (even if they are not justiciable) since they constitute the spirit of the Constitution.
- 5.6. The ultimate sanction supporting all laws is public opinion. If a Government ignores principles such as these, it will certainly have to answer for that dereliction to an electorate whenever the time comes. For, in the last resort, these principles fall to be implemented through the political process. And it is this process which determines, under the influence and choice of the electorate, the progress which can be made from time to time in the application of the fundamental directives.

Recommendation

- 5.7. **The Commission recommends that similar broad statements of principle, defining the general policy framework within which the governance of Barbados is undertaken, should be included in the reformed Constitution of Barbados.**
- 5.8. **The application of these principles in the making of laws should be the responsibility of Parliament and should not be cognisable by any court under any of the provisions of the Constitution.**

5.9. Responsibilities of Persons

The Commission recommends that the reformed Constitution emphasize that it is the duty and responsibility of every person in Barbados to:

- 5.9.1. **obey the law and abide by the Constitution and respect the ideals which it enshrines and the institutions which it establishes;**

- 5.9.2. exercise that person's rights in a manner which respects the rights of others;**
- 5.9.3. cooperate with lawful agencies in the maintenance of law and order;**
- 5.9.4. respect the National Anthem, the National Flag, the National Pledge and all National Emblems;**
- 5.9.5. register for electoral and other lawful purposes;**
- 5.9.6. defend the country and render national service when necessary;**
- 5.9.7. value and preserve the rich heritage of Barbadian culture;**
- 5.9.8. create and maintain a clean and healthy environment and have compassion for living creatures;**
- 5.9.9. participate in the economic, political and social life of Barbados;**
- 5.9.10. contribute to the well-being of Barbados to the best of that person's ability;**
- 5.9.11. strive towards excellence in all spheres of individual and collective activity, so that the Nation constantly rises to higher levels of endeavour and achievement;**
- 5.9.12. promote harmony and a spirit of unity among all the people of Barbados, transcending religious, sectoral or racial diversities, and abstain from practices derogatory to the dignity of the human person.**

5.10. Responsibilities of the State

The State shall:

- 5.10.1. respect democratic principles and the fundamental rights and freedoms proclaimed in this Constitution, and encourage and facilitate the widest possible participation in all the processes and institutions of government;**
- 5.10.2. endeavour to operate the machinery of government, including the use and disposition of public finances, with the greatest degree of transparency consistent with good government and the national interest, and in a manner that is in keeping with the democratic vocation of Barbados;**
- 5.10.3. endeavour to ensure the protection and promotion of the internationally recognised economic and social rights of its People, including the right to work, the right to health, the right to education and the right to public assistance in cases of extreme need;**

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- 5.10.4. **endeavour to safeguard the economic interests of the weaker sections of the community and where required, contribute to the support of the aged, the infirm, the disabled and children;**
 - 5.10.5. **endeavour to secure that private enterprise is so conducted as to ensure reasonable efficiency in the production and distribution of goods and in the provision and delivery of services so as to protect the public against unjust exploitation;**
 - 5.10.6. **direct the policies of the State towards securing that the operation of free competition is not allowed to develop in such a manner as to result in the concentration of ownership or control of essential commodities in a few individuals to the common detriment of its People;**
 - 5.10.7. **ensure that the beaches and public areas are accessible to all and do not become the exclusive preserve of any one sector of the community;**
 - 5.10.8. **fashion and direct the policies of the State towards ensuring that land is not so owned and used as to result in a concentration of ownership and control in a few individuals to the common detriment of its People;**
 - 5.10.9. **give the highest priority in the planning and execution of government policy to the preservation and protection of the natural environment of Barbados, which it shall hold as a sacred trust for future generations;**
 - 5.10.10. **affirm the commitment of the State to peace, friendly cooperation and security among all nations founded on international justice and morality and respect for human rights;**
 - 5.10.11. **in the conduct of the affairs of the State, accept the generally recognised principles of international law and ensure that the Parliament and People of Barbados respect and implement treaties and conventions which the State, through its Executive and Parliament, has negotiated and ratified.**
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CHAPTER 6

CITIZENSHIP

Introduction

- 6.1. Citizenship is a defining element of a nation and its people. It affects not only a person's status in the country of which that person is a citizen, but it also facilitates that person's travel abroad and provides safeguards for his or her safety. Countries therefore guard their national interest by strictly controlling their right to grant or withhold citizenship.
- 6.2. Strong representation was made to us that Barbados must continue to place a premium on citizenship, ensuring that applicants are properly scrutinised and that only suitable and acceptable persons are granted this privilege. Most of those who made submissions to the Commission advocated reform of the laws relating to citizenship. Broadly speaking, their concerns can be placed in five categories: (1) complexity of the language used in Chapter II of the existing Constitution; (2) the obvious gender discrimination in some of the existing clauses; (3) misuse of some of the existing provisions of the Constitution and of the *Barbados Citizenship Act, Cap. 186* and the *Immigration Act, Cap. 190* for the purpose of acquiring citizenship through marriages of convenience; (4) the fear of exclusion of second generation descendants of Barbadians living overseas from qualifying for citizenship; and (5) the lack of an express provision in the Constitution relating to dual or multiple nationality.
- 6.3. The present legislation governing citizenship is contained not only in the Constitution, but in the *Barbados Citizenship Act* and the *Immigration Act*. Three comments are pertinent. Firstly, the language of the Constitution reflects the colonial transition from British nationality to Barbadian citizenship and the very concepts were influenced by the premium then placed on British citizenship and Commonwealth status. Secondly, it also reflects the lack of importance then placed on the principle of gender equality. Thirdly, since the conditions under which persons acquire, renounce or are deprived of citizenship must of necessity be extensive, it is best to ensure that the fundamental aspects of the law governing citizenship are placed in the Constitution, while leaving it to Parliament to prescribe by legislation for the general regulation of the other aspects.

Recommendation

- 6.4. **The Commission recommends that the language of Chapter II be simplified so that its provisions are expressed in a more readily understandable form.**
- 6.5. **Gender discrimination should be removed from all citizenship provisions.**
- 6.6. **Provision should be made to ensure that every person who, at the commencement of the patriated Constitution, was a citizen of Barbados continues to be such a citizen.**
- 6.7. A number of specific issues were raised by the public concerning the existing citizenship provisions in the Constitution and in related citizenship and immigration laws. The Commission is satisfied that

the criticisms are well founded. The recommendations which follow have taken into account these concerns and seek to provide solutions.

Oath of Allegiance

- 6.8. Section 3(1) and section 6 of the Constitution require that successful applicants for citizenship by virtue of marriage swear an oath of allegiance before being registered as citizens of Barbados. This oath swears allegiance to Her Majesty the Queen. Commonwealth citizens are not required to swear the Oath. This means that they are never afforded an opportunity to swear allegiance to Barbados.
- 6.9. There is a similar provision in the Third Schedule to the Barbados *Citizenship Act* for persons acquiring citizenship by naturalisation. In such a case, the Oath is included in the Certificate of Citizenship and taken before the Chief Immigration Officer in the capacity of Justice of the Peace.

Recommendations

- 6.10. **Having regard to the above factors and to our recommendation that the monarchical system should be abolished in Barbados, the Commission recommends that:**
- 6.10.1. **The Constitution should be amended to require that, before applicants are registered as citizens of Barbados, they should take an Oath of Allegiance to Barbados in the manner provided for in the Third Schedule to the *Barbados Citizenship Act*.**
- 6.10.2. **Persons recognised as citizens by descent would not be required to take the Oath.**

Citizenship By Birth

- 6.11. There is no specific provision in the Constitution recognising as citizens by birth the children born outside Barbados to Barbadians serving the country in a diplomatic or consular capacity. Such children have had to be recognised as citizens by descent. Provision is made at section 2(9) of the *Barbados Citizenship Act* for such children to be deemed citizens by birth. However, that provision is ineffective since there is no provision in the *Vital Statistics Registration Act*, Cap. 192A to allow for the registration of these children. These children are also not deemed to be citizens of the country in which the diplomat or consul serves, because their parents enjoy diplomatic privileges and immunities in the host country. When these children are recognised as citizens of Barbados by descent, they do not have a country of first citizenship, i.e. citizenship by birth.
- 6.12. The existing provisions of the Constitution confer citizenship on everyone born in Barbados except in cases where the father possesses immunity from suit and legal process as the representative of a foreign sovereign state, and neither parent is born in Barbados; or if the child's father is an enemy alien. Thus, all other children born in Barbados become citizens

whether or not their parents are lawfully in Barbados. Further, the following children become citizens of Barbados by birth: (i) a child born of a mother who has come to Barbados merely for medical attention; (ii) a child born in prison of an inmate whose mother has no status in Barbados; (iii) a child of a citizen of any country who is on holiday or working temporarily in Barbados.

Recommendations

The Commission recommends that:

- 6.13. the Constitution be amended to recognise as citizens by birth the children born overseas to citizens of Barbados serving in a diplomatic or consular capacity;**
- 6.14. children born in Barbados should be deemed citizens at birth only where at least one parent is a citizen of Barbados, a permanent resident, or an immigrant of Barbados, or is registered under the *Immigration Act* by the provision enacted in a 1996 amendment;**
- 6.15. a child aged not more than five years found in Barbados, whose parents are not known, shall be presumed to be a citizen of Barbados by birth;**
- 6.16. a child under the age of 18 years, neither of whose parents is a citizen of Barbados, who is adopted by a citizen of Barbados shall, on application, be registered as a citizen of Barbados;**
- 6.17. consequential amendments be made to other legislation to give full effect to the amended constitutional provisions.**
- 6.18. Citizenship by Descent**

There are two cases of obvious discrimination based on gender:

- 6.18.1. a child born outside Barbados in wedlock of a Barbadian-born father is a citizen of Barbados by descent whereas a child born in similar circumstances to a Barbadian-born mother is only entitled to permanent residence under the provisions of the *Immigration Act*;**
 - 6.18.2. similarly, a child born outside of Barbados out of wedlock to a Barbadian mother is a citizen of Barbados whereas a child born in similar circumstances to a Barbadian father is not.**
- 6.19. It was also represented to us that the wording of section 5 of the Constitution has in the past resulted in the wrongful recognition of citizenship where the non-national parent is registered as a citizen of Barbados. For example, children have been recognised as citizens where neither of their parents is a citizen of Barbados by birth. This was clearly not the intent of the legislation where the child is already a citizen by descent of the countries of its parents' birth.**

Recommendations

The Commission recommends that:

- 6.20. **Children born of Barbadian males and females should be equally treated, subject to such exceptions and qualifications as may be prescribed in the *Barbados Citizenship Act*.**
- 6.21. **The Constitution should be amended to make it absolutely clear that no child born outside Barbados may be recognised as a citizen by descent unless at least one parent is a citizen of Barbados by birth and holds Barbadian citizenship at the time of the child's birth.**

Dual and Multiple Citizenship

- 6.22. Barbados recognises the dual and multiple citizenship of its citizens, as evidenced by a note in the Barbados Passport which states that persons born abroad of Barbadian parents or born in Barbados of foreign parents, women married to aliens or naturalized persons, may possess a foreign nationality in addition to Barbados citizenship. There is no express provision in the Constitution or other related citizenship or immigration legislation dealing with this issue.
- 6.23. Strong representation was made to us for the retention of this policy, having regard to the number of Barbadians residing outside Barbados who have benefitted from obtaining citizenship of other countries. Some persons, however, expressed the fear that the security of Barbados may be adversely affected if persons are allowed to hold multiple nationalities and multiple passports. It was said that multiple citizenship facilitates fraudulent use of passports, the commission of major crimes, the provision of a quick, safe harbour for individuals wanted in other countries and the illegal smuggling of would-be immigrants. A predisposition to crime should not be blamed on a passport. While these dangers no doubt exist, we believe it has become part of the Barbadian culture to seek self-improvement and increased opportunities in other countries without losing one's loyalty to Barbados and one's sense of national pride. Dual and multiple citizenship have not, in our view, undermined the unswerving patriotism which Barbadians across the diaspora have consistently shown towards their country.

Recommendation

- 6.24. **The Commission therefore recommends the retention of the present policy of recognising dual and multiple citizenship.**

Equality of the Sexes

- 6.25. Under sections 3(1), 3(3) and 3(6) of the Constitution, the non-national spouse of a Barbadian male is entitled to citizenship of Barbados on application; not so the non-national spouse of a Barbadian born female. The latter is merely entitled to permanent residence granted under the provisions of the *Immigration Act*. We were assured by the Immigration authorities that they anticipate no difficulties arising from the abolition of this unequal treatment of the sexes so long as

the appropriate checks and balances are instituted to prevent persons from acquiring citizenship by virtue of marriages of convenience.

Recommendation

- 6.26. The Commission recommends that the Constitution should be amended to allow the non-national spouses of Barbadian born persons to be equally treated, subject to the qualification as contained in our recommendations under “Marriages of Convenience”.**

Citizenship by Marriage

Exceptions and Qualifications to be Prescribed

- 6.27. Since the legislation does not provide for the Immigration Department of the Ministry of Home Affairs to do otherwise, the policy in cases of citizenship by virtue of marriage is simply to register any woman who can provide a marriage certificate to prove that she is or was married to a citizen of Barbados.
- 6.28. This blanket approval is clearly not the intent of the legislation, as sections 3(5) and 6(2) of the Constitution provide that the right to be registered as a citizen of Barbados under these sections shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security and public policy.
- 6.29. Sections 4(2) and 4(9) of the *Barbados Citizenship Act* have prescribed certain exceptions and qualifications by which the Minister responsible for Immigration may refuse citizenship in the cases of:
- 6.29.1. citizenship by virtue of marriage to a Barbadian man prior to 30 November, 1966 (section 3(1) of the Constitution);
 - 6.29.2. citizenship by virtue of marriage to a Barbadian man registered as a citizen under (section 3(2) of the Barbados Constitution);
 - 6.29.3. citizenship by virtue of marriage to a Barbadian man after 29 November, 1966 (section 6 of the Constitution).
- 6.30. Unfortunately, while sections 3(2) and 3(3) of the Constitution are listed in the provisions of sections 4(8) and 4(9) of the *Barbados Citizenship Act*, sections 3(1) and 6 of the Constitution are not. We are convinced that this is an oversight, particularly since the evidence from the public and confirmed by the immigration authorities clearly shows that most applications for citizenship by virtue of marriage are made under sections 3(1) and 6 of the Barbados Constitution.
- 6.31. Since no exceptions or qualifications have been prescribed for the purpose, there is no authority to carry out investigations to determine the *bona fides* of a marriage or whether an applicant has a criminal record, or is otherwise inadmissible to Barbados. For the same reason, there is no authority to undertake a security check. Even where it comes to the attention of the Immigration Department that an applicant is a criminally prohibited person

or poses a threat to national security or public policy, the Department in the absence of prescribed rules has no choice but to register such an individual as a citizen of Barbados. On the other hand, section 9(b) of the Constitution provides the authority to deprive the same individuals of citizenship once they are registered. Section 9(b) of the Constitution authorises Parliament to make provision for depriving any person of citizenship who is a citizen of Barbados otherwise than by virtue of sub-section (1) or (2) of section 2 or section 4 or section 5 of the Constitution.

- 6.32. The Constitution therefore authorises Parliament to make provisions for depriving anyone of citizenship, except a citizen of Barbados by birth or descent. Parliament has made such provisions by virtue of section 9 of the *Barbados Citizenship Act* which authorises the Minister, at his discretion, by order, to deprive of citizenship any person who is a citizen of Barbados by virtue of section 2(3) of the Constitution, or by registration or naturalisation if the Minister is satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representation or concealment of any material fact. It is thus legally permissible to deprive a woman of citizenship by virtue of marriage pursuant to section 3(1) or section 6 of the Constitution, after she is registered as a citizen; but it is not possible to refuse to register her for the reason for which after registration she can be deprived of citizenship.

Recommendation

- 6.33. **The Commission recommends that the gaps identified should be closed. The Constitution should confer on Parliament the power to make provision for the granting of citizenship (whether by registration or naturalisation or in any other way) to persons who do not become citizens under the other provisions set out in the Constitution. Parliament should also be able to prescribe by legislation the exceptions and qualifications that are required in the interest of national security or public policy. Persons who, in accordance with the First Schedule to the *Immigration Act*, are considered prohibited persons must not be granted citizenship automatically.**

Marriages of Convenience

- 6.34. Marriages of convenience have increased in Barbados. This is the area of citizenship that creates the greatest problem and is most open to abuse. We recognise an individual's constitutional right to marry as he/she chooses and we must ensure that there is no derogation from this right. Clearly there are obvious benefits which must accrue from international marriages, particularly in a country as small as Barbados. Where a marriage is genuine, everything possible should be done to facilitate the parties involved so that they do not suffer as a result of discriminatory legislative provisions.
- 6.35. Conversely, the law should also make clear that persons who misuse marriage for the sole purpose of evading immigration laws should have no right to citizenship in Barbados. Marriages of convenience - that is, marriages entered into solely or primarily for the purpose of foreign spouses immigrating to Barbados, in many cases with sizable families of minor children who would become entitled to benefit from the range of social services, including free

education, free medical services, welfare and child care services – can only bring social problems to the country.

- 6.36. The existing law appears to offer protection for the rights of the non-national spouse. There is no provision to deport the non-national spouse or to revoke the status granted where the marriage is not *bona fide*.

Recommendation

- 6.37. **The Commission recommends that the legislation be amended to prevent persons who enter “sham” marriages from automatically qualifying for citizenship. There is sufficient precedent for such a provision, for example, in the laws of Antigua and Barbuda, Canada and the United States of America.**

Deprivation of Citizenship

Recommendation

- 6.38. **Persons should not be deprived of citizenship without due process of law. The Commission recommends that the applicable law be amended to reflect this fundamental principle.**

Appeals in Respect of Citizenship and Immigration

- 6.39. Existing legislation provides some form of review in respect of applicants who are denied citizenship or permanent residence or immigrant status under the appropriate laws.

Recommendation

- 6.40. **The Commission recommends that this legislation be modernised and strengthened. The Review Board should be obligated to report annually to the Minister. Reports should be laid in Parliament. This would achieve transparency and avoid opportunities for corruption, since Parliament would be in a position to monitor the system and debate the reports.**

CHAPTER 7

PROTECTION OF FUNDAMENTAL RIGHTS - THE BILL OF RIGHTS

- 7.1. There was consensus within the Commission that Chapter III of the Constitution was basically a sound and adequate expression of the rights and freedoms which the democratic State of Barbados should guarantee to all persons within its jurisdiction. This view was, moreover, broadly supported by the overwhelming majority of those who presented their opinions to the Commission either orally or in writing, and shared as well by the distinguished consultants who advised the Commission on the more strictly technical and jurisprudential aspects of the "Bill of Rights". There were, however, some calls for both general and specific changes.

General

- 7.2. **Simplification of the language of the Chapter**, in order to make its meaning more accessible to non-specialists. **The Commission has agreed to this change.** For increased clarity of the text of the Chapter, the Commission proposes that the rights and freedoms protected should be presented in a clear and distinct manner; so too the exceptions and modifications which are necessary and appropriate in a free and democratic society.
- 7.3. **A more positive delineation of the rights protected**, in contrast to the negative formulations employed in the current text; see, e.g. sections 12(1) "No person shall be deprived of his life ..."; 13(1) "No person shall be deprived of his personal liberty ..."; 15(1) "No person shall be subjected to torture or inhuman or degrading punishment..."; 22(1) "No person shall be deprived of his freedom of movement ...". Compare Article 13 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of movement ..."; Article 7(1) of the American Convention on Human Rights: "Every person has the right to personal liberty and security"; Article 9(1) of the European Convention: "Everyone has the right to freedom of thought, conscience and religion ..." **The Commission concluded that this change was acceptable in areas where it could be appropriately introduced.**
- 7.4. **The "internationalisation" of the Bill of Rights.** The Commission is aware that the provisions contained in Chapter III are in large measure based on the European Convention, and that Barbados has ratified the American Convention on Human Rights and the International Covenant on Civil and Political Rights (together with its Optional Protocol), thus ensuring for persons under its jurisdiction access to international organs for the protection of the relevant rights. However, the Constitution contains no reference to international codes governing human rights. After considering the advisability of including language in the Chapter that would specifically reflect Barbados' international legal obligations, the Commission concluded that, since the clear trend of Barbadian and Commonwealth Caribbean jurisprudence is in the direction of giving full consideration to international human rights norms (cf. *Hobbs et al v. R.* [1992] 27 Barb. L.R.; *Pratt and Morgan v. A.G.* [1993] 43 W.I.R. 340), this concern could be adequately met by a general reference to international standards in the proposed section dealing with fundamental principles and responsibilities.

Specific

7.5. The Commission also gave detailed consideration to proposals for expansion of the ambit of the Chapter to give expression to certain rights which are being increasingly recognised and codified in international instruments for the protection of human rights, particularly in relation to the following matters:

7.5.1. greater recognition of gender rights;

7.5.2. provision for the protection of the rights of the disabled;

7.5.3. special protection for the aged;

7.5.4. inclusion of internationally recognised economic, social and cultural rights; such as the right to vote.

7.6. The Commission's views and recommendations on these matters are set out below.

Gender Rights

7.7. Representations on this subject varied from the formal to the substantive. The main formal concern was with the language of the current Constitution which, in keeping with the requirements of the *Interpretation Act*, Cap. 1 and with legal convention, employs masculine pronouns to refer to both males and females. **The Commission agreed that the appropriate changes should be made to the text so that the reformed Constitution will be gender neutral.**

7.8. More substantively, while section 23 of the Constitution protects the individual from discrimination on grounds of "race, place of origin, political opinions, colour or creed", it was represented to the Commission that protection should be provided in this section against discrimination on grounds of gender or "sexual orientation".

7.9. Subsections (1) and (2) of section 23 read as follows:

"(1) Subject to the provisions of this section

(a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description."

- 7.10. The Commission noted that while the definition of “discriminatory” contained in the section does not make specific reference to gender as one of the “respective descriptions”, the declaratory section of Chapter III, section 11, makes it clear that “the fundamental rights and freedoms of the individual” are guaranteed by the Constitution, regardless of “race, place of origin, political opinions, colour, creed or sex...”.
- 7.11. At the same time, in dealing with the protection against discrimination, the leading texts of relevant international covenants, conventions and declarations specifically include sex as a category of description entitled to protection from discrimination. (cf Universal Declaration of Human Rights: Article 7; International Covenant on Civil and Political Rights: Article 26; European Convention for the Protection of Human Rights and Fundamental Freedoms: Article 14).
- 7.12. **The Commission agreed that the category of gender should be included in the definition of “discriminatory” in an amended Constitution. However, the majority of the Commission was not satisfied that a convincing case had been made out for the inclusion of “sexual orientation” as a category of description meriting special constitutional protection.**
- 7.13 Commissioner Melanie Newton expressed a dissenting view from the latter part of the majority recommendation dealing with the subject of “sexual orientation.”

Rights of the disabled

- 7.14. **The Commission received eloquent testimony concerning the needs of disabled persons. After much consideration the Commission came to the view that the special care which society undoubtedly owes to persons with various physical and/or mental disabilities falls more appropriately to be dealt with by way of carefully crafted legislation - as is, to some extent, already the case - rather than in the broad sweep which constitutional provisions would entail.**

Protection for the aged

- 7.15. The Commission is satisfied that the present provisions of the Constitution for the protection of all persons offer adequate protection of aged members of society. Apparent sources of discrimination on the ground of age, such as the age of retirement, restrictions on the issuing of driving licences for persons over a stipulated age, etc., constitute measures which may be considered reasonable in the context of the ordering of a democratic society.

Economic, social, and cultural rights

- 7.16. The Commission took note of representations made in favour of inclusion of internationally recognised rights in the catalogue of rights protected by the Constitution. Particular stress was laid in both oral and written submissions on the right to a healthy environment, the right to education and the right to work. The Commission gave consideration to the evolution of public international law in this matter and, in particular, to the provisions of Article 2 of the International Covenant on Economic, Social and Cultural Rights which entered into force in 1976 under the aegis of the United Nations. The relevant portion of that Article provides that:

“1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

- 7.17. It is the view of the Commission that this is the most appropriate approach to the concept of economic, social and cultural rights, and **the Commission recommends that the reformed Constitution should contain declaratory language along lines similar to that of the International Covenant.**

Right to Vote

- 7.18. Many Barbadians trace the making of modern Barbados to the grant of universal adult suffrage in 1951. The right of every citizen to vote in an election of members of the House of Assembly and the right to be qualified for membership therein widened the participation of Barbadians in their government and in the affairs of State. It is these rights more than any other that have guaranteed Barbadians a democratic government.
- 7.19. The right to vote is not presently entrenched in the Constitution, although it is implicitly recognised in the constitutional provisions governing the functioning of the Electoral and Boundaries Commission, and this in itself speaks to its constitutional importance.
- 7.20. The Representation of the People Act, Cap. 12 is still the principal legislative bulwark underpinning the above-mentioned rights. The Commission considers that these rights should be expressly provided for in the Constitution. As exists in current legislation, some limits on these rights may be reasonable even in a democracy; for example, the exclusion of imprisoned persons from voting whilst incarcerated and the fixing of a qualifying age at which the right can be exercised.
- 7.21. **The Commission recommends that the right of every citizen to vote in an election of members of the House of Assembly and the right of every citizen to be qualified for membership therein be entrenched in the Constitution as fundamental rights, subject only to such exceptions and considerations as may be reasonable in a democratic society and as may be prescribed by law.**

Access to the Protective Mechanisms

- 7.22. In giving consideration to the question of facilitating access to the mechanisms provided by the Constitution and the general law for the protection of the fundamental rights and freedoms of the individual, the Commission was unanimously of the view that, while the Constitution in its present form offers an admirably wide range of protection for recognised human rights, in practice the apparatus for the vindication of those rights remains largely remote and theoretical for many ordinary people. That apparatus consists, essentially, of the High Court, which is given specific authority by section 24 to provide redress for any person who “alleges that any of the provisions of sections 12 to 23 has been, is being, or is likely to be contravened in relation to him ...”
- 7.23. The other legal instrument available to persons who consider that they have been victims of injustice perpetrated by a State agency is the institution of the Ombudsman, established by Act of Parliament but enjoying no constitutional status.

- 7.24. It was the view of members of the Commission and of many of the persons who made representations to it that the mere existence of constitutional guarantees and of legal machinery capable of redressing breaches of the “Bill of Rights” did not suffice to ensure that all or most persons who might be affected would be able to obtain vindication of their rights and freedoms.
- 7.25. In this context the Commission gave consideration to various suggestions, including calls for a general strengthening of the role of the Ombudsman; for creation of an office of Public Defender and for Government to establish adequately staffed Citizens’ Advice Bureaux to which the public would have free access for advice on their rights and on means of indicating them.
- 7.26. These suggestions arise from what appeared to be a general sense that the high costs of litigation, and the absence of any adequate provision for publicly funded legal aid for litigants in constitutional matters, can act as a real deterrent to persons who may reasonably believe that their constitutionally protected rights are being or are likely to be violated. *De facto* therefore, to that extent, the system discriminates against persons without the means to engage legal representatives or the ability to prosecute their case in the Courts on their own behalf.
- 7.27. This problem was addressed by the Trinidad and Tobago Constitution Review Commission in 1973. That Commission recommended the adoption of a provision whereby the court would be empowered to order that the costs of an unsuccessful claimant in proceedings for the enforcement of a right protected by the Constitution should be borne by the State where
- 7.27.1. the point of law raised in the proceedings is one of public importance; or
- 7.27.2. it was reasonable to institute proceedings given the particular circumstances of the case.
- 7.28. **The Commission recommends the adoption of a similar provision. In our view, this would strengthen the provisions governing the enforcement of fundamental rights and would be of considerable benefit to a large number of deserving persons.**
- 7.29. **The Commission is convinced that many of the needs for intermediation between the Government and the citizen can be met within the ambit of the *Ombudsman Act, Cap. 8A* in its present form. Nevertheless, because of the evidence which it received indicating widespread failure to appreciate the potentially important role which this office can perform in representing persons aggrieved by acts or omissions of the administrative arm of the government, the Commission has concluded that it is appropriate to raise the profile of the institution and enhance its authority and prestige by giving it constitutional status, and equating the conditions of service of the Ombudsman with those of a High Court Judge. The Commission so recommends.**

Emergency provisions (Section 13(6))

- 7.30. **The Commission recommends that the emergency provisions in Chapter III of the existing Constitution should be included in a separate chapter.**

The “Torture Proviso”

7.31. Section 15 of the Constitution provides as follows:

“(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any punishment or the administration of any treatment that was lawful in Barbados immediately before 30th November 1966.”

7.32. The proviso in section 15(2) was criticised in the course of the Commission’s hearings. It was pointed out that a constitutional provision which, in effect, contradicts the concept of the paramountcy of the Constitution is an anomaly.

7.33. The Commission is of the view that the clause profoundly weakens the pre-eminence of the Constitution in the scheme of Barbadian law and governance, and gives rise to an unnecessary conflict between the role of the Common Law and that of the Constitution. While section 15(1) reflects the international norms to which Barbados has subscribed by becoming party to the human rights treaties mentioned above, the proviso in section 15(2) constitutes a reservation that in essence defeats the very purpose and sense of the right which the section purports to protect.

Recommendation

7.34. **The Commission recommends the deletion of the proviso at section 15(2).**

The “Existing Law Clause”

7.35. Section 26 of the Constitution provides for the saving of existing written law by excluding from the purview of the human rights norms set out in sections 12 to 23 any law “that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day”.

7.36. As the Cox Commission pointed out, this section, “commonly known as the ‘existing law clause’, protects written pre-Independence law from challenge on constitutional grounds. The effect of this provision was to validate, at the date of Independence, all law passed before that date. This means that pre-Independence law will prevail over the fundamental rights clauses no matter how flagrant is the contravention of those rights”.

7.37. The Barbados Bar Association has noted that the section was inserted “to prevent a situation where, on Independence, many of our laws became unconstitutional. It was anticipated at the time that a thorough review of the laws would take place with a view to bringing them into conformity with the Constitution. There must be either a complete review of the laws or the section should be deleted”.

7.38. As with the proviso at section 15(2), the Commission is of the view that section 26 has the effect of weakening the supremacy of the Constitution. As Professor Telford Georges, a consultant to the Commission, has pointed out, if the Constitution is the Supreme Law of the land, to which all other laws are subject, it is anomalous that there should be laws not subject to challenge under the supreme law.

- 7.39. In the thirty-two years since Independence, the review of pre-Independence laws which, presumably, the drafters of the Constitution envisaged, has in fact not been carried out. In any event, such a period of time will surely have sufficed for any major conflict between existing law and the constitutional norms of sections 12 to 23 to have surfaced. Moreover, it has been drawn to the attention of the Commission that the absence of an “existing law clause” in the Constitution of Belize, drafted in terms very similar to the Barbados Constitution, has posed no significant problems in that jurisdiction. The Commission has also taken note of the fact that Jamaica’s Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform, in its May 1995 final report, recommended the deletion of a similar clause in the Jamaica Constitution.
- 7.40. **By majority decision, the Commission recommends the deletion of section 26.**
- 7.41. Commissioner Norma Forde expressed a dissenting view. She favoured the inclusion of a grace period of three to six years to allow the relevant authorities to undertake the necessary review and revision of the law.

The State Action Criterion

- 7.42. The classical and purist constitutional theory applied to the Chapter on fundamental rights and freedoms is that its provisions regulate the relations between the State and private persons and have no application to relations between private persons. Relationships between private persons are left to be regulated by statute and by the common law. So that where private action results in an invasion of fundamental rights and freedoms identified by the Constitution, the aggrieved person has to seek a remedy outside the Constitution in statute law or the common law.
- 7.43. Two examples illustrate the point. The Constitution proscribes discrimination on the grounds of race, place of origin, political opinions, colour or creed. The Constitution also prohibits interference with a person’s enjoyment of freedom of assembly and association, that is to say, the right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of their interests.
- 7.44. Because of the classical and purist constitutional theory and its application to the Bill of Rights these prohibitions are directed against governmental or state action only and not against private individuals. So, where private action discriminates against a person on the grounds identified in the Constitution or results in an invasion of a person’s freedom of assembly or association the fundamental rights provisions and the relevant jurisprudence provide no redress. If there is no remedy provided by statute or the common law or where such remedy is inadequate there is a gaping vacuum. There is a wrong without a remedy. This situation may be obviated by the enactment of the requisite remedial legislation to fill the gap, or by extending the application of the fundamental rights and freedoms provisions to private acts.

Recommendation

- 7.45. **The Commission recommends that Parliament, as a matter of urgency, enact remedial legislation in all areas where the Constitution provides a remedy and redress against governmental or state action, but where no law exists to provide an appropriate or adequate remedy against private action of the same character.**

CHAPTER 8

THE HEAD OF STATE

Presidential vs. Parliamentary Government

- 8.1. Generally speaking, the main forms of democratic government are those described as “presidential” and “parliamentary”. In the former, as, for example, in the United States of America, the president is directly elected by the population and holds office as both Head of State and Head of Government. In the latter as, for example, in Trinidad and Tobago, the two posts are separate, and the role of the Head of State is mainly, though not exclusively, ceremonial. In the parliamentary system, the Head of Government (“Prime Minister” or “Chancellor”) is a member of, and derives his authority directly from Parliament. There are also currently a number of variations on this basic theme, as in Guyana and France, with executive power being shared, in differing proportions, between the two authorities, the President and the Prime Minister.
- 8.2. The 1966 Constitution of Barbados provided for a parliamentary rather than a presidential system of government, with the British sovereign as Head of State. The Queen is represented locally by a Governor-General, whose appointment is by the Queen on the advice of her Barbados Ministers and whose tenure is in the discretion of Her Majesty but in effect and by convention is in the discretion of the Prime Minister on whose advice the Queen acts.

Functions of the Governor-General

- 8.3. Barbados has been well served by its six Governors-General, of whom five have been natives of Barbados. It is this success which has led the public to question whether it is indeed necessary for the Head of State of Barbados to be someone other than a Barbadian-born citizen. One of the strongest arguments which was repeatedly made to the Commission is that under the present monarchical system of government the people have no say in the selection of their Head of State and the Head of State is not even a citizen of Barbados.
- 8.4. In its 1979 Report at paragraphs 27 and 28, the Cox Commission noted that in 1966:

“a constitutional monarchy seemed to have been accepted by the majority of Barbadians as a realistic and useful arrangement devised to meet our requirements on assuming independence. However ... some twelve years later, the same forces which motivated the move towards independence have engendered a wish on the part of some citizens of Barbados for serious consideration of the merits of adopting a republican form of government. In this regard, the examples of Guyana and Trinidad and Tobago have reinforced the arguments of those disposed to criticise the continuation of a system of government in which the Head of State seems to be an increasingly remote, hereditary, non-Barbadian monarch.”
- 8.5. Even so, after reviewing the arguments for and against retention of the monarchy the Cox Commission concluded at paragraph 43 that:

“Having taken all the submissions into consideration, and bearing in mind the measure of support evinced at public meetings for the retention of the monarchical system of government for Barbados, the Commission recommends the retention of that system of government for Barbados.”

- 8.6. The arguments presented to us were essentially those made to the Cox Commission in 1979, and indeed, elsewhere in the Commonwealth where similar debates have taken place. However, this time, with very few exceptions, the overwhelming preference was for a system of government in which a President would replace the Queen as the Barbadian Head of State. Many persons noted that of the fifty-two nations in the Commonwealth, some thirty are republics, seven are monarchies with their own sovereign and sixteen have the Queen of the United Kingdom as their Head of State. Today, there is a clear movement for change away from the monarchical system of government. This is strikingly manifested in a recent decision taken in a dominion as old as Australia to hold a referendum to determine whether Australia should become a republic with a non-executive president as Head of State. The Joint Select Committee of the Jamaica Houses of Parliament on Constitutional and Electoral Reform has also recommended that Jamaica should become a republic, with a Jamaican-born citizen as its non-executive President.
- 8.7. Those who are in favour of retention of the Monarchy argue that:
- 8.7.1. it is an unseen and benign hand which has guided us through the decades;
 - 8.7.2. since Independence it has presided over our destiny without intervention in either our internal or external affairs;
 - 8.7.3. the Crown has a reserve role in the system, in that it can act as a final check on political excesses by using its power to “advise” on the timing or propriety of a request by the government for a dissolution of Parliament. The Crown is also the last resort in situations where the government threatens to act illegally or, as in the famous 1974 case in Australia which led to the dismissal of a government by the Governor-General, to govern without “supply”, the annual appropriation vote which funds public expenditure;
 - 8.7.4. those powers vested in Her Majesty, but exercised only by her representative in Barbados, are the essential bulwark of our freedom under the law, which enable the Queen to act as an impartial defender of the people’s rights. Under a republican system, some people doubt whether these reserve powers would invariably be used to the country’s advantage. This argument was advanced in particular by older Barbadians who had left Barbados prior to Independence, had made their second home in the United Kingdom and who had no first-hand experience of the day-to-day governance of the country by its native sons and daughters.
- 8.8. On the other hand, those who favoured a presidential system of government argued that:
- 8.8.1. Barbados should become a republic since it would allow our Head of State to be chosen by the democratic will of the people rather than by accident of birth;

- 8.8.2. Barbados is no longer British and the Queen of England, although much loved and respected, is not a citizen of Barbados. Barbadians, with very few exceptions, believe that our Head of State should be a citizen of Barbados by birth or descent, who lives in Barbados, has first allegiance to Barbados, and reflects the values which Barbados holds as a nation;
- 8.8.3. in a republican system of government, there is a more democratic basis for selecting a Head of State, whether or not directly selected by the people. Under the present system, the rules of selection and succession of the Barbados monarch are made by the British people and their Parliament and not by Barbadians;
- 8.8.4. the Head of State should be the focal point of national unity and patriotism. This is more likely to be achieved if the Head of State is a citizen of the country by birth or descent, resides in the country and is familiar with its history, customs, traditions and culture;
- 8.8.5. despite being an independent nation, we continue to swear allegiance to the Crown, and the people's lands are described as "Crown lands". This is symbolic of a past era and hardly represents the reality of Barbados today;
- 8.8.6. monarchy is seen as sustaining notions of snobbishness and an inflexible social hierarchy.
- 8.9. Unlike our predecessor Commission, we had no difficulty in accepting that Independence and the experiences gained from it have nourished in citizens a belief in themselves and that national identity has become a reality. Today, Barbadians are confident that they can properly manage all aspects of their national affairs. A succession of native Governors-General have discharged their duties with impartiality and decorum. They have not been seen as representing any particular group or interest, but all the people. In office they have been non-political and non-partisan. They have reflected the people's highest values and aspirations.

The Commission recommends that:

- 8.10. Our system of government should be a parliamentary republic with the Head of State being the President. Executive power should continue to be exercised by a Cabinet, with the Head of Government being the Prime Minister. The advantage of this system is that it replaces the monarch with an elected president, while simultaneously retaining the present relationship between the formal Head of State and the executive arm of government. This system was the choice of almost everyone who gave evidence before us on this subject. Little support was found for the presidential system of government as represented by either the American or Guyanese models.**
- 8.11. The Head of State of Barbados should be a President.**

- 8.12. **The President should be a citizen of Barbados by birth or descent, not less than 40 years of age and should have been residing in Barbados continuously for at least 5 years prior to election.**
- 8.13. **The President should hold no other office of emolument or profit, whether in the public service or otherwise.**
- 8.14. **The President should hold office for a fixed term of 7 years.**
- 8.15. **The salary and allowances payable to the President and the other terms of service of the office should not be altered to the disadvantage of the President after assumption of office.**
- 8.16. **The person holding the office of Governor-General at the commencement of the reformed Constitution should hold the office of President under the new Constitution until a President is elected under the provisions of the new Constitution.**

Electoral College

- 8.17. **The Senate and the House of Assembly should be constituted an Electoral College and should meet as a unicameral body for the purpose of electing the President.**
- 8.18. **The Electoral College should be convened by the Speaker of the House of Assembly who should preside as chairman over the proceedings of the Electoral College and should have an original vote.**
- 8.19. **Ten Senators, the Speaker, and fourteen other members of the House of Assembly should constitute a quorum of the Electoral College.**

Election of the President

- 8.20. **Whenever the office of President is vacant, or within not more than 90 nor less than 60 days before the term of office of the President will expire, the Prime Minister should consult with the Leader of the Opposition with a view to their joint nomination of a candidate qualified for election as President.**
- 8.21. **If the Prime Minister and the Leader of the Opposition submit to the Speaker in writing a joint nomination of a candidate for election as President, being a nomination to which the candidate has consented, the Speaker should inform the Electoral College of the nomination and declare the candidate duly elected without a vote of the Electoral College for the election.**
- 8.22. **If the Electoral College has been informed of the nomination of only one candidate the Speaker should declare that candidate to have been duly elected without a vote of the Electoral College for the election.**

- 8.23. If the Prime Minister and the Leader of the Opposition are unable to agree as to their joint nomination of a candidate for election as President, the Prime Minister should notify the Speaker to that effect and the Speaker should inform the Electoral College accordingly.**
- 8.24. The Prime Minister or the Leader of the Opposition or any ten members of the House of Assembly, may, during the period expiring 14 days after the day on which the Electoral College has been so informed, submit to the Speaker in writing under their hands a nomination of a candidate for election as President and the Speaker shall at the first meeting of the House after the expiration of that period and before the House proceeds to any other business inform the House of the nominations received to which the candidates named have consented.**
- 8.25. No candidate should be elected President unless the person has secured the votes in secret ballot of not less than two-thirds of all members of the Electoral College.**
- 8.26. Whenever the question of the election of the President from among two or more candidates is put to a vote, voting should be by secret ballot, or in such manner as not to disclose the votes of any particular member of the Electoral College.**

Removal from Office

- 8.27. The President may be removed from office if the President -**
- (a) wilfully violates any provision of the Constitution;**
 - (b) behaves in such a way as to bring the office into discredit, ridicule or contempt;**
 - (c) behaves in a way that endangers the security of the State;**
 - (d) because of physical or mental or other incapacity, is unable to perform the functions of the office.**

Removal Procedure

- 8.28. The President should be removed from office if -**
- (a) a motion is proposed in the House of Assembly that the question of removal of the President from office should be investigated by a tribunal;**
 - (b) the motion states with full particulars the grounds on which the removal from office is proposed, and is signed by not less than one-third of all the members of the House of Assembly;**

- (c) **the motion for removal from office is approved by the vote of not less than two-thirds of all the members of the Senate and the House of Assembly assembled together;**
- (d) **a tribunal consisting of the Chief Justice and four other judges appointed by the Chief Justice (being as far as practicable the most senior judges of the Supreme Court of Judicature) investigates the complaint and reports the facts to the Speaker;**
- (e) **the Senate and the House of Assembly assembled together on the summons of the Speaker consider the report and by resolution supported by the votes of not less than two-thirds of all the members of the Senate and the House of Assembly assembled together, declare that the President be removed from office.**

Immunities of President

- 8.29. Whilst any person holds the office of President or is acting as President no criminal proceedings should be instituted or continued against that person in respect of anything done or omitted to be done by the President either in an official capacity or in a private capacity.**
- 8.30. No civil proceedings should be instituted or continued against the President in respect of which relief is claimed against the President in respect of anything done or omitted to be done in the President's private capacity whether before or during the term of office of the President.**
- 8.31. Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which a person has held office or acted as President should not be taken into account in calculating any period of time described by that law which determines whether any such proceedings as are mentioned in paragraphs 8.29. and 8.30. above may be brought or continued against that person.**

Acting President

- 8.32. Where the office of President is vacant or the President is incapable of performing the functions of President by reason of absence from Barbados or for any other reason, those functions should be performed by -**
- (i) **such person as the Prime Minister and the Leader of the Opposition may jointly designate;**
 - (ii) **where there is no person so designated within seven days of the vacancy, or, as the case may be, the incapacity in question occurring, by the President of the Senate;**
 - (iii) **where the President of the Senate is unwilling or for whatever reason is unable to act, by such person as the Prime Minister may designate.**

CHAPTER 9

PARLIAMENT

9.1. The Commission has recommended that the Head of State should be a non-executive President. The Parliament of Barbados should therefore consist of the President, a Senate and a House of Assembly.

9.2. Qualifying Age for Membership of Parliament

Any citizen of Barbados of the age of 21 years or upwards is presently qualified to be appointed as a Senator or elected as a member of the House of Assembly. The qualifying age for voting is 18 years. The Commission considered whether the minimum qualifying age for membership of Parliament should be the same as the qualifying age for voting. However, the majority of the Commission was of the view that the age qualification for the Senate should be 25 years on the grounds that persons should have more experience before qualifying for appointment to an institution which performs the reviewing role of the Senate. In the case of the House of Assembly, the qualifying age should be the same as that prescribed for voting purposes.

Recommendation

9.2.1. The majority of the Commission recommends that sections 37 and 43 be amended to provide qualifying ages of 25 and 18 respectively for membership of the Senate and the House of Assembly.

9.2.2. Commissioner Melanie Newton expressed a dissenting view in respect of the age qualification for membership of the Senate. Her views are contained in Appendix 1, Part 3.

SENATE

9.3. A major part of the work of the Senate in our parliamentary system is to review and if appropriate revise legislation and resolutions passed by the elected representatives in the House of Assembly. The purpose of the Senate is clearly not to obstruct or frustrate the business of Government. It is therefore important that Government should always have a comfortable majority in the Senate and that those who do not support the Government have adequate representation to enable them effectively to present their views. It is also important that an opportunity be provided for the representation of non-partisan interests whose representatives should be dispassionate and forthright in debating important issues of national concern. These concerns can be adequately met with the present size of the Senate, now fixed at twenty-one members.

Recommendation

9.4. The number of Senators should remain at twenty-one. However the composition of the Senate should be modified, principally to provide for more representatives for those who do not support the Government of the day and also to give recognition to the fact that there are now more than two established political parties in Barbados and that the number of parties can increase. These objectives can be achieved by the following proposals:

9.4.1. Where there is a Leader of the Opposition, the appointment of Senators should be as follows:

- (i) twelve Senators should be appointed by the President, acting in accordance with the advice of the Prime Minister;**
- (ii) four Senators should be appointed by the President, acting in accordance with the advice of the Leader of the Opposition;**
- (iii) if there are members of a political party represented in the House of Assembly who do not support the Prime Minister or the Leader of the Opposition, two Senators should be appointed by the President, acting after consultation with the Leader of that political party or where there is more than one such party, the leaders of those parties;**
- (iv) if there is represented in the House of Assembly no such political party as is described in sub-paragraph (iii) above, two Senators shall be appointed by the President acting in the President's discretion after consultation with (a) the leader of any political party which was supported in the election by the votes of at least ten per cent of all those who voted in the election and (b) such other persons as the President considers ought to be consulted;**
- (v) three Senators should be appointed by the President, acting in the President's discretion, after consultation with such persons as the President considers ought to be consulted, to represent such interests as the President considers ought to be represented in the Senate.**

9.4.2. Where there is no Leader of the Opposition by reason of the fact that the President, acting in the President's discretion, has determined that there is no person qualified under the Constitution for and willing to accept appointment to that office, the appointment of Senators should be as follows:

- (i) twelve Senators should be appointed by the President, acting in accordance with the advice of the Prime Minister;**
- (ii) six Senators should be appointed by the President, acting in the President's discretion after consultation with (a) the leader of any political party which was supported in the election by the votes of at least ten per cent of all those who voted in the election and (b) such other persons as the President considers ought to be consulted;**
- (iii) three Senators should be appointed by the President, acting in the President's discretion, after consultation with such persons as the President considers ought to be consulted, to represent such interests as the President considers ought to be represented in the Senate.**

- 9.5. As the Constitution now provides, the Senate has a delaying power of one month over money bills. At present, however, the Senate does not debate money resolutions. Sometimes such resolutions can authorise the executive to spend enormous sums of money. The Senate can debate such expenditure only *ex post facto* when the matter comes before it in the form of a supplementary or final appropriation bill. The Commission considers that the Senate should be able to express its views on such resolutions before expenditure is authorised. This would not undermine the paramountcy of the elected representatives of the people, but the change would improve the working of Parliament and protect its authority as a legislative body.

Recommendation

- 9.6. **The Commission recommends that an appropriate amendment be made to the Constitution to provide that the Senate can debate money resolutions before expenditure on such resolutions is authorised.**
- 9.7. As regards qualifications and disqualifications for membership of the Senate, tenure of seats of Senators and provisions relating to the President and Deputy President of the Senate, the existing constitutional arrangements are adequate and require only such consequential amendments as naturally ensue from the changes made in the method of appointment.

Recommendation

- 9.8. **The Commission however recommends that the President be empowered to revoke the appointment of any Senator appointed by him in his discretion.**

HOUSE OF ASSEMBLY

- 9.9. The existing constitutional arrangements relating to the composition of the House of Assembly, qualifications and disqualifications for membership, tenure of seats of members are adequate in substance.

Recommendation

- 9.10. **The Commission however recommends that the language of section 44(1)(i) be simplified in terms of identifying the qualifications for election to the House of Assembly.**

Parliamentary Committees

- 9.11. The Commission considers that early attention should be given to developing mechanisms for facilitating consultation between the Executive, the Legislature and the public on matters of major importance capable of affecting the form and structure of government, the quality of governance and the rights of citizens.

- 9.12. The Commission noted that the Standing Orders of the House of Assembly and of the Senate each provides for the establishment of parliamentary committees. These committees, apart from the Public Accounts Committee, relate mainly to the internal business of Parliament. There is clearly, however, a need to initiate a wide-ranging system of parliamentary committees to examine the central issues affecting all areas of our society and development, to examine and scrutinise major legislation, to debate draft legislation, to entertain representations and submissions from the public, to take evidence and to report to the Houses of Parliament.
- 9.13. A properly formed committee system will require adequate financing, accommodation and staff and provisions for the use of specialist advisers. Their specific areas of duty and responsibility should be clearly delineated and publicised to attract and encourage the interest and input of everyone in Barbados.

Recommendations

- 9.14. **It is recommended that the Committee system in Parliament be expanded, that parliamentary committees be provided with adequate financial resources and appropriate staff so that they may be better able to ensure government accountability and to provide opportunities for concerned and interested persons to make representations to Parliament through its committees on issues that affect the community. An expanded, efficient, well ordered and better utilised committee system in Parliament could greatly enhance government accountability, would provide a forum for greater consultation between Parliament and the public and thereby contribute significantly towards securing and maintaining good governance.**
- 9.15. **In similar vein the more frequent use of commissions having public hearings on matters of national concern where persons can express and exchange views would provide a useful forum for more effective and better consultation between the Parliament, the Executive and the public. Citizens' Advice *Bureaux* can also be useful agencies for providing information to the public on government and related activities and advising persons on their rights and responsibilities.**

Electoral System

- 9.16. The Commission considered proposals for modifying the electoral system of *the first-past-the-post* to provide for a form of proportional representation that would more accurately mirror the relationship of votes cast to seats won at elections.
- 9.17. The Commission is of the opinion that the existing electoral system has worked well and has provided Barbados with stable government throughout its history. Examples of experiments in proportional representation have tended to lead to instability and weakness in governments in many countries.

Recommendations

- 9.18. **The Commission recommends that the present system of first past the post be retained.**
- 9.19. **Having considered various methods and means of increasing representation in the House of Assembly the Commission recommends that the existing constitutional arrangements be maintained. Under the existing system the Electoral and Boundaries Commission is required to revise the constituencies when major changes in the distribution of population occur.**
- 9.20. **The Commission, by a majority, recommends that the provisions regulating the Electoral and Boundaries Commission should be a separate chapter of the Constitution.**
- 9.21. Commissioner McClean expressed a dissenting view from the majority recommendations at paragraphs 9.16. and 9.17. His views are contained in **Appendix 1, Part 2.**

Parliamentary Integrity Commission

- 9.22. For some time now there has been a growing lack of faith and confidence in politicians and in the political process. There is a widespread belief that politicians aspire to and hold political office for the purpose of looking after themselves, accumulating wealth and dispensing patronage to their friends and supporters. It is felt that this may to some extent account for the diminishing interest shown by the public in elections and in the failure of many interested persons to offer themselves as candidates for election. There should be an institutionalised focus on integrity in public life.
- 9.23. **The Commission therefore recommends the establishment of a Parliamentary Integrity Commission. Such a Commission should move to restore confidence in the political process.** The duty of the Commission would be to receive declarations of assets, liabilities and income of Members of Parliament with powers if necessary to investigate any declaration and generally to perform such other duties as may be prescribed by Parliament. To be effective a power to investigate must carry with it a power to subpoena persons to testify before it and to subpoena documents to be produced. The Commission should have the authority of committees prescribed by the *Parliament (Privileges, Immunities and Powers) Act, Cap. 9.*
- 9.24. The Commission should comprise a chairman and three other members with recognised integrity, ability and experience and should be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition and any other persons the President thinks fit. Members of Parliament should be disqualified from being members of the Commission. Of necessity, the reformed Constitution will contain the minimum provisions for the establishment and functioning of the Parliamentary Integrity Commission. It is Parliament that must prescribe the other provisions which will ensure that the Commission functions within the framework of the Constitution. There are ample successful precedents for such a Commission. It is therefore vital that the enabling legislation should be passed to come into effect simultaneously with the promulgation of the reformed Constitution.

- 9.25. The Commission should be provided with appropriate staff to enable it properly to discharge its functions and all information reaching the Commission in the course of its duties shall be held secret and confidential.
- 9.26. Parliament should pass appropriate legislation providing for the procedures to be followed by the Integrity Commission, setting out its powers and duties, making provision for appropriate sanctions and penalties for breaches of law, and generally regulating the proper functioning of the Commission.
- 9.27. **The Commission also recommends that the Constitution should provide a code of conduct for Ministers and Parliamentary Secretaries which the Prime Minister should lay before Parliament to be approved by Resolution of Parliament.**
- 9.28. **The Integrity Commission should be given power to investigate alleged breaches of the Code of Conduct and make recommendations.**

Crossing the Floor

- 9.29. The Commission considered a proposal that the seat of a member of the House of Assembly should be declared vacant, when, following election as a candidate of one political party, the member resigns or is expelled from that party.
- 9.30. The Commission felt that a member should retain the right to freedom of association to be a member of any political party or not to be a member of any political party as the member chooses.

Right of Recall

- 9.31. The Commission also considered a proposal that the electorate of any constituency should have a right to recall its elected member. The advocates of such a proposal contend that the purpose of such a right is to make elected representatives more accountable to their constituents and to permit electors in any constituency to recall the elected member if a predetermined number or percentage of electors eligible to vote when the member was elected feel that the member has failed to serve the interests of the constituency.
- 9.32. The Commission reviewed the situation in a number of jurisdictions where the right of recall was provided, noted that it was used very rarely, that in some states where the legislation was enacted it was subsequently repealed and that in one province of Canada it was declared unconstitutional.

Recommendations

- 9.33. **The majority of the Commission does not recommend legislating the right of recall. The potential for abuse and creation of instability in the political culture outweighs any perceived value that such a right may provide.**
- 9.34. **Commissioner McClean expressed a dissenting view, details of which are set out in Appendix 1, Part 2.**

People's Initiatives

- 9.35. In keeping with the explicit mandate in its Terms of Reference requiring it to make recommendations for broad public participation in the governmental process, the Commission considered a proposal for the introduction of some form of popular initiative as a means of providing the electorate of Barbados with a more direct method of access to the legislative process than is possible under the traditional "Westminster" system of government.
- 9.36. The Commission noted the existence in a number of democratic countries of methods by which the popular will may be formally expressed outside of the purely representative framework of an elected parliament, in such a way as to be binding or at least of considerable moral and political force in the operation of government. These include referenda and plebiscites, as well as the limited popular initiatives which may be legally binding or create law and are a feature of a number of States of the United States of America. They are usually introduced and voted on contemporaneously with mid-term or quadrennial elections.
- 9.37. The Commission was satisfied that the overall effect of such modalities is to enhance genuine public participation in the business of government and, thus, to reinforce the concept of the sovereignty of the people as part of the concept of national sovereignty. Moreover, the power to introduce into the parliamentary agenda matters which might transcend the agendas of individual political parties seemed to offer an additional "check and balance" in regard to the exercise of the comprehensive powers which traditionally devolve on elected representatives and on the Executive in most systems of democratic government.
- 9.38. At the same time the Commission recognised the dangers inherent in the introduction of procedures which might seriously distort the crucial deliberative process of Parliament, or oust altogether Parliament's role as the legislative arm of government, where, for example, the result of a plebiscite or referendum or initiative was constitutionally binding.

Recommendation

- 9.39. **The Commission therefore recommends that, as soon as possible, Government should introduce into Parliament legislation creating a system of People's Initiatives, so designed as to accord to electors a measure of original law-making power without bypassing or distorting the fundamental authority of Parliament in this domain. It is envisaged that, at the time when a general election is held, qualifying groups of electors should be empowered to present, for the approval or disapproval of the general electorate, simply worded propositions for legislation by the incoming Parliament. It would be the responsibility of the Government, whenever any such proposition was approved by a qualifying proportion of the electorate, to present the relevant legislative measure to Parliament, where it would be the object of a free vote not subject to the discipline of the Party Whips.**
- 9.40. Within the Commission the view was expressed that the figure of, say, 500 electors might be an appropriate number to originate an initiative, and the support of, say, one fifteenth of registered voters could be considered adequate to introduce an initiative to the parliamentary agenda. However,

it is the considered view of the Commission that this is a matter the ramifications of which should be fully debated by Parliament in order to arrive at the relevant procedural arrangements.

Local Government

- 9.41. Local government in Barbados was abolished in 1969. The services it provided were thereafter administered by the central government directly through ministries or indirectly by statutory corporations responsible to ministers.
- 9.42. Advocates for the re-introduction of local government see it as a means of providing wider community participation in management, decision-making and delivery of services which directly affect local communities. Such services may include, among others, road maintenance, sanitation, cemeteries, street lighting, welfare, public assistance, parks, playing fields and community development. The administering authority would be the community, parish or district council financed by transfers of funds from central government.
- 9.43. Opponents of the re-introduction of local government point to the many shortcomings in the system that existed. Such shortcomings might include additional taxation to finance the system, high administrative costs, lack of trained personnel, inefficiency in the delivery of services and the potential for political friction and tension, division and conflict between local and central government authorities. They argue also that Barbados is a small country with good transportation and internal and telecommunications facilities and an otherwise well developed infrastructure. Communities are not large or inaccessible and services provided by local government can be delivered at less cost and with greater efficiency by the central government.
- 9.44. Statutory corporations were established and entrusted with responsibility for providing some of the services formerly administered by local government. The rationale for establishing such corporations was that as public enterprise corporations they should function like their counterpart private business corporations freed of the restrictions and red tape that characterise public service management. They were expected to function efficiently, financing their own operations and delivering on their mandate rather than focussing on maximisation of profits.
- 9.45. Some public enterprise corporations have not functioned as effectively or as efficiently as was hoped and expected. Some have suffered from inadequate capitalisation and inappropriate management and have been burdened by Boards of Directors that have been too much the result of political patronage.
- 9.46. The Commission is of the view that the public enterprise corporations are appropriate and can be effective instruments for providing and delivering services. Government's obligation is to ensure that they are efficient, well managed, properly staffed and adequately financed to enable them to fulfil their mandates.
- 9.47. Fragmentation of costs will hardly provide savings. The early perceived need for services from the national level has necessitated central regulation. It would now be difficult to transfer responsibility for any of the major services to parochial control, with the possible exception of cemeteries.

- 9.48. What is now required is a dynamic thrust towards maximum efficiency and utility by those bodies that are the statutory providers of services subject to government regulation and financed to whatever extent by the national purse.
- 9.49. Devolution and decentralisation are impractical and unrealistic contemporary concepts. Financial accountability, human resource management and national planning for communal needs are part of the obligations of the ministries, departments, statutory, statal and para-statal bodies.
- 9.50. Communities are relatively compact, and within easy reach of the centre. The state must serve the communities, but effective business management must radiate from coordinated regulation.

Recommendation

- 9.51. **By majority decision the Commission does not recommend the reintroduction of local government.**
- 9.52. Commissioner McClean dissented from this view. In his opinion, many of the arguments advanced against the re-introduction of local government were not well-founded. In particular, he was of the view that, within their limited area of expertise, community councils could deliver more cost-effective services to a community than any other arrangement.

Political Parties

- 9.53. The existence of political parties is crucial to the functioning of representative democracy. This fact was recognised by those who gave evidence before us. Many stressed the need to strengthen the role of political parties in governance, to give greater attention to their reform especially as it relates to the shortcomings and pitfalls of internal decision-making and candidate selection. Some felt that more stringent criteria should be applied to candidate screening in the party selection process.
- 9.54. There was unanimity in the view that there should be greater representation of women in the candidate selection and electoral processes. This was also required in the internal management of political parties. It was noticed that political parties were weak in administration and management structures. Part of this was explained by the lack of funding and other resources. With regard to political fund-raising and the related questions of ethics, accountability and transparency Barbados, like some established liberal democracies, must urgently grapple with these issues if multi-party parliamentary democracy is to be maintained.
- 9.55. The Commission, at paragraph 9.4., has put forward certain proposals for modifying the composition of the Senate. These proposals place on the Head of State the obligation to identify the leaders of political parties. There is no constitutional provision which defines the term "political party", although political parties are mentioned at sections 21(1) and 42(2)(d) of the Constitution. The latter provision contemplates that the electoral law should regulate political broadcasting; and this in fact has been done by the Electoral and Boundaries Commission under section 68 of the *Representation of the People Act*, Cap. 12. The relevant regulations *The General Elections (Allocation of Broadcasting Time) Regulations 1990* do not, however, define the expression "political party".

- 9.56. The Commission considered this apparent hiatus and came to the conclusion that some provision should be made for the definition of the term “political party” and also for the registration of such parties. This should not be by way of constitutional amendment. The Commission is of the view that Parliament should prescribe both for the definition and registration of such parties. However, before this is done, the contents of such legislation should be carefully studied and consensus reached among the main actors on the terms of such legislation.

Recommendation

- 9.57. The Commission therefore recommends that legal criteria should be established for defining political parties. No constitutional amendment is required for this purpose. The subject should be referred for further study by the Task Force mentioned in Chapter 14 of this Report, prior to legislating on the matter. The subject is one which requires a non-partisan approach and political unanimity.**

General

- 9.58. The adjudication of questions relating to the membership of the Senate is done by the High Court whose decision is final.
- 9.59. The adjudication of questions relating to the election of members of the House of Assembly is done by “Such authority as may be prescribed by any law in force in Barbados.” Section 39 of the *Election Offences and Controversies Act, Cap. 3* provides for an Election Court comprising three judges to hear election petitions, that is to say, whether any person has been validly elected as a member of the House of Assembly.
- 9.60. It seems that no law has prescribed any authority for determining whether “any person has vacated his seat as a member of the House of Assembly or is required under the provisions of paragraph (a) of section 45(2) to cease to perform his functions as such a member.”: (section 46(2)(b) of the Constitution).
- 9.61. There is no appeal from the decision of the Election Court on any question of law as to membership of the House of Assembly - *Supreme Court of Judicature Act, Cap. 117A, section 54(1)(h)*.

Recommendations

The Commission therefore recommends that:

- 9.62. related law should prescribe the authority for adjudicating questions relating to issues arising under section 46(2)(b) of the Constitution;**
- 9.63. there should be a right of appeal to the Court of Appeal on all questions of disputed membership of the Senate;**
- 9.64. section 39 of the *Election Offences and Controversies Act, Cap. 3* should be amended to provide that the Election Court should comprise any three judges of the Court of Appeal and that their decisions should be final. It is important that election petitions are disposed of speedily and by the highest local court.**

CHAPTER 10

THE EXECUTIVE

Introduction

- 10.1. The main concern expressed by the overwhelming majority of those who appeared before the Commission to offer their views on the topic of the Executive was in relation to the perception that the present Constitution concentrates excessive power in the hands of the holder of the office of Prime Minister.
- 10.2. It was noted that such power stretches over the entire gamut of governmental and political activity, starting with the conventional arrangement whereby the Sovereign appoints the Governor-General on the advice of her Barbados Ministers, a determination no doubt initiated by a Prime Minister – “advice” which by long-standing constitutional practice is not normally refused. Prime Ministerial power extends to the appointment of the Chief Justice and the judges of the Supreme Court, appointments on transfer to “such offices within the Ministry responsible for the external affairs of Barbados as may be designated by the Prime Minister” and, crucially in relation to the functioning of the political system, the authority, without reference to any other organ of State, to call for a dissolution of Parliament even in circumstances where the holder of the office no longer commands the confidence of a majority of the members of the House of Assembly.
- 10.3. In the relevant sections of this Report, the Commission has made a number of recommendations designed to widen the scope of the consultations which should be undertaken by the Executive in coming to decisions of fundamental importance. In the context of the functioning of the political machinery of government, the Commission was unable to accept a number of radical suggestions emanating from persons who appeared before it such, for example, as the proposal that the life of Parliament should be of fixed rather than, as now, a maximum duration. While satisfied that, on the whole, the present system is well adapted to the needs of multi-party democracy, the Commission was persuaded that the adjustments recommended below will have the desired effect of enhancing “the independence and authority of Parliament and the fundamental rights and freedoms” of Barbadians, in the words of the Commission’s Terms of Reference.
- 10.4. It was also argued before the Commission that the definition of ministerial responsibility at section 72(1) as including “**the administration of any department of government**” misrepresented the proper relationship between the political directorate and the permanent public service in a democracy. A convincing case was made for amending the relevant sections of the Constitution to provide that the permanent secretary should be responsible for the **management** of the ministry which should be under the **general direction and control** of the Minister.
- 10.5. Representation was made to the Commission that section 73(1) of the Constitution ought to be amended to provide for recognition of the office of Minister of State. The Commission noted that for some time now, persons have been appointed with the designation of Ministers of State, although that office is not mentioned in the Constitution. Whereas the function and status of Parliamentary Secretaries, who are provided for in the Constitution, are clear, the same is not true of Ministers

of State. Parliamentary Secretaries are clearly junior Ministers. They are paid less than Ministers; are not sworn in as Ministers unless they are temporarily functioning as Ministers and do not attend Cabinet meetings. On the other hand, Ministers of State have the same status and pay as Ministers and appear in legal terms to be indistinguishable from other Ministers, though whenever such a post exists there will be a Minister in overall charge of the Ministry. This appears to be an anomalous situation which may easily be clarified by administrative or prime ministerial action rather than by an amendment to the Constitution.

- 10.6. Parliamentary democracy is considerably strengthened when both the institutions of Parliament and the people are given adequate information concerning the functioning of government. There are no existing provisions which allow a minister who is a member of one House of Parliament to take part in any debate or proceeding of the other House. In some democratic countries with bi-cameral legislatures, ministers who are members of one Chamber have the right to attend a sitting of the other Chamber and take part in any debate or other proceeding relating to a matter for which that minister has been assigned responsibility under the Constitution. A Chamber also has the power by motion to request a minister from the other Chamber to attend a sitting for those purposes.
- 10.7. Such a system has the advantage of improving the flow of information and communication between government and the people's representatives. Simultaneously it increases accountability and improves the standard of debate and the quality of decision-making.
- 10.8. In such a system, the Attorney-General has a special role to play. In our Parliament, as in most other Parliaments based on the Westminster style of government, the Attorney General is the principal legal adviser to the Chambers of Parliament. The three ministries of Prime Minister, of the Minister responsible for Finance, and of the office of Attorney General are the only ministries specifically named in the Constitution. The Attorney General should be free to appear in either Chamber of Parliament and to speak in the debate or other proceedings on all subjects. Both Houses are part of the process of legislation and most of their business is initiated by Government.
- 10.9. There are potential dangers from the adoption of such a system, particularly where provisions of a Constitution are entrenched and can only be changed by a stated majority of members of both Chambers. If Ministers are allowed to attend both Houses of Parliament, take part in their proceedings, move amendments and propose motions and vote on those motions, then their votes can influence that majority and be contrary to the spirit of the Constitution.
- 10.10. The majority of the Commissioners are persuaded that the advantages of providing for ministers to be able to attend either House of Parliament and to take part in its proceedings can be preserved provided that these ministers are not allowed to move amendments in any such debates or proceedings or to propose or vote on any motions in a House of which the minister is not a member.
- 10.11. Commissioners Norma Forde and Maurice King do not support the recommendation which we have made on this subject at paragraph 10.21. below.

Recommendations

The Commission recommends that:

- 10.12. **the executive authority of Barbados shall be vested in the President who shall be Commander-in-Chief of the armed forces. There would be further consequential amendments to Chapter VI of the existing Constitution to reflect this change;**
- 10.13. **in relation to the provisions regulating the tenure of office of the Prime Minister, the Commission recommends that the requirements of section 66(1) should include a provision that the office of Prime Minister shall become vacant if the Prime Minister resigns his office;**
- 10.14. **section 66(2) should be amended to remove the power of the Prime Minister to advise the President to dissolve Parliament in circumstances when the House of Assembly by a resolution of the affirmative vote of a majority of all the members thereof resolves that the appointment of the Prime Minister ought to be revoked;**
- 10.15. **when the office of Prime Minister becomes vacant in such circumstances and the President is unable within seven days to find anyone who can command the support of the majority of the members of the House of Assembly to fill that office, the President shall by proclamation dissolve Parliament;**
- 10.16. **in relation to the appointment of the Leader of the Opposition where the President is doubtful whether a person commands the support of a majority of those members of the House of Assembly who do not support the government he shall in determining the question act in his discretion after consultation with the Speaker. The Commission recommends that section 74(5) should be amended accordingly;**
- 10.17. **the “Privy Council” be renamed the “Presidential Council” and that appropriate consequential amendments be made. It is also recommended that the office of a member of the Presidential Council shall become vacant “*inter alia*” at the expiration of seven rather than fifteen years from the date of the member’s appointment or such shorter period as may be specified in the instrument of appointment and that the present maximum age of seventy-five years for membership of the Council should be removed.**
- 10.18. **the establishment of the office and functions of the Director of Public Prosecutions (D.P.P.) should form a separate chapter so as to reflect the concept of the independence of that office;**
- 10.19. **(by a majority), the provisions of section 79A should be amended to remove the power of the Attorney General to give directions to the D.P.P. in the case of the offences specified therein. The role of the Attorney General should be consultative only and the D.P.P. should be authorized to exercise those powers after consultation with the Attorney General;**

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- 10.20. **the retiring age for the D.P.P. should be 65;**
- 10.21. **a minister who is a member of one House of Parliament should have the right to attend the sitting of the other House and take part in any debate or other proceeding of that House relating to a matter for which the minister has been assigned responsibility under the Constitution. He should not, however, be permitted to move amendments in any such debate or proceeding or to propose or vote on any motion in that House. Because of the special responsibility attached to the office of Attorney General, the Attorney General should be entitled to speak on any subject whether it is part of his portfolio or not.**
- 10.22. It was urged on the Commission that a change should also be made to sec. 61(2) to limit the power of the Prime Minister to advise the President to dissolve Parliament in circumstances other than those set out above. It was argued that if the Prime Minister fears that a move is afoot to remove him from office under sec. 66(2), the Prime Minister can invoke the provisions of sec. 61(2) and advise a dissolution. Some members were of the view that sec. 61(2) should be limited by prescribing that where a resolution under sec. 66(2) is before Parliament, the President should not act in accordance with the advice of the Prime Minister until after Parliament had voted on the resolution. The majority of members did not consider it advisable to further circumscribe the powers of dissolution;
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CHAPTER 11

THE JUDICATURE

Introduction

- 11.1. On the basis both of its own deliberations and of the submissions made to it by experts and lay persons, the Commission is satisfied that the current constitutional provisions governing the Judicature are largely adequate to meet the evolving needs of the democratic State of Barbados. Apart from a series of useful, but mainly technical, suggestions for strengthening the judiciary, the single major proposal for alteration of the status quo advanced by the vast majority of persons and institutions appearing before or otherwise communicating with the Commission relates to the method of appointment of judges to the Supreme Court.

Appointment of judges

- 11.2. The Constitution provides in section 81(1) for all judges of the Supreme Court, viz, High Court Judges, Justices of Appeal, and the Chief Justice, to be “appointed by the Governor-General, by instrument under the Public Seal, on the recommendation of the Prime Minister after consultation with the Leader of the Opposition”. It is well established that the recommendation of the Prime Minister in such circumstances must be accepted by the Head of State, and it is widely believed that, in practice, “consultation”, a process which may not be inquired into, does not provide a genuine bulwark against partisan appointments.
- 11.3. The provisions of section 81(1) reflect the results of the 1974 amendments together with subsequent amendments consequential on the creation of the Court of Appeal. Before the 1974 amendments, the Constitution provided for the appointment of judges, with the exception of the Chief Justice, to be made by the Governor-General on the recommendation of the Judicial and Legal Service Commission. The Chief Justice alone was appointed on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.
- 11.4. The 1974 amendments in effect put all judicial appointments in the gift of the Prime Minister, raising at the time considerable fears about the potential for the politicisation of the judiciary. The Cox Commission adverted to this situation in its March 1979 Report, noting that “much public concern” had been expressed concerning section 81 as amended in 1974, and recommended that the original provisions of the section be restored to provide for:
- 11.4.1. “the Chief Justice alone to be appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition;
- 11.4.2. the (Puisne) Judges to be appointed by the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.”
- 11.5. This recommendation was not implemented by the Government of the time. Nearly two decades later the experience of the present Commission and representations to the

Commission have proved not dissimilar to that of its predecessor. The overwhelming majority of persons and institutions making representations to the Commission have pointed to the risks inherent in the present procedure, and have offered a variety of recommendations aimed at making the process of appointment of judges less vulnerable to partisan political manipulation. The Commission lists below some of the more cogent of these suggestions:

- 11.5.1. The Prime Minister should be required to consult more widely before tendering his advice to the Head of State. In addition to the Leader of the Opposition, the President of the Bar Association and the Chairman of the Disciplinary Committee of the Bar Association should be consulted.
- 11.5.2. The present arrangements for appointing the Chief Justice should remain. However, Justices of Appeal and High Court Judges should be appointed by the Head of State on the recommendation of a committee chaired by the Prime Minister and including the Chief Justice, the Leader of the Opposition, the Attorney General, and the President of the Bar Association.
- 11.5.3. The Constitution should be amended to provide for the appointment of judges by a judicial commission and not by the Prime Minister.
- 11.5.4. The appointment of all judges, including the Chief Justice, should be made by the Head of State, acting on the advice of the Prime Minister making his selection from a panel submitted to him by the Judicial and Legal Service Commission which should include a member from a panel submitted by the Bar Association.
- 11.5.5. The appointment of all judges should be made by a revamped Judicial and Legal Service Commission.
- 11.5.6. There should be a return to the pre-1974 provisions for the appointment of judges below the rank of Chief Justice. Even when the Prime Minister is a lawyer he is not engaged in the day-to-day work of the court and therefore does not have first-hand information about the merits or otherwise of particular candidates. In the United Kingdom people are questioning the power of the Prime Minister to have the last say in appointing the Chief Justice and judges of the Court of Appeal. Already for County and Crown Courts applications are invited including by advertisement and judges are selected on the basis of interviews. The system may well extend to the High Court.
- 11.5.7. The Chief Justice should be appointed by the Head of State on the joint recommendation of the Prime Minister and the Leader of the Opposition. If they cannot reach a joint recommendation the Head of State should make the final selection from among the candidates considered by the Prime Minister and the Leader of the Opposition. Other judges should be appointed by the Head of State on the recommendation of a consolidated Public Service Commission.
- 11.5.8. The Constitution should provide for the appointment of all judicial officers, including magistrates, by the Head of State, acting in accordance with the advice of a broad-based body independent of government control.

- 11.5.9. Judges should be appointed from a list prepared by the Judicial and Legal Service Commission. The Prime Minister, after consultation with the Leader of the Opposition, should then make recommendations to the Head of State.
- 11.6. In arriving at its recommendations on this important subject, the Commission has taken into account a variety of issues, including the views cited above, the practice in a number of jurisdictions with a legal and political history similar to that of Barbados and, above all, its own mandate to “make recommendations for maintaining and strengthening the independence of the judiciary at all levels”, and to “advise and make recommendations concerning a structure for the executive authority of Barbados that is best suited to protect...the fundamental rights and freedoms of its citizens.”
- 11.7. The Commission has taken note of the constitutional position in other Commonwealth Caribbean countries, including Trinidad and Tobago where the Chief Justice is appointed “by the President after consultation with the Prime Minister and the Leader of the Opposition” and other judges “by the President, acting in accordance with the advice of the Judicial and Legal Service Commission”. In particular, it has noted that in common law Caribbean jurisdictions other than Barbados “The Chief Justices apart, judges of the superior courts are appointed by the Head of State on the recommendation of the Judicial and Legal Service Commission.” (Albert Fiadjoe. *Public Law: Text, Cases and Materials*: - London: Cavendish Publishing, 1996, p. 151).
- 11.8. The majority of the Commission’s members are convinced that, whether or not the 1974 provisions have, in practice, been abused by sitting Governments, those provisions leave open large and unjustifiable possibilities of abuse by the Executive, which may have an impact on a wide range of matters in which there is interaction between the Executive and the individual citizen. As the ultimate guardian, under Parliament, of the Constitution itself and the sole authorised interpreter of the Supreme Law, the judiciary should be guaranteed the appearance as well as the substance of independence. The majority of members of the Commission, together with the majority of those who have made representations to it, are persuaded that the provisions of the present section 81 signally fail to ensure such independence and should accordingly be amended.
- 11.9. Recognising that absolutist concepts of “separation of powers” have no place in the evolutionary constitutional culture of Barbados, the Commission has sought to formulate recommendations that take into account the actual experience of thirty-two years of Independence. This period has been marked by a high degree of political restraint and maturity and a gradual but sure-footed development of conventions that are respectful of the spirit as well as the letter of the Constitution.

Recommendations

- 11.10 Against this background the Commission, by a majority, recommends that section 81(1) be amended to provide as follows:**
- 11.10.1. that the Chief Justice be appointed by the Head of State on the joint recommendation of the Prime Minister and the Leader of the Opposition**

after they have consulted with the Judicial and Legal Service Commission. If no joint recommendation is tendered, the Head of State shall, in his own deliberate judgment, appoint a person from among those considered by the Prime Minister and the Leader of the Opposition;

11.10.2. that the other judges of the Supreme Court be appointed by the Head of State acting on the recommendation of the Judicial and Legal Service Commission after that Commission has consulted with the Prime Minister and the Leader of the Opposition;

11.11. that section 89 of the Constitution be amended to make provision for

11.11.1. the appointment of the members of the Judicial and Legal Service Commission (other than the Chief Justice and the Chairman of the Public Service Commission (or nominee)) by the Head of State after consultation with the Prime Minister and Leader of the Opposition;

11.11.2. “appointed members” to be appointed by the Head of State, one member after consultation with the Prime Minister, and one after consultation with the Leader of the Opposition from among persons who are, or have been, judges of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court;

11.11.3. where the President, acting as aforesaid, is satisfied that there is no suitable person who is or has been such a judge available and willing to be appointed, he may after consultation with such organisations, if any, as he thinks fit, appoint a person who has practised in Barbados as an Attorney-at-Law for not less than (10) years but is not in active practice as an Attorney-at-Law.

11.12. Commissioner King was unable to join in these recommendations, and his views are set out in Appendix 1 Part I.

Retiring Age of Judges

11.13. The attention of the Commission was repeatedly drawn to the apparent anomalies or inconsistencies presented by the provisions of section 84 of the Constitution which regulates the age of retirement for judges of the Supreme Court. In summary that section sets the retiring age for High Court judges at 65 and that of the Chief Justice and Justices of Appeal at 70. Nevertheless, “the Governor-General, acting on the recommendation of the Prime Minister may permit” a High Court judge to continue in office until the age of 67 and the Chief Justice or a Justice of Appeal to continue in office until the age of 72.

11.14. Objection was taken to these provisions on two grounds. Firstly, there was no objective justification for a differentiation in retirement age between High Court judges and Justices of Appeal. A majority of witnesses favoured a single retirement age for all judges of the Supreme Court.

- 11.15. Secondly, it was represented that the discretion given to the Prime Minister to extend the retirement age by two years in all cases left open the real possibility of arbitrariness or favouritism or improper pressure on judges reaching or nearing retiring age. In this latter connection, pointed reference was made to the recent, highly controversial case of a Windward Islands High Court judge whose tenure, under similar constitutional provisions, was not extended on application.

Recommendations

- 11.16. **The Commission sees merit in both these contentions, and recommends that the retirement age for all judges of the Supreme Court, with the sole exception of the Chief Justice, should be set at 72.**
- 11.17. **In the case of the Chief Justice, the Commission recommends that the Head of State should be empowered, after consultation with the Prime Minister, the Leader of the Opposition and the Judicial and Legal Service Commission, to permit the Chief Justice to continue in office until he has attained the age of 75 years.**

“Holding-over”

- 11.18. On a related subject, representations were made to the Commission concerning the problems caused in the functioning of the court system by the provision in section 84(2)(b) whereby a judge is permitted to sit as a judge on the bench after his age of retirement “for the purpose of delivering judgments or doing any other thing in relation to proceedings which were commenced before him before he attained that retiring age or, as the case may be, retired or resigned.”
- 11.19. The Commission is persuaded that extended “holding-over” would become unnecessary if a fixed age of retirement were incorporated into the amended Constitution, as it would then be easier for the work of the court to be so ordered as to permit judges to wind up their pending cases in a timely manner. **Accordingly, the Commission recommends that the provisions of the relevant clause be amended so as to limit the “holding-over” period to six months.**

“Vesting” of Judicial Power

- 11.20. Sections 48 and 63(1) of the Constitution expressly vest legislative and executive power in Parliament and Her Majesty. There is no similar vesting of judicial power in the courts. This omission occurs in other Commonwealth Caribbean constitutions; but it has not prevented the Judicial Committee of the Privy Council from holding that such a power is to be implied in sections that are worded similarly to section 80(1) of the Constitution - see for example *Hinds v. The Queen* [1976] 1 All E.R. 353 and *Bribery Commissioner v. Ranasinghe* [1964] 2 All E.R. 785. The Commission has concluded that the present arrangement whereby Parliament may pass laws to create new courts or to extend the jurisdiction of Magistrates' Courts offers certain practical advantages in terms of procedural economy and flexibility. At the same time, it is clear that, in the event of a challenge, the Supreme Court has full

constitutional authority to rule on whether such courts or such extension of jurisdiction provide adequate protection for the fundamental right of litigants to a fair hearing before an independent and impartial tribunal. **It is therefore recommended that there should be no explicit “vesting” of the judicial power.**

Removal of Judges

11.21. The attention of the Commission was drawn to the provision at section 84(3) which deals with the removal of judges. The sub-section reads:

“(3) A judge may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour...”

11.22. It was suggested that the phrase “or any other cause” was unacceptably imprecise in a constitutional document, giving scope for arbitrary action by the relevant authorities and should be removed. After discussion the Commission agreed not to change the section.

11.23. The view was also expressed that the Constitution should specify the offences which amounted to “misbehaviour” by a judge, either in the general interpretation section or in an interpretation provision within the relevant section. The Commission considers this to be both inappropriate and unnecessary. The procedure proposed below for the removal of judges culminates, as do the existing procedures, in a process in which the evidence would be weighed and a judicial determination arrived at.

11.24. The Commission considered in detail the procedure for the removal of judges. The first step in the process requires that the Prime Minister, in the case of the Chief Justice, and the Chief Justice, after consultation with the Prime Minister in the case of the other judges, should advise the Head of State “that the question of removing a Judge from office for inability as aforesaid or for misbehaviour ought to be investigated.” (Section 84(5)).

11.25. On receiving the advice, the Head of State appoints a tribunal comprising judges or former judges from any part of the Commonwealth who will inquire into the matter and advise the Head of State “whether he should request that the matter of the removal of that Judge should be referred by Her Majesty to the Judicial Committee”. Where the judge concerned is the Chief Justice, the tribunal is selected by the Head of State in accordance with the advice of the Prime Minister; in the case of other judges, the selection is made by the Head of State in accordance with the advice of the Chief Justice.

11.26. It is implicit, but it is not expressly stated, in the provision at section 84(8)(b) that removal of a judge from office is an act of Her Majesty, acting on the advice of the Judicial Committee of the Privy Council after the referral mentioned above. In the light of the recommendations made elsewhere in this report concerning Barbados’ future relations with the Crown, and with the Judicial Committee, the Commission proposes a new mechanism for the removal of judges.

Recommendations

- 11.27. **The Commission recommends that advice “that the question of removing a Judge from office for inability as aforesaid or for misbehaviour ought to be investigated” should be tendered to the Head of State by the Judicial and Legal Service Commission after consultation with the Prime Minister and the Chief Justice. Advice concerning an investigation into the removal of the Chief Justice should be tendered by the Judicial and Legal Service Commission after consultation with the Prime Minister and the Leader of the Opposition.**
- 11.28. **The Commission further recommends that provision should be made for the Head of State to refer the matter to a tribunal as provided for in section 84(5)(a) of the Constitution, but appointed by the Head of State after consultation with the Prime Minister, the Leader of the Opposition, the Judicial and Legal Service Commission and - except when the Chief Justice is the subject of the investigation - the Chief Justice. The tribunal will hear and determine whether the judge should be removed for any of the stated reasons and will so advise the Head of State who will be required to act in accordance with that advice.**

The Magistracy

- 11.29. The Commission received a number of thoughtful representations concerning the role of the Magistracy in the administration of justice, in particular from the then Chief Magistrate and a number of her colleagues, and also from the Bar Association and several lay persons who attended its hearings or made written submissions.
- 11.30. Considerable emphasis was placed in these representations on both the increased work load of the magisterial establishment and the substantial extension of the magisterial jurisdiction brought about by a series of statutes enacted by Parliament in recent years. It was noted, for example, that the vast majority of wrongful dismissal cases are presently adjudicated in the Magistrates' Courts, with the magistrates having unlimited jurisdiction as to the amount of compensation which they may award.
- 11.31. Reference was also made to recent amendments to the *Prevention of Floods Act*, Cap. 235 which empowers a magistrate to make awards in excess of those ordinarily conferred on the lower courts. Under the *Drugs Abuse (Prevention and Control) Act*, Cap. 131 a magistrate can impose fines of up to \$250,000.00 and periods of imprisonment up to seven years. The *Domestic Violence (Protection Orders) Act*, Cap. 130A gives a magistrate authority described as being akin to that of a High Court judge.
- 11.32. The attention of the Commission was also drawn to the Privy Council decision in the Jamaican case of *Hinds v. R.* which laid down that magistrates, being civil servants, are not part of the judiciary. As civil servants they are subject to the normal disciplinary regime governing public officers and while, in fact, carrying out functions which are by nature unquestionably judicial, they do not enjoy the constitutional protection afforded to judges. Given the fact that it is at the level of a magistrate that the citizen will most frequently come in contact

with the coercive powers of the law, the Commission was invited to consider the case for strengthening the independence of this vital arm of the judicature.

Recommendations

The Commission recommends:

- 11.33. **that the Magistracy should be recognised in the Constitution as a part of the judicial system of Barbados;**
- 11.34. **that because of the complexity of the issues involved the entire question of the status of the magistracy should be the object of urgent and detailed study by the Government. The terms of reference of such a study should include an examination of the terms and conditions of service of magistrates, the methods of recruitment and training, the appropriateness of establishing a career magistracy, the role of the Chief Magistrate in relation to the management of the magistracy, and the scope of constitutional protection which should be afforded to magistrates.**

The Judicial Committee of Her Majesty's Privy Council

- 11.35. The Commission has recommended elsewhere that the Head of State should be a national of Barbados, thus ending the fundamental legal nexus with the British Crown. In this context the Commission examined the structure of the Barbados Judicature which has as its apex the Judicial Committee of Her Majesty's Privy Council, being the final court of appeal for civil and criminal matters.

The majority of those who gave evidence to the Commission were of the view that a logical consequence of the ending of the monarchical connection would be the establishment of the full independence of the Barbadian judicature. The consensus was that Barbados should be prepared to join other Commonwealth Caribbean countries in establishing a Caribbean tribunal as a final Court of Appeal. If such an arrangement proved to be impossible, in the light of the historical fact that, over a considerable number of years decisions of the Barbados Court of Appeal have only exceptionally been reversed by the Judicial Committee, justice would be adequately served by assigning to the Barbadian Court the role of final judicial instance.

Commissioner Norma Forde expressed reservation concerning the recommendation that the Barbados Court of Appeal be assigned the role of final judicial instance.

Recommendations

The Commission recommends, by a majority, that Barbados should speedily obtain the agreement of the British Government to the retention of the Judicial Committee as this country's final court of appeal until the establishment of a Caribbean Court of Justice. If this court does not come into being within a reasonable period of time, Barbados should assign to the Court of Appeal the role and function of this country's final judicial instance.

CHAPTER 12

THE PUBLIC SERVICE

- 12.1. The Commission's terms include:
 - 12.1.1. strengthening the independence and impartiality of the Public Service, having particular regard to the need for efficient and responsive administration of government business;
 - 12.1.2. strengthening the relevant government machinery in order to ensure maximum transparency and strict accountability in the management of public funds, including appropriate sanctions for corruption.
- 12.2. The Commission took note of the current programme of Public Sector Reform which began in earnest three and a half years ago and is designed primarily to meet the need for more efficient and responsive administration of governmental activities.
- 12.3. Notwithstanding this, representations were made to the Commission on the need to eliminate political influence and interference in public service matters relating to appointments, removal and discipline of public officers.
- 12.4. Attention was drawn to the adverse effects and impact on the Public Service of the 1974 Constitutional Amendments, especially in relation to temporary posts, appointments to the senior posts in a Ministry or Department and in the Foreign Service.
- 12.5. Due cognizance was taken of the reality that the political directorate is in the final analysis answerable to the people and that a government must have scope to govern and to implement its programme. Bearing this in mind, the Commission also saw the need for a constitutional framework predicated on the basis of parliamentary democracy, the notion of separation of powers, maximum transparency and strict accountability. The Commissioners deemed it necessary to avoid as far as possible and practicable any provisions that would leave open or create opportunities for inefficiency, corruption or dictatorship of the Executive, or Prime Ministerial dictatorship, no matter how benign. Representations to the Commission on these matters were strong and cogent from authoritative sources including the political parties, Trade Unions, senior civil servants of the past and present as well as members of the general public.
- 12.6. Within this context the Commission examined the existing provisions relating to the Services Commissions. Matters considered included the methods of appointment, removal and disciplining of public officers; the role, functions and independence of the Director of Public Prosecutions, the Auditor-General, the Ombudsman and the Head of the Civil Service; the case for the creation of a post of Contractor-General; and the utility of short-term contractual appointments within the Public Service.

SERVICES COMMISSIONS

- 12.7. Issues raised in submissions to the Commission related to the following areas of concern:
- 12.7.1. whether to retain separate Services Commissions or to have one Commission with different committees to look after specific services;
 - 12.7.2. whether the Commissions or their Chairmen only should be full time with separate secretariats;
 - 12.7.3. whether section 89A relating to the Teaching Service Commission should be brought into force;
 - 12.7.4. whether the Police Service, the Prisons Service and the Fire Service should be dealt with under one and the same Commission to be called the Protective Services Commission;
 - 12.7.5. whether there is need for additional specialist Commissions e.g. for the Nursing Service;
 - 12.7.6. whether the method of appointment to Services Commissions should be changed and the process of consultation before they recommend appointments should be widened.
- 12.8. Existing provisions make arrangements for the appointment of members of Services Commissions to be made on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.
- 12.9. The Commission examined the need to reduce the level of direct political input into the appointment of members of Services Commissions and certain other appointments in the Public Service. In this process opportunity was taken to enhance the role and function of the Head of State.
- 12.10. This Commission supports the view of the Cox Commission that a separate Judicial and Legal Service Commission is in character with the desired independence of the Judicature.
- 12.11. The Commission heard representations from senior officers of the Royal Barbados Police Force, the Barbados Fire Service, and the Prisons Service, as well as from spokespersons of their respective staff associations concerning matters of appointment, removal, organisation and discipline within these institutions.
- 12.12. At present the Police Force is under the jurisdiction of the Police Service Commission, whilst the Prisons Service and Fire Service fall under the jurisdiction of the Public Service Commission. It is clear that the three services share many characteristics as disciplined forces. They also have common interests in regard to questions of civil defence and public security.
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- 12.13. On the basis of the representations made to it the Commission is persuaded that there could be substantial gains in efficiency and coordination among these services which, in practice, are required regularly to act in concert, if all matters concerning the appointment, removal, organisation and discipline of their members were administered by a single Service Commission.
- 12.14. The Commission also received representations concerning the matter of the Teaching Service Commission for which provision was made in the 1974 constitutional amendments. However, the Commission has not been constituted, as the relevant provisions of section 89A have not been brought into force.
- 12.15. It is the view of this Commission, unlike that of the Cox Commission, that the size of the teaching service establishment and the complexities of its various specialist functions merit the direction, attention and expertise which could be provided by a separate supervisory Commission.
- 12.16. The Commission is, however, not persuaded that the situation in regard to the health services warrants similar treatment.

The Commission recommends that:

- 12.17. There be established a Protective Services Commission with the responsibility for the appointment, removal, organisation and discipline of the Royal Barbados Police Force, the Barbados Fire Service and the Prisons Service, and that the Police Service Commission be abolished.**
- 12.18. Section 89A relating to the Teaching Service Commission should be brought into force, after amendment to empower the President to appoint a Chairman, the Chairman of the Public Service Commission or his/her nominee and four other members of the Teaching Service Commission after consultation with the Prime Minister, the Leader of the Opposition and such other persons or organisations as the President thinks fit. Presently, such appointments would be made on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.**
- 12.19. Section 90 of the Constitution should be amended to empower the President to appoint a Chairman and five other persons as members of the Public Service Commission after consultation with the Prime Minister, the Leader of the Opposition and any other persons or organisations as the President thinks fit.**

Section 92 Procedure of Commissions

- 12.20. The Commission took note of concerns aired repeatedly about selection processes which fail to match administrative and management vacancies with suitable office-holders, about prolonged delays in dealing with personnel matters relating to appointments, promotion, leave, training and disciplinary charges.

- 12.21. The need for Services Commissions to respond timely and adequately to urgent concerns and emergency situations and also for better Human Resources Management was urged by individual persons as well as representative organisations appearing before the Commission.
- 12.22. The Commission agreed with submissions which requested that consideration should be given to Services Commissions having separate Secretariats adequately staffed and serviced and full-time Chairmen.

The Commission further recommends that:

12.23. provision be made for each Service Commission to have separate office and administrative facilities appropriate to the performance of its responsibilities;

12.24. in regard to

- (1) the Public Service Commission, legislation should be introduced into Parliament providing for the creation of a post of full-time Chairman, with the appropriate administrative infrastructure;**
- (2) the Teaching Service Commission and the Protective Services Commission respectively, urgent consideration should be given to implementing a similar arrangement.**

12.25. The 1974 constitutional amendments included sections making provision for an increase in the number of senior posts in the Public Service to which appointments would be made on the recommendation of the appropriate Service Commission after consultation with the Prime Minister. The offices added were as stated at paragraph 1.8.6. above (page 13).

12.26. Also included in the 1974 amendments was a re-definition of "public officer" at section 117(7)(e) which removed from within the ambit of Services Commissions several hundreds of temporary and unestablished posts, leaving such posts at the disposal of the political directorate.

12.27. The Commission in considering the impact of the 1974-Constitutional Amendments took note of concerns expressed with respect to the possibilities for politicization of the Public Service, back-door entry to the Public Service, dilution of the authority and integrity of Services Commissions, and the effect on morale in the Public Service.

Recommendations

12.28. By majority decision the Commission agreed to recommend the reversal of the 1974 Constitutional Amendments with respect to temporary and unestablished posts as well

as appointments to certain senior posts. The majority view of the Commission that the 1974 Constitutional Amendments should be reversed with respect to appointments endorses the position of the 1979 Cox Commission as outlined at paragraphs 118-122 on pages 41-42 of its Report.

- 12.29. The amendment of section 99(2) by deleting the posts of chief or deputy chief professional or technical adviser or officer in a Ministry of the Government (by whatever name called), and head or deputy head of a department of the Government.**
- 12.30. A definition of “public office” at section 117(7) so as to restore the meaning in the definition before the 1974 Constitutional Amendments and to eliminate any anomaly or ambiguity in construing section 117(7)(e).**
- 12.31. Commissioner King’s reservations on this matter have been noted in Appendix 1, Part 1.**
- 12.32. GENERAL ORDERS for the Public Service of Barbados 1970 (Revised Edition 1997) make provision for Appointments on Contract at Chapter 2 (sections 2:13 - 2:16). Section 2:13 reads in part:**
- “Appointments on Contract for a specific duration may be made to any public office as may be determined.”**
- 12.33. The Commission recognises, however, that there may exist from time to time a need for particular specialist skills not available at the time within the Public Service for a specific task on a temporary or short term contractual basis; but there may be no vacant public office to accommodate such a need at the required time.**
- 12.34. The Commission holds the view that a Minister identifying such a need should be able to recruit such a person with the required qualifications and skills on terms and conditions approved by the relevant Service Commission.**
- 12.35. The Commission recommends that provision be made for the recruitment and appointment of specialists on a temporary basis or a short-term contract as the need arises and circumstances dictate and that such recruitment and appointment be made by and with the approval of the relevant Service Commission on the recommendation of the Minister.**
- 12.36. The Commission was persuaded by arguments in favour of providing constitutional fiat and protection for the role and function of the Commissioner of Police. It is felt that a constitutional provision would go further than section 8 of the *Police Act*, Cap. 167 in strengthening the authority of the Commissioner of Police and helping to insulate that office from political influence or pressure.**
- 12.37. The Commission recommends inclusion of a provision in the Constitution similar in intent to section 8 of Cap. 167 and indicating that:-**

- (a) overall responsibility for the Police Force is vested in the Head of State;
- (b) the Commissioner of Police has the command and superintendence of the Police Force in its day-to-day operations;
- (c) the Commissioner of Police is responsible as the accounting officer for public monies collected by that Department;
- (d) the Commissioner of Police shall act in accordance with laws and regulations prescribed with respect to such monies.

Section 98 – Appeals to Privy Council in Disciplinary Matters

- 12.38. The Public Service organisations expressed dissatisfaction with some aspects of the existing procedure for dealing with disciplinary matters before the local Privy Council (to be re-designated Presidential Council).
- 12.38.1. The major grievance is that neither the officer nor his representative has a right to appear in person before the Privy Council at a hearing and that the decision of this body is not reviewable in a court of law.
 - 12.38.2. Consequently the Commission was urged to consider the establishment of a Public Service Appeal Board, a proposal for which there appeared to be significant support.
- 12.39. In its deliberations the Commission examined the merits of both systems - the Public Service Appeal Board and Appeal to the Presidential Council.
- 12.40. The Commission noted that disciplinary matters range from the simple to the very complex. It noted, too, that the different systems would involve differences in terms of length of time, procedural approaches and costs, some perhaps tempering justice with mercy more so than applying other criteria. For these reasons the Commission considered offering both options as mutually exclusive alternative routes available to public officers who would be free to choose advisedly.
- 12.41. The attention of the Commission was directed to efforts in train by the Social Partners of Barbados to resolve industrial disputes and conflicts through a system of tribunals based on the tripartite idea and the proposal to apply such a system to industrial disputes both in the Public Service and in the Private Sector.
- 12.42. The Commission is aware of the positive efforts of the Social Partners in promoting industrial harmony, increased productivity and greater economic development through negotiated Protocols which have been hailed as models of excellence in industrial relations practice.

- 12.43. The Commission is in no position at this stage to make a recommendation on the proposed tribunal system which is still under discussion but foresees no great difficulty in such a system of arbitration being adopted so long as the principle has been accepted tripartitely.

The Commission recommends:-

- 12.44. **Establishment of a Public Service Appeal Board to hear and determine an appeal from any decision of a Service Commission, or from any person to whom the powers of the Commission have been delegated in matters relating to:-**
- (a) **imposing a penalty as a result of disciplinary proceedings brought against a public officer; or**
 - (b) **adversely affecting the terms of service of a public officer; or**
 - (c) **approving the withholding, suspending or reducing of a benefit payable to a public officer.**
- 12.45. **Retention of the function of the proposed Presidential Council as an (alternative) appellate body in disciplinary matters involving public officers.**
- 12.46. **The Public Service Appeal Board and Presidential Council would be alternative appeal routes exercisable at the option of the public officer in respect of whom a decision is made in matters of a disciplinary nature.**
- 12.47. **The proposed Public Service Appeal Board shall consist of a Chairman and two other members appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and the Chief Justice.**
- 12.48. **The Chairman shall be a Judge or a citizen of Barbados who has held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.**
- 12.49. **One member of the Appeal Board shall be a retired public officer.**

Section 99 Appointment of Permanent Secretaries and Certain Other Public Officers

- 12.50. The Commission holds the view that the boundaries separating the separate roles of a Minister and of a Permanent Secretary need to be defined as they were in section 99 (3) of the Constitution before the 1974 amendments.
- 12.51. **The Commission recommends amendment of section 99 (3) to restore a definition of "Permanent Secretary" in terms similar in meaning to that which was given in subsection (3) prior to its amendment in 1974.**

- 12.51.1. This amendment should accord with a proposed amendment by which section 72(1) would read as follows, or to such effect:**

“Where any Minister has been assigned responsibility for any department of government, that Minister shall exercise general direction and control over that department and, subject to such direction and control, the department shall be managed by a Permanent Secretary whose office shall be a public office.

For the purpose of this section –

- (a) two or more government departments may be placed under the management of one Permanent Secretary; or**
- (b) two or more Permanent Secretaries may be appointed to manage any department of government for which a Minister has been charged with responsibility.**

Sections 100 & 100A – Appointment, Removal and Discipline of Principal Representatives Abroad and Subordinate Staff

- 12.52. Our Commission shares the view of the Cox Commission that the post of Consul-General should be included in the category of “principal representative of Barbados” in regard to which the powers of appointment and removal are set out at section 100 of the Constitution.
- 12.53. In addition, the Commission took note of the wide powers vested in the Prime Minister by section 100A. The practical effect of this provision, when combined with section 100, is to grant a Prime Minister unfettered control over the movement of all personnel responsible for the diplomatic and consular representation of Barbados abroad. This includes quasi-consular posts such as those held by representatives of the Barbados Tourism Authority and the Barbados Investment and Development Corporation. Moreover, the provision at section 100A(3) extends these powers to **such offices in the Ministry responsible for the external affairs of Barbados as may be designated by the Prime Minister** (emphasis added). The role of the Public Service Commission is thus completely ousted, leaving open the possibility of politicization of this fundamentally important segment of the Public Service.
- 12.54. The Commission believes that the Prime Minister can exercise effective general direction and control of the Foreign Service without the existing arrangement at section 100A which could be manipulated or even abused for purposes of stark political patronage.

The Commission recommends:

- 12.55. The amendment of section 100(3) to include the office of Consul-General.**
- 12.56. The amendment of section 100A(1) so that the power to make appointments on transfer to offices to which this section applies shall vest in the President who shall exercise such authority on the advice of the Prime Minister, and that in the exercise of this power**

the Prime Minister shall consult with the Public Service Commission and any other Service Commission or Statutory Authority or Statutory Body whose officers may be affected.

- 12.57. This amendment seeks to remove opportunities for direct political involvement in Public Service appointments, a practice which undermines the authority and independence of Services Commissions.

Appointment etc. of Director of Public Prosecutions

The Commission recommends:

- 12.58. Reorganisation of sections 79 and 101 of the Constitution dealing with the Director of Public Prosecutions, so as to consolidate them in a separate chapter of the Constitution.**

- 12.59. Raising the age limit of the Director of Public Prosecutions to 65 years.**

Section 102 Appointment etc. of Auditor-General

- 12.60. The Commission noted that there are several provisions in the Constitution in different chapters governing the appointment, functions and terms and conditions of service of the Auditor-General. The Commission's recommendations for amendment and consolidation and the reasons therefor are stated later in Chapter 13 of this Report.

Sections 103 and 104 - Pensions

- 12.61. Serious concern was expressed to the Commission on the matter of public officers not having a right to a pension. Portability of pensions was proposed as a measure to facilitate movement of persons with certain skills and competencies between the private and public sectors. The Commission noted that Government was committed to a comprehensive study of pensions and urges that these concerns be taken into account. **The Commission concludes that recommendations on pensions should be based on the results of such a study.**

The Public Officer - Fundamental Rights and Freedoms

- 12.62. The attention of the Commission was drawn to section 21(2)(c) which permits restrictions upon public officers or members of a disciplined force:

“...in the enjoyment of freedom of assembly and association ..in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of (their) interests - section 21(1)”.

- 12.63. Sections of the Public Service most affected by this provision readily concede that unrestricted freedom to engage in partisan politics by all public officers, especially senior public officers involved in policy formulation and execution, could lead to serious conflicts of interest and

awkwardness at certain levels and result in great and unwelcome compromises to the impartiality of the Public Service.

- 12.64. The 'aggrieved' parties argue that there are some categories of public servants who are not affected by the sections in as serious a manner as other public servants. For instance, persons who are employed by statutory corporations, statutory bodies and other statal and para-statal organisations are generally not prevented from participating in partisan politics. The discrimination, they contend, affects adversely some of the most talented and competent persons within the country. This is seen as a woeful waste and patent loss to the political and electoral processes.
- 12.65. The Protective Services apart, the Commission is of the view that this is a matter for urgent attention and review so that there is evidence of consistency and justice in reconciling the obvious dilemma.
- 12.66. It does not seem advisable to delete or amend section 21(2)(c) of the Constitution but there may be a definite need for amendment of certain sections of related laws and regulations and the General Orders for the Public Service of Barbados. Reference is hereby made to General Orders 3.18.1. and 3.18.2. dealing with active participation in politics as well as to section 10.12. of General Orders dealing with Staff Relations and Trade Union Activities.
- 12.67. Sections 20(2)(c) and 22(3)(f) permit the imposition of restrictions on the freedom of expression and freedom of movement of public officers or members of a disciplined force.
- 12.68. Officers of the Protective Services constitute a special case in this regard if adequate protection, security and defence are to be guaranteed at all times.

The Commission recommends:

- 12.69. That restrictions on the fundamental rights of persons should be limited to persons and circumstances where contingencies relating to a specific post make such terms and conditions of service reasonable and justifiable.**

Head of the Public Service

- 12.70. For sometime now the designation of Head of the Public Service has been conferred on a senior public officer, usually of the rank of Permanent Secretary or equivalent status. Over time specific duties have evolved with this responsibility. The Commission investigated and researched this matter and concluded from available evidence that the post of Head of the Public Service should be a statutory full-time position and should also be provided for in the Constitution of Barbados, with the protection provided in section 105 of the Constitution.

The Commission therefore recommends:

- 12.71. Amendment of section 99(2) to include the post of Head of the Public Service.**

- 12.72. Enactment of legislation to establish the post of Head of the Public Service, to prescribe the duties and responsibilities of the office and for offices, staff, administrative resources and facilities appropriate to the post.**

The Public Service of Barbados

- 12.73. The attention of the Commission was directed to concerns expressed with reference to the Public Service operating under the aegis of the Services Commissions in relation to the 1974 Amendments; the proliferation of State Enterprises, whether as Statutory Boards, Statutory Bodies, other statal or para-statal agencies; movements towards privatization; outsourcing; contractual appointments; dilution of the authority and functions of Services Commissions; downsizing of the Public Service with increasing political control in the face of strident calls for impartiality, transparency, accountability and efficiency.
- 12.74. It is being claimed that more and more services are being taken out of the mainstream of the Public Service and more and more there seem to be developing two Public Services each operating under different sets of rules and regulations and markedly different sets of terms and conditions of service, both of which are charges on the Consolidated Fund - the Public Service under the jurisdiction of the Services Commissions and the other Public Service comprising Commissions, Statutory Boards and Bodies and other statutory authorities etc. which have taken over services formerly managed by Local Government bodies or by the central government.
- 12.75. The Commission is aware of the need for Government to deliver adequate services to meet the legitimate expectations of a well-informed, politically alert and demanding public. Nor is the Commission unaware of the relentless calls of the public for greater transparency and accountability in Government's dispensation of social justice through its social and economic policies and services.
- 12.76. Complaints were heard from members of the public of their frustration with the bureaucracy and "red tape" normally encountered in public service business transactions. The Commission hopes that the current programme of Public Sector Reform will result in what the public desires and deserves as of right; that is, a more responsive, more efficient, more client-and-service-oriented, public service operation.
- 12.77. Statutory Corporations, Statutory Bodies, State Enterprises and Commissions are some of the administrative and management mechanisms used by Government in its search for more direct and user-friendly delivery of its services. As indicated earlier in this report some of them have been very effective and successful and have justified their claim for a legitimate role and function in the administrative system of Government. Others have been less effective and less efficient for a variety of reasons including, in some cases, allegations bordering on public scandal.
- 12.78. On balance it does appear that both systems of public administration can be appropriate, adequate and effective instruments in providing and delivering certain governmental services if effective remedies are employed to deal with the defects and deficiencies in each system.
- 12.79. But there seem to be no clear guidelines as to which services are best provided and/or delivered by one or the other system of public administration and no accurate cost-benefit analysis either in

social or economic terms. **Research in this area may well assist Government in increasing the efficiency and effectiveness of its administration.**

- 12.80. Representations to this Commission urged that demands for impartiality, transparency, accountability and efficiency should apply equally to both sets of government agencies; that there should be better coordination of the agencies outside the direct ambit of the central administration; and that both sets of government agencies should be equally subject to scrutiny by the Auditor-General's Office.
- 12.81. **The Commission recommends that these developments in public administration be studied with a view to harmonization and formulation of clear policy initiatives.**

SUMMARY OF RECOMMENDATIONS

In summary the Commission recommends

- 12.82. **Promulgation of section 89A with amendment of section 89A(1) to change the structure and method of appointment and to provide for wider consultation in the appointment of the Teaching Service Commission.**
- 12.83. **Amendment of section 90(1) to change the structure and method of appointment of the Public Service Commission and to allow for wider consultation in its appointment.**
- 12.84. **Deletion of section 91 to abolish the Police Service Commission and insertion of a new section to establish a Protective Services Commission in place of the Police Service Commission to deal with matters relating to appointment, removal and discipline of members of the Police Force, the Prisons Service and the Fire Service of Barbados.**
- 12.85. **Insertion of a subsection to make provision for separate secretariats for each of the Services Commissions.**
- 12.86. **That Government keep under review the need for full-time Chairmen of the Service Commissions, with the exception of the Judicial and Legal Service Commission. Such a change can be made administratively and without an amendment to the Constitution.**
- 12.87. **Amendment of section 117(7)(e) to re-define "public officer".**
- 12.88. **That recruitment for temporary posts or of specialists on short-term contracts should be made by and with approval of the relevant Service Commission on the recommendation of the Minister.**
- 12.89. **Amendment to give constitutional protection to the office of Commissioner of Police.**
- 12.90. **Amendment to establish the Public Service Appeal Board.**

- 12.91. Amendment of section 99(2) to delete certain posts and of section 99(3) to include a definition of “Permanent Secretary”.**
- 12.92. Amendment of sections 100(3) and 100A(1) with respect to the method of appointment of persons serving abroad.**
- 12.93. Amendment of section 101(4) to raise the age limit of the Director of Public Prosecutions (D.P.P.) to 65;**
- 12.94. The establishment of the post of Head of the Civil Service by legislation.**

CHAPTER 13

FINANCE

Introduction

- 13.1. The framers of our Constitution recognised that if democracy was to be preserved those charged with the responsibility of managing public funds must be accountable to the people through their elected representatives. As a result, special provisions were included in the Constitution to govern the management of the country's revenues and to maintain a strict system of accountability on the part of those to whom these funds are entrusted.
- 13.2. The concept of an independent institution of state through which those charged with responsibility for managing public finances are accountable to the people through their elected representatives dates back to the City States of Athens in the third century B.C. The concept has taken many forms through the centuries but nowhere is it better exemplified than in the United Kingdom where the Comptroller and Auditor-General is an officer of and reports to Parliament. The holder of the office appoints its staff, is able to make representations directly to Parliament for adequate resources, has wide powers of audit in respect of governmental and quasi-governmental departments, undertakes value-for-money audits, and is authorised to accept work from outside the governmental system to permit the raising of sufficient resources for the better functioning of the department. The independence of the office is so buttressed that there can be no doubt about its impartiality.

The Commission is much indebted to Sir John Bourn, the Comptroller and Auditor-General of the United Kingdom, for placing at our disposal his vast knowledge and experience by meeting with members of the Commission and also by making available to us literature on the role and function of the Comptroller General of the Receipt and Issue of Her Majesty's Exchequer and Auditor-General of Public Accounts.

- 13.3. The existing arrangements in Barbados have not achieved the same level of independence and accountability as is evident in the United Kingdom. However, a large degree of transparency and accountability in the management of public funds is assured in at least three ways.
- 13.4. Firstly, all public funds are deposited into a Consolidated Fund from which withdrawals can be made only for the purpose of meeting expenditure charged upon the Fund by the Constitution or by an Act of Parliament. The Minister responsible for Finance is also required to lay annual estimates of revenue and expenditure for public services before the House of Assembly and Parliament must approve the annual Estimates before withdrawals can be made from the Fund. The Commission agrees that the system of votes on account of annual appropriations should be available until the legislation is passed and that, in emergency circumstances the Minister responsible for finance should be authorised to draw down sums from the Consolidated Fund, according to established constitutional principles available in Trinidad & Tobago, Jamaica, U.K. and elsewhere, pending ratification by Parliament.
- 13.5. Secondly, the office of Auditor-General has been recognised by provisions in the Constitution. The Auditor-General is not subject to the control of any person whilst exercising the functions of

the Auditor-General. It is the Auditor-General's duty to ensure that no money is issued from the Consolidated Fund except for purposes approved by Parliament and to audit the accounts of government departments and designated public authorities, statutory boards and statutory bodies.

- 13.6. Thirdly, there is provision, outside the Constitution, for a House of Assembly Committee, the Public Accounts Committee, which is headed, *ex officio*, by the Leader of the Opposition. The majority of members of the Committee is selected from among Members of Parliament who do not hold ministerial office.
- 13.7. These three provisions have partially achieved their objective. There are, however, well recognised deficiencies which must be corrected.

The Independence and Functioning of the Auditor-General

- 13.8. The general authority and power of the Auditor-General are crucial in ensuring strict accountability in the management of public funds. The efficiency of the Auditor-General's Office can, however, be adversely affected by lack of adequate resources, including constraints on funding, staffing and equipment, by the absence of sanctions against corruption and also by non-cooperation in investigations.
- 13.9. The Commission accepted that existing arrangements do not adequately allow the Auditor-General to determine the quality and composition of the staff of the office or to control in any way the movement of personnel in and out of the office. Nor are there any facilities available to the Auditor-General to engage the services of professionally competent persons outside the Public Service, if and when it becomes necessary to buy such expertise from private sources. The Auditor-General is personally responsible for the reports made to Parliament and his or her inability to determine the persons who are engaged and retained to provide the material on which the reports are based is a serious constraint on the efficiency of the office and the value of the reports which the Auditor-General provides.
- 13.10. Parliament and the Ministry of Finance determine and control the financing of the office of the Auditor-General. There is no independent parliamentary commission or other authority which can recommend to Parliament an increase in these resources, if required, to ensure that the public finances are properly safeguarded and accounted for and that there is maximum transparency in the management of public funds. Thus, the functioning of the office of Auditor-General can be impaired if, because of budgetary constraints, there is a cut-back in the resources made available to it. For this reason, the Commission is of the view that there ought to be a provision which allows a special report to be made to Parliament when budgetary constraints are likely to cause operational deficiencies in the office of the Auditor-General. The purpose of the special report would be to supply Parliament with information to enable the Auditor-General's claims to be investigated so that an independent and objective assessment may be made by Parliament.
- 13.11. Section 113(2) of the Constitution restricts the function of the Auditor-General in the conduct of the audit of government accounts. Government's activities over the past forty years have been considerably expanded by the creation of state enterprises which own and control substantial

public funds and operate over large sectors of the economy. In most cases, the legislation establishing these bodies makes provision for the audit of their accounts. There are also entities in which government is the principal shareholder. The public interest requires that all these bodies operate in such a way as to provide adequate value for money and also conduct their affairs to minimise and if possible eradicate every opportunity for corruption. The Commission is satisfied that one of the ways to ensure maximum transparency and strict accountability in the use of public funds is to confer on the Auditor-General a constitutional power to undertake value-for-money audits of the accounts of central government and such enterprises as may from time to time be prescribed by law. In undertaking these audits, the Auditor-General's mandate should extend beyond a mere bookkeeping exercise, and should include the power and responsibility of ensuring that there is efficiency in the operations of these enterprises and that public funds are spent to the best advantage. There should be a clear constitutional provision empowering the Auditor-General to perform comprehensive audits of the public accounts of the government and of all enterprises owned or controlled by the state.

- 13.12. At the same time, the Auditor-General's independence can be strengthened by improving the terms and conditions of service of the office. The Auditor-General is appointed by the Governor-General acting on the recommendation of the Public Service Commission, made after the Commission has consulted with the Prime Minister: section 102(1). Successive governments have come to accept that this post should be seen as a non-partisan one and we believe that the Leader of the Opposition should be involved in the consultative process.
- 13.13. Presently, the Auditor-General is required to retire at age sixty-two. The Constitution should be amended so that the retiring age is on par with that of the Director of Public Prosecutions -the age of sixty-five.

The Financial Administration and Audit Act, Cap. 5

- 13.14. The Financial Administration and Audit Act is the principal legislative enactment which controls the expenditure of government funds and which provides safeguards against misappropriation and corruption. We were advised that a Committee is currently examining the Act with a view to making substantial amendments to improve the supervision of government expenditure and also to strengthen the role of the office of the Auditor-General to ensure that accounting officers comply with the legislation. There has been a litany of complaints over the last 32 years from successive Auditors-General about the failure of accounting officers to comply with the provisions of the Act. The Auditor-General's reports to Parliament have been debated by Parliament on very few occasions and the recommendations for improvement to the Act have not met with prompt executive or legislative action. This is unsatisfactory in a nation which seeks to preserve parliamentary democracy and to ensure strict accountability in the use of all public funds. Whilst we are heartened by the knowledge that work has seriously commenced on amending this Act, we would urge early completion and enactment of an updated and modern Financial Administration and Audit Act. Such an Act should pay due regard to the independence necessary for improvement in the performance of the office of Auditor-General, the need for this officer to play a greater role in the appointment, transfer and retention of staff of the office, and also the need to strengthen the Auditor-General's relationship with Parliament to enable Parliament to be the real watchdog of the public purse.

The Public Accounts Committee

- 13.15. We have elsewhere recommended the expansion of the Committee system in Parliament and the provision of Committees with adequate financial resources and staff to enable them to function effectively and efficiently. The Public Accounts Committee is a creature of the Standing Orders of the House of Assembly. No member of the Senate sits on this Committee. It is chaired by the Leader of the Opposition but, in the absence of an Opposition in Parliament, such a Committee may not be appointed at all.
- 13.16. The Public Accounts Committee has reported to Parliament only twice in its more than thirty years of existence. Even when it has met, the record of its meetings has certainly not been made available to the public. Its functioning has been such that we are left to conclude that as presently constituted it is not undertaking its very important function. We are satisfied that there is an obvious need to strengthen this Committee by giving it constitutional status and adequate resources, whilst expanding its membership to include members of the Senate. The Cox Commission came to the same conclusion at paragraphs 125 and 127 of its Report, and those comments and recommendations on this subject are as valid and pertinent today as they were twenty years ago.
- 13.17. We have earlier adverted to the vast expansion of the State into commercial enterprises. In the case of those corporations which have been established by Act of Parliament, it is usual to provide for the accounts to be audited by the Auditor-General or an independent auditor and laid annually in Parliament. In several instances, reports have not been so laid for many years and very often they are laid late and prove to be inadequate. We are satisfied that there should be stricter parliamentary surveillance of state enterprises, public authorities, statutory boards and statutory bodies and that the Committee system of Parliament should be used for this purpose. We are also reminded of the comment at paragraph 126 of the Cox Report on "the apparent ease with which Government can expend large sums on the purchase of properties or services without prior knowledge or approval of Parliament as to the particular properties or services so purchased." This led the Cox Commission to recommend that the prior approval of Parliament be obtained in respect of the proposed purchase by the Government or by a statutory board or body of property of a value above such sum as may be determined by Parliament from time to time. We adopt this recommendation in relation to all property.

The Consolidated Fund

- 13.18. We heard evidence to the effect that the Constitution as well as the *Financial Administration and Audit Act*, Cap. 5 refer in some instances to the Consolidated Fund as though the Fund is a cash or bank account. Revenue is paid into the Treasury or into the Treasury Account at a Bank and credited to the Consolidated Fund. Expenditure, on the other hand, is paid out of cash or bank accounts and debited to or charged on the Consolidated Fund. The technical argument made to us is that there is a need to amend sections 107, 108(2) and 109(6) so that the language used would adequately reflect the transactions which take place. Whilst we appreciate the technical niceties of the argument, we are of the view that the Consolidated Fund is a well recognised concept and that the establishment of a central fund into which all State revenues,

other than those specifically excepted by law, must be paid, is essential to the proper control and management of public finances. We consider that the wording of the sections should be clear in style and content and should ensure that all revenues of the State from whatever source arising should, subject to such exceptions as may be provided by law, form one Fund and should be appropriated for the purposes and in the manner and subject to the charges and liabilities determined and imposed by law. For the purpose of effecting the recommended change, we have drawn on the experience and legal precedents available in the Constitutions of Ireland and of several Caribbean countries.

Recommendations

The Commission, therefore, recommends the following:

- 13.19. the amendment of section 102(1) to ensure that in the appointment of the Auditor-General, the Prime Minister and the Leader of the Opposition are both consulted before the appointment is made by the President on the recommendation of the Public Service Commission;**
- 13.20. the age of sixty-five years for vacating of office by the Auditor-General under section 102(3);**
- 13.21. delegation to the Auditor-General of authority to select staff for the office of the Auditor-General;**
- 13.22. provision for the Auditor-General to submit a special report to Parliament when the amount appropriated for the Department of the Auditor-General in the Annual Estimates of Expenditure is insufficient for the discharge of the functions of that Department to the end of the financial year;**
- 13.23. provision for the Auditor-General's special report mentioned above to be referred to the Public Accounts Committee to be evaluated and reported on to Parliament within one month after the reference with a view to providing the Auditor-General with sufficient resources for the discharge of the functions of his office. The Auditor-General should be given control of these funds, subject to the usual accountability for their use;**
- 13.24. the Auditor-General should be authorised and given the necessary resources to employ auditors from the private sector to provide audits within the purview of the office of Auditor-General;**
- 13.25. amendment of section 113(2) to permit the Auditor-General to undertake comprehensive audits in order to provide an objective and constructive assessment of the extent to which financial, human and physical resources are managed with due regard to economy, efficiency and effectiveness. The audit should be an examination of both financial and management controls, including information systems and reporting;**

- 13.26. the Auditor-General should be empowered to carry out audits of the accounts, balance sheets and other financial statements of all enterprises owned or controlled by the State;**
- 13.27. the Public Accounts Committee should be given greater constitutional importance by specifically providing for its establishment in the Constitution. Its membership should consist of not less than six nor more than ten members. The Chairman of the Public Accounts Committee should be a member of the Opposition in the House of Assembly, if any, and if willing to act. The Chairman and other members may comprise an equal number of members of the House of Assembly and the Senate as the House of Assembly may determine. Where no member of the Opposition in the House of Assembly is willing to act as Chairman of the Public Accounts Committee, a member of the Opposition in the Senate should be appointed, and where no member of the Opposition in the Senate is willing so to act, one of the Senators appointed by the President in his discretion should be appointed Chairman;**
- 13.28. the Public Accounts Committee should consider and report to the House of Assembly on:**
- (a) the examination of accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure of Barbados;**
 - (b) such other accounts laid before Parliament as the Committee may think fit or such other accounts as the House of Assembly may direct the Committee to examine;**
 - (c) the audited accounts, balance sheets and other financial statements of such enterprises as are owned or controlled by or on behalf of the State and as may be prescribed by Parliament;**
 - (d) such other accounts as may stand referred to the Committee by any other law;**
 - (e) the report of the Auditor-General on such accounts as are mentioned above;**
 - (f) any audit undertaken by the Auditor-General under the proposed amendment to section 113(2);**
 - (g) special reports by the Auditor-General on the amounts voted in the approved Estimates of Expenditure for the office of the Auditor-General,**
- 13.29. an enterprise shall be presumed to be controlled by the State if the Government or any body controlled by the Government**
- (a) exercises or is entitled to exercise control directly or indirectly over the affairs of the enterprise;**

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- (b) is entitled to appoint a majority of the directors of the Board of Directors of the enterprise;**
 - (c) holds at least fifty per cent of the ordinary share capital of the enterprise;**
- 13.30. appropriate amendments to sections 107, 108(2) and 109(6) of the Constitution to effect clarification of the matters referred to in paragraph 13.17. above in relation to the establishment of the Consolidated Fund;**
- 13.31. early completion and enactment of an updated and modern Financial Administration and Audit Act which would pay due regard to the independence necessary for the performance of the functions of the Auditor-General, permit the Auditor-General to play a greater role in the appointment, transfer and retention of the staff of the Audit Department, and would also strengthen the Auditor-General's relationship with Parliament to enable Parliament to be the real watchdog of the public purse;**
- 13.32. the Public Accounts Committee should be required to meet at such times as may be specified by law or by the Standing Orders of the House of Assembly and should report to Parliament at least once in every year and within six months of the presentation of the Auditor-General's Report to Parliament on the annual appropriation accounts;**
- 13.33. provision should be made for votes on account of annual appropriations until legislation is passed and for an emergency draw down by the Minister responsible for Finance from the Consolidated Fund subject to subsequent ratification by Parliament, in both cases under principles established and applied in many countries of the Commonwealth.**

CHAPTER 14

Related Laws And Transitory Provisions

Introduction

- 14.1. The first of our specific Terms of Reference requires us to examine, consider and enquire into other related laws and matters which might impact on the Constitution. There are several such laws. There are also others which are affected by the Constitution itself.
- 14.2. We are of the view that as a result of several of our recommendations and in particular those relating to the patriation of the Constitution, the change to a republican form of government with a President as Head of State and the repeal of the existing law clause, changes will have to be made to several enactments to ensure conformity with the Constitution as a whole and, in particular, with the fundamental rights provisions.
- 14.3. Among the laws which we have identified as requiring close examination and possible change are the Barbados Citizenship Act, the Civil Establishment Act, the Crown Proceedings Act, the Crown Lands (Vesting and Disposal) Act, the Defence Act, the Election Offences and Controversies Act, the Emergency Powers Act, the Financial Administration and Audit Act, the Governor-General (Conditions of Service) Act, the Immigration Act, the Income Tax Act, the Interpretation Act, the Judges Remuneration and Pensions Act, the Judicial and Legal Service Commission Act, the Official Secrets Act, the Ombudsman Act, the Parliament (Privileges, Immunities and Powers) Act, the Pensions Act, the Police Act, the Public Order Act, the Public Service Commission Act, the Representation of the People Act, the Senate (Disputed Appointments & Vacancies) Act, the Service Commissions Act, the Supreme Court of Judicature Act and the Teachers Pensions Act.
- 14.4. During our hearings, we were made aware that work has already started on the amendment and reform of some of these; for example, the Financial Administration and Audit Act, the Police Act and the Service Commissions Act. The civil establishment legislation is also being reformed as part of the programme of reform of the Public Service.
- 14.5. This undertaking will require the setting up of a special Task Force mandated to urgently analyse all of the existing statutory provisions in Barbados and make recommendations for the specific changes required. These changes must be effected prior to the commencement of the reformed Constitution.
- 14.6. No reference is made in the existing Constitution to the prerogative powers which vest in the Crown. The change to a republican system of government emphasises the need to review such powers and to make some constitutional provision in respect of them. We are of the view that all powers, functions, rights and prerogatives exercisable in or in respect of Barbados immediately before the 30th November, 1966 should be vested in and declared to belong to the people. Provision should be made that such powers, functions, rights and prerogatives should not be exercised or be capable of being exercised in or in respect of the State save only by or on the authority of the Government and only to the extent to which

provision is made by the reformed Constitution or by law. *The Case of Proclamations (1611) 12 Co. Rep. 74* has long settled the right of the Court to determine the limit of the prerogative. Constitutional and statutory provisions have traditionally also defined, refined and limited prerogative powers and their exercise.

- 14.7. Despite such a provision it will still, in our view, be necessary for a Task Force to investigate further the details of the powers, functions, rights and prerogatives to determine their full content and whether it is necessary to retain them all.
- 14.8. For the removal of doubt, the reformed Constitution should also provide that the democratic state of Barbados should succeed to all property, assets, rights and liabilities which at present vest in the Crown.
- 14.9. There were several submissions made to us on other matters (not necessarily of a legal nature) but which are of relevance to the proper day-to-day functioning of any Constitution. We have not reported specifically on all of these, nor has it been necessary for us to comment or make recommendations on each one of them, although we appreciated their importance to the process of review. Some require further study; others will be dealt with when the Task Force examines the related laws. Some of them will also appear in the published minutes of our meetings and consultations.
- 14.10. Reviewing the Constitution of necessity involved us giving consideration to a wide range of matters such as fundamental rights, electoral systems and constitutional status for certain institutions. However, in deciding on those matters that should receive constitutional recognition, we took the approach that constitutional recognition should be sparingly accorded on the basis that the Constitution should be concerned principally with the strategic elements of the organisation of the State.
- 14.11. There are, however, two specific matters which require special mention. The first relates to the right of freedom of association. It was submitted to us that the existing provision should be reformulated in such a way as to ensure that an employer is bound to negotiate with a trade union or association chosen by an employee. It was argued that if an employer is not bound to recognise an association or trade union chosen by an employee then the constitutional right of freedom of association may remain illusory.
- 14.12. The right of association is one of the most important rights in the proper functioning of civil society. In the changes which we have proposed, we have sought to ensure that this right is so designed as to regulate not only the relationship between the State and its citizens, but also to have a horizontal effect in a manner which could affect the rights of other private persons such as employers. We consider that industrial relations policy should be designed to require employers to negotiate with trade unions the issue of recognition. We are of the view that appropriate legislation should be passed to buttress the right set out in the Constitution. We were informed that such legislation is in an advanced state of preparation and we would urge its urgent enactment.

- 14.13. The second relates to the Barbados National Honours system. The Cox Commission had been commanded in its instrument of appointment to examine, study and enquire into the necessity for a system of Barbados National Honours. As a result of the Cox Commission's recommendations, Letters Patent were issued establishing the Order of Barbados and the various Classes of Awards. The system has been accepted by the people and every effort has been made to remove partisan politics from the selection process. We are of the view that such a system should be retained. However, because of the recommended change to a republican form of government, it will be necessary to revise the system and to make the appropriate constitutional arrangements for the operation of the system in the new environment.

Transitory Provisions

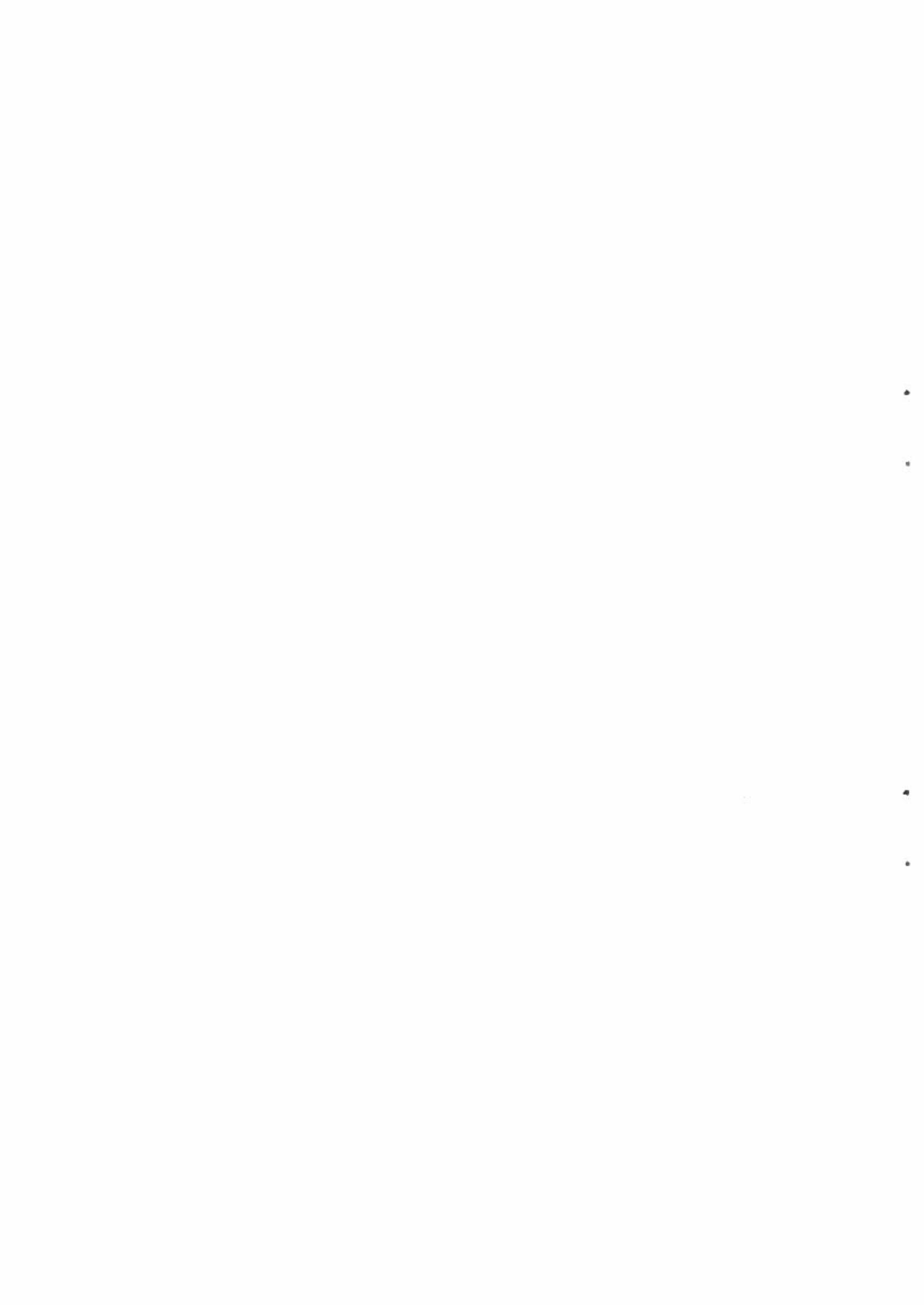
- 14.14. The promulgation of the reformed Constitution must be so timed as to ensure that there is no legal hiatus between the repeal of the existing Constitution and the commencement of the new Constitution. Of necessity this will involve the enactment of several statutory provisions of a transitory nature. It will also involve the continuance in full force and effect of certain laws, institutions, offices and organs of government. These provisions will be designed to ensure continuity in the authority and effectiveness of organs and institutions of the State in the course of transition from the present Constitution to the republican state to be established by the reformed Constitution.
- 14.15. Some Constitutions seek to achieve such a transition by inserting in the Constitution provisions that eventually become spent. This is not the ideal solution. We are of the view that a separate Act should provide for such matters. The Act rather than provisions of the Constitution will become spent, and the Constitution will not be cluttered up with provisions of a transitory nature.

Recommendations

The Commission recommends

- 14.16. **The establishment of a special Task Force mandated to analyse urgently existing statutory provisions to ensure that they are in or brought into conformity with the reformed Constitution and, in particular, with the fundamental rights provisions therein.**
- 14.17. **Provision should be made for succession to the prerogatives which vest in the Crown by common law. A further detailed examination must also be undertaken to identify the contents of those prerogatives and which of them should be retained.**

- 14.18. Provision should be made in the Constitution to ensure succession to all property, assets, rights and liabilities which at present vest in the Crown in right of its government of Barbados.**
- 14.19. Legislation should be enacted urgently to make it obligatory for employers to recognise trade unions so as to fortify the constitutional right of freedom of association.**
- 14.20. The Barbados National Honours system should be retained but appropriate changes made to reflect the change to a republican form of government and the new environment ensuing therefrom.**
- 14.21. Transitory provisions should be enacted to ensure continuity in the authority and effectiveness of the organs and institutions of State during the legal period and the process of transition from the existing Constitution to the reformed Constitution.**



CHAPTER 15**SUMMARY OF RECOMMENDATIONS****1. THE PREAMBLE**

The Commission recommends as the Preamble to the reformed Constitution the revised text which appears at pages 18 and 19 of this Report.

2. THE SUPREME LAW

The Commission recommends that the Supreme Law Clause be retained. It should also be strengthened by expressly conferring on the courts the power to review legislation to ensure its conformity with the Constitution. Also citizens should be given the right to mount constitutional challenges concerning the validity of any legislation which they consider may be *ultra vires* the Constitution. Those recommendations were made in paragraphs 6 and 7 of the Cox Report. However, differing from the Cox Commission, we recommend that a citizen making such a challenge should have a relevant interest.

3. FUNDAMENTAL PRINCIPLES AND RESPONSIBILITIES

The Commission recommends that certain broad statements of principle defining the general policy framework within which the governance of Barbados is undertaken should be included in the reformed Constitution of Barbados. The application of these principles in the making of laws should be the responsibility of Parliament and should not be cognisable by any court under any of the provisions of the Constitution.

A. Responsibilities of Persons

The Commission recommends that the reformed Constitution emphasise that it is the duty and responsibility of every person in Barbados to:—

- obey the law and abide by the Constitution and respect the ideals which it enshrines and the institutions which it establishes;
- exercise that person's rights in a manner which respects the rights of others;
- cooperate with lawful agencies in the maintenance of law and order;
- respect the National Flag, the National Anthem, the National Pledge and all National Emblems;

- register for electoral and other lawful purposes;
- defend the country and render national service whenever necessary;
- value and preserve the rich heritage of Barbadian culture;
- create and maintain a clean and healthy environment and have compassion for living creatures;
- participate in the economic, political and social life of Barbados;
- contribute to the well-being of Barbados to the best of that person's ability;
- strive towards excellence in all spheres of individual and collective activity, so that the Nation constantly rises to higher levels of endeavour and achievement;
- promote harmony and a spirit of unity among all the people of Barbados, transcending religious, sectoral or racial diversities and abstain from practices derogatory to the dignity of the human person.

B. Responsibilities

The State shall:--

- respect democratic principles and the fundamental rights and freedoms proclaimed in this Constitution, and encourage and facilitate the widest possible participation in all the processes and institutions of government;
- endeavour to operate the machinery of government, including the use and disposition of public finances, with the greatest degree of transparency consistent with good government and the national interest, and in a manner that is in keeping with the democratic vocation of Barbados;
- endeavour to ensure the protection and promotion of the internationally recognised economic and social rights of its People, including the right to work, the right to health, the right to education and the right to public assistance in cases of extreme need;
- endeavour to safeguard the economic interest of the weaker sections of the community and where required contribute to the support of the aged, the infirm, the disabled and children;
- endeavour to secure that private enterprise is so conducted as to ensure reasonable efficiency in the production and distribution of goods, the provision and delivery of services and to protect the public against unjust exploitation;

- direct its policies towards securing that the operation of free competition is not allowed to develop in such a manner as to result in the concentration of ownership or control of essential commodities in a few individuals to the common detriment of the People;
- ensure that the beaches and public areas are accessible to all and do not become the exclusive preserve of any one sector of the community;
- fashion and direct its policies to ensure that land is not so owned and used as to result in a concentration of ownership and control in a few individuals to the common detriment of the People;
- give the highest priority in the planning and execution of government policy to the preservation and protection of the natural environment of Barbados, which it shall hold as a sacred trust for future generations;
- affirm its commitment to the idea of peace, friendly cooperation and security among all nations founded on international justice and morality and respect for human rights;
- in the conduct of state affairs, accept the generally recognised principles of international law and ensure that its Parliament and people respect and implement treaties and conventions which the State, through its Executive and Parliament, has negotiated and ratified.

4. CITIZENSHIP

The Commission recommends that:–

- (a) the Constitution be amended to recognise as citizens by birth the children born overseas to citizens of Barbados while serving in a diplomatic or consular capacity;
- (b) children born in Barbados should be deemed citizens at birth only where at least one parent is a citizen of Barbados, a permanent resident, an immigrant of Barbados or is registered under the *Immigration Act* by the provision enacted in a 1996 enactment;
- (c) a child aged not more than five years found in Barbados, whose parents are not known, shall be presumed to be a citizen of Barbados by birth;
- (d) a child under the age of 18 years, neither of whose parents is a citizen of Barbados, who is adopted by a citizen of Barbados shall, on application, be registered as a citizen of Barbados;

- (e) consequential amendments be made to other legislation to give full effect to the amended constitutional provisions;
- (f) children born of Barbadian males and females should be equally treated subject to such exceptions and qualifications as may be prescribed in the *Barbados Citizenship Act*;
- (g) the Constitution should be amended to make it absolutely clear that no child born outside Barbados may be recognised as a citizen by descent unless at least one parent is a citizen of Barbados by birth and holds Barbadian citizenship at the time of the child's birth;
- (h) the present policy of recognizing dual and multiple citizenship should be retained;
- (i) the Constitution or related laws should make further provision prescribing the exceptions and qualifications to the grant of citizenship by virtue of marriage. This would prevent persons who would be considered prohibited persons in accordance with the First Schedule of the *Immigration Act*, Cap. 190, from being granted citizenship automatically;
- (j) persons should not be deprived of citizenship without due process of law. The Commission recommends that the applicable law be amended to reflect this fundamental principle;
- (k) existing legislation which provides for review of the cases of applicants who are denied citizenship or permanent resident or immigrant status under the appropriate laws should be strengthened. The Review Board should be obligated to report annually to the Minister. Reports should be laid in Parliament. This would achieve transparency and avoid opportunities for corruption, since Parliament would be in a position to monitor the system and debate the reports.

5. THE BILL OF RIGHTS

The Commission recommends:-

- (a) Simplification of the language of the Chapter, in order to make its meaning more accessible to non-specialists. For increased clarity of the text of the Chapter, the Commission proposes that the rights and freedoms protected should be presented in a clear and distinct manner; so too the exceptions and modifications which are necessary and appropriate in a free and democratic society.
- (b) The category of gender should be included in the definition of "discriminatory" in the revised Constitution.

- (c) That the special care which society undoubtedly owes to persons with various physical and/or mental disabilities be dealt with by way of carefully crafted legislation – as is, to some extent, already the case – rather than in the broad sweep of constitutional provisions.
- (d) Inclusion in the revised Constitution of declaratory language similar to that of the International Covenant on Economic, Social and Cultural Rights to meet concerns expressed by many who appeared before the Commission.
- (e) That the right of every citizen to vote in an election of members of the House of Assembly and the right of every citizen to be qualified for membership therein be entrenched in the Constitution as fundamental rights, subject only to such exceptions and considerations as may be reasonable in a democratic society and as may be prescribed by law.
- (f) That the emergency provisions in Chapter III of the Constitution should be included in a separate chapter.
- (g) Deletion of section 15(2) which authorises the retention of certain punishments or treatments that were lawful before Independence.
- (h) By a majority, deletion of section 26 which saves existing law and derogates from the supremacy of the Constitution.

6. PRIVATE ACTIONS VIOLATING FUNDAMENTAL RIGHTS

The Commission recommends that Parliament, as a matter of urgency, enact remedial legislation in all areas where the Constitution provides a remedy and redress against governmental or other state action, but where no law exists to provide an appropriate or adequate remedy against private action of the same character.

7. THE HEAD OF STATE: ELECTION AND REMOVAL

The Commission recommends that:–

- (a) The Head of State of Barbados should be a President, elected by an Electoral College constituted by the Senate and the House of Assembly meeting as a single body for the purpose of such an election.
- (b) The system of government should be that of a parliamentary democracy with substantive executive authority exercised by a Cabinet headed by a Prime Minister.
- (c) The President should be a citizen of Barbados by birth or descent not less than 40 years of age and should have been resident in Barbados continuously for at least 5 years prior to election.

- (d) The President should hold no other office of emolument or profit, whether in the public service or otherwise.
- (e) The President should hold office for a fixed term of seven years.
- (f) The salary and allowances of the President and the other terms of service should not be altered to the disadvantage of the President after assumption of office.
- (g) The person holding the office of Governor-General at the commencement of the reformed Constitution should hold office of President under the new Constitution until a President is elected under the provisions of the new Constitution.
- (h) The Electoral College shall be convened by the Speaker of the House of Assembly who shall preside as chairman over the proceedings of the Electoral College and shall have an original vote.
- (i) Ten Senators, the Speaker, and fourteen other members of the House of Assembly shall constitute a quorum of the Electoral College.
- (j) Whenever the office of the President is vacant, or within not more than 90 days nor less than 60 days before the term of office of the President will expire, the Prime Minister shall consult with the Leader of the Opposition with a view to their joint nomination of a suitable candidate for election as President.
- (k) If the Prime Minister and the Leader of the Opposition submit to the Speaker in writing a joint nomination of a candidate for election as President, being a nomination to which the candidate has consented, the Speaker shall inform the Electoral College of the nomination and declare the candidate duly elected without a vote of the Electoral College for the election.
- (l) If the Electoral College has been informed of the nomination of only one candidate the Speaker shall declare that candidate to have been duly elected without a vote of the Electoral College for the election.
- (m) If the Prime Minister and the Leader of the Opposition are unable to agree a joint nomination of a candidate for election as President, the Prime Minister shall notify the Speaker to that effect and the Speaker shall inform the Electoral College accordingly.
- (n) The Prime Minister or the Leader of the Opposition or any ten members of the House of Assembly, may, during the period expiring fourteen days after the day on which the Electoral College has been so informed, submit to the Speaker in writing a nomination of a candidate for election as President and the Speaker shall at the first meeting of the House after the expiration of that period and before the House proceeds to any other business inform the House of the nominations received to which the candidates named have consented.

- (o) No candidate shall be elected President unless the person has secured the votes in secret ballot of not less than two-thirds of all members of the Electoral College.
- (p) Whenever the question of the election of the President from among two or more candidates is put to a vote, voting shall be by secret ballot, or in such manner as not to disclose the vote of any member of the Electoral College.
- (q) The President may be removed from office if the President –
 - (i) wilfully violates any provision of the Constitution;
 - (ii) behaves in such a way as to bring the office into discredit, ridicule or contempt;
 - (iii) behaves in a way that endangers the security of the State;
 - (iv) because of physical or mental or other incapacity, is unable to perform the functions of the office.
- (r) The President should be removed from office if –
 - (i) a motion is proposed in the House of Assembly that the removal of the President from office should be investigated by a tribunal;
 - (ii) the motion states with full particulars the grounds on which the removal from office is proposed, and is signed by not less than one-third of all members of the House of Assembly;
 - (iii) the motion for removal from office is approved by the vote of not less than two-thirds of all the members of the Senate and the House of Assembly assembled together;
 - (iv) a tribunal consisting of the Chief Justice and four other judges appointed by the Chief Justice (being as far as practicable the most senior judges of the Supreme Court of Judicature) investigates the complaint and reports on the facts to the Speaker;
 - (v) the Senate and the House of Assembly assembled together on the summons of the Speaker consider the report and by resolution supported by the votes of not less than two-thirds of all members of the Senate and the House of Assembly assembled together, declare that the President be removed from office.
- (s) Where the office of President is vacant or the President is incapable of performing the functions of President by reason of absence from Barbados, or for any other reason, those functions should be performed by:–

- (i) such person as the Prime Minister and the Leader of the Opposition may jointly designate;
- (ii) where there is no person so designated within seven days of the vacancy, or as the case may be, the incapacity in question occurring, by the President of the Senate;
- (iii) where the President of the Senate is unwilling or for whatever reason is unable to act, by such person as the Prime Minister may designate.

8. THE SENATE

The Commission recommends:-

- (a) The number of Senators should remain at twenty-one. However the composition of the Senate should be modified, principally to provide for more representatives for those who do not support the Government of the day and also to give recognition to the fact that there are now more than two established political parties in Barbados and that the number of parties can increase. These objectives can be achieved by the following proposals:

Where there is a Leader of the Opposition, the appointment of Senators should be as follows:

- (i) twelve Senators shall be appointed by the President, acting in accordance with the advice of the Prime Minister;
- (ii) four Senators shall be appointed by the President, acting in accordance with the advice of the Leader of the Opposition;
- (iii) if there are members of a political party represented in the House of Assembly who do not support the Prime Minister or the Leader of the Opposition, two Senators shall be appointed by the President acting after consultation with the Leader of that political party or where there is more than one such party, the leaders of those parties;
- (iv) if there is represented in the House of Assembly no such political party as is described in sub-paragraph (iii) above, two Senators shall be appointed by the President acting in the President's discretion after consultation with (a) the leader of any political party which was supported in the election by the votes of at least ten per cent of all those who voted in the election and (b) such other persons as the President considers ought to be consulted;

- (v) three Senators shall be appointed by the President, acting in the President's discretion, after consultation with such persons as the President considers ought to be consulted, to represent such interests as the President considers ought to be represented in the Senate.

Where there is no Leader of the Opposition by reason of the fact that the President, acting in the President's discretion, has determined that there is no person qualified under the Constitution for and willing to accept appointment to that office, the appointment of Senators should be as follows:

- (i) twelve Senators shall be appointed by the President, acting in accordance with the advice of the Prime Minister;
 - (ii) six Senators shall be appointed by the President, acting in the President's discretion after consultation with (a) the leader of any political party which was supported in the election by the votes of at least ten per cent of all those who voted in the election and (b) such other persons as the President considers ought to be consulted;
 - (iii) three Senators shall be appointed by the President acting in the President's discretion after consultation with such persons as the President considers ought to be consulted, to represent such interests as the President considers ought to be represented in the Senate.
- (b) An appropriate amendment should be made to the Constitution to provide that the Senate can debate money resolutions before expenditure on such resolutions is authorised.

9. PARLIAMENTARY COMMITTEE SYSTEM

The Commission recommends that the Committee system in Parliament be expanded and that parliamentary committees be provided with adequate financial resources and appropriate staff so that they may be better able to ensure government accountability and to provide opportunities for concerned and interested persons to make representations to Parliament through its committees on issues that affect the community.

10. THE ELECTORAL SYSTEM

The Commission recommends that the present system of "first-past-the-post" should be retained.

11. INTEGRITY COMMISSION

The Commission recommends that a Parliamentary Integrity Commission should be established. The duty of the Commission would be to receive declarations of assets, liabilities and

income of Members of Parliament with powers if necessary to investigate any declaration and generally to perform such other duties as may be prescribed by Parliament.

12. PEOPLE'S INITIATIVES

The Commission recommends that, as soon as possible, Government should introduce into Parliament legislation creating a system of "People's Initiatives" designed to accord to electors a measure of original law-making power without by-passing or distorting the fundamental authority of Parliament in this domain. It is recommended that, at the time when a general election is held, qualifying groups of electors should be empowered to present, for the approval or disapproval of the general electorate, simply-worded propositions for legislation by the incoming Parliament. It would be the responsibility of the Government, whenever any such proposition was approved by a qualifying proportion of the electorate, to present the relevant legislative measure to Parliament, where it would be the object of a free vote not subject to the discipline of the Party Whips.

13. ELECTION DISPUTES

The Commission recommends that:

- (a) There should be a right of appeal to the Court of Appeal on all questions of disputed membership of the Senate, and that section 39 of the *Election Offences and Controversies Act* Cap. 3, should be amended to provide that the Election Court should be constituted by any three judges of the Court of Appeal, whose decision shall be final.
- (b) In relation to section 46(2) of the Constitution, Parliament should by law prescribe the authority or authorities responsible for determining certain questions concerning the membership of the House of Assembly, in particular whether any person has vacated a seat or is required by section 45 (2) (a) to cease to function as a member.

14. THE EXECUTIVE

The Commission recommends that:—

- (a) The executive authority of Barbados shall be vested in the President who shall be Commander-in-Chief of the armed forces.
- (b) Section 66(2) of the Constitution should be amended to remove the power of the Prime Minister to advise the President to dissolve Parliament when the House of Assembly has by a majority of all its members resolved that the appointment of the Prime Minister be revoked.

- (c) If, within seven days of a resolution to revoke the appointment of the Prime Minister, the President is unable to find anyone who can command the support of a majority of members of the House of Assembly, the President should be empowered to dissolve Parliament.
- (d) Section 74(5) should be amended to provide that when the President is doubtful whether a person commands the support of a majority of those members of the House of Assembly who do not support the Government, the President should act in his own discretion, after consulting with the Speaker, in determining the question.

15. THE PRIVY COUNCIL

The Commission recommends that the Privy Council should be renamed the “Presidential Council”, and that the tenure of its members be fixed at a maximum of seven years instead of the present maximum of fifteen years and that the age limit of seventy-five years for Presidential Councillors should be removed.

16. DIRECTOR OF PUBLIC PROSECUTIONS

The Commission recommends:-

- (a) By a majority, that section 79A should be amended to remove the power of the Attorney General to give directions to the Director of Public Prosecutions in regard to the matters specified therein, and to provide that, in relation to those matters, the Director of Public Prosecutions should consult the Attorney General before exercising the relevant powers.
- (b) That the age of retirement for the Director of Public Prosecutions should be 65.

17. THE JUDICATURE

The Commission recommends, by a majority, that sections 81 and 89 of the Constitution should be amended to provide as follows:-

- (a) That the Chief Justice be appointed by the Head of State on the joint recommendation of the Prime Minister and the Leader of the Opposition after the latter have consulted with the Judicial and Legal Service Commission. If no joint recommendation is tendered the Head of State shall, in his own deliberate judgement, appoint a person from among those considered by the Prime Minister and the Leader of the Opposition.
- (b) That the other judges of the Supreme Court be appointed by the Head of State acting on the recommendation of the Judicial and Legal Service Commission after that Commission has consulted with the Prime Minister and the Leader of the Opposition.

- (c) That in appointing the members of the Judicial and Legal Service Commission (other than the Chief Justice and the Chairman of the Public Service Commission or nominee) the Head of State should act after consultation with the Prime Minister and the Leader of the Opposition, where, presently, the Governor-General is required to act in accordance with the recommendation of the Prime Minister after the latter has consulted the Leader of the Opposition.
- (d) That the retirement age for all judges of the Supreme Court, with the exception of the Chief Justice, should be fixed at 72.
- (e) That the Head of State may, after consultation with the Prime Minister, the Leader of the Opposition, and the Judicial and Legal Service Commission, authorise the Chief Justice to continue in office until he has attained the age of 75 years.
- (f) That the procedure for the removal of the Chief Justice should be initiated by referral to the Head of State by the Judicial and Legal Service Commission after consultation with the Prime Minister and the Leader of the Opposition; in the case of a judge the procedure should be initiated by referral to the Head of State by that Commission after consultation with the Prime Minister and the Chief Justice.
- (g) That the Magistracy should be recognised in the Constitution as part of the judicial system of Barbados and that Government should, as a matter of urgency, undertake a detailed study of the status of the institution covering terms and conditions of service of magistrates, the appropriateness of establishing a career magistracy, the role of the Chief Magistrate in relation to the administration of the magistracy, and the scope of constitutional protection which should be afforded to its officers.

18. THE PUBLIC SERVICE

The Commission recommends that the relevant sections of the Constitution should be amended to provide for:

- (a) Appointment of the Public Service Commission by the Head of State after consultation with the Prime Minister and the Leader of the Opposition and with such organisations as the Head of State sees fit to consult.
- (b) The bringing into force of the existing constitutional provisions for the creation of a Teaching Service Commission.
- (c) The creation of a Protective Services Commission to deal with matters relating to the appointment, removal and discipline of officers of the Police Force, the Prisons Service and the Fire Service, and the consequential abolition of the Police Service Commission.

- (d) Inclusion in the revised Constitution of language similar to that of section 8 of the *Police Act*, Cap. 167 to the effect that the Commissioner of Police shall have the command and the superintendence of the Police Force and shall be responsible to the President for the efficient administration and government of the Force;
- (e) The establishment of a Public Service Appeal Board comprising a Chairman and two other members, and appointed by the Head of State after consultation with the Prime Minister, the Leader of the Opposition, and the Chief Justice, to hear and determine appeals from any decisions of a Service Commission or from any person to whom powers of the Commission have been duly delegated.
- (f) By a majority, the reversal of the 1974 constitutional amendments with respect to temporary and unestablished posts as well as to certain senior posts.
- (g) A redefinition of "public service" at section 117(7) so as to retain the meaning of the term in force before the 1974 constitutional amendments.
- (h) Inclusion of a definition of "permanent secretary" to make it clear that the holder of such office has the principal responsibility for the management of the respective department of which the Minister has general direction and control.
- (i) Removal of the posts of "chief or deputy chief professional or technical adviser or officer" from the list of posts appointment to which requires that the respective Service Commission should consult the Prime Minister before tendering a recommendation to the Head of State.

19. FINANCE

The Commission recommends:

- (a) that the Public Accounts Committee should be given greater constitutional importance by specifically providing for its establishment in the Constitution. Its membership should consist of not less than six nor more than ten members. The Chairman of the Public Accounts Committee should be a member of the Opposition in the House of Assembly, if any, and if willing to act. The Chairman and other members may comprise an equal number of members of the House of Assembly and the Senate as the House of Assembly may determine. Where no member of the Opposition in the House of Assembly is willing to act as Chairman of the Public Accounts Committee, a member of the Opposition in the Senate should be appointed, and where no member of the Opposition in the Senate is willing so to act, one of the Senators appointed by the President in his discretion should be appointed Chairman;
- (b) that the Public Accounts Committee should consider and report to the House of Assembly on the examination of accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure of Barbados; such other accounts as the Committee may think fit or such other accounts as the House of Assembly may direct the Committee

to examine; the audited accounts, balance sheets and other financial statements of such enterprises as are owned or controlled by or on behalf of the State and as may be prescribed by Parliament; such other accounts as may stand referred to the Committee by any other law; and the report of the Auditor-General on the accounts mentioned;

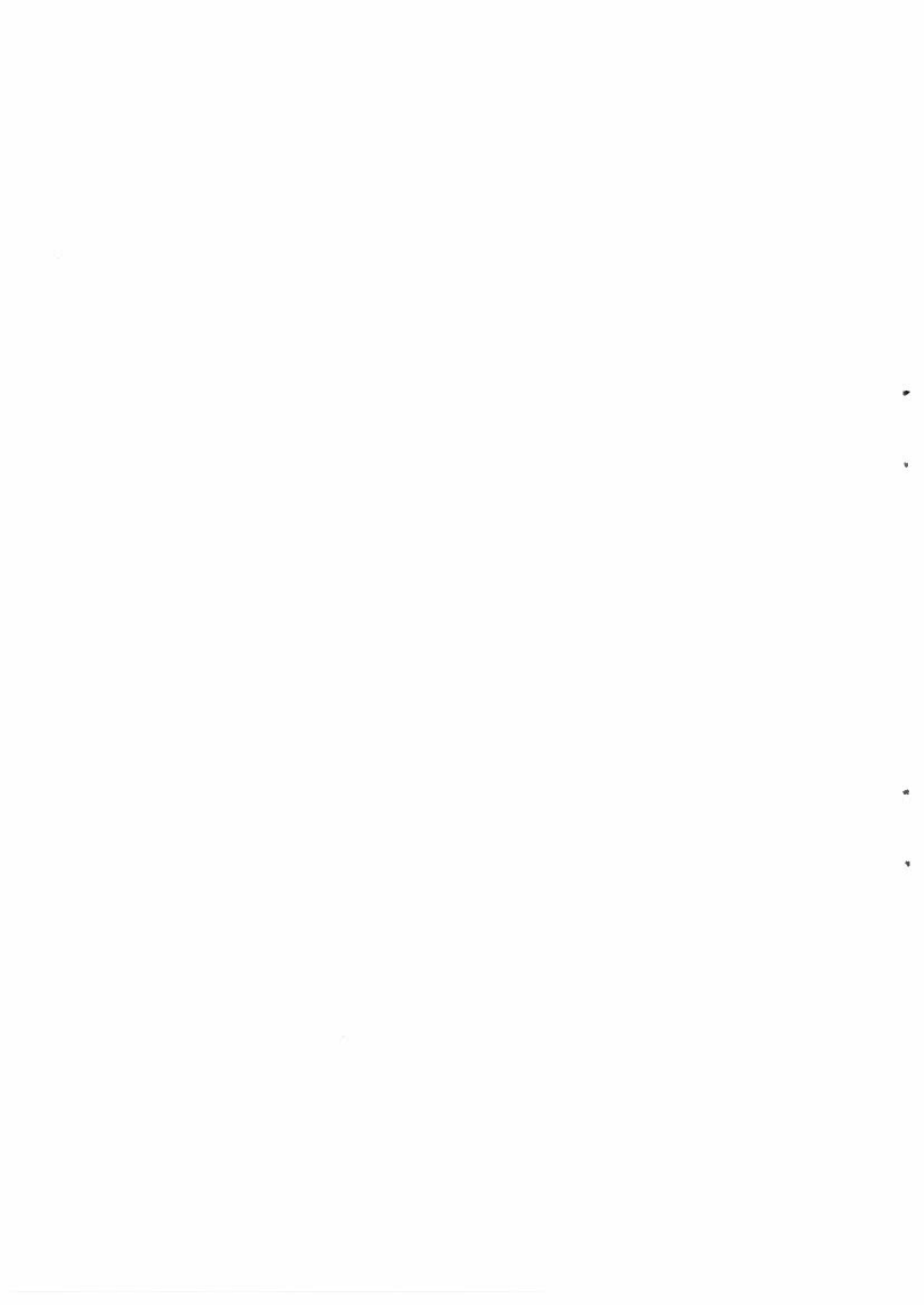
- (c) that the Public Accounts Committee should be required to meet at such times as may be specified by law or by the Standing Orders of the House of Assembly and should report to Parliament at least once in every year and within six months of the presentation of the Auditor-General's Report to Parliament on the annual appropriation account;
- (d) that both the Prime Minister and the Leader of the Opposition be consulted in connection with the appointment of the Auditor-General and that the Auditor-General be appointed by the President on the recommendation of the Public Service Commission;
- (e) delegation of authority to the Auditor-General to select staff for the office of the Auditor-General;
- (f) provision for the Auditor-General to submit a special report to Parliament when the amount voted in the Approved Estimates for the functioning of the Auditor-General's Office during a financial year is insufficient for the discharge of the functions of the Office. The special report should be referred to the Public Accounts Committee for its evaluation and to enable the Committee to make recommendations to Parliament for the provision of adequate resources. The Auditor-General should also be authorised and given the necessary resources to employ auditors from the private sector to assist with audits within the purview of the Office of Auditor-General;
- (g) amendment of section 113(2) to permit the Auditor-General to undertake comprehensive audits in order to provide an objective and constructive assessment of the extent to which financial, human and physical resources are managed with due regard to economy, efficiency and effectiveness. The audit should be an examination of both financial and management controls, including information systems and reporting;
- (h) that the Auditor-General should be empowered to carry out audits of the accounts, balance sheets and other financial statements of all state enterprises owned or controlled by the State;
- (i) early completion and enactment of an updated and modern Financial Administration and Audit Act which would pay due regard to the independence necessary for the improvement in the performance of the functions of the Auditor-General, permit the Auditor-General to play a greater role in the appointment, transfer and retention of the staff of the Audit Office, and would also strengthen the Auditor-General's relationship with Parliament to enable Parliament to be the real watchdog of the public purse;

- (j) Provision for votes on account of annual appropriations and for an emergency draw-down by the Minister responsible for Finance from the Consolidated Fund.

20. RELATED LAWS AND TRANSITORY PROVISIONS

The Commission recommends:

- (a) The establishment of a special Task Force mandated to analyse urgently existing statutory provisions to ensure that they are in or are brought into conformity with the reformed Constitution and, in particular, with the fundamental rights provisions therein.
- (b) That provision should be made for succession to the prerogatives which at present vest in the Crown by common law. A further detailed examination must also be undertaken to identify the contents of those prerogatives and which of them should be retained.
- (c) That provision should be made in the Constitution to ensure succession to all property, assets, rights and liabilities which at present vest in the Crown in right of its government of Barbados.
- (d) That legislation should be enacted urgently to make it obligatory for employers to recognise trade unions so as to buttress the constitutional right of freedom of association.
- (e) That the Barbados National Honours system should be retained but appropriate changes made to reflect the change to a republican form of government and the new environment ensuing therefrom.
- (f) That transitory provisions should be enacted to ensure continuity in the authority and effectiveness of the organs and institutions of State during the legal period and the process of transition from the existing Constitution to the reformed Constitution.



APPENDIX 1**DISSENTING VIEWS****PART 1****Dissenting Views of Commissioner Maurice King, Q.C.****Introduction**

In a parliamentary democracy where members of Parliament are elected by the direct vote of an electorate the authority to govern should vest unequivocally in those to whom the electorate has entrusted a mandate to govern.

In our constitutional arrangements prime responsibility for the management of government business is vested in a person styled Prime Minister because that person has been elected by voters in a constituency and is able to command the confidence and support of a majority of the members of Parliament who also have been elected by the people. The Prime Minister then chooses a Cabinet which is the major source of executive authority and over which the Prime Minister presides. The Prime Minister is in substance the chief executive of government. Power to make appointments to the principal organs of government should therefore reside with the chief executive, for that is the person to whom authority to govern has been given and who is accountable to Parliament and to the people for the exercise of such authority.

It has been argued that the Constitution places too much power in the hands of a prime minister. For example, section 66(2) of the Constitution gives the Prime Minister power to advise the President to dissolve Parliament in circumstances when the House of Assembly by a resolution of the affirmative vote of a majority of all the members thereof resolve that the appointment of the Prime Minister ought to be revoked. It has been recommended that section 66 (2) of the Constitution should be amended to remove this power of the Prime Minister.

When the office of Prime Minister becomes vacant in such circumstances and the President is unable within seven days to find anyone who can command the support of the majority of the members of the House of Assembly to fill the office, the President shall by proclamation dissolve Parliament.

I fully support the recommendation for amending section 66 (2). Its effect is to remove considerable power that a prime minister may be able to exert over his ministerial and parliamentary colleagues by holding the threat of a dissolution like a sword of Damocles over their heads. It facilitates the substitution of a prime minister who has lost the confidence and support of his party and parliamentary colleagues and whose continuance in office is likely to cause serious political instability and a crisis in governance. The tremendous power which a prime minister otherwise exerted over his colleagues is to a large extent controlled by their ability to remove the prime minister without necessarily endangering the continuance in office of the government.

In our system of government the Head of State is a non-executive head whose functions are largely ceremonial, whose appointment to office is not independent of the Legislature but derives

from and is dependent on the will of the elected representatives of the people. The President therefore should properly exercise authority in large measure on the direction of the elected representatives of the people through Cabinet and in some cases through Ministers.

A non-executive and ceremonial Head of State is not answerable to the electorate and should therefore exercise authority only as directed by the Executive which is accountable to the elected representatives of the people and ultimately to the electorate. Such power and authority properly belongs to those to whom responsibility has been entrusted by the votes of the people being governed.

In this regard, in the areas identified herein, the existing constitutional arrangements give expression to the concept of the exercise of authority by those to whom authority is given in a system of free and fair election.

Appointment of Judges

The principle to be secured is the independence of the judiciary. Throughout our constitutional history the Chief Justice has always been appointed by the Head of State on the advice of the political executive. It has never been argued nor even remotely suggested that such a method of appointment compromised the integrity and independence of the Office of Chief Justice.

The integrity and independence of the judiciary is secured NOT by the method of appointment, but by other provisions of the constitution providing for security of tenure of office, and that their salaries, allowances and other conditions of service shall not be altered to their disadvantage after appointment. Judges are human. Like most thinking persons they have a political point of view whether they are appointed on the advice of the political executive or of a Commission. And so the best guarantee of judicial independence is the character, integrity and independence of spirit of those appointed. Other vital support for judicial independence is provided by a well organised, vigorous and entirely professional Bar Association and by a demanding, discerning, courageous, critical, intelligent and vigilant public. Indeed, Lord Atkin in a memorable judgment in the case of *Amard v. Attorney General for Trinidad and Tobago* [1936] A.C. 322 made it pellucidly clear that there was absolutely nothing wrong with criticising the public acts of those involved in the administration of justice. He said at page 335:

“Whether the authority and position of an individual judge, or the due administration of justice is concerned, no wrong is committed by any member of the public, who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.”

The Judicial and Legal Service Commission is a relatively recent creation in our constitutional history devised for the newly independent Commonwealth countries. The rationale for vesting power of appointment of judges in a Judicial and Legal Service Commission is that such a device insulates judicial

appointments from undesirable political influences. The Judicial and Legal Service Commission is itself a creature of the political executive. Furthermore, even if appointments are insulated from purely political influences there is no guarantee that appointments by a commission are insulated from other undesirable if subtle influences. The Judicial and Legal Service Commission has been characterised in some quarters as a device designed by the former colonial power based on the misguided philosophy that the elected representatives of newly independent Commonwealth countries could not be trusted with the appointment of members of the judiciary and other important offices of State.

A perfect system for the appointment of judges has not yet been devised, but the least unattractive seems to be one where the authority is exercised by the elected representatives of the people through their chief executive and after appropriate consultation with the political opposition and other appropriate persons.

In its report the Commission has recommended that the President be elected by Parliament on the joint nomination of the Prime Minister and the Leader of the Opposition. In the absence of agreement between the Prime Minister and the Leader of the Opposition as to their joint nomination the Prime Minister, the Leader of the Opposition or any ten members of the House of Assembly may submit to the Speaker nominations of candidates for election as President. No person shall be elected as President unless that person has secured the votes **in secret ballot** of not less than two thirds of all the members of the House of Assembly and the Senate sitting in joint session. The procedure for electing a President can usefully be adapted for appointments to all offices of Judge of the High Court and Court of Appeal, the Ombudsman, the Service Commissions, tribunals and statutory corporations. In like measure, the procedure for removal from office of the President can be adapted to remove from office persons similarly appointed.

I do not share the distrust of or contempt for the elected representatives of the people which has from time to time characterised the political commentary of some intellectuals and others. In a representative democracy the elected representatives of the people have a mandate from the people to govern. To place the worst construction at all times on the actions of the elected representatives of the people is to deny the very essence of democracy.

The Public Service

It is a laudable objective that constitutional arrangements should be concerned "to defend the values of the non-political civil service rather than weaken them". However the opportunity should not be lost to ensure that our constitutional arrangements make adequate provision for Ministers to recruit specialist advisers and experts to push forward the agenda of government in critical areas unencumbered by the procedures for regular civil service appointments. Such appointments being political by nature terminate with the term of office of the Minister.

Furthermore Ministers may wish to benefit from existing expertise in the public service. They should be able, with the officer's consent, to have public officers with the required expertise assigned to their staff for specific specialist duties. In relation to the political appointment of lower level unestablished

staff, if the choice is between such appointments being made by Ministers or being made by Permanent Secretaries, the opportunity for dispensing such patronage should reside more appropriately with Ministers than with public officers. Ideally such appointments should be made by the Public Service Commission untrammelled by the influences of public officers, ministers or others of the political directorate.

Section 112A

In 1995 the Constitution was amended to include a provision that

“The salaries and allowances payable to the holders of offices established under the Civil Establishment Act and the Defence Act shall not be altered to their disadvantage.”

This amendment was a result of a manifesto commitment by the government of the day consequent on the judgment of the Lords of the Judicial Committee of the Privy Council in the case *Gladwyn Ophelia King v. The Attorney General of Barbados* which held that the decision of the government in 1991 to reduce civil servants' salaries by 8% for a limited period of 18 months was not unconstitutional. The Government had taken this action because it was advised that it was an essential element of a program to reduce the size of government expenditure, to promote the recovery of the economy of Barbados and restore the country's foreign exchange reserves to an adequate level. Government was further advised that the alternative was a devaluation of the Barbados dollar which would trigger a series of further devaluations and lead to serious financial instability.

While understanding the political motivation for such an amendment it is doubtful whether it provides real security for those whom it is intended to protect. The language of section 112A is manifestly different from that of section 112. Furthermore there is nothing to prevent a government from abolishing the offices to which section 112A relates. In the private sector when an enterprise needs to reduce expenditure in order to promote recovery of its finances and to ensure its survival there are no impediments to its reducing staff, subject of course, to compliance with the provisions of the *Severance Payments Act* where applicable. The enterprise may or may not rehire such employees at reduced rates of pay. The *Severance Payments Act* does not apply to public officers. One would have thought it desirable as far as practicably possible to standardise the terms and conditions of employment in public and private enterprise. Employment law should aim to promote equality and equity in relation to the terms and conditions of all classes of employees, private or public, and not create privileged regimes for some and not for others. These observations do not apply to section 112 which encompasses offices of special constitutional significance and importance. The section 112A amendment is specious in substance and therefore ought to have no place in our Constitution.

In practical terms one must have serious reservations about unnecessarily trying to limit the options available to a government in managing its monetary policy with a view to avoiding the adverse effects which a change in the exchange rate of the Barbados dollar can have on the cost of living, the standard of living and the quality of life of our citizens. Admittedly a decision to reduce salaries should be taken only *in extremis* and as a last resort when no other reasonable options are available. But the option should be available. It is to be noted that the courts have always imported a requirement of reasonableness to justify action of this kind by the State in legislating for peace, order and good government. So our jurisprudence has built in adequate safeguards against arbitrary, capricious and unreasonable actions by the State in legislating for peace, order and good government.

In the course of a public hearing held by the Commission at Montreal, Canada, Mr. Stanley Brooks, a Barbadian working in the Canadian Public Service referred to the question "Should the language of sections 112 and 112A which provide that the salaries of public servants cannot be altered to their disadvantage be retained?"

He made these comments:

"I know that some of my colleagues in this room may wonder what has gone wrong with me when I say that I think the language should not be retained. And I am saying this even though it is something which affects me. In 1981 the Government of Quebec arbitrarily rolled back the salaries of civil servants by 18% and we have not recovered from it yet. And over the past three years, our salaries have been subjected to a decrease as well - again, arbitrary. Even though that has hurt financially, I still believe that government, in the interest of making laws for the peace, order and good government of the State may need to alter the salaries of public servants. It should be allowed to have this power. I think that the government should be allowed to have this power, because only government can determine if peace, order and good government may be served by having this power. However the public service normally should be able to challenge the decision of the government in the High Court, where the burden of proof of necessity and reasonableness should be on the shoulders of the government, so the government may pass an Act to reduce salaries which may be of disadvantage to civil servants, but the burden of proof that it is necessary, and the burden of proof that it is reasonable, should be on the government in the High Court. And the decision of the High Court should be final."

This statement in all its simplicity and clarity captures the very essence of the justification for there to be available to government a variety of options in the management of monetary policy and the need for reasonableness in the exercise of governmental power. The commentator's views must however be subject to the reservation that they do not apply to section 112 and that there should always be provision for appeal.

The Director of Public Prosecutions

I do not support the recommendation that the Director of Public Prosecutions should act in his own discretion after consultation with the Attorney General in the exercise of the Director's powers in connection with the offences specified in Section 79A of the Constitution. It is to be noted that those offences are existing offences under the laws of Barbados relating to matters of state security, public safety and our country's international obligations.

They are not concerned with the power vested in the Director to the exclusion of any other person or authority in relation to instituting, undertaking, taking over and continuing or discontinuing any criminal proceedings in respect of offences against the laws of Barbados. In the exercise of such power the Director is not subject to the direction or control of any other person or authority. That is as it should be.

The offences specified in Section 79A may involve sensitive political, national security or foreign policy issues. These are areas of government which in my opinion belong principally to the province of executive authority subject always to overriding parliamentary supervision. It would be invidious therefore

to require the Director to exercise exclusive authority in matters essentially of a political and national security nature or in matters affecting the foreign policy of the government. If a Director is required to act in his own discretion in such matters, his actions will almost inevitably be subject to debilitating partisan political debate, which may have the effect of compromising the integrity and independence of the office. The responsibility for such sensitive matters should properly rest with the Attorney General who is the principal legal adviser to the executive authority of the State. The Attorney General can bring an executive judgment to bear on the exercise of his discretion and he is ultimately answerable and accountable to Parliament and to the electorate for his actions and the actions of the executive.

Parliament

I do not support the recommendation that a Minister who is a member of the House of Assembly and a Minister who is a Senator when required may attend any sitting of the Senate or the House of Assembly and take part in debates.

The House of Assembly is a body of the elected representatives of the people. The Senate is not. It is a nominated chamber. They are both independent parts of the Legislature, and tend to bring different perspectives to debates on the issues before them.

A major part of the work of the Senate is to review and if necessary revise the work of the House of Assembly. A not insignificant aspect of its work also is the opportunity it provides to ventilate non-partisan, apolitical and independent views on several issues.

The Senate should be able to perform its work uninfluenced by the direct advocacy of the members of the other place and vice versa.

There are Ministers of government in the Senate, one of whom is its Leader, who are members of the Cabinet and who ought always to be fully briefed on and who are expected to deal competently with all matters coming before the Senate. The same considerations apply to Ministers in the House of Assembly.

Members of the House of Assembly and the Senate if they are functioning efficiently and effectively should always research the issues and be in a position to form an independent judgment and express considered views on all matters coming before the respective Houses, and reach decisions thereon.

The recommendation tends to reflect adversely on the intellectual competence and ability of Members of respective Houses to deal with the issues before them. It compromises the independence and integrity of the separate Houses of the Legislature. It provides an opportunity for unnecessary reflection by the members of the one House on members of the other.

Conclusion

Subject to the above, the recommendations of the Commission are fully supported.

Maurice A. King, Q.C.

APPENDIX 1**PART 2****Dissenting Views of Commissioner Wendell McClean****Electoral System (see para. 9.16) *et seq***

Commissioner McClean expressed preference for a system in which members of the House of Assembly are elected on a first-past-the-post basis, and Senators, other than those appointed by the President in his own discretion, are elected on a nation-wide proportional representation basis. It is his view that such an arrangement would preserve the advantages of the present system and eliminate its major disadvantages, which arise from the possibility that a Government can be elected with the support of only a relatively small minority of the electorate.

In this regard, Mr. McClean supported the proposed change in the composition of the Senate, as an improvement over the existing arrangement. However, he considered the proposal to be the fourth best option. He considered the second best option to be one in which Senators appointed on the advice of the leaders of political parties should be appointed on the basis of the proportion of votes obtained by the respective parties, in the elections for membership of the House of Assembly. His third best option would be to allocate the six proposed opposition Senators on the basis of the votes obtained by the opposition parties.

Right of Recall (para 9.31.)

Commissioner McClean expressed the dissenting view that citizens should be accorded the right of recall and the system should include the following features:

- the initiation of recall proceedings should not occur during the first or final year of the life of Parliament, or less than fifteen months after a previous recall petition pertaining to the Members of the House of Assembly;
- the grounds of the recall petition should be clearly specified and limited to questions of fact pertaining to the conduct or performance of the Members of the House of Assembly, since the last election, or the last recall petition pertaining to the said Member, whichever is the more recent;
- any recall petition must be evaluated by a body established for this purpose, as to its factual content. In the event that a petition is found to contain errors of fact, the initiative shall be voided and be of no effect. The Member of Parliament and the sponsors of the recall petition shall have the right to be heard in these proceedings;
- should the recall petition be found to be rooted in fact, the Electoral and Boundaries Commission shall arrange a recall poll that shall take place within eight weeks of the ruling on the content of the recall petition;

- a recall petition should be initiated by at least 100 electors registered in the constituency represented by the particular Member of the House of Assembly;
- a recall petition should succeed if fifty-five percent of those voting in the recall poll vote in favour of recall.

APPENDIX 1

PART 3

Dissenting Views of Commissioner Melanie Newton

Gender Rights (see para. 7.12.)

I dissent from the view that a convincing case had not been made out for the inclusion of "sexual orientation" as a category of description meriting special constitutional protection. In my view, in recognising the right to hold religious beliefs and creeds and not to be discriminated against on the basis of gender, religion, race, etc., constitutions are recognising both the right not to be discriminated against on the basis of biological factors as well as on the basis of the right of the individual to freedom of choice. There is also the recognition, in spelling out these rights in Constitutions, that these attributes have been used as a basis for discrimination against individuals and groups, and that the violation of the rights of one individual is a violation of the rights of everyone.

On the basis of the above principles, there is no justifiable legal or ethical reason why sexual orientation should not be included in the fundamental rights provisions. To include it is not to provide protection for a specific group of people; it is protecting the right of *all* members of the community to be of a specific sexual orientation, to exercise freedom of choice with regards to sexual orientation and to avoid discrimination on the basis of their sexual orientation.

Capital Punishment

Section 12.1. of the Constitution which provides that no person shall be deprived of his life intentionally save in execution of the sentence of a Court in respect of a criminal offence is de facto constitutional sanctioning of capital punishment. Given that the Report does not mention attempts to conform to international standards of human rights, I am of the opinion that there should be a clear explanation in the Report as to why this crucial aspect of human rights has not been addressed. I recognise the political sensitivity of the subject, but representations were made to the Commission on this subject. Capital punishment is a critical legal and social issue. It is inappropriate in my view for the Report to pass over it without comment. I am of the view that the right to life is too fundamental a right for the maintenance of the existing provision in the Constitution.

Freedom of the Press

Whilst Section 20 of the Constitution makes provision for freedom of expression, I consider that express mention should be made of freedom of the Press. I recall very lively debates about this at meetings of the Commission. I was personally unconvinced by the arguments against including the right of freedom of the Press specifically in the Constitution. I think that a provision for freedom of the Press could only serve to strengthen democracy.

Qualifying Age for Membership of Parliament (see para. 9.2.)

I strongly disagree with the recommendation that the age qualification for the Senate should be 25 years. This is an unnecessary and, frankly, undemocratic recommendation, not called for by past experience of the functioning of the Senate. There was no evidence brought before the Commission that political representation in Barbados and the perceived respectability of the position of Senator has been compromised by the current practice of allowing 21 year olds to sit in the Senate.

Also, there is nothing particularly magical about the age of 25. Throughout history there have been people younger than that who have been elected to lead countries – for example, Pitt the Younger was 20 when he entered Parliament, and 23 when he became Prime Minister – and there is currently a mayor in Dominica who is under that age. If one can vote at 18 and sit in the House of Assembly at 18, one should be able to sit in the Senate at 18. If this is felt by persons older than myself to be too young, then at the very least the minimum age for appointment to the Senate should remain at 21.

APPENDIX 2**PUBLIC NOTICES RE SUBMISSIONS**

The Constitution Review Commission, established by the Government of Barbados on 29th October, 1996, invites the general public to submit written suggestions and recommendations concerning the amendment of the Constitution and related laws of Barbados.

The Commission has been mandated to inquire into and advise on all aspects of the governance of Barbados, to consult widely with the citizens and organisations of Barbados, and to present its report to the Governor-General by 31st October, 1997. It is therefore desirable that written submissions should reach the Secretary of the Commission by 28th February, 1997.

The Commission will also be holding a series of meetings at which members of the general public may present their views in person. In order to facilitate the organisation of these meetings, the Commission invites those who wish to make oral submissions to notify the Secretary of the Commission, by writing to Mr. Keith Inniss, Secretary, Constitution Review Commission, Cabinet Office, Government Headquarters, Bay Street, St. Michael or by telephoning him at 427-5270 Ext. 273 not less than seven (7) days in advance. Times and venues for the meetings will be announced shortly.

Copies of the Commission's Terms of Reference may be obtained from the Secretary.

APPENDIX 3**PUBLIC NOTICE RE VENUE OF PUBLIC MEETINGS**

The Constitution Review Commission will begin public meetings at the Sherbourne Conference Centre, Two Mile Hill, St. Michael, on Friday, February 14, 1997 between the hours 7.00 p.m. and 10.00 p.m.

The dates and venues for other meetings are:-

Alexandra School	-	Monday, March 3, 1997
Dover Convention Centre	-	Monday, March 17, 1997
Alleyne School	-	Tuesday, April 2, 1997
Princess Margaret School	-	Thursday, April 10, 1997

Members of the general public who may wish to make oral submissions should write to Mr. Keith A. Inniss, Secretary, Constitution Review Commission, Old Lazaretto Complex, Black Rock, St. Michael or telephone him at 417-0970.

Copies of the Commission's terms of Reference may be obtained from the Secretary.

APPENDIX 4**PUBLIC NOTICE****PUBLIC MEETINGS ON SPECIAL TOPICS RELATING
TO THE BARBADOS CONSTITUTION**

The Constitution Review Commission will hold a number of public meetings and invites members of the public to discussions on special topics relating to the Barbados Constitution. These discussions will be led by consultants and will take place at the Sherbourne Conference Centre between the hours of 7.00 p.m. and 10.00 p.m.

The Schedule for the meetings is as follows:

Thursday, May 22, 1997	Fundamental Rights and Freedoms of the Individual
Thursday, May 29, 1997	Strengthening of the Judiciary
Thursday, June 12, 1997	Right of Recall of a Member of Parliament
	*Parliament and Executive Powers
	*Role and Powers of the Head of State
	*The Ombudsman
Thursday, June 26, 1997	Local Government

*** The meeting to discuss these topics was actually held on June 19, 1997.**

APPENDIX 5

SUMMARY OF SUBMISSIONS AT PUBLIC HEARINGS

A. GENERAL		
(i) LOCAL		
DATE	VENUE	NO. OF SUBMISSIONS
February 14, 1997	Sherbourne Conf. Centre	10
March 3, 1997	Alexandra School	9
March 17, 1997	Dover Convention Centre	16
March 26, 1997	Sherbourne Conference Centre (Secondary Schools)	14
April 2, 1997	Alleyne School	7
April 10, 1997	Princess Margaret	19
Total		75
(ii) OVERSEAS		
July 6, 1997	Birmingham, U.K.	19
July 7, 1997	Brixton, U.K.	20
September 6, 1997	Montreal, Canada	15
September 7, 1997	Toronto, Canada	15
September 13, 1997	Boston, U.S.A.	14
September 14, 1997	Brooklyn, U.S.A.	15
Total		98
(iii) SPECIAL TOPICS		
May 29, 1997	Strengthening of the Judiciary	7
June 12, 1997	Right of Recall of a Member of Parliament	5
June 19, 1997	Parliament and the Executive Role and Powers of Head of State The Ombudsman	4
June 19, 1997	Fundamental Rights	14
June 26, 1997	Local Government	4
August 21, 1997	Public Service	8
Total		42
Total submissions at Public Hearings		215
Other Submissions		50
GRAND TOTAL		265

APPENDIX 6

LIST OF PERSONS/ORGANISATIONS WHO MADE WRITTEN SUBMISSIONS

Adamson, Mark
 Alder, Shirley
 Alleyne, Patricia
 Allman, Victor
 Allsopp, S.R.R.
 Alfonso, Fr. Leonard et al
 Amnesty International, Barbados
 Archer, C. A. Norman
 Atwell, Marcus
 Austin, Hal
 Aziz, Jabbar

Banfield, Roger
 Bannister, Andrew
 Barbados Bar Association
 Barbados Christian Council
 Barbados Council for the Disabled
 Barbados Labour Party, National Council
 Barbados Overseas Women's League (U.K.)
 Barbados Youth Educ. And Culture Advisory
 Group (U.K.)
 Bascombe, Edwin
 Barrow, Malcolm D.
 Best, Winston
 Birmingham Residents (U.K.)
 Bishop, Eric
 Blackman, Basil
 Blackman, Ambassador Dr. Courtney
 Blackman, Francis
 Blackman, Sir Frank
 Blackman, Marjorie
 Blair-Reid, David
 Brancker, George
 Brathwaite, H.W.
 Brathwaite, Harvey
 Brewster, Frederick
 Brome, Rt. Rev. Rufus
 Brooks, Stanley
 Browne, Dr. Phyllis
 Bureau of Women's Affairs
 Burke, Owen
 Burton, Sir Carlisle
 Butler, Rev. Glenville
 Byer, I.
 Bynoe, Gordon

Caddle, Dr. Rameses
 Cadogan, Martin
 Campbell, Junior
 Carnegie, Prof. A.R.
 Carter, Colin
 Clarke, Eleanor
 Clarke, T. Austin
 Clarke, Thelbert

Clarke, Trevor
 Clement Payne Cultural Centre
 Collins, V.
 Collymore, Branston
 Collymore, George
 Comissiong, David
 Commission on Social Justice
 Connell, Trevor
 Coppin, Amha
 Cox, J. MacArthur
 Cozier, Juliette
 Cozier, Wendell
 Crawford, Angela
 Cumberbatch, Edward

Dear, Sir John
 Dear, Karen
 Denny, David
 Denny, John
 Downes, Ralph
 Drayton, Sylvan
 Durant, Erskine

Edey, Walter
 Edwards, Arthur

Fenty, Vernon
 Fields, Rev. Stephen
 Flatts, Roderick
 Foster, Andrew
 Fredericks, Mrs.

Gale, B.L.V.
 Gale, D.A.
 Gibbs, Katherine
 Gibson, Marston
 Gibson, Rev. Dr. Zacharias
 Georges, Prof. P. Telford
 Goddard, Sir John
 Green, Horace
 Greer, Gary
 Goodridge, Frank
 Greenidge, Emmerson
 Griffith, Clyde
 Griffith, David
 Griffith, Janelle
 Griffith, William

Harvey, Fred
 Haynes, Dr. Richard
 Hinds, Marsha
 Hinds, Rudolph
 Hinkson, D.A.

APPENDIX 6 – *Cont'd*

Holmes, Esther	Prescod, Trevor
Howell, Alwyn	Prescott, A.
Hoyte, Keith	
Hoyte, Dr. Leroy	Rasta Alice
Hunte, Julian	Rastafari Community
Hunte, Sir Keith	Rawlins, Hugh
Hunte, Lyle	Reid, G.L.
Hutson, Mr.	Richards, Levere
	Rickinson, Sen. Peggy
Immigration Dept., Ministry of Home Affairs	Rodway, James
Innis, Leroy	Rowe, Owen
Ishmael, Mervin	Royal Commonwealth Society (B'dos Branch)
	Rudder, Rev. Sinclair
Johnsbn, Ernest	Russell, Rosalind
Johnson, Kingsley	
Johnson, Natalie	Scantlebury, Lincoln
Jones, I.	Scott, Corrie
Jones, J.	Scott, Laurel
Jones, Willis	Seale, Olaf
Jordan, R.O.	A Senior Citizen
	Serieux, Peter
Kinch, Deirdre	Skeete, Bert
Kirton, Clinton	Smith, Dylan
Knight, Carlton	Smith, Eric
	Smith, Horace
Larrier, Buddy	Smith, Mike
Lashley, Kyle	Society for Resettlement of Caribbean Nationals
Leacock, Charles	Soroptimists International of Barbados
Leahing, E.	Springer, Lester
Lord, Ndelamiko	Springer, Valery
Lovell, John	St. Hill, Leonard
Lowe, (Bongo Spear)	St. John, Karl
	Stafford, Winston
Mahon, Euclid	Straker, Ralph
Marshall, Sir Roy	Straughan, Glenroy
Matthews, Gordon	Symmmonds, Senator P.
Mayers, Douglas	
Maynard, Clifton	Tfari, Dr. Ikael
McIntosh, Prof. Simeon	Taylor, A.
Merritt, Ahmed	Thomas, Frank
Miller, Hon. Billie	Thompson, Suzana
Modern High School Old Scholars' Association	Thorpe, Winfield
Morgan, Peter	Toppin, Louis
Murray, Jessima	Trimmingham, Kelly
Newton, Nigel	Walrond, Olutoye
Niles, Samuel	Walton, Karen
Nri, Celeste	Watson, June
	Weekes, Ivan
Osborne, Philip	Weekes, James
	Weekes, Olwyn
Padmore, Grantley	Weekes, Orville
Palmer, Catherine	Welch, R.
Pan African Youth Congress	Wilkie, Angus
Parris, Ricky	Wood, Rt. Rev. Dr. Wilfred
Parris, William	Worrell, Grattan
Payne, Llewellyn	Worrell, Lionel
Peoples' Forum	Worrell, Rodney
Phillips, Denise	
Phillips, John	Yarde, Victor
Phillips, Lyman	
Piggott, Prof. Glyne	

APPENDIX 7**ORGANISATIONS SPECIFICALLY INVITED TO SUBMIT MEMORANDA**

The Barbados Bar Association
The Barbados Chamber of Commerce
The Barbados Christian Council
The Barbados Employers' Confederation
The Barbados Labour Party
The Barbados Registered Nurses Association
The Barbados Secondary Teachers' Union
The Barbados Women's Club
The Barbados Workers' Union
The Barbados Association of Journalists
The Business and Professional Women's Club
The Democratic Labour Party
The National Organisation of Women
The National Union of Public Workers
The Police Association
The Soroptimist Club of Barbados
The West Indies Group of University Teachers
The National Democratic Party
The Barbados Workers' Union Credit Union
The Council for the Disabled of Barbados
The Guild of Undergraduates of the UWI
The Institute of Chartered Accountants of Barbados

APPENDIX 8**PRIVATE HEARINGS**

DATES	INDIVIDUALS
March 5, 1997	Sir Frank Blackman, KA, KCVO, OBE
March 19, 1997	Mr. Fitzgerald Parris Sir Roy Marshall
April 16, 1997	Sen. The Hon. O. Patricia Symmonds Mr. David Griffith
April 23, 1997	Sir Keith Hunte Former Chairman, Public Service Commission
April 30, 1997	Dr. Richard Haynes, MP
May 7, 1997	Mr. Leroy Inniss, QC Sir Carlisle Burton
May 14, 1997	Sir Harold St. John, KA, QC, MP
May 28, 1997	Sir Neville Nicholls, KA
June 4, 1997	Mr. Philip Greaves, QC Mr. Erskine Griffith
June 18, 1997	Sir John Goddard, KA, GCM Mr. Branston Collymore, CMG
June 25, 1997	Mr. Charles Leacock Director of Public Prosecutions
August 6, 1997	Sir John Goddard, KA, GCM Mr. Darcy Boyce Mr. Anthony King Mr Rolph Jordan Mr. James Ward Representatives, Barbados Private Sector Agency

APPENDIX 8 – Cont'd

August 7, 1997	Ms. Sandra Mason, Chief Magistrate Magistrates: Miss Heather Clarke Miss Marva Clarke Mr. Emmerson Graham Mr. Carlyle Greaves Mr. Clyde Nicholls
August 15, 1997	Sen. Leroy Trotman Mr. Patrick Frost Representatives, Congress of Trade Unions and Staff Associations of Barbados
August 25, 1997	Mr. Michael Rudder Mr. Roger Smith Members of Executive, Barbados Labour Party
October 22, 1997	Mr. Wendell H. Kellman Chief Personnel Officer
November 12, 1997	Brigadier Rudyard Lewis Chief of Staff, Barbados Defence Force
November 13, 1997	Mr. Grantley Watson Commissioner of Police
November 17, 1997	Mr. David Thompson, MP, President Mr. Branford Taitt, MP, General Secretary Mr. Joseph Tudor, First Vice-President Ms. Margaret Lashley, Fourth Vice-President Democratic Labour Party
January 13, 1998	Chief Justice, Sir Denys Williams, KCMG, GCM Hon. Mr. Justice of Appeal George Moe, CHB Hon. Mr. Justice of Appeal Colin Williams Hon. Mr. Justice Frederick Waterman

APPENDIX 8 – *Concl'd*

January 22, 1998

Mr. Lloyd Knight, President
Mr. Cumberbatch, Vice-President
Mr. Walters, Assistant Secretary/Treasurer
Mr. Small, Floor Member
Prison Service Association
Mr. Ryan Austin, Acting President
Mr. Ricardo Gittens, Assistant Secretary
Fire Service Association
President, Constable Patrick Jones
Station Sargeant Juliet Best
Police Association:

January 23, 1998

Mr. Denis Smith
Former Chief Electoral Officer

APPENDIX 9

**SUMMARY OF RECOMMENDATIONS MADE BY
THE COX COMMISSION (1979)**

Section(s) affected	PART 1	Ref. To para(s) in Report
-	The Constitution should be repatriated	3
1	The Supreme Court should be empowered to decide on the constitutionality of legislation on application by any person whether or not he has a relevant interest.	5
2-10	There should be equal rights for men and women in the matter of acquiring citizenship, including citizenship by descent.	9
6	When a divorced person becomes a Barbadian citizen after the date of the divorce, the spouse of that person prior to the divorce should not be entitled to Barbadian citizenship by virtue of the original marriage.	10-11
11	The insertion of certain words to improve the protection of fundamental rights and freedoms of the individual.	21(a)
16(2)(b)(ii)	Section 16(2)(b)(ii), relating to deprivation of property, should be amended to reduce the age of 21 years to 18 years so as to be consistent with the age mentioned in section 13(1)(f) with regard to the right to personal liberty.	21(b)

Section(s) affected	PART 1	Ref. To para(s) in Report
24(2)	The provision to section 24(2) should be deleted so as to allow the High Court to exercise its powers under the section notwithstanding that means of redress might have been available under any other law.	21(c)
26	Section 26, providing for the saving of existing law, should be repealed.	21(d)
-	The State Action criterion should be clearly expressed to apply generally in the fundamental rights provisions but should be broadly construed.	24
-	The monarchical system of government should be retained.	43
	Any change in form of government should be subject to submission first to the electorate at a general election.	44
28	The office of Governor-General should be held by only a citizen of Barbados.	45
29(1)(b)	The functions of Acting Governor-General should not be performed by the Chief Justice.	48
29(1)	Persons disqualified by s. 44(1)(b) from membership of the House of Assembly also should be debarred from appointment as Acting Governor-General.	50
32(6), 75	Provision should be made for circumstances where the Leader of the Opposition is not available for consultation.	55

Section(s) affected	PART 1	Ref. To para(s) in Report
35, 36(1)	The Senate should be retained and continue to have 21 nominated members.	60
36(3), 36(4)	Composition of the Senate should be changed.	62
37	Retention of the qualifying age for membership of the Senate as 21 years.	64
39	The seat of a Senator should become vacant also by the submission by that Senator of a letter of resignation.	65
39	The Governor-General should be empowered to revoke the appointment of any one of his appointees to the Senate at any time.	66
41	Membership of the House of Assembly should be increased from 24 to 30.	67
41(2)	Section 41(2) should be amended by the substitution of the words "by this Constitution" for the words "by any law in force in Barbados" at the end of subsection.	68
42	Provision should be made in the Constitution for the electorate to be given the right to vote.	69(i)
	There should be freedom of formation of political parties.	69(ii)
	There should be an independent Boundaries and Electoral Commission.	69(iii)

Section(s) affected	PART 1	Ref. To para(s) in Report
42	Control of political election broadcasts should be the responsibility of the Boundaries and Electoral Commission.	70-71
44(1)(c)	Revocation of the provision for disqualification from membership of the House of Assembly because of past conviction of a felony or of any other criminal offence involving dishonesty.	76
45(1)(B)	Resignation by a member of the House of Assembly may be done by writing to the Speaker and the seat should become vacant from the date of such resignation.	77
	Members of the Houses of Parliament should not be permitted to participate in contracts with the Government.	80
49(2), 58	Method of amending the Constitution.	85, 90
49(2)	Increase in the entrenched provisions.	86
54-57	Expansion of the functions of the Senate in relation to Money measures.	89
61(4)	Extension of the life of Parliament when there is a period of public emergency.	91
65(2)	Provision for the appointment of a Deputy Prime Minister and for an Attorney-General.	92
66	Provision for the Prime Minister to resign office without ceasing to be a member of the House of Assembly.	93

Section(s) affected	PART 1	Ref. To para(s) in Report
67(1), 68	Provision for Acting Prime Minister and other Ministers in certain circumstances.	94, 96
67(3)	Consultation to be done by the Governor-General with the Acting Prime Minister or the Deputy Prime Minister if the substantive Prime Minister is unavailable.	95
72	Clarification of the provisions for assignment of responsibilities to Ministers.	97
74(5)	Governor-General should be required to act after consultation with, rather than on the advice of, the Speaker in the appointment of the Leader of the Opposition in certain circumstances.	98
78(1)(d)	The provisions for the remission of punishment or any penalty or forfeiture due to the Crown should be expanded to refer to "all penal forfeitures."	99
79(a)	Repeal of section 79A so as to have the functions of the DPP completely free from control.	100
80	The jurisdiction of the Supreme Court should be clarified.	101
80	The nomenclature of Puisne Judge should be changed to "Judge".	102 81

Section(s) affected	PART 1	Ref. To para(s) in Report
81	The appointment of (Puisne) Judges should fall to the Judicial and Legal Service Commission.	104
89(2)	An attorney-at-law in private practice should be eligible, under certain conditions, for appointment to the Judicial and Legal Service Commission.	113
89A	The provision for a separate Teaching Service Commission should be repealed.	111
93(2)	Safeguarding the retention of magistrates and legal officers under the purview of Judicial and Legal Service Commission.	116
95(1)	Delegation of the Governor-General's powers relating to appointments and discipline should be expanded.	117
99(2)	Appointment to posts of chief or deputy chief professional or technical officer and of head or deputy head of a department should be made without consultation with the Prime Minister.	121
99(3)	A definition of "Permanent Secretary" should be provided.	122
100(3)	The post of Consul-General should be included among those of principal representatives abroad who are appointed or removed from office on the advice of the Prime Minister.	123
100A	There should be consistency in the provisions for transfer of officers from the "Home" service to the "Foreign" service and vice versa.	124

Section(s) affected	PART 1	Ref. To para(s) in Report
107-110	Prior approval of Parliament should be required for the purchase of real property by the Government or statutory boards.	127(i)
107-110	Reports on all acquisitions of real property and on particulars of contracts for services entered into by the Government or statutory boards should be required to be laid before Parliament at regular intervals.	127(ii)
107-110	Provision for the Public Accounts Committee should be made in the Constitution.	127(iii)
112	Remuneration of the staff of the Boundaries and Electoral Commission should be protected against alteration to their disadvantage.	128
115(2)	Resignation from certain offices should be permitted to take effect from a future date rather than be restricted to the date of receipt of the letter of resignation.	129
117	A new definition of "public officer" should be provided.	131
	PART 2	
1	The former Local Government system should not be revived.	8
1	Regional centres and district community councils should be developed.	17

Section(s) affected	PART 2	Ref. To para(s) in Report
2	An extended Legal Aid Scheme should be introduced in lieu of the creation of an office of Ombudsman in the first place.	6
3	The staff of all statutory boards should fall under the Statutory Boards Service Commission.	6
4	A local Official Secrets Act should be enacted.	4
5	Tribunals relating to the right to personal liberty and to freedom of movement should be established as standing tribunals.	7

Report
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Review
Commission**

1998

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