Report of the Constitutional Reform Commission

Constitutional Reform Commission

ABOUT THE COVER

From the outset of this exercise, the Constitutional Reform Commission (the "Commission") has been committed to developing a visual identity that would be an effective, purpose-driven communication tool for the enhancement of its messages. Each potential direction had a unique story and approach connected to the mandate of the Commission. However, ultimately, we gravitated toward a visual identity that would convey the following:

1. **Evolution/Progress:** from the traditional to modern while honouring genuine representations of Barbados and the standards we uphold;
2. **Reform:** meaningful change directed towards the development of a Supreme Law of the land that befits a republican Barbados and is capable of enduring as our true compass for years to come; and
3. **Conversation:** facilitating the exchange of ideas and the contribution of perspectives with the intention of reconciling divergent views and creating an enabling environment within which Barbadians can and do progress.

Thus, the Commission's logo, which is incorporated into the cover art of this Report, was born. Alluding to the iconic broken trident of the Barbados flag, the upward trajectory of the incorporated arrows points to the elevation of national consciousness and discourse with respect to constitutional reform.

As for our chosen photography, we were intentional about our selection of the Monument to the Barbadian Family designed by Vincent Jones and Hugh Holder, with the unmistakable Barbados Parliament building in the background. Set in the heart of what is now National Heroes Square, formerly Trafalgar Square, the Monument was conceptualised to speak to the importance of the family unit in building and maintaining a successful nation and follows the Barbadian Family's journey, past and present. It also recognises them as the heroic beacons from which all National Heroes came. In doing so, the Monument replaces the relocated statue of Admiral Horatio, Lord Nelson with the symbolism of broken shackles pulled apart by collective effort and determination. At the centre of the open shackles is a stone depiction of the Barbadian family – we loyal sons and daughters all – and at the top of the shackles themselves is the poignant reminder from our National Anthem that we are: Inspired, Exulting, Free.

In keeping with the spirit of this Report, the Monument, set against the backdrop of one of the oldest continuous Parliaments in the Commonwealth, represents a thoughtful acknowledgment of our past and the promise of an even brighter future rooted in a clear understanding of who we are as Barbadians. In this way, it conveys a sense of coherence from content to cover.

The Commission is grateful to IDS Creative Inc. for their professional support in bringing this vision to life.

Report of the Constitutional Reform Commission

A Commission of Inquiry established by The President of Barbados pursuant to the Commissions of Inquiry Act, Cap. 112 to advise The Government of Barbados on the reform of the Constitution of Barbados and related matters.

Appointed

June 20, 2022

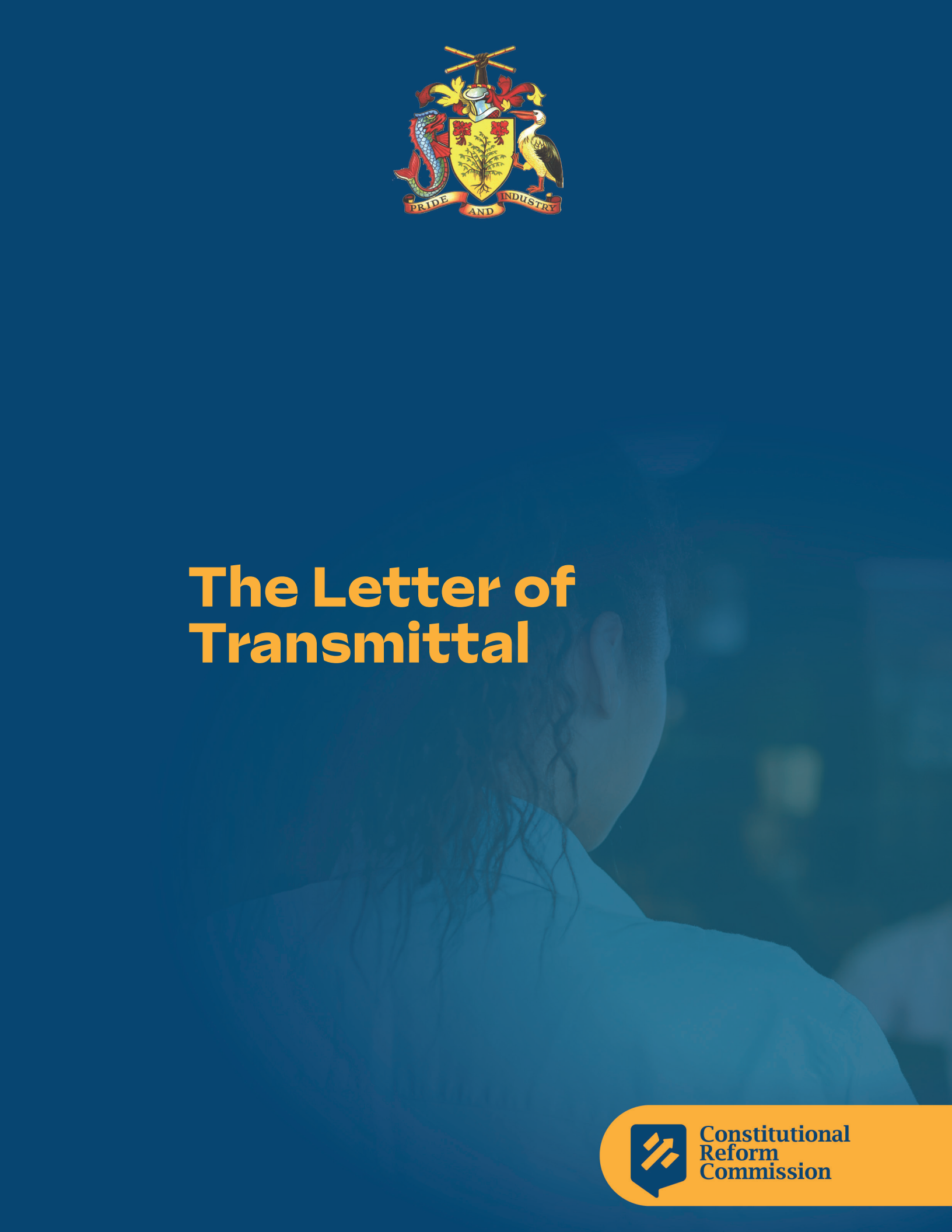
Report and Appendices

September 16, 2024

Contents

Appendices

The Letter of Transmittal



Constitutional Reform Commission

CONSTITUTIONAL REFORM COMMISSION
E. Humphrey Walcott Building, Cnr. Culloden Road & Collymore Rock, St. Michael
Tel.: (246) 535-4423/E-mail: constitutionalreform@barbados.gov.bb

September 16, 2024

Her Excellency
The Most Honourable Dame Sandra Prunella Mason, FB, GCMG, DA
President of Barbados
State House
Government Hill
St. Michael

Your Excellency:

By instrument dated June 20, 2022, issued by the Acting President, The Very Reverend Dr. Jeffrey Douglas Gibson, under the provisions of section 3(1) of the *Commissions of Inquiry Act, Cap. 112*, we, the undersigned, were appointed as a Commission to review the Constitution of Barbados. We subscribed to our oaths of office before him on the same day.

Our specific **Terms of Reference** were to:

(a) examine, consider and inquire into the *Constitution of Barbados* and all other related laws and matters with a view to the development and enactment of a new Constitution for Barbados;

(b) report in writing, after due examination, study and inquiry, giving our opinions and making recommendations and providing for consideration, a draft Constitution for Barbados that, in our opinion, is necessary and desirable and would meet the circumstances of a 21st century Barbados and promote the peace, order and good governance of Barbados; and

(c) consider and make recommendations on all other matters which, in our opinion, are relevant to the attainment of the aims and objectives set out in paragraphs (a) and (b).

We were also mandated to:

(a) consult widely with the citizens and organizations of Barbados, whether in Barbados or abroad, in such manner and by such procedure as we considered reasonable and appropriate;

(b) receive and examine proposals from the general public;

(c) prepare and disseminate such material as may be relevant to widen public knowledge of and interest in the *Constitution of Barbados* and the draft Constitution that is prepared;

(d) generate public interest in the subject of constitutional reform by means of meetings and media programs, both in person and virtually, and by means of materials, whether digital or otherwise; and

(e) present the written report within fifteen (15) months from the date of appointment of the Commission.

The Commission

Membership of the Commission encompassed persons representing, the legal profession, civil society, the youth, the disabled community, religious interests, the social partnership and the labour movement. The Hon. Mr. Justice (rtd) Christopher Blackman, GCM was appointed Chairman of the Commission. At our first meeting on Friday, June 24, 2022, we elected Senator Gregory Nicholls as Deputy Chairman.

The other members of the Commission were:

- Mr. Adriel Brathwaite, SC – Former Attorney-General and Minister of Home Affairs of Barbados
- Mr. Suleiman Bulbulia, STE, JP – Muslim Chaplain
- Mr. Christopher de Caires – Chartered Accountant, Businessman and Former Chairman of the Barbados Private Sector Association
- The Most Honourable Ms. Kerryann Ifill, FB, SCM - Former President of the Senate and Representative of the Disabled Community;
- Mrs. Sade Jemmott – Attorney-at-Law
- Mr. Khaleel Kothdiwala – Youth Advocate
- Ms. Mary-Anne Redman – President of the Barbados Secondary Teachers' Union and former first Vice President of the Congress of Trade Unions and Staff Associations of Barbados

- Senator The Reverend Canon Dr John Rogers – Rural Dean of St. John and Rector of St. George's Parish Church

Prof. Cynthia Barrow-Giles, Professor of Constitutional Governance and Politics at the University of the West Indies, Care Hill Campus, was appointed as Secretary to the Commission by way of Instrument dated June 21, 2022, in accordance with section 18 of the *Commissions of Inquiry Act, Cap. 112*. She subscribed to her oath of office before the Acting President, The Very Reverend Dr. Jeffrey Douglas Gibson on the same day.

Invaluable administrative support was provided to the Commission by the Office of the Director General, Governance, led by Ms Gail Atkins, together with her staff, particularly Ms. Linda Ifill. The Commission's internal research capacity was also augmented by the services of Research Assistants, Ms. Kimberley Benjamin, Ms. Nicole Parris, Mr. Pierre Cooke, Mr. Jumar Walrond and Ms. Faith Parris.

Although we were mandated to report within fifteen (15) months from the date of our appointment, in retrospect, this date was optimistic. We sincerely made every effort to complete our task within the initial stipulated timeframe but the vast scope of our Terms of Reference, the logistics of consulting as widely as considered necessary, the imperative that we draw on the research and knowledge of specialists and the time required to produce a draft Bill which accurately represented our recommendations made it inevitable that we would ultimately require three (3) extensions to our original term of office, as set out in our Warrant of Appointment.

Our requested extensions were granted by:

(i) *Commissions of Inquiry (Constitutional Reform Commission Warrant of Appointment) (Variation) Order, 2023* dated September 18, 2023, issued by you under section 8(1) of the Commissions of Inquiry Act which indicated that the Warrant of Appointment dated June 20, 2022, was varied to direct that we instead present the written report within twenty-two (22) months from our date of appointment;

(ii) *Commissions of Inquiry (Constitutional Reform Commission Warrant of Appointment) (Variation) Order, 2024* dated April 17, 2024, issued by you under section 8(1) of the Commissions of Inquiry Act which indicated that the Warrant of Appointment dated June 20, 2022, was varied to direct that we instead present the written report by June 30, 2024; and

(iii) *Commissions of Inquiry (Constitutional Reform Commission Warrant of Appointment) (Variation) (No. 2) Order, 2024* dated June 29, 2024, issued by you under section 8(1) of the Commissions of Inquiry Act which indicated that the Warrant of Appointment dated June 20, 2022, was varied to direct that we instead present the written report by September 30, 2024.

Methodology

From the outset, we were satisfied that, if we were to carry out our mandate effectively, we had to provide the public with clear, concise and readily accessible information on the Constitution, even before we commenced our formal hearings. Indeed, it quickly became apparent to the Commission that there was a deficit in public knowledge about Barbados' Constitution and our system of governance generally. Additionally, prevailing public sentiment demanded that we properly contextualise our efforts, while addressing several misconceptions in relation to Barbados' constitutional status and its process of constitutional reform.

Having determined that the Commission would consult as widely as possible, we built several dedicated communication channels, then invited and received written and oral submissions from the public and stakeholders through both traditional and unconventional means. We also placed significant emphasis on consulting with specialists, knowledgeable in constitutional law, while building the internal capacity of the Commission as well as stakeholders with which the Commission intended to engage.

As a key aspect of the Commission's consultation plan, public hearings were hosted at strategic locations across the island, in addition to meetings privately held with individuals, groups, organisations and associations representative of our society. It was also determined that our consultations must extend to Barbadians across the wider diaspora, and the Commission felt it important to visit specific locations in which large numbers of Barbadians reside, so as to underscore the value of their input.

(a) Dissemination of Information

To widen public knowledge and appreciation of the Constitution, and stimulate informed discussion thereon, the Commission establish its own dedicated website (www.crcbarbados.com) and a presence on several social media platforms, including Facebook, Instagram, X (formerly Twitter) and YouTube with the branding and design support of IDS Creative Inc. Using these modes of communication, the Commission developed and disseminated responses to frequently asked questions about the Constitution and our reform process.

A digital copy of the Constitution, consolidated as at June 30, 2022, was also prepared by the office of the Chief Parliamentary Counsel and made available to members of the public for viewing and download on the Commission's website, and by extension, its social media platforms.

The Commission also made available on its website and social media platforms the revised copy of a booklet entitled *The Barbados Constitution: Facts and Questions* which was commissioned by the Office of the Attorney General from author Prof. Velma Newton, CBE, SCM, former Law Librarian of the University of the West Indies. The original version of this booklet, had been prepared for the previous Constitution Review Commission, chaired by Sir Henry Forde. In the revised booklet, which was updated to reflect Barbados' republican status in 2021, 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. The intention was that these questions would assist in focusing attention on the areas which could be reviewed and would in turn lead the public to ask even more detailed-oriented questions about the Constitution. An electronic copy of the booklet was also made available on the website of the Government Information Service.

Physical copies of the booklet, which were printed by the Government Printing Department, were made available to the public free of charge from the Office of the Director General, Governance and were also distributed at the Commission's town hall meetings in Barbados and overseas. Additionally, Four hundred and twenty (420) copies were donated by the Commission to the Ministry of Education, Technological and Vocational Training for distribution to the secondary schools in Barbados for use in their Civics Programmes.

The Commission also partnered with the U-Report Barbados platform to develop a Constitutional Reform Information Hub, allowing participants to learn more about the provisions of the Barbados Constitution in an engaging way via the popular messaging application WhatsApp. The novel initiative invited the public to text the word "REFORM" via WhatsApp to the designated number – (246) 832-6775 –whereupon they would receive a series of prompts, guiding them through the chapters of the Constitution. Thus, using an automated text-bot to explain key provisions in a concise, clear and digestible manner in the interest of not only public engagement but also public education.

The platform of radio was also used by the Commission to serve the dual purposes of educating the public on the Constitution and the reform process, while hearing their views. Between August and October 2022, the Commission held eight (8) such themed programmes, four (4) of which were facilitated by Starcom Network VOB92.9FM's *Down to Brass Tacks* programme, and the other four (4) on the *Let's Talk About It* call-in show on the Caribbean Broadcasting Corporation's Q100.7FM.

(b) Public Notices

By notices published in various mediums such as the Commission's website and social media platforms, the Government Information Service website and the daily newspapers (both printed and online):

(i) members of the public were informed of the official launch of the Commission and invited to submit their ideas, comments and suggestions on the reform of the Constitution via written submissions to the Commission's email address or via regular mail in care in of the Director General, Governance;

(ii) all members of the public were invited to make oral submissions under the theme "Have Your Say" at three (3) general public hearings and one (1) thematic public hearing.

(iii) the youth were specially invited to give their input at two (2) virtual town hall meetings hosted on the Commission's Twitter page.

(iv) members of the public were informed of eight (8) sensitization/consultation sessions relating to the Barbados Constitution on the radio programmes Down to Brass Tacks and Q100.7 FM Let's Talk About It.

(v) public lectures organized by the Commission were announced.

(c) Public Hearings

(i) General Hearings in Barbados

Three (3) public hearings at which the Commission heard submissions on general constitutional matters were held in Barbados at the St. Michael School, the Alexandra School and the Deighton Griffith School. These events were also livestreamed across the Commission's social media platforms with the technical support of Oversight Corp, thus, extending public participation beyond those who physically attended.

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. These public hearings, which commenced at 5:00 p.m. and ended at 8:00 p.m., were structured as general sessions to enable members of the public to address the Commission on any matter of constitutional relevance.

(ii) Special Public Hearing on the Preamble to the Constitution

Once the general public hearings were completed, we held one public hearing on the special topic "The Preamble, The Charter & The Spirit of Barbados to be reflected in the Constitution". This public hearing took place at the Frederick Smith Secondary School. Of note is that the panel included Chereda Grannum, a member of the Republican Status Transition Advisory Committee (RSTAC) who, with Commissioner John Rogers who was also a member, co-chaired the Committee on Fundamental Principles, Rights and Freedoms which was the Subcommittee of RSTAC that drafted the Charter of Barbados. This public hearing commenced at 6:30 p.m. and ended at 8:30 p.m.

(iii) Twitter Spaces (Virtual Youth-Centred Public Hearings)

The Commission placed special emphasis on engaging young people, recognizing the significance of a new, enduring Constitution to them. In this context, the Commission took the innovative decision to host two public hearings via the Twitter Spaces platform (as it then was) on February 9 and 23, 2023. These three to four hour consultations were co-hosted by the Commission and our implementing partners, Mr. Luke Lascaris and Mr. Corey Sandiford, who manage Twitter engagements under the hashtag #betterbim.

The two virtual events attracted seven hundred and fifty-two (752) live listeners, eight hundred and seventy-six (876) listeners via replay and generated a total of sixty-seven (67) submissions (22 oral and 45 written) and over two hundred (200) additional engagements via tweet.

(iv) General Hearings with the Diaspora

Thanks to the financial contribution of IMPACT Justice, the Commission visited communities in the Barbadian diaspora to conduct public hearings and receive submissions on proposals for constitutional reform. After careful consideration, it was determined that the most strategic locations for these visits would be the United Kingdom (specifically London, Birmingham and Reading) as well as North America (New York, Boston, Atlanta and Toronto, Canada). In this connection, the Commission must express its gratitude to the diplomatic missions of Barbados in the jurisdictions visited for the courtesies extended as well as to the Barbadian diaspora for their warm hospitality.

From March 8-18, 2023, a delegation comprised of Commissioners Adriel Brathwaite, Suleiman Bulbulia and Mary-Anne Redman with the Director General, Governance, Gail Atkins in attendance visited Birmingham, Reading and London in the United Kingdom. The Chairman joined the meetings in the United Kingdom virtually. A second delegation comprised of The Chairman, Justice Christopher Blackman (rtd); the Deputy Chairman, Senator Gregory Nicholls and Commissioners Sade Jemmott, Rev. Dr John Rogers with the Secretary, Prof. Cynthia Barrow-Giles in attendance visited New York, Boston and Atlanta in the United States and Toronto in Canada from May 18-29, 2023.

Much like the concerns raised by the Diaspora on the visit by the Forde Commission, it was notable that while these Barbadians were happy to be included in the consultation process for the preparation of the new Constitution for Barbados, they believed that greater representation of their perspectives was generally necessary in the island's governance. Among some of the major concerns addressed by the Diaspora were: their right to vote in elections in Barbados, specific representation for their community in the Parliament of Barbados, rules applicable to Barbadian citizenships, land ownership, health care and unrestricted access to beaches.

(d) Submissions

In order to discharge its mandate to consult widely with the public, the Commission devised a multi-faceted engagement strategy, which featured several ways to contribute to the constitutional reform process. In addition to making written submissions via the contact form on the Commission's website, by email to the Commission's email address (constitutionalreform@barbados.gov.bb) or by regular mail in care of the Director General, Governance, members of the public were encouraged to submit their oral comments, concerns, views, and recommendations on constitutional reform through the Commission's Hotline number – (246) 536-1260.

The deadline given for receipt of written and oral submissions was April 14, 2023. A public notice to this effect was published in the daily newspapers and on the Government Information Service website on February 9, 2023.

Despite this deadline, the Commission continued to receive and accept submissions after this date in an effort to have all views contend. To date, the last oral submission was made April 21, 2023 and the last written submission which was considered was made as late as January 25, 2024.

(i) Oral Submissions

At the public hearings which addressed general matters relating to the Constitution, forty-three (43) oral submissions were made at public hearings in Barbados; forty-nine (49) at public hearings in Canada and the United States and forty (40) at public hearings in the United Kingdom.

With respect to the Commission's Hotline number, there were twenty-nine (29) oral submissions.

At the two Twitter Town Halls there were twenty-two (22) oral submissions.

At the discussions on special topic "The Preamble, The Charter & The Spirit of Barbados to be reflected in the Constitution" held in Barbados, fifteen (15) oral submissions were made.

It should be noted that a mini public meeting was held on December 23, 2022 aboard the ship Rhapsody of the Seas. This impromptu meeting came about after the Chairman was asked for more information after distributing a number of copies of the booklet "The Barbados Constitution: Facts and Questions" to those Barbadians who were present. Two (2) persons in the audience gave their oral recommendations regarding the Constitution.

In total, there were two hundred (200) oral submissions recorded which does not include the numerous other oral submissions made on the radio programmes Down to Brass Tacks and Q100.7 FM Let's Talk About It.

(ii) Written Submissions

A total of two hundred and thirteen (213) written submissions were received.

(iii) Tweets

A total of forty-five (45) tweets were received during the two Twitter Town Halls.

(e) Private Hearings

The Commission recognized the particular importance of civil society actors in the constitution-making process, and so made a special effort to engage a wide cross-section of civil society. To that end, the Commission wrote to thirty-five (35) organisations and associations requesting submissions on matters of constitutional significance, receiving fourteen (14) written

submissions in response. In addition, the Commission received six (6) written submissions from State institutions.

In addition to the receipt of written submissions, the Commission also conducted a robust series of engagements with stakeholders. There were thirty-one (31) such meetings held between August 2022 and September 2023 with officials of the Government of Barbados and the security services; legislators; and representatives of faith-based organisations, political parties, trade unions, professional associations and other interests.

In addition to meeting with you, we also met with the other 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, such as the former Chief Justice Sir Patterson Cheltenham and members of the Judiciary and Magistracy; the Senate; the House of Assembly the Auditor General, the Commissioner of Police and the Chief of Staff of the Defence Force and the former Prime Minister, the late Sir Erskine Sandiford.

We also met in private with representatives of the political parties, civic organisations, the trade unions, senior civil servants (past and present); the House of Assembly's backbenchers and members of the Parliamentary Reform Commission, the Barbados Bar Association, the Barbados Association of Retired Persons (BARP) and the Synod of the Anglican Church among others.

(f) Training Sessions for Commissioners

The Commission received training in various matters related to, among other things, managing public hearings, preparing the report and the process of drafting legislation from persons such as:

- Prof. Dwayne Devonish, Professor of Management and Organisational Behaviour and Coordinator of the International Management MSc Programme at the Department of Management Studies, Faculty of Social Sciences, University of the West Indies, Cave Hill Campus;
- Retired Justice of Appeal Sherman Moore, CHB;
- Prof. Tracy Robinson, Professor of Law, Mona Campus, Jamaica;
- Mr. Sumit Bisarya, Head of Constitution-Building Processes and Head of Mission for the International Institute for Democracy and Electoral Assistance (International IDEA) in the Netherlands;
- Dr. W. Elliot Bulmer, Senior Advisor (Constitution Building) of International IDEA; and
- Professor Richard Albert, William Stamps Farish Professor in Law, Professor of Government and Director of Constitutional Studies at the University at Texas, Austin.

Notably, members of the Commission attended a two (2) day workshop facilitated by the United Nations Development Programme (UNDP), International IDEA and the University of the West Indies on *Constitutional Change in the Commonwealth Caribbean: Common Themes, Options and Experiences* on June 1 and June 2, 2023. This workshop was attended by regional and international experts in constitutional law, politics and governance and allied disciplines as well as representatives of the People's Constitution Commission of Belize. Attendees received several presentations on the theory, practice and process of constitutional reform in the Caribbean.

(g) Workshop for Civil Society Organisations (CSOs)

Being acutely aware of the fact that the success of constitutional reform processes depends not only on government-created bodies, but also on a vibrant civil society. The Commission, in collaboration with International IDEA, hosted a Workshop for Civil Society Organisations on Thursday, December 8, 2022, at the Cave Hill School of Business, University of the West Indies. It was facilitated by Mr. Sumit Bisarya, Head of Constitution-Building Processes and Head of Mission for International IDEA in the Netherlands. The Workshop carried the theme "Constitution Building Processes: Concepts and Principles".

This workshop was part of an effort to buttress the capacity of civil society actors to enable more effective participation on their part in the reform process. It, therefore, sought to give participants a greater understanding of the general contents and functions of constitutions and the processes of constitution building as well as ideas for how CSOs can engage with the process in Barbados.

(h) Public Lectures

The Commission arranged two (2) public lectures:

(i) Lecture on "*Constitution Making in the 21st Century – Trends and Challenges"* by Mr. Sumit Bisarya delivered on December 9, 2022; and

(ii) Lecture entitled *"The Grenade, the Hourglass and the Sundial: the Lifetime of Constitution*s" by Prof. Richard Albert delivered on January 15, 2024.

(i) Meetings of Commission Members

The Commission conducted its work by meetings of the whole Commission in plenary, as well as through standing and ad hoc committees. Initially, the Commission met several times per month in plenary as it was getting its programme of work off the ground. However, when the Commission reached its deliberative phase in June 2023, the Commission increased the frequency of its working sessions to twice weekly and doubled the length of these meetings. In total, the Commission met in plenary session on seventy-six (76) occasions.

Early in its life, the Commission established four (4) standing committees. These committees met periodically over the course of our tenure and led the Commission's efforts in their respective portfolios. These committees were:

1. The Management Committee, chaired by The Hon. Mr. Justice (rtd) Christopher Blackman;
2. The Education and Research Committee, chaired by Senator Gregory Nicholls;
3. The Public Education and Engagement Committee, chaired by Commissioner Sade Jemmott; and
4. The Stakeholder and Institutional Engagement Committee, chaired by Commissioner Adriel Brathwaite.

During the deliberative phase of the Commission's tenure, as issues arose requiring further discussion outside of the plenary, *ad hoc* committees were also established to address these issues.

(j) Documents Examined

We considered a large number of documents which included:

- the *Constitution of Barbados* and related laws of Barbados;
- a collection of constitutional cases decided in the law courts of Barbados since Independence;
- reports of previous constitution commissions in Barbados and across the Commonwealth Caribbean;
- the constitutions of other countries, particularly Commonwealth jurisdictions in Africa, the Caribbean, Africa and the Pacific, and other comparative constitutional law material;
- international human rights treaties and information from international organisations such as the United Nations Development Programme (UNDP) and primers from the International Institute for Democracy and Electoral Assistance (International IDEA); and
- newspaper articles on the Constitution;
- all of the submissions received from Barbadians.

This information will be preserved not only as part of our historical records, but as an important research collection as mandated by the Cabinet in its decision to establish the Commission. The minutes of the Commission and the verbatim records of the public and private hearings will also form part of this collection.

(k) Drafting of Proposed Amendments

We are indeed grateful to Hon. Justice Sherman Moore (rtd), a former Chief Parliamentary Counsel and Justice of Appeal, who was retained to work with the Commission, specifically with respect to the drafting the new Constitution based upon the Commission's recommendations. Justice Moore was ably assisted by Ms. Gabrielle Whitehall, Parliamentary Counsel (ag.) in the office of the Chief Parliamentary Counsel. The draft Constitution Bill, 2024 is enclosed herewith.

(l) Acknowledgements

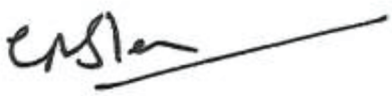
We thank all those - and there were many - who gave so freely of their time and expertise to assist us in carrying out our mandate such as consultants, specialists in constitutional law, researchers, professors, those international and local organisations which offered assistance; etc.

We also wish to thank the many stakeholders and persons who made submissions.

(m) Conclusion

We now have the honour to submit to Your Excellency the Report of our recommendations. Additionally, we enclose a related Pocket Guide – a user-friendly summary document specifically designed to support wider public readership and understanding of our recommendations.

Yours sincerely,



The Hon. Christopher Blackman, GCM

Senator Gregory Nicholls

Adriel Brathwaite, SC

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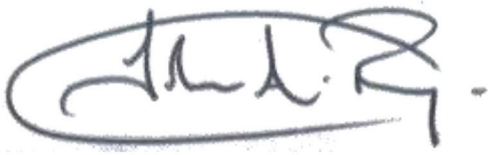
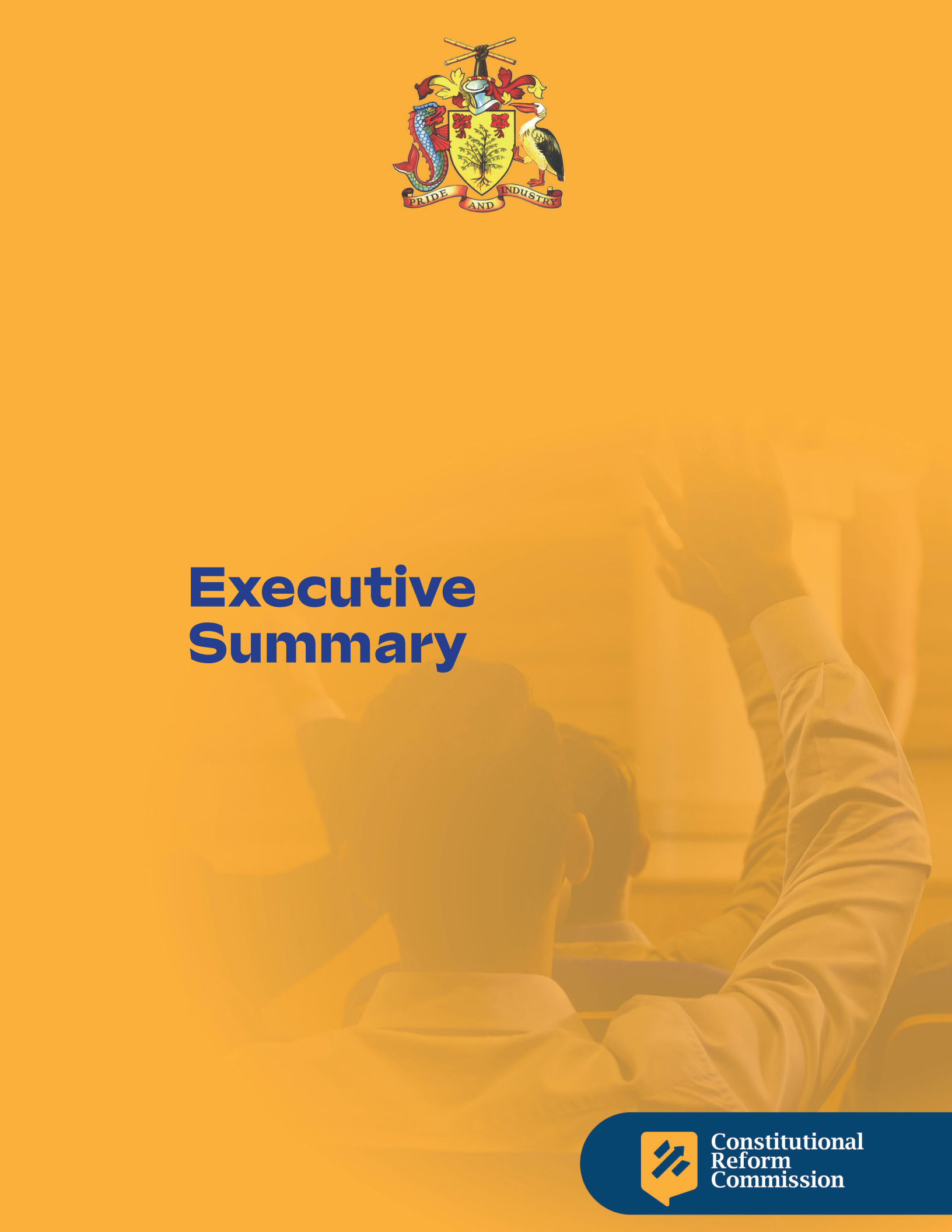


Senator Rev. Canon Dr John Rogers

Professor Cynthia Barrow-Giles,

Secretary

Executive Summary



Constitutional Reform Commission

The Constitutional Reform Commission was appointed by the President of Barbados, acting under the powers conferred by section 3(1) of the Commissions of Inquiry Act, Cap.112 as an advisory commission to make recommendations on the reform of the Constitution of Barbados, considering the country's new republican status.

The Commission remained at all times keenly aware that its mandate concerned constitutional reform, rather than mere review or revision. Consequently, over the course of its work, the Commission interrogated the history and development of this nation's constitutional institutions, inquired into the historical, political, social and economic context of constitutional reform, and examined developments in constitutional jurisprudence since Independence. As a result, whenever the Commission deliberated on an issue, the central question to be determined concerned whether the proposal was consistent with the desire for a constitution fit for a republican Barbados.

Arising out of its extensive inquiry, the Commission was generally satisfied that the Constitution of Barbados had served Barbados adequately since Independence. Nevertheless, the Commission was cognisant of the fact that every generation is called upon to build upon the foundation left by its forebears. The framers of our Independence Constitution bequeathed to us the framework for a constitutional democracy. Therefore, the urgent task of this Commission was to consider and make recommendations for the further building out of that democracy.

Guiding Principles of Constitutional Reform

Throughout its deliberations, the Commission was guided by several principles which informed its final recommendations. These principles included the commitment to:

- Honouring and protecting the inherent human dignity of all people;
- Asserting the sovereign aspirations of the people of Barbados;
- Ensuring the maintenance of a representative democracy;
- Enforcing accountability for all institutions of the State;
- Enhancing respect for the rule of law and the separation of powers; and
- Preserving the political and constitutional stability that has always characterised Barbados.

Against this backdrop, the Commission carefully considered the many submissions made to it, the constitutional arrangements in other, similar jurisdictions and constitutional scholarship. Arising out of this detailed inquiry, the Commission has crafted a package of recommendation for constitutional reform designed to attain the aforementioned guiding principles. In doing so, the Commission proposes a Constitution for a republican Barbados which can inspire a new-found confidence on the part of all Barbadians in the hope and aspiration of our Supreme Law.

The Package of Constitutional Reform

The most significant elements of the Commission's proposals for constitutional reform include:

- Better reflecting national aspirations in a new Preamble to the Constitution;
- Expanding access to citizenship, while preserving Barbadian identity;
- Ensuring that the full promise of fundamental rights is unlocked for all people;
- Guaranteeing new and additional fundamental rights and freedoms;
- Securing universal respect and protection for fundamental rights;
- Retaining the Office of the President as a symbol of national unity and an object of Barbadian pride;
- Providing for a more representative Parliament;
- Securing the role of the parliamentary opposition;
- Designing a structure for ministerial accountability;
- Institutionalising a system for consensual decision-making in the appointment of key constitutional officeholders;
- Improving effectiveness in the judicial system;
- Protecting judicial independence;
- Creating a coherent scheme for judicial accountability;
- Protecting the independence of the Service Commissions;

- Promoting the effectiveness of the Service Commissions;
- Establishing values and principles for public service;
- Establishing, and better protecting the independence and effectiveness, of regulatory and oversight institutions; and
- Expanding access to constitutional justice.

The recommendations of the Commission holistically seek to create a refurbished constitutional structure. These reforms are neither a radical demolition of the existing constitutional order, nor are they mere tweaks to aspects of the system.

The Commission viewed with seriousness its mandate to recommend a constitution for a republican Barbados. Understanding that a republican form of government – by the very etymology of the word – vests power in the People, the Commission undertook to place the People of Barbados at the centre of the reform package. As a result, recommendations have been crafted to ensure the Constitution secures a system of government that protects the People's rights and freedoms and makes the People's government more accountable. The Commission is thus confident that its recommendations together constitute a Constitution fit for a republican Barbados.

i. Better reflecting national aspirations in a new Preamble to the Constitution

The Commission recommends the replacement of the existing Preamble to the Constitution. While it may have been appropriate for a country now attaining independent statehood after centuries of colonial domination, it does not adequately reflect the Barbados of today.

Therefore, the Commission has crafted a new Preamble, influenced by the previous recommendations of the Forde Commission and the 2021 Charter of Barbados, which more accurately captures our national history and better articulates the role of our forebears. The proposed Preamble also declares the nation's central principles and our most important national commitments.

The central principles acknowledge:

- the supremacy of God who created, guides, sustains and protects;
- the dignity and worth of the Human Person;
- the fundamental rights and freedoms of the Individual; and
- the central role of the Family in a free society.
- The central national commitments set out are:
- to order the social and economic life of the Nation to promote the general welfare;
- to preserve, enhance and conserve a healthy and balanced environment;
- to forge closer ties with our brothers and sisters in the Caribbean civilisation; and
- to cooperate with the global community to secure international peace and security.

ii. Expanding access to citizenship, while preserving Barbadian identity

The Commission recommends that all gender discrimination remaining in the citizenship provisions be expunged and that citizenship be conferred on an equal basis regardless of sex. Further, the Commission recommends the retention of the right to citizenship by birth and by registration. Finally, the Commission recommends that citizenship by descent be extended by one generation, to confer citizenship on persons born outside Barbados who have Barbadian grandparents.

While the Commission received calls to go even further in expanding access to citizenship, it was felt that it was important to still have a citizenship regime at the constitutional level that was circumspect and did not lead to an opening of the floodgates. The Commission deeply values the immense contribution of members of the Barbadian diaspora and consequently suggests that Government explore other avenues to possibly confer citizenship on diaspora members through the *Barbados Citizenship Act, Cap.186*.

iii. Ensuring that the full promise of fundamental rights is unlocked for all people

The Commission had especial regard to the difficult history of this island, where, for more than two centuries, the majority of the inhabitants were enslaved and systematically denied their inherent human dignity. Recognising this history, the urgent mission of Barbadians in the 21st century must be to ensure that we fully honour, without exception, the dignity and worth inherent in each of us, by virtue of being human.

With this front of mind, the Commission recommends that the right to protection against discrimination be updated to reflect our national commitment to respecting the equality of all people. More specifically, the Commission recommends that the new constitution protect persons against discrimination on the basis of a vastly expanded set of grounds, including race, ethnic or social origin, political opinion, colour, creed, age, sex, gender, class, culture, marital status, sexual orientation, pregnancy, disability or health. In the view of the Commission, to accept that some may be discriminated against is to consign those persons to second-class status. In a republican Barbados, there can be no place for denying the humanity of any person.

The Commission also recommends the inclusion of rights specifically related to persons with disabilities, recognising the historical silence of the Constitution and law about them and their continued struggle for full acceptance as equal and capable human beings.

iv. Guaranteeing new and additional fundamental rights and freedoms

The Commission recommends that the new constitution protect additional fundamental rights and freedoms of the individual, in particular the right to work, to access information held by the State, to fair and just administrative action and to vote and stand for election. These rights are intended to further promote the ability of all citizens to participate in our civic and democratic processes, to secure their economic existence and to be dealt with fairly by the State.

Additionally, the Commission had regard to international developments in human rights law, specifically the provision of economic and social rights. The Commission was satisfied that Barbados has a long history of promoting high standards of human development, through the provision of government and social services. To this end, the Commission recommends that the new constitution impose an obligation on government to pursue legislative and other means to progressively realise the right of all persons to access education, healthcare, adequate housing, adequate food and clean water.

Finally, given the status of Barbados as a Small Island Developing State on the frontline of the climate crisis, and in the vanguard of the fight for climate justice, the Commission recommends that the new 21st century Barbadian constitution impose an obligation on government to pursue legislative and other means to progressively realise the right of all persons to a safe and healthy environment.

v. Securing universal respect and protection for fundamental rights

The Commission recommends that the fundamental rights and freedoms apply to and bind all persons in the society, and not only the State. The fundamental premise of human rights is that they must apply universally and are inalienable. It is therefore inconsistent that only the State is presently required to respect fundamental rights, while others may violate them with impunity. In a republican Barbados, this is untenable. Naturally, though, private citizens will not bear the same level of responsibility as the State and so fundamental rights will inevitably apply differently between private citizens. Thus, acknowledging that each and every citizen has equal fundamental rights and freedoms that may at time conflict but ultimately can be reconciled and must be respected.

vi. Retaining the Office of the President as a symbol of national unity and an object of Barbadian pride

The Commission felt that the role of the President as a symbol of national unity was an important function in a small society. While there was robust debate about the wisdom of retaining an Office of the President without substantive executive powers, the majority of the Commission decided that it was of critical import that there be at least one office in the highest echelons of our society and political system which all Barbadians could rally around and of which all Barbadians could be proud. Thus, retaining the President as a non-partisan figure was important for the Commission.

The Commission, therefore, declined to require that the President be popularly elected or that the Office be conferred with greater executive powers. To do so would necessarily invite the President into the political arena and thereby weaken that office's ability to unite the nation. Indeed, it was felt that the current method of election and powers of the Office are consistent with the purpose of the Head of State as a unifying force in our society.

For similar reasons, the Commission recommends lengthening the term of the President to seven (7) years so that the said term does not run concurrently with a single Parliament. Additionally, the Commission recommends the discontinuation of the power of the President to assent to Bills in order for them to become law. This is an inherited monarchical power that is no longer necessary in a country with a democratic, representative Parliament. Thus, the Commission proposes that once both Houses pass a Bill, it should become law without reference to the President.

vii. Providing for a more representative Parliament

The Commission was generally satisfied with the current role and method of election of the House of Assembly. The constituency-based system was deemed appropriate for a small nation because it ensures that the People's representatives have a close relationship with them by virtue of being elected by a geographically defined group of persons. The Commission discussed the inclusion of Members of Parliament ("MPs") elected on a national basis, but the majority ultimately declined to recommend that for the reasons already stated, particularly concerns that it might compromise and/or undermine the role and importance of constituency MPs.

In the Commission's view, the Senate serves an important function in the legislative process of review, and also enables the participation in law-making of capable persons who might otherwise be left out of the process by the cut and thrust of elective politics. However, the Commission felt that modifications could be made to the Senate to make it more broadly representative of the People. In particular, the Commission recommended that:

- the equal representation of men and women in the Senate be constitutionally enshrined to secure the Nation's commitment to maintaining parity between the sexes, in evidence of the equal worth and value of men and women; and
- the minimum qualifying age for membership of Parliament be reduced to 18, in line with the voting age. The Commission could not determine an objective basis on which to deny full franchise to persons between the age of 18 and 21.

The Commission discussed but did not ultimately agree to recommend provisions for the recall of MPs or restrictions on them "crossing the floor". In either case, the majority

felt that the essence of representative democracy was that the People elect their MPs at periodic general elections with a mandate to represent them, and thus, MPs must have the ability during the parliamentary term, to act as necessary in pursuit of that mandate.

viii. Securing the role of the parliamentary opposition

The Commission recognised the central role of the parliamentary opposition in our system of government. As a result, the Commission felt it important to better secure the role of the parliamentary opposition in our Constitution.

In particular, the Commission recommends that provision be made for circumstances where no person is appointed as Leader of the Opposition, likely because of a landslide election result. In such circumstances the Commission recommends that all constitutional functions relating to the Leader of the Opposition be exercised by the opposition political party that gained the highest number of votes in the general election. This would ensure that whenever the Constitution requires consultation or advice from the Opposition, it could be facilitated.

Finally, the Commission recommends increasing the number of Opposition Senators to four (4) which would require a reduction in the number of Independent Senators to five (5). The current number of Opposition Senators means that these two individuals must be prepared to speak on almost every measure coming before the Senate. This is an obviously onerous responsibility and one that is not necessarily felt in the same way by Government or Independent Senators whose numbers are greater. Therefore, increasing the number of Opposition Senators would better enable effective Opposition representation in the Senate.

ix. Designing a structure for ministerial accountability

A major emphasis of our parliamentary system of government is ministerial accountability to Parliament. That goal is more effectively achieved in the context of a nation with a large Parliament, with full-time MPs and a large backbench. It is not similarly achievable in the context of a small Parliament, without full-time legislators. Other ways must therefore be found to ensure that an Administration remains accountable for their performance in between elections.

Thus, the Commission recommends that the new constitution require that a Code of Conduct be prepared to govern Ministers and Parliamentary Secretaries. The Integrity Commission would have the power to investigate alleged breaches of the Code and report thereon to Parliament. The aim of this is to institutionalise ministerial accountability.

x. Institutionalising a system for consensual decision-making in the appointment of key constitutional officeholders

Since Independence, academics, politicians, writers and members of the public have expressed concerns about the constitutional arrangement which empowers the person holding the office of Prime Minister to effectively make recommendations for the appointment of a swathe of key constitutional officeholders, including Judges, members of the Service Commissions, the majority of the members of the Electoral and Boundaries Commission and others.

This is because the current mechanism requires the President to act on the Prime Minister's advice, after the Prime Minister has "consulted" the Opposition Leader. The nature and quality of that consultation between the two will depend on the particular occupants of the offices. However, the effect of the relevant constitutional provision is, essentially, that the view of the Prime Minister is paramount.

The Commission considered that in a republican Barbados, such a critical power should not be exercised unilaterally by one officeholder. The Commission therefore recommends the establishment of a Constitutional Offices Commission consisting of the Prime Minister, Opposition Leader, Attorney-General and persons appointed on the advice of the Prime Minister, Opposition Leader and President. This Commission would create an institutional structure for dialogue between these officeholders and better ensure that appointments to these key offices are made after meaningful consultation among the country's political leaders.

xi. Improving effectiveness in the judicial system

The Commission recognised the importance of bolstering public confidence in the ability of the judicial system to render justice to litigants, in particular securing the right to have access to speedy and effective justice. The majority of the Commission was convinced that the specific concerns of members of the public in this regard could be addressed by reforms at the administrative level.

However, at the constitutional level, the Commission proposes reforms to the leadership structure of the Courts to facilitate the provision of more effective leadership. To this end, the Commission proposes the creation of an office of President of the High Court, to be responsible for managing the day-to-day administration of the High Court. The Chief Justice would be retained as overall head of the judiciary and would manage the day-to-day affairs of the Court of Appeal. This is intended to improve management effectiveness as the leader of each Court, by virtue of having a closer, functional relationship to the Court, would be able to pursue a more hands-on approach to leadership. The appointment of separate heads would require each to manage, lead and organize the resources, skills and business of each Branch and be held accountable for the delivery of performance and the meeting of targets.

The Commission also proposes that the revamped Judicial and Legal Service Commission play a role in establishing and monitoring standards relating to performance, conduct and other matters for the judiciary, and be required to report thereon to Parliament. This would create an objective basis on which to assess judicial performance and hopefully lead to greater efficiency in the system.

xii. Protecting judicial independence

The Commission acknowledges that the judiciary is essential for the maintenance of the rule of law and constitutional democracy. Further strengthening judicial independence is therefore critical. As a result, the Commission has given wide consideration to several recommendations intended to ensure that judicial officers, and the judiciary as an institution, continue to have the independence and autonomy required to effectively dispense justice.

To that end, the Commission recommends significant changes to the judicial appointments process designed to professionalise that process. The Commission therefore

recommends that the power to recommend the appointment of Judges be vested in a revamped Judicial and Legal Service Commission, consisting of retired judges, attorneys-at-law and distinguished members of civil society. For the Chief Justice, the Commission accepts that the People's representatives have a legitimate interest in that appointment and therefore recommends that the Constitutional Offices Commission be responsible for making the recommendation for that appointment.

In addition, the Commission proposes that the age of retirement for Judges be standardised and fixed at 72 years. This would discontinue the power of the Prime Minister to extend the tenure of Judges by a further two years after the retirement age. That arrangement is no longer desirable and is not consistent with the separation of powers.

Finally, the Commission recommends that Government explore pursuing administrative and legislative reforms to give the Judiciary greater autonomy over the management of their own operations and resources, thereby lessening the reliance of the Judiciary on the Executive and the Public Service for basic facilitations. This would be achievable through the creation of a Court Services Department, not subject to the direction or control of a Minister, but led by the Chief Justice, and charged with overall responsibility for the administration of the Supreme Court and Magistrates' Courts.

xiii. Creating a coherent scheme for judicial accountability

While the judiciary plays a significant role in holding the other arms of the State accountable, all branches of government – including the judiciary – must be accountable. Therefore, the Commission proposes a more transparent and objective system for the discipline of judicial officers, if necessary, from time to time.

The Commission was concerned that the current Constitution only contemplates removal from office as the disciplinary sanction for Judges. This is not consistent with accepted industrial relations practice that dismissal should only be a measure of last resort, and that there should be a progressive regime of disciplinary measures. The recognition of only the most extreme sanction therefore tends to frustrate the effectiveness of the disciplinary process. As a result, the Commission recommends that the new constitution permit the imposition of sanctions less than removal where necessary, such as formal warnings, reprimands or suspension.

The Commission also recommends the alteration of the grounds which would trigger a disciplinary proceeding against a Judge, in particular the replacement of the ground requiring the removal of a Judge for a delay of more than six (6) months in delivering a judgement. The Commission considered that setting an absolute timeframe may be arbitrary and does not take account of the fact that a reasonable timeframe for the delivery of judgement may differ from case to case depending on circumstances. Therefore, the Commission proposes that instead provision be made for a disciplinary proceeding to be triggered in the case of excessive or inordinate delay in the delivery of a judgement, or persistent delay of six (6) months in the delivery of judgements.

Finally, the Commission recommends a new process for judicial discipline which vests responsibility for receiving and enquiring into complaints about a Judge in the revamped Judicial and Legal Service Commission (JLSC), and in the case of removing a Judge, retaining the involvement of the Caribbean Court of Justice (CCJ). The proposed new structure provides transparency to a currently opaque process and affirms the respective rights of complainants and a Judge about whom a complaint is made.

xiv. Protecting the independence of the Service Commissions

The functioning of the Government relies on a non-partisan Public Service. For this reason, responsibility for advising on the recruitment, appointment, promotion, transfer, discipline and removal of public officers is placed in various Service Commissions. Buttressing the independence of these Service Commissions therefore is important for maintaining an effective Government.

To this end, the Commission recommends that the members of these Service Commissions be appointed on the advice of the Constitutional Offices Commission, rather than on the advice of the Prime Minister after "consultation" with the Opposition Leader. Additionally, the Commission recommends that provision be made for the Service Commissions not to be subject to the control or direction of any other authority, in the performance of their functions.

xv. Promoting the effectiveness of the Service Commissions

Given the role of the Service Commissions in human resource management in the Public Service, a lack of efficiency and effectiveness of the Service Commissions can dampen morale in the Service.

The Commission therefore considered mechanisms to facilitate greater efficiency in the operations of the Service Commission. In particular, the Commission recommends the urgent operationalisation of the Teaching Service Commission, to provide an adequate forum to address the human resource matters in the teaching service. Further, the Commission recommends that every Service Commission be provided with its own full-time secretariat to facilitate its work, rather than all Service Commissions having to rely upon a single, centralised secretariat.

xvi. Establishing values and principles for public service

As stated above, the Public Service serves a critical role in the overall functioning of the Government. To that end, the Commission recommends that the new constitution sets out broad principles and values for the public service, including the maintenance of high standards of professionalism, ethics, impartiality and integrity; merit-based recruitment and promotion; transparent, efficient, economic and effective use of public resources; and the fair, impartial, responsive and courteous provision and delivery services to the public.

xvii. Establishing, and better protecting the independence and effectiveness, of regulatory and oversight institutions

The Commission paid particular attention to the constitutional role of institutions which acted as a check on executive power, particularly given the limits of traditional parliamentary oversight in the context of a small legislature. Therefore, the Commission recommends that further provision be made for the protection of the independence and effectiveness of these regulatory and oversight institutions, particularly the Human Rights Commission, the Electoral and Boundaries Commission, the Office of the Auditor General, the Office of the Ombudsman and the Integrity Commission.

To this end, the Commission recommends that these institutions be insulated from ministerial control and given greater power over their staffing and resources. It should also be constitutionally required that these institutions be provided with adequate facilities and resources for the efficient discharge of their responsibilities.

At the same time, to ensure the accountability of these institutions, the Commission recommends that their accounts be audited by the Office of the Auditor General (and in

the case of the Office of the Auditor General itself, the current practice should be retained, whereby the accounts are audited by a private auditor). In addition, each institution should be required to submit an annual report to Parliament on their administration and operations, which should be considered by a standing joint select committee appointed for that purpose.

xviii. Expanding access to constitutional justice

The current Constitution expressly secures the right of a person who alleges that one of their fundamental rights has been breached to seek redress for that alleged breach from the High Court. It is now well-established that a person alleging that any provision of the Constitution has been breached can file a constitutional motion, provided that they have standing.

The Commission determined that express provision should be made for this in the new constitution, enabling a person to seek redress for breaches of the Constitution including person's acting in their own interest, or on behalf of another, or as a member of a group or class of persons, or an association acting on behalf of its members.

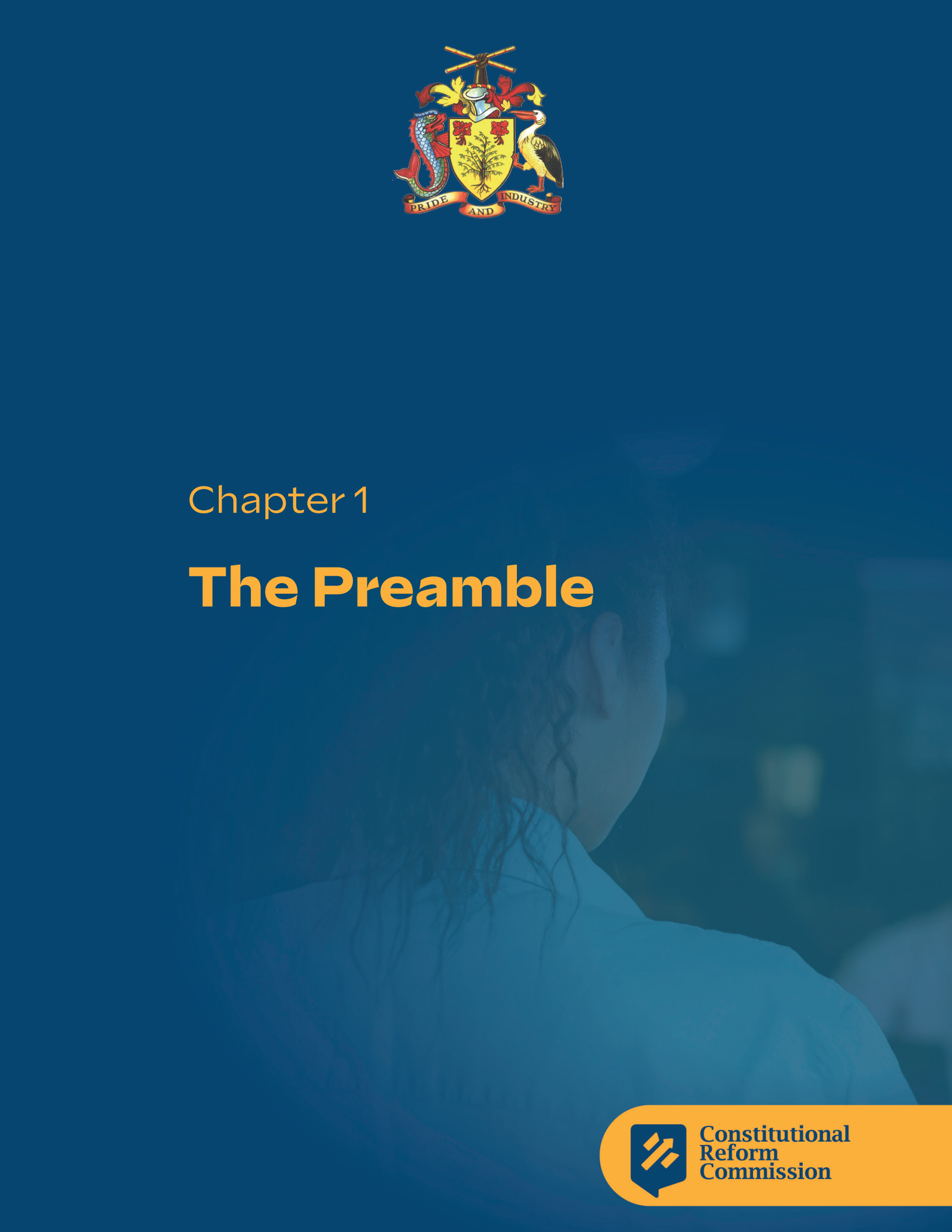
Conclusion

The Commission submits its recommendations fully cognisant of the fact that the success of any attempt at reform does not depend solely on the actions of formal institutions. It requires the collective action of a society enlivened by the prospect of better securing their constitutional sovereignty. Equally, the Commission appreciates that the process of constitutional reform is one of inevitable negotiation and compromise. Indeed, it may never be possible to create a constitutional text which wholly satisfies every citizen in every way.

Instead, the measure of a sound package of constitutional reform is whether it broadly meets the fundamental requirements of the state and its people, particularly the most vulnerable. The Commission humbly submits that this package of reform rises to the present moment and creates the conditions for a constitution able to endure long into the future. It is our sincere hope that in the fruit of our efforts, reflected in these recommendations, the Government and People of Barbados can find a republican Constitution representative of who we are as Barbadians and our aspirations for our national future.

Chapter 1

The Preamble



Constitutional Reform Commission

INTRODUCTION

1.1. A preamble is an important element of a national constitution because it seeks to encapsulate the values upon which the Constitution is founded and thus engenders feelings of national solidarity and pride. While the preamble may not be enforceable on its own, the courts may have regard to its content when seeking to interpret the provisions of the Constitution. Generally, the Preamble can embody several critical aspects of national significance for those for whom the constitution is written, including:

a. chronicling a people's past by signposting some of what are deemed to be seminal moments along the national journey;

b. outlining the philosophical and ideological tenets which shape national identity; and

c. serving as a source of inspiration to develop national consciousness.

1.2. The Commission agreed that the Preamble to the 1966 Constitution may have been appropriate to the time in which it was crafted, but that a new Preamble was imperative to better reflect our republican Barbados. In crafting this new Preamble, the Commission deemed it necessary to acknowledge and incorporate, where relevant, the concerns and views of previous Constitution Commissions, as well as the Charter of Barbados 2021.

THE CURRENT PREAMBLE

1.3. As the first truly Barbadian Constitution in the sense that it emerges from a people who are totally unfettered from any colonial ties, a new Preamble must be reflective of the new outlook of our nation. The Commission felt that the issues with the present Preamble concerned both its style and content.

1.4. **Style**

Given the choice between the traditional legalistic style of the 1966 Preamble and a more contemporary approach which utilizes more aspirational and, at times, reflective language, the Commission opted for the latter. This was in keeping with the approach of the Forde Commission in its draft Preamble.

1.5. Content

The Commission did not receive many submissions that dealt primarily with the Preamble. Of these, some suggested that the Charter of Barbados 2021 be the guide for the new Preamble, while others highlighted aspects of the 1966 Preamble which they found problematic and would wish removed, or on the other hand, which were deemed essential and ought not be altered. Interestingly, the major areas flagged by the public for consideration in the Preamble are the same areas that were highlighted during the time of the Forde Commission. These areas were:

1.5.1. The Inclusion of the 'Supremacy of God' in the Preamble

The Commission received numerous representations for the retention of the reference to the supremacy of God in the Preamble, as well as a few calls for its removal. Interestingly, the calls for its retention were supported by both Christians and other religious groups. This may reflect the spiritual development of the community between the time of the Forde Commission and today. When this matter was considered by the Forde Commission in its 1998 Report, a concern was expressed that acknowledging the supremacy of God "may plausibly be interpreted as excluding non-Christians from the purview of the Constitution". Today, it appears that the acknowledgement of the supremacy of God is interpreted as representing a unifying reference for an increasingly religiously diverse nation.

While the Commission accepts that there is an increasing number of Barbadians who do not observe any faith, we believe that the vast majority of Barbadians continue to believe in a Higher Power, however referred to, even though they may not espouse the formal rituals of organised religion. Moreover, the Commission views the acknowledgement of the supremacy of God as a recognition of the foundational tenet upon which this nation is built, in particular the moral core of this nation of faiths. The reference to the "supremacy of God" is not intended to exclude anyone – including those who do not believe – but rather should be viewed as our nation's commitment to a faith-influenced moral centre. It does not diminish the secular character of our nation's laws, nor does it seek to impose one belief

system. It is open to future generations of Barbadians to re-evaluate this matter in light of evolving developments, but the Commission believes that an acknowledgement of the supremacy of God continues to characterize the nation of Barbados.

1.5.2. **The Presence of Material that is Not Supported by Historical Fact**

The opening words of the existing Preamble – that "the love of free institutions and of independence has always strongly characterised the inhabitants of Barbados" – may be described as ahistorical given the challenging early history of our land. Its removal was recommended by the Forde Commission and in agreement with submissions that have been made to this Commission, that line has been omitted from the new Preamble.

1.5.3. **The Lack of Reference to Slavery**

As was the case with the Forde Commission, representations were made to this Commission questioning the absence of any reference to slavery, a painful, but unavoidable, part of this nation's past. The Commission unhesitatingly agreed to correct this anomaly.

A NEW PREAMBLE

1.6. The new Preamble proposed by the Commission maintains the general spirit of the current Preamble but introduces additional perspectives which better reflect the spiritual, cultural, social, political, philosophical and ideological development of the nation in the intervening period, and our aspirations for the future.

1.7. The first clause declares the fundamental principles upon which our nation is founded. Clauses two to five recognise the development of the political institutions of this island which have enabled the emergence of one of the world's most stable democracies. Clauses six to eight pays tribute to the people of Barbados beginning with the indigenous people, whose memories we reclaim, and includes all of the peoples of Barbados, in our splendid diversity. Clauses nine to twelve set out the nation's fundamental commitments with respect to national development and our place in the region and wider world.

Recommendation

1.8. The Commission recommends the following text as the Preamble to the new Constitution of Barbados:

WE, THE SOVEREIGN PEOPLE OF BARBADOS,

AFFIRM that the Nation of Barbados is founded upon principles that acknowledge the supremacy of God who created, guides, sustains and protects, the dignity and worth of the Human Person, the fundamental rights and freedoms of the Individual and the central role of the Family in a free society;

SALUTE the Founders of the Independent state of Barbados for the patriotic spirit, wisdom and foresight which shaped the national ethos founded on the auspices of social democracy with the inbuilt principle that every generation is indebted to those generations which preceded it and is morally obligated to the one that follows;

ACKNOWLEDGE the establishment of a Barbados Parliament in 1639 and the Charter of Barbados 1652;

RECOGNISE that a Parliament has met without interruption since 1639 and after attaining Independence in 1966 has been guided by the Constitution which has effected civic and political progress through its application and evolution;

CELEBRATE the seminal moment of our national journey with the move to a Republic when the Parliament of this island settled a new Charter of Barbados and chose a Barbadian as Head of State in 2021;

HONOUR the memory and contribution of the indigenous inhabitants of this island, then known as Ichirouganaim;

RECALL the different journeys and diverse motives of our ancestors, some arriving to this land in search of new frontiers and exploits, most by compulsion, the vast majority of whom were uprooted from Africa;

ACCLAIM 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;

ASSERT our unyielding devotion to the preservation of our democracy, characterised by the pursuit of justice, freedom and equality, respect for the rule of law, the maintenance of our long-established parliamentary government and the ability of every person to participate in all institutions of national life, to the full extent of their capacity;

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;

ENDEAVOURING to facilitate the pursuit of happiness through participation in the preservation, conservation, enhancement, and regeneration of a healthy and balanced environment;

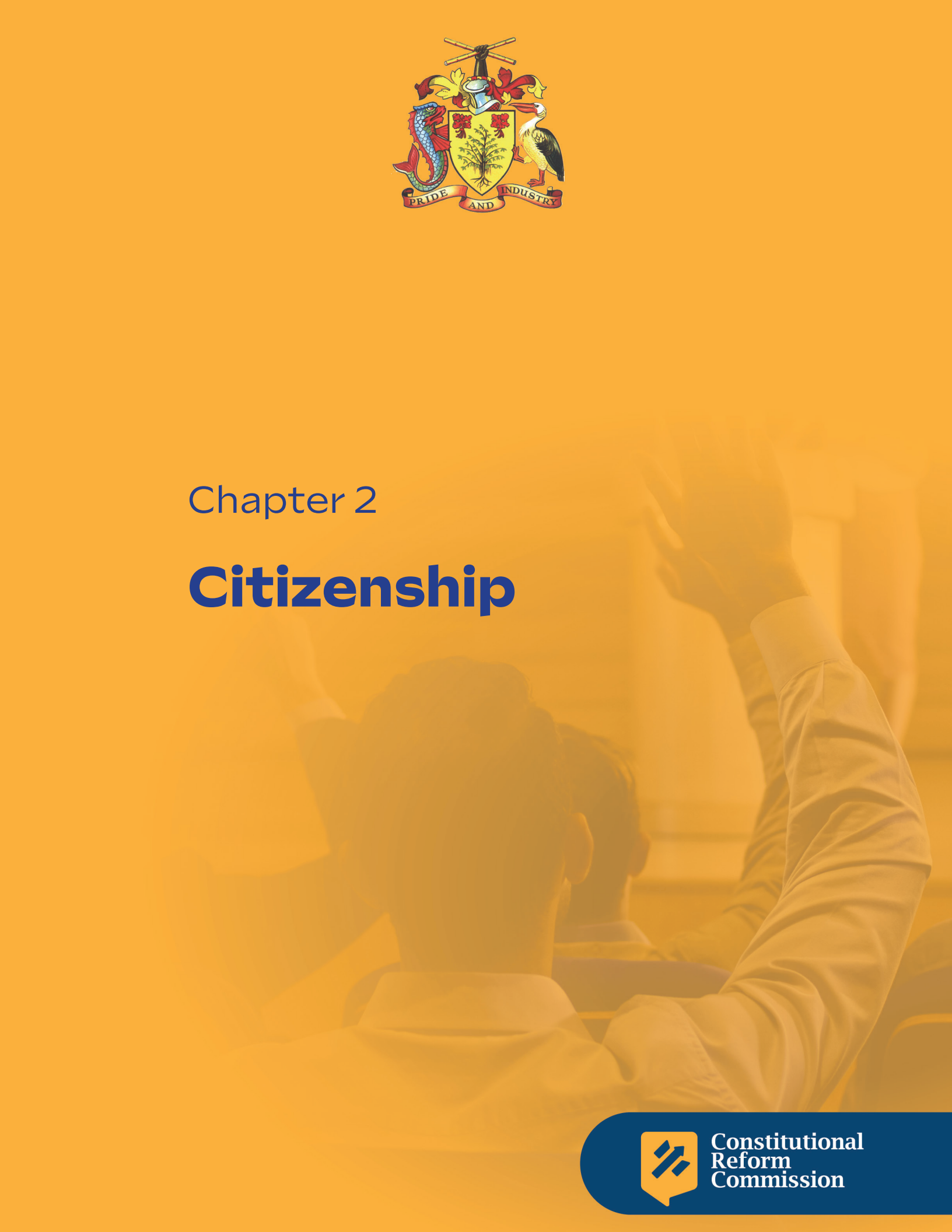
DECLARE that our own Barbadian Nationhood is nourished by our roots in the wider spiritual and cultural reality of the Caribbean People and endeavour to forge closer ties with our Caribbean sisters and brothers;

PLEDGE to cooperate with the global community in the quest for international peace and security guided by the maxim that we will be friends of all and satellites of none;

PROCLAIM the following provisions as the Constitution of Barbados—

Chapter 2

Citizenship



Constitutional Reform Commission

INTRODUCTION

2.1. The act of defining who belongs to a state is one of the most significant tasks in nation-building. The idea of citizenship is bound up in notions of allegiance and loyalty to a state.

2.2. Citizenship serves important symbolic and practical functions. Symbolically, in defining the classes of persons upon whom the signal honour of citizenship is conferred, the state says much about its vision of itself and its future and its way of thinking about its people. Practically, the privileges and advantages of citizenship, coupled with its responsibilities, makes the identification of the citizen a meaningful task.

Philosophical Underpinnings

2.3. From the outset, the Commission resolved its ultimate vision for citizenship under the new Constitution as being a regime that should be coherent and non-arbitrary. It should also remove artificial, discriminatory distinctions between the sexes and between the various ways by which persons become citizens.

2.4. In arriving at this overarching position, the Commission had regard to two important elements of context: (1) as a practical matter, the developing under-population crisis; and (2) the residual discrimination, particularly on the basis of sex, still present in the citizenship regime.

2.5. The declining population was an alarming trend noted by the Commission. According to the Report of the 2021 Population and Housing Census, produced by the Barbados Statistical Service and published in June 2023, the estimated population of Barbados stands at 269,090. This represents a decline of almost 10,000 people since the 2010 census. The Vital Statistics Indicators published by the Statistical Service suggests that in every year since 2016 the annual mortality rate has exceeded the annual birth rate, clearly posing grave challenges to the ability of the population to reproduce itself.

2.6. The population challenge poses grave danger for the nation's future, as the tax base contracts, the contribution base to national insurance declines and national productivity inevitably falls as there are less people of working age. The Commission has therefore recognised the urgent national imperative of encouraging population growth in Barbados, by natural and other means. From the perspective of citizenship, as will be observed below, this means that the Commission is making recommendations to expand the scope of the acquisition of Barbadian citizenship by descent and registration. These proposed reforms are designed to encourage the acquisition of citizenship (especially by members of the Barbadian diaspora who maintain a close connection with the island). However, the Commission has taken care to preserve the sacrosanct nature of Barbadian citizenship, by retaining appropriate guardrails to ensure the retention of Barbadian culture and heritage. The proposed reforms, then, are emphatically not designed to "open the floodgates" but are, rather, carefully calibrated.

2.7 On the matter of discrimination, the Commission felt strongly that, consistent with the nation's commitment to equality as a fundamental right, it was necessary to remove artificial distinctions which had been created between the sexes and between the classes of citizenship. With respect to the issue of sex, the Commission was resolute that the provisions of the citizenship chapter should be made gender-neutral. Additionally, the Commission agreed that the provisions of section 10(2) of the Constitution, which drew a distinction between children on the basis of their parents' marital status, was inconsistent with the full legal equality of all children which had been established by section 3 of the Status of Children Reform Act, Cap.220. The Commission's commitment to non-discrimination also influenced its recommendations on the matter of dual and multiple citizenship.

General Matters

2.8 The Commission agreed that citizenship should continue to be provided for in the Constitution and that the current categories of birth, descent and registration should be retained.

2.9 Additionally, to ensure a smooth transition to the new constitution, every person who is a citizen of Barbados under the Constitution or the Barbados Citizenship Act, Cap.186, or was entitled to citizenship thereunder, should continue to be citizens under the new Constitution.

2.10 As necessary, Cabinet and Parliament ought to consider amendments to the Barbados Citizenship Act, the Immigration Act, Cap.190 and other relevant legislation to align these enactments with the proposed new provisions.

Outline of Chapter

2.11. In its deliberations on the issue of citizenship, the Commission had regard to submissions made by the public, as well as stakeholder groups, including submissions made by members of the diaspora during the Commission's visits to diaspora communities in the United Kingdom, the United States and Canada.

2.12. This Chapter contains the Commission's recommendations for the acquisition of citizenship, i.e., by birth, descent and registration; the question of dual and multiple citizenship; and the loss of citizenship by renunciation and revocation

General Recommendations

2.13. The Commission recommends that:

2.13.1. The Constitution should provide for the continuation of the citizenship of every person who is a citizen on the day that the new constitution enters into force

2.13.2 The Constitution should continue to provide for three categories of citizenship: birth, descent and registration.

2.13.3 The citizenship regime under the Constitution should not be discriminatory, on the basis of sex, class of citizenship, the marital status of parents or other distinguishing characteristic.

2.13.4 The chapter on citizenship should feature gender-neutral language, in particular the use of the term "parent", rather than "father" or "mother" in recognition of the legal equality of both parents.

2.13.5. Parliament should consider amendments to the Barbados Citizenship Act, the Immigration Act and related subsidiary legislation consequential to the recommendations in this Chapter.

CITIZENSHIP BY BIRTH

2.14. Citizenship by birth is, perhaps, the most fundamental form of acquiring citizenship, and is deeply embedded in the common law conception of citizenship. The current Constitution recognises this, and by section 4, automatically confers citizenship on all persons born in Barbados (subject to two exceptions). The state is also prohibited from depriving a person of their citizenship if acquired by birth.

2.15. While the Commission received no submissions recommending changes to the regime for citizenship by birth, regard was had to the recommendation of the Forde Commission, set out in paragraph 6.14 of its report, that citizenship by birth be limited to children born in Barbados with at least one parent who is a Barbadian citizen, permanent resident or lawful immigrant.

2.16. The Commission however received no empirical evidence showing a widespread, or even moderately concerning, trend of exploitation or abuse of the present unconditional citizenship by birth regime. In the absence of such evidence, the Commission determined that there was no cause, at this time, to restrict the right of a person born in Barbados to be automatically a citizen.

2.17. The Commission therefore agreed to retain the present provisions relating to citizenship by birth, including the entitlement of children born to Barbadian diplomats serving overseas to birthright citizenship.

2.18. On a final note, section 4(2) of the current Constitution contains two exceptions to birthright citizenship: (1) where the child's father is a foreign diplomat accredited to Barbados, and neither parent is a citizen; and (2) where the father is an enemy alien, and the child is born in enemy-occupied territory. Consistent with the Commission's general recommendation pertaining to gender-neutrality, these exceptions should apply to a "parent" rather than a "father".

Recommendations

2.19. The Commission recommends that:

2.19.1. Every person born in Barbados should continue to be entitled to citizenship as of right, subject to paragraph 2.19.2.

2.19.2 Notwithstanding paragraph 2.19.1, a person born in Barbados should not be entitled to citizenship by birth, where

2.19.2.1. A person who, at the time of their birth, has at least one grandparent who is a citizen of Barbados by birth or registration.

2.19.2.2. at least one parent is an enemy alien, and the birth occurs in a place then under occupation by the enemy.

2.19.3. Persons born outside of Barbados who, at the time of their birth, have at least one parent who is serving Barbados as a diplomat or in a similar capacity, should continue to be entitled to be citizens by birth.

CITIZENSHIP BY DESCENT

2.20. Another significant method of acquiring citizenship, that is equally automatic and incapable of deprivation, is citizenship by descent. Section 5 of the Barbados Constitution, as originally enacted, embodied significant gender discrimination against children born of female Barbadian citizens, as it exclusively permitted Barbadian fathers to pass on citizenship to their children born outside Barbados.[1] This was partially remedied in the year 2000 when section 5 was amended to insert a provision permitting citizenship to be passed on by either parent, provided that he or she was a citizen by birth. This was of clearly more limited scope than the provision applying to fathers alone, which also permitted male citizens by registration to pass on their citizenship. As aforementioned, the Commission sees no reason to continue this remaining distinction and therefore recommends that either parent may pass on citizenship, on equal basis, provided that the parent is a Barbadian citizen by birth or registration.

2.21. The second major consideration arising out of the provisions of section 5 is the restriction on citizens by descent themselves passing on citizenship to their children born outside of Barbados. In its tour of diaspora communities, the Commission heard representations from some individuals calling for this restriction to be removed, thereby entitling members of the diaspora to citizenship by descent, provided that they are able to identify a Barbadian-born ancestor, thus potentially creating a situation of perpetual or infinite descent.

2.22. The Commission carefully considered this position, in particular the need to encourage the return of members of the valued diaspora community, while preserving the sanctity of citizenship. Consequently, the Commission adopted a middle-ground approach and recommends that a person born outside of Barbados, who has a grandparent who is a citizen of Barbados by birth or registration, be entitled to citizenship by descent. This has the effect of extending citizenship by descent by one generation beyond the current provisions, while still ensuring that the "floodgates" are not opened. This is important because it must be recalled that citizenship by descent is automatic and incapable of deprivation. Thus, the conferral of citizenship by descent must be approached soberly and circumspectly.

[1]However, by virtue of section 10(2), in relation to children born to unmarried parents, it was the mother from whom citizenship could descend.

2.23. Considering the importance of maintaining ties with our brothers and sisters in the diaspora, the Commission recommends that Parliament also consider amendments to the Barbados Citizenship Act, with a view to providing for other generations of the diaspora to acquire citizenship by registration. This may be done by exempting persons who can identify a Barbadian ancestor from certain requirements of citizenship by registration, or varying some of those requirements, e.g. shortening the required period of residency.

Recommendations

2.24. The Commission recommends that:

2.24.1. The following groups of persons should be entitled to citizenship by descent:

2.24.1.1. A person who, at the time of their birth, has at least one parent who is a citizen of Barbados by birth or registration; and

2.24.1.2. A person who, at the time of their birth, has at least one grandparent who is a citizen of Barbados by birth or registration.

2.24.2. Parliament may consider relaxing some of the requirements for citizenship by registration in the case of members of the Barbadian diaspora who do not otherwise qualify for citizenship by descent.

CITIZENSHIP BY REGISTRATION

2.25. Presently, the Constitution provides for two grounds for acquiring citizenship by registration: a period of residency in Barbados or marriage to a Barbadian citizen. The Barbados Citizenship Act provides for additional grounds of registration. The Commission envisions citizenship by registration as a more dynamic form of citizenship. Unlike citizenship by birth or descent, it is not automatic nor is it immune from deprivation. Therefore, citizenship by registration may be a useful tool to promote population growth.

2.26. The Commission recommends that the two constitutional grounds for acquiring citizenship by registration be retained. However, the Commission felt that, consistent with its view of citizenship by registration, the Constitution need not prescribe the minimum period of residence in Barbados required, or a minimum period of cohabitation required for the purposes of marriage. Instead, the prescription of these periods should be left to Parliament to do by the Barbados Citizenship Act.

2.27. With respect to citizenship by marriage, the Commission noted the concerns expressed in the report of the Forde Commission relating to the potential exploitation of the constitutional provisions by persons entering into marriages of convenience whose sole or predominant object is the acquisition of citizenship. In its own work, the Commission has not received evidence of significant or concerning abuse of the provisions. Therefore, the Commission flags this matter as an issue for further consideration by Parliament, which may elect to prescribe methods to ascertain the veracity of a marriage.

2.28. The Commission agrees with the recommendation of the Forde Commission that all persons who become citizens by registration should be required to take an oath of allegiance (or affirmation).

Citizenship by Registration of Certain Minors

2.29. The Commission had regard to the provisions of the Barbados Citizenship Act which confer citizenship upon children adopted by Barbadian citizens.

2.30. Section 5(3) of that Act provides for a child adopted by a Barbadian citizen to be deemed to be a citizen by registration from the date of the adoption order. The Commission agreed that this provision should be elevated to constitutional status and therefore this should form an additional ground for acquiring citizenship by registration.

Recommendations

2.31. The Commission recommends that:

2.31.1. Persons should continue to be entitled to registration a citizen of Barbados, on the basis of residence in Barbados or marriage to a Barbadian citizen.

2.31.2. In respect of citizenship by registration in the case of residence, the minimum period of residence should be prescribed by legislation rather than in the Constitution.

2.31.3 In respect of citizenship by marriage, there should be no minimum period of cohabitation prescribed in the Constitution, but Government may consider, by legislative and other measures, means to ensure that citizenship by marriage is not exploited.

2.31.4. The new constitution should provide for a child who is not a citizen of Barbados, but who is adopted by a person who is a Barbadian citizen (or in the case of a joint adoption, where one of the parties thereto is a Barbadian citizen) to be entitled to citizenship by registration from the date of the adoption order made under the provisions of the Adoption Act, Cap. 212.

2.31.5. The requirement to take an oath (or affirmation) should apply universally to all citizens by registration.

DUAL AND MULTIPLE CITIZENSHIP

2.32. Historically, the phenomenon of Barbadians possessing multiple citizenships has arisen because of the emigration of Barbadians abroad and the immigration of persons to this country. Overseas, Barbadian-born persons and their children have made significant contributions and maintain an active interest in local affairs. Here, persons who have immigrated to Barbados have also made substantial contributions to national development, while retaining other citizenships.

2.33. Against this backdrop, though the Commission does not believe that the ability of Barbadians to hold multiple nationalities is at risk in any way, the Commission nevertheless recommends that this ought to be placed on firm constitutional footing, with express provision made in the Constitution permitting a Barbadian citizen to also be a citizen of one or more other countries. The Commission had regard to similar provisions in the constitutions of Antigua and Barbuda, Belize and Saint Christopher and Nevis.

2.34. During the course of its deliberations on dual citizenship, the Commission discussed the imposition of barriers upon dual citizens in relation to the holding of certain public offices. This is not a matter directly related to the chapter on citizenship and will instead be addressed in the succeeding chapters. As a point of principle, though, the majority of the Commission recalled its commitment to non-discrimination in relation to citizenship: put simply, a citizen is a citizen. The Commission was not presented with any compelling evidence that the current position created a problem. The majority felt strongly that, given our size, citizens who are committed to Barbados, demonstrated by virtue of their interest in serving the nation, should have the opportunity to so do, without arbitrary limitations. In particular, the Commission was not persuaded that requiring a dual citizen to renounce their other citizenship(s) would better ensure their loyalty to Barbados, as it was unlikely that any person – dual citizen or not – who was predisposed to disloyalty would suddenly be instilled with loyalty to Barbados, by virtue of a formalistic act of renunciation. Therefore, the Commission did not support a blanket restriction on dual citizens.

2.35. The Chairman expresses a dissenting opinion from this recommendation which may found in Appendix A.

Recommendation

2.36. The Commission recommends that the new constitution should contain a provision expressly permitting a citizen of Barbados to also be a citizen of one or more other countries.

LOSS OF CITIZENSHIP

2.37. The Constitution currently permits an adult person to renounce their citizenship of Barbados if they choose, as long as they are, or will become, a citizen of another state. The Commission proposes no changes to these provisions.

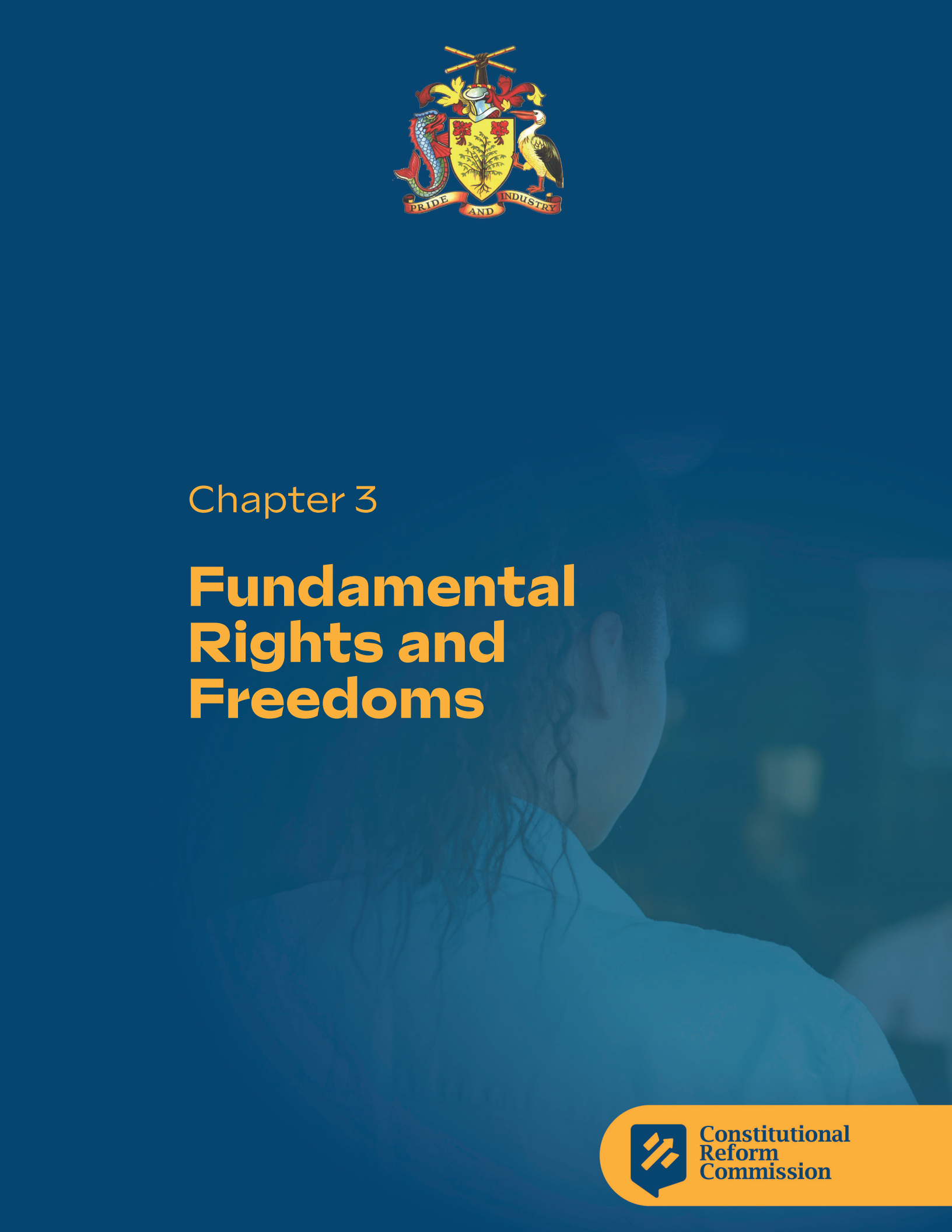
2.38. The Constitution also confers upon Parliament the power to provide for the deprivation of the citizenship of citizens by registration. The Commission considered whether this power should be circumscribed by the requirement that citizenship only be deprived after due process has taken its course. However, the Commission ultimately felt that this was unnecessary, particularly given the later provisions of the Constitution proposed by the Commission, in particular the right to protection of the law and to fair administrative action, which would both embed a right to due process in the deprivation procedure.

Recommendations

2.39. The Commission recommends that:

2.39.1. The existing constitutional provisions on the renunciation of citizenship should be retained.

2.39.2. The existing constitutional provisions on the deprivation of citizenship should be retained.



Chapter 3

Fundamental Rights and Freedoms

Constitutional Reform Commission

INTRODUCTION

3.1. The Chapter protecting and guaranteeing fundamental rights and freedoms to all persons in Barbados is perhaps the most iconic part of our Constitution. Also known as the Bill of Rights, it is the Chapter of the Constitution to which most people have the greatest feeling of attachment. So ingrained is our common belief that we all possess the same basic rights simply by virtue of our status as human beings.

3.2. In Barbados, the constitutional guarantee of fundamental rights and freedoms assumes particular resonance. It was here that the institution of chattel slavery was horrifically "perfected" resulting in the creation of the world's first society founded upon the institutionalised domination and exploitation of a people, in the form of slavery. Barbados, at the time, exported some of the most inhuman practices of that era abroad.

3.3. In this land, whose fields and hills bore witness to that oppression, we – who mercifully inhabit a nation far removed from those turbulent times – have a special duty to honour and embrace, in every way possible, the dignity which inheres in every human being. That dignity lies at the core of the idea of human rights: an idea that holds that every person, without distinction, is entitled to certain things to aid their human flourishing.

3.4. It is with this in mind that the Commission approached its deliberations on fundamental rights in a republican Barbados. We also considered that the mission of every generation must be to improve upon the situation left by its forebears. The Commission had no doubt that, in the context of 1966, the Bill of Rights in our Constitution was appropriate and, since then, has largely been to the benefit of Barbadians. Cognisant that six decades have passed since the enactment of the Bill of Rights, it is now our responsibility to further enhance those protections to ensure that our Constitution upholds the fundamental human dignity of all Barbadians in a modern context.

3.5. To this end, the Commission recommends six innovations to further enhance the protection of fundamental rights:

3.5.1. The transformation of the structure of the Bill of Rights and the articulation of the rights;

3.5.2 The expansion of the scope of rights already provided for in the Constitution;

3.5.3. The inclusion of additional civil and political rights;

3.5.4. The introduction of horizontal application of the fundamental rights (i.e., enabling rights to apply to the conduct of private persons);

3.5.5. The inclusion of social and economic rights; and

3.5.6. The creation of a Human Rights Commission.

3.6. Each of these innovations will be examined in turn.

STRUCTURE AND ARTICULATION OF FUNDAMENTAL RIGHTS

3.7. The Constitution of Barbados presently contains protections for fundamental rights and freedoms of the individual in Chapter III. The structure of that Chapter is as follows:

3.7.1. The Chapter commences with a general guarantee of certain rights and freedoms to all persons in Barbados. This provision – section 11 of the Constitution – is known as the **"opening section"** to the Bill of Rights. It is expressed in very broad and positive terms.[2] It affirms that every person in Barbados enjoys the following rights:

a. life, liberty and security of the person;

b. protection for the privacy of his home and other property and from deprivation of property without compensation;

c. the protection of the law; and

d. freedom of conscience, of expression and of assembly and association

Finally, the opening section provides that the enjoyment of these rights is limited by the succeeding provisions of the Bill of Rights, which seek to balance the enjoyment of individual rights with the rights of others and with the public interest.

It was traditionally thought that this section was not enforceable, but the Caribbean Court of Justice ruled in 2018 in the Barbadian case, ***Nervais and Severin v The Queen*** 2018 CCJ 19 (AJ), that this provision was directly enforceable.

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[2]When used in this sense, "positive" refers to the fact that the rights are guaranteed in an affirmative manner. Thus section 11 provides, in part, that "every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right ... to each and all of the following, namely life ...". This is in contradistinction to a negative articulation, which may be observed in section 12 which provides, in part, that "no person shall be deprived of his life intentionally ...". In the negative formulation, the emphasis is placed upon what cannot be done, while the positive formulation emphasises what is supposed to be done.

3.7.2 Section 11 is followed by 12 sections which elaborate further on the fundamental rights protections. Known as "detailed sections", these provisions contain specific guarantees for the aforementioned rights. However, their articulation is in the negative and the focus of these provisions is on exceptions to the rights. Some of these are specific exceptions, for example, the freedom of expression is limited by laws that are reasonably required to protect the reputations of others. Others are general derogations, for example, several rights are limited by laws that are reasonably required "in the interests of defence, public safety, public order, public morality or public health". Quantitively, the majority of the provisions of the Bill of Rights set set out limits to the fundamental rights and freedoms.

3.7.3. The other sections of the Bill of Rights include provisions relating to redressing alleged violations of fundamental rights and states of emergency.

3.8. In approaching the reform of the Bill of Rights, the Commission was especially struck by the extensive focus of the current Chapter on exceptions to and derogations from the rights. The Commission took notice of the fact that more recently enacted constitutions in other jurisdictions adopted an alternative approach of setting out both the rights and freedoms, and the derogations, in quite general terms with the specific application of those provisions to particular matters left to the judiciary. Regard was also had to the aforementioned decision of the CCJ in the case of Nervais and Severin, which held that the opening section was independently enforceable. Thus, it was conceivable that much of the narrower detailed sections could be consumed by the broadly stated opening section which might well render some of those provisions redundant or superseded. This may then create a problem of internal coherence.

3.9. The Commission noted that Barbados' current Bill of Rights was largely based on a standard model designed by the Colonial Office for the constitutions of the newly independent former British colonies. In our region, there are three notable exceptions: Guyana, Jamaica and Trinidad and Tobago. The Commission was particularly interested in the approach used in Jamaica and Trinidad and Tobago.

3.10. Unlike the other countries in the region, from its independence, Trinidad and Tobago's Bill of Rights avoided any detailed sections and instead included a single section guaranteeing a list of fundamental rights and freedoms to all persons. This was followed by another section containing certain specific protections. While the Trinidad model includes very few expressed limitations, it was recognised that this did not mean that fundamental rights in Trinidad are absolute or unlimited. For example, while not expressly stated, the courts have recognised that the right to freedom of expression protected in the Trinidadian Constitution is nevertheless limited by the law on defamation, which seeks to protect the legitimate right of others to their reputation. The Trinidad model was based on the Canadian Bill of Rights 1960.

3.11. Jamaica originally had a Bill of Rights similar to Barbados', but in 2011 enacted a new Charter of Fundamental Rights and Freedoms, influenced by the Canadian Charter of Rights and Freedoms 1982. The Jamaica Charter commences with a general provision setting out the fundamental rights in broad and positive terms. Unlike Trinidad, though, it includes express provision that the rights are subject to limits that are demonstrably justifiable in a free and democratic society. Additionally, the Charter retains some of the detailed sections, including the ones concerning the right to liberty, protection from deprivation of property, protection of the law and freedom of religion.

3.12. After careful consideration of these alternative approaches (including approaches adopted in Commonwealth African jurisdictions) and the jurisprudence which has resulted, the Commission determined that the new constitution should embrace a more modern approach and set out the fundamental rights and freedoms in a broad and positive manner. These rights should be enjoyed by all persons in Barbados, without exception, and should be subject, generally, to limitations that are reasonably justifiable in a free and democratic society, which would be limitations designed to protect the equal rights and freedoms of others, as well as protect the public interest, the welfare, safety and security of Barbados and the well-being of the community.[3]

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[3] For example, it may be reasonably justifiable for the state to limit the right of a person to leave Barbados (which is a part of the freedom of movement) if that person is detained on suspicion of committing a criminal offence, or has been charged with such an offence, or has been granted bail by the courts on condition of not leaving Barbados.

3.13. However, recognising the critical importance of certain of the rights, and the need for legal certainty, the Commission has also agreed that the new Bill of Rights should include a limited number of detailed clauses, specifically those protecting the right to life, personal liberty, protection from deprivation of property, protection of the law, freedom of movement and protection from discrimination, as well as for three additional rights explored later in this Chapter.

3.14. The detailed sections which are proposed to be retained have been carefully selected given the highly specific provisions included in those sections which the Commission felt was desirable to retain. In general, though, the Commission is satisfied that the protection of fundamental rights through an all-encompassing and widely-drawn provision will enhance the coherence of the constitutional scheme, and also improve public understanding of the rights to be guaranteed.

Nature of Rights to be Protected

3.15. The detailed sections which are proposed to be retained have been carefully selected given the highly specific provisions included in those sections which the Commission felt was desirable to retain. In general, though, the Commission is satisfied that the protection of fundamental rights through an all-encompassing and widely-drawn provision will enhance the coherence of the constitutional scheme, and also improve public understanding of the rights to be guaranteed.

Recommendations

3.16. The Commission recommends that:

3.16.1 The fundamental rights provisions should be expressed positively, in generous terms and subjected to general limitations in the public interest.

3.16.2. The Chapter on fundamental rights should no longer guarantee rights through extensive, negatively-framed and derogations-focused detailed sections. Instead, the fundamental rights should be guaranteed in a single provision, together with a general limitation clause. For a limited number of rights, in the interests of clarity, detailed sections should also supplement the general provisions.

3.16.3. The Constitution should guarantee and protect two categories of rights:

3.16.3.1 Rights subject to limitations which are reasonably justifiable in a free and democratic society (mainly civil and political rights); and

3.16.3.2 Rights imposing obligations on the State to progressively achieve their full realisation (mainly social and economic rights).

EXPANSION OF EXISTING RIGHTS

3.17. For the avoidance of doubt, the Commission recommends the retention of every fundamental right or freedom presently provided for in the Bill of Rights. In fact, in adopting the approach outlined above – concerning the manner of articulating and protecting the rights – the Commission believes that this will facilitate some expansion in the scope of the existing rights.

3.18. An illuminating example may be drawn from the decision of the High Court in the case ***Holder-McClean-Ramirez and ors v Attorney-General of Barbados*** No. CV 0044/2020. There, the High Court considered the scope of right to liberty in the Constitution. Section 13 – a detailed section – essentially protects the right of a person not to be arbitrarily detained or arrested. However, protection from detention or arrest is not necessarily exhaustive of the right to liberty in the broader sense, which is provided for in those terms in section 11. Therefore, the High Court, in relying on section 11, found that the right to liberty encompassed more than section 13's protections and could also protect, for example, the right to make personal choices.

3.19. Thus, by fully and expressly liberating the opening section, the Commission intends that this will better ensure that Barbadians are able to enjoy the fullest ambit of the protection of fundamental rights that is possible, consistent with the protection of the public interest.

3.20. Beyond this, the Commission recommends specific expansion in the scope of the right to protection from discrimination. Additionally, while no change is being proposed for the right to life as presently provided for, some comment is offered below.

Right to Life

3.21. Section 12(1) of the current Constitution 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 under the law of Barbados of which he has been convicted.

3.22. This provision therefore permits the courts to impose a sentence of death on a convicted person, without such being a violation of the right to life. Implicitly, this section authorises Parliament to include capital punishment as a possible sentence for criminal offences. While the sentence of death was once a mandatory punishment for the offences of murder, high treason and terrorism (in certain cases), the CCJ in the case, Nervais and Severin, mentioned above, ruled that the mandatory death penalty was unconstitutional. This, however, does not affect the constitutional viability of the death penalty itself as a punishment for certain crimes, as long as it is not a mandatory punishment. In sum, under the current Constitution, it remains possible, constitutionally speaking, for Parliament to prescribe capital punishment as a punishment, and for the courts to impose such a penalty.

3.23. The Commission received eleven (11) submissions concerning capital punishment as an exception to the right to life. Of the eight (8) written submissions on this point, six (6) called for the retention of the status quo, while two (2) recommended the removal of the death penalty. Additionally, two (2) organisations recommended the removal of the death penalty as an exception to the right to life. One witness at one of the Commission's public meetings supported its retention.

3.24. The Commission considered the possible amendment of what is now section 12(1), but has decided to make no recommendation on this point. No sentence of death has actually been carried out in Barbados for almost four decades, as of 2024, despite such sentences having been imposed in accordance with law. Nevertheless, the issue of capital punishment is one which excites passions on the several sides of the debate. The Commission feels that the matter of whether capital punishment should be retained is properly a matter for Parliament and for future generations of Barbadians, as capital punishment is not required by the Constitution, but simply permitted by it.

Right to Equality

3.25. The current Constitution protects the right of a person not to be discriminated against on certain bases. However, the Commission was persuaded that this right is not coterminous with a general right to equality. A right not be discriminated against on certain grounds means that a person is confined to only being able to seek constitutional relief in respect of unjustifiable discriminatory meted out to him on one of the expressly stated grounds. On the other hand, a right to equality secures the right of a person to equal treatment in general and is not confined to a closed list of grounds or characteristics.

3.26. In recent times, a first-instance High Court decision was rendered in the case ***A.B and C.D v Attorney-General and ors*** Claim No. Civ 0424/2022, in which it was held that the protection of the law, guaranteed in section 11(c) included a right to equal treatment and equality before the law.

3.27. The Commission has agreed that this right to equality should be placed on firm constitutional ground and given express protection in the new Bill of Rights.

Protection from Discrimination

3.28. In the Commission's engagement with the public, the constitutional protection from discrimination attracted much discussion. The Commission approached its deliberations on this matter conscious of this country's history as alluded to in the introduction to this Chapter.

3.29. Our nation's early society was forged in the crucible of discrimination. A ruling class determined that on the basis of certain immutable characteristics – a person's race, ethnicity and colour – some would be elevated in the society, and others would have their basic human dignity stripped away from them in unspeakable ways. At the core of chattel slavery laid the notion that people were not created equal and some were deserving of subhuman treatment. So pernicious is the legacy of that history that even today we continue to grapple with issues of colour and class especially.

3.30. In like manner, the history of this country, like the rest of the world, is stained by sexism and misogyny enacted across centuries in institutions and structures of economic, social and political power, calculated to subject women to unequal treatment.

3.31. Almost two centuries since the abolition of slavery, and 73 years since the political enfranchisement of all Barbadians through universal adult suffrage, it is an indefensible idea that the state should still be able to arbitrarily subject different groups of people to unfairly differential treatment solely on the basis that some aspect of their personhood is different to others

3.32. Thus, our constitutional framers are to be commended for including in the Constitution prohibition from discrimination on the basis of race, place of origin, political opinions, colour or creed (these are known as "protected characteristics"). Clearly, in the third decade of the 21st century, it is our generational responsibility to go further and better secure the equal rights of every person in Barbados, by prohibiting discrimination on any basis whatever.

3.33. More than twenty years ago now, the Forde Commission recommended that gender be included as one of the grounds of discrimination in the Constitution. This Commission concurs. The Forde Commission however recommended that age, disability and sexual orientation not be included. With the passage of time, however, this view does not appear sustainable, especially against the historical backdrop painted above. In any event, modern constitutional jurisprudence has moved on, with the result being that the courts have already found that age and sexual orientation are protected characteristics, despite their absence from the constitutional text.[4] That means that under the law, as it stands at the time of writing, the Constitution of Barbados already implicitly protects the right of a person not be discriminated against on the basis of age or sexual orientation, among others.

3.34. The Commission received fifty-seven (57) written submissions from members of the public in connection with the grounds of discrimination. These submissions made recommendations for the inclusion of various proposed protected characteristics in the new constitution. Table 3.1 below shows the number of written submissions recommending the inclusion of each of the following characteristics in alphabetical order. "Sexual orientation" appears twice in the table as the Commission received written submissions both supporting and opposing its inclusion.

Table 3.1: Table showing the number of written submissions received recommending the inclusion of certain protected characteristics in the new constitution

Characteristic	No. of Submissions
Ability	23
Age	9
Being male or female	2
Class	2
Creed	1
Culture	2
Disability	8
Educational background	22
Ethnicity	1

[4] See for example the judgements of the High Court in ***A.B and C.D v Attorney-General and ors*** Claim No. Civ 0424/2022 and ***Holder-McClean-Ramirez and ors v Attorney-General of Barbados*** No. CV 0044/2020. Neither decision has been appealed.

Characteristic	No. of Submissions
Faith	2
Family relations	1
Gender	23
Gender identity	23
Language	1
Political opinion	3
Political party affiliation	1
Place of origin	2
Nationality	1
Race	4
Religion	4
Sex	25
Sexual orientation (AGAINST inclusion)	11
Sexual orientation (FOR inclusion)	43

As can be seen from the Table, there was fairly strong support in the submissions received for expanding the scope of the constitutional protection against discrimination.

3.35. In addition to examining the submissions received on the matter, the Commission also reviewed the protected characteristics enumerated in the constitutions of the eleven (11) other Commonwealth Caribbean nations, three (3) Commonwealth African states (Ghana, Kenya and South Africa), one (1) Commonwealth Pacific jurisdiction (Fiji) and two (2) British Overseas Territories (Montserrat and British Virgin Islands). Table 3.2 below shows the protected characteristics enumerated in the abovementioned 17 constitutions and the number of constitutions in which those characteristics may be found.

Table 3.2: Table showing the number of jurisdictions in which certain protected characteristics are constitutionally protected

Characteristics	No. of Jurisdictions
Age	4
Belief	3
Being male or female	6
Birth	6
Birth out of wedlock	1
Colour	16
Conscience	4
Creed	10
Culture	3
Disability	5
Dress	1
Economic status	3
Family relations	2
Gender	3
Gender identity and expression	1
Health status	2
Language	6
Marital status	5
Nat'l, ethnic or social origin	6
Place of origin	12
Political affiliation	2

Characteristics	No. of Jurisdictions
Political opinion	12
Pregnancy	4
Property	2
Race	16
Religion	7
Sex	12
Sexual orientation	4
Social class	4

3.36. The Commission, considering the material before it, concluded that the protected characteristics set out in Table 3.2 were broadly acceptable as they captured a wide range of characteristics on the basis of which persons may experience discrimination. However, some were deemed not to be relevant to our context. For example, "language", as that did not appear to be a ground on which persons regularly faced discrimination in Barbados. Some others in the Table, such as "economic status" and "property" were considered to be redundant insofar as they could be covered by "class".

3.37. The Commission therefore recommends the holistic expansion of the constitutionally protected characteristics to include the following:

3.37.1. ethnic or social origin,

3.37.2. age,

3.37.3. sex,

3.37.4. gender,

3.37.5. class,

3.37.6. culture,

3.37.7. marital status,

3.37.8. sexual orientation,

3.37.9. pregnancy,

3.37.10 disability, and

3.37.11 health.

For the avoidance of doubt, the Commission also recommends the retention of the existing protected characteristics.

3.38. Some of these protected characteristics constitute immutable personal attributes; others reflect personal choices which people in a free society make about how they wish to live their lives. And yet others reflect the aspiration of a society wishing to see people unbound from their social circumstance. Nonetheless, what unites all of these characteristics is the fact that where applicable they constitute deeply personal aspects of our individual identities. To engage in the excessive policing of people's personal identity is antithetical to the notion of the free and democratic society which undergirds our constitution. That is especially so where that constitution already recognises that all freedoms, in a civilised society, must be subject to respect for the rights of others and the public interest.

3.39. Respect for personal identity, as an element of personal freedom, also lies at the heart of the constitutional guarantee of fundamental rights. The essential premise of human rights is that every person is equally entitled to their enjoyment, as a function of the equal human dignity which we all possess. To countenance the unfairly unequal treatment of some solely on the basis of a characteristic of theirs is to seek to diminish their equal worth as human beings. It is to hold that some people or groups are worth more than others; it is to create second- and third-class citizens. A society in which the innate human dignity of some of our citizens is disrespected could not have been the kind of society which our ancestors fought so hard to bequeath to us; nor should it be the society we hope to leave for our successors.

Recommendations

3.40. The Commission recommends that:

3.40.1. All rights presently guaranteed by the Constitution should be retained, that is to say that the Constitution should guarantee the following rights and freedoms to every person in Barbados without distinction:

3.40.1.1. the right to life, liberty and the security of the person, and the right not to be deprived thereof other than by due process of law;

3.40.1.2. the freedom from slavery and forced labour;

3.40.1.3. the right to protection from inhuman or degrading punishment;

3.40.1.4. the right to privacy, which shall include

3.40.1.4.1. the right to protection against the search of his person or his property, or the entry by others on his premises, and

3.40.1.4.2. the right to respect for and protection of his private and family life;

3.40.1.5. the right to the use and enjoyment of his property;

3.40.1.6. the right to the protection of the law;

3.40.1.7. the right to right to protection against discrimination;

3.40.1.8. the freedom of conscience, which shall include

3.40.1.8.1 the freedom of thought,

3.40.1.8.2. the freedom of religion or belief and the freedom to change religion or belief, and

3.40.1.8.3. the freedom, whether alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance;

3.40.1.9 the freedom of expression, which shall include

3.40.1.9.1. the freedom to hold opinions and to receive and communicate ideas and information without interference, and

3.40.1.9.2. the freedom from interference with their correspondence or other means of communication;

3.40.2. the freedom of peaceful assembly and association, that is to say, the right to assemble freely and associate with other persons and in particular, the right to form and belong to political parties, trade unions, cooperative societies and other associations for the protection of the interests of the individual; and

3.40.3. the freedom of movement.

3.41. The new constitution should also provide for the protection of the right to equality before the law.

3.42. In relation to the right not to be discriminated against, a person should be entitled to protection from discrimination on the basis of race, ethnic or social origin, political opinions, conscience and belief, colour, creed, age, sex, gender, class, culture, marital status, sexual orientation, pregnancy, disability, dress and health status.

INCLUSION OF ADDITIONAL RIGHTS

3.43. The Commission received several submissions recommending the inclusion of new rights and freedoms into the Constitution. Additionally, in its own research into the human rights protected in the constitutions of other Commonwealth jurisdictions, the Commission considered expanding the rights protected by our Bill of Rights.

3.44. Thus, the Commission mainly considered the inclusion of five additional rights:

3.44.1. The right to work;

3.44.2. The right to fair administrative action;

3.44.3. The right to access to information;

3.44.4. The right to vote; and

3.44.5. Special rights for parents.

3.45. Each of these will be addressed in turn

Right to Work

3.46. Cognisant that workers constitute the bedrock of our society and the nation's economy, the Commission determined that the new constitution should include some protection of the right of persons to work, or otherwise be engaged in economic activity, as well as for the rights of workers.

3.47. In relation to the general right to work, the Commission had especial regard to section 15 of the Constitution of Belize which provides in subsection (1) that:

> No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business or otherwise.

3.48. This provision has been judicially interpreted by the Belizean courts,[5] where it has been highlighted that the essence of this version of the right to work is that a person may not be denied the opportunity to work. In this way, it does not impose an obligation on the state to provide work, as such, but rather prohibits the state from imposing unreasonable barriers to person's ability to work. The Commission is satisfied that this more circumspect version of the right to work is acceptable to our national context.

3.49. The Commission also considered the international obligations of Barbados, especially under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Barbados became a party in January 1973. Article 7 of ICESCR requires State Parties to recognise the right to just and favourable conditions of work, including the right to equal pay for equal work. Additionally, Article 23(2) of the Universal Declaration of Human Rights declares that workers have a right to just and favourable remuneration ensuring an existence worthy of human dignity. The Commission determined that these entitlements ought to be included in a new Bill of Rights as they substantively reflect the aspiration of the proposed Preamble set out in Chapter 1 of this Report, which envisions a nation in which "the social and economic life ... is so ordered as to promote the general welfare ... by humane and just conditions under which all people labour...".

3.50. The Commission also recognised that the advent of organised labour in the aftermath of the 1937 People's Rebellion was a decisive moment in the journey towards political enfranchisement and social justice for the masses. Therefore, as part of the right to work, the Commission recommends that the right of workers and employers to form and join trade unions or employers' organisations should be protected in the new Bill of Rights. In addition, the Commission recommends that the right to take collective action be secured, subject of course to limitations that are reasonably required in the interest of defence, public safety, public order or public health. Significantly, the Commission also proposes that provision be included for Parliament to create a right for workers and employers or their organisations to negotiate and conclude collective agreements, and in cases of conflict, to take collective action, including strike action.

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5 Notably in ***Belize Petroleum Haulers Associations v Habert*** 2005 Civ App No 20 of 2004 (CA BZ) and ***Fort Street Tourism Village v Attorney-General of Belize and ors*** (2008) 74 WIR 133.

Recommendations

3.51. The Commission recommends that the new constitution should protect:

3.51.1. the right of every person to the opportunity to gain a living by work which he freely chooses or accepts;

3.51.2. the right of every worker to:

3.51.2.1. just and favourable conditions of work, including the right to equal pay for equal work,

3.51.2.2. the right to just and favourable remuneration ensuring an existence worthy of human dignity, and

3.51.2.3. protection against unemployment; and

3.51.3. the right of workers and employers to form and join trade unions or employers' organisations, as the case may be, for the purpose of protecting their interests, including the right to take collective action to defend those interests, subject to limitations that are reasonably required in the interests of defence, public safety, public order, public morality or public health.

Right to Fair Administrative Action

3.52. The right of a person to be treated fairly and justly by administrative decision-makers has long been recognised in our legal system. Concomitantly, the right of a person who is aggrieved by an adverse administrative decision to seek the review of that decision has long been secured. At present, this right is guaranteed statutorily in the *Administrative Justice Act, Cap. 109B*.

3.53. The Commission determined that, in a democratic society, it was critical that persons have the right to be treated fairly by the State, particularly where interests or rights are at stake, and similarly, that persons are able to vindicate those rights through a judicial process whenever they feel that they have been mistreated. Additionally, it was agreed that persons should have a right to receive reasons for administrative decisions where it is adverse to their interests. Consequently, the majority of the Commission agreed that the right to fair administrative action should be secured in the new constitution.

Recommendations

3.54. The Commission recommends that:

3.54.1. The right to fair administrative action should be elevated to constitutional status, which should include a general right to administrative action that is lawful, rational and procedurally fair, as well as a right to reasons for administrative decisions.

3.54.2. The right to fair administrative action should be subject to limitations which promote good and efficient administration and protect the public interest, in particular, public health, public safety and national security.

Right to Access Information

3.55. The Commission received five (5) submissions from members of the public, and two (2) submissions from organisations, calling for the inclusion of a right to access information in the new constitution.

3.56. The Commission considered that a foundational element of accountability in a democratic state was transparency on the part of government. The ability of citizens to access information held by their government is therefore critical to maintaining democratic accountability. Therefore, the majority of the Commission agreed that the Constitution should provide for some protection of the right of a person to access information held by the state.

3.57. Of course, there are legitimate reasons why certain state information should not be disclosed, for example, where disclosure would prejudice national security or the administration of justice. Therefore, the Commission also agrees that provision should be made to limit this right where it is reasonably required in the public interest.

Recommendation

3.58. The Commission recommends that the new constitution should protect the right of every person to access information held by the State, subject to limitations that are reasonably required in the interests of public health, public order, defence and national security.

Right to Vote

3.59. The Commission received five (5) written submissions from members of the public, and three (3) submissions from organisations, recommending the constitutionalisation of the right to vote, which is presently guaranteed by section 6 of the *Representation of the People Act, Cap.12*.

3.60. The Commission agreed that this right should be expressly elevated to the Constitution as a fundamental right of citizens in a democracy..

3.61. The Commission notes that section 7 of the Representation of the People Act enables the registration to vote of Commonwealth citizens who have resided in Barbados for at least 3 years. The Commissions believes that these persons' entitlement to vote should continue to be provided for and protected in the said Act.

3.62. The Commission received one (1) submission from an organisation calling for the minimum voting age to be lowered to 16 years old. The Commission felt that it would be more appropriate for such a matter to be examined by Government, or a body empanelled to examine electoral reform, and so the Commission expresses no opinion on this point. The Commission's recommendation for the right to vote therefore reflects the current status quo which is that every citizen over the age of eighteen (18) years be entitled to be registered as an elector and to vote.

3.63. Several submissions were also received, both in writing and orally at townhalls held overseas, that the right to vote should be extended to members of the diaspora residing overseas. The Commission gave much thought to this matter and ultimately determined that the qualifications to be registered as an elector is really a matter for the Representation of the People Act, rather than the Constitution, and so voting in and by the diaspora would properly be a matter for Government, or a body empanelled to examine electoral reform.

Recommendations

3.64. The Commission recommends that:

3.64.1. The new constitution should protect the right of every citizen of Barbados who is over the age of 18 years old to the following:

3.64.1.1. The right to be registered as an elector for the purposes of elections of members to the House of Assembly, subject to any qualifications set out under the *Representation of the People Act, Cap.12;*

3.64.1.2. The right of persons so registered to vote in elections of members to the House of Assembly; and

3.64.1.3. The right of persons so registered to stand for, and if elected, hold public office.

3.64.2. The right to vote and stand for election should be subject to such limitations as are reasonably required for the purposes of promoting election integrity and the conduct of free and fair elections.

Special Rights for Parents

3.65. The Commission received a petition calling for the inclusion of a provision in the new constitution expressly protecting parental rights. The Commission subsequently met with the coordinators of that petition in a private audience as may be seen in Appendix H.

3.66. The Commission carefully considered the petition, which included a draft of the proposed provision. Each clause of that draft provision was thoughtfully examined. The Commission has no doubt that the petitioners are persons with a genuine interest in better securing the position of the family in our nation. That is a commendable objective.

3.67. The petition specifically called for provision to be made for the following matters:

3.67.1. A statement that the family is "primary and natural educator of the child";

3.67.2. A guarantee that the State shall "respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children";

3.67.3. Protection of the right of parents "to control and direct the upbringing of their children" including educational and healthcare decisions, and this should be superior to any of Barbados' international law obligations;

3.67.4 Protection of the right of parents "to provide appropriate direction and guidance" to the child in the exercise of the child's rights;

3.67.5. An unequivocal statement that parents are the primary arbiters of a child's best interest;

3.67.6 Protection of the right of a parent to ensure the education of their child in accordance with their own convictions;

3.67.7. An obligation on the state to ensure that all persons have access to primary and secondary education; and

3.67.8. An obligation on the state to ensure that public education "avoids contravening" the "moral, religious and philosophical convictions" of a child's parents.

3.68. From the outset, the Commission recognised that, in most cases, parents play a central role in the life and development of their children. Indeed, the Preamble to the current Constitution hails the importance of the "position of the family" in Barbados, and in the preamble proposed by this Commission, it is now suggested to declare that the family holds a "central role" in our nation. Equally, the State has some interest in the care and development of children, both as a matter of law – domestic and international – but also as a matter of basic morality in a civilised society. Within the bounds of the law, and consistent with the rights and freedoms of the individual, people – including parents – should be free to order their home and family life, including matters relating to their children as they see fit. That however has never stopped the State from prescribing basic requirements in the interests of children, for example, that a child must receive education. Therefore, a careful balancing act must always be struck between the natural and moral entitlement of a parent to see to the affairs of their children and the legitimate legal and moral interest of the State to see that children are allowed to maximise their potential.

3.69. Importantly, sight must not be lost of the true reason for this discourse. To the extent that parents have rights, those rights are not enjoyed for their own sake. Those entitlements exist for the purpose of promoting the best interests of a child. Therefore, in considering the matter of parental rights, a child's best interest should always remain the first and paramount consideration, recognising too that children are not chattels which may be owned, but are human beings, themselves endowed with fundamental rights and freedoms.

3.70. Having set out the Commission's philosophical underpinnings on this matter, the specific recommendations from the petition, set out in paragraph 3.67 will now be addressed in turn.

3.71. With respect to paragraph 3.67.1, the Commission felt that it may be generally true that the family is the "primary and natural educator of the child". It was not however clear why such a statement needed constitutional protection, and it was, moreover, quite vague as to its intent and scope.

3.72. In terms of paragraph 3.67.2, the common law has long accepted that parents have a right to provide for the education of their children. In our Constitution, the freedom of conscience protects the right of a parent not to have his child compelled to receive religious instruction or take part in religious ceremonies which do not accord with the parent's faith. Furthermore, the Commission is making recommendations for the inclusion of a right to education, which includes protection for the right of a parent to make arrangements for the education of their children. It is also the Commission's understanding that, at the administrative level, public schools in this country are generally tolerant of students of various faiths and beliefs. Consequently, the Commission determined that no further action need be taken in this regard. This applies equally to the recommendations set out in paragraphs 3.67.6 and 3.67.8.

3.73. With respect to paragraph 3.67.3, on the right "to control and direct" a child's upbringing, the law already recognises that decisions regarding a child are generally made by that child's parent. Again, that right – like every right – is not absolute, and, in a minority of instances provided for by law, the right of care and control may be exercised by another. That is the case in this country, and in almost all other free and democratic societies. Therefore, the purpose and intent of this recommendation was curious to the Commission, and thus the Commission determined that no constitutional action needed to be taken on this point.

3.74. With respect to paragraph 3.67.4 on the right of parents to give "appropriate direction and guidance" to the child in the exercise of the child's rights, the Commission felt that this recommendation was well-intentioned but not well conceived. A difference must be drawn between the fact that children, by virtue of their age and stage of development, require special care and protection, on the one hand; and the fact that children enjoy fundamental rights and freedoms on the other. Therefore, it is obvious that, in most cases, parents will teach their child in its formative years on how to appropriately exercise its freedom of expression, for example. That is clearly acceptable and natural. Children, because of their age, must be given guidance. That is, however, an altogether different thing than subordinating the right of a child to that of its parent, which is what the recommendation tends to do. It cannot be forgotten that however linked the two may be, a parent and their child are separate persons with individual rights and freedoms.

3.75. The Commission also could not agree with the recommendation in paragraph 3.67.5 which suggested that the parents are the primary arbiters of the child's best interest. It is accepted, globally, that, for the purposes of the law, the best interests of the child is a concept to be objectively ascertained. In the overwhelming majority of cases, the best interests of the child will align with that of the parent. There are, however, a minority of cases, where that is not the case. Consequently, a blanket pronouncement that the child's best interest "is primarily determined by the parents" is somewhat reductive and potentially, and no doubt unintentionally, harmful for some children.

3.76. Finally, with respect to the recommendation set out in paragraph 3.67.7, as mentioned above, the Commission is making recommendations for the right to education.

3.77. In sum, the Commission was not persuaded that there was a need for a specific constitutional provision relating to the rights of parents. In several cases, such protections may be found in other existing or proposed constitutional provisions, and in many other cases, adequate provision is already made in legislation and the common law.

Other Submissions Supporting Additional Rights

3.78. It should be noted that the Commission also received submissions recommending that the new Constitution protect other entitlements. For different reasons, the Commission determined that no constitutional amendment was required in relation to these matters. Some of these included:

3.78.1. A right to "quiet in one's own home" from "horns and music" – the Commission felt that legislative or administrative measures were more appropriate for addressing private nuisance and noise pollution;

3.78.2. A right to "be informed and educated about culture" – the Commission agreed that the public, and in particular young people, should be educated about our nation's culture, but did not see this as a matter for the Constitution;

3.78.3. Right to privacy online and to the protection of one's data – the Commission noted that Parliament has enacted the Data Protection Act, 2019-29, which entered into force on March 31, 2021, and which has created an extensive regime for data protection. The Commission also determined that the right to privacy which has been recommended for inclusion is sufficiently broad and capable of judicial interpretation as applying to privacy of data and online activity; and

3.78.4. A "right to die", i.e., a right to euthanasia – the Commission felt that this is a complex social issue requiring extensive consultation, and is, in any event, not necessarily a matter for the Constitution.

HORIZONTAL APPLICATION OF RIGHTS

3.79. One of the main functions of a constitution is seen as regulating the relations between the state and its citizens. Therefore, the traditional view, in relation to fundamental rights, has been that those provisions only bind the State, and therefore, rights and freedoms are enjoyed by persons against the State, rather than against other persons. Said differently, it is only the State which is obliged to respect the rights and freedoms of persons. In this context, persons are traditionally only able to seek the enforcement of those rights (and relief against their breach) against the State, but not against other persons. Put simply, one can only sue the state for breach of constitutional rights, but not a private person. This view of fundamental rights is known as "vertical application", so called because of the idea that the state exists above the person, so that constitutional rights apply vertically between the two.

3.80. There is however a growing body of thought that fundamental rights ought to also apply horizontally. That is to say, that fundamental rights should bind both the state and private actors, so that persons would owe each other the obligation to respect their respective fundamental rights and would consequently be able to seek to enforce those rights against a private actor (i.e., in court). Indeed, early on, the Commission received a submission at a townhall meeting recommending that fundamental rights in the new constitution should apply horizontally.

3.81. Notably, in the Commonwealth Caribbean, only Jamaica has introduced direct horizontality of fundamental rights.

3.82. The Commission considered the matter at length and looked at the matter of human rights in the round. The essential premise of rights is that they apply universally and that respect for them is non-negotiable. Traditionally that has meant that every individual is entitled to enjoy fundamental rights. However, taken to its logical conclusion, if fundamental rights apply universally, then they equally ought to bind everyone, including private persons. As will be seen later in this chapter, it is perhaps even more important than the mere constitutional guarantee of rights on paper for there to be a culture of respect for human rights in the society. Such a culture is best cultivated when the requirement to respect human rights is shared by all actors in the society. Indeed, in the modern state, private actors often exercise far-reaching powers that have a tangible impact on the lives (and the rights) of others, and may even do so on behalf of the State in some instances. The Commission is therefore satisfied that, in the spirit of building upon the foundation of our Independence Constitution, the direct horizontality of fundamental rights is the next logical step.

3.83. Nonetheless, the Commission was alive to the view that direct horizontality could import the unnecessary constitutionalisation of vast swathes of private law. However, it will ultimately be for the courts of this country to determine the scope and contour of horizontal application of each right in our jurisdiction. Already, the courts treat the grant of constitutional relief as a serious undertaking and resist applications where the matter may be dealt with in another forum outside of the constitutional motion. Therefore, it is reasonable to expect that, in the case of a constitutional motion between two private actors, the courts would have regard to whether there is an adequate, alternative remedy available in private law. To this end, the Commission notes the statement of Justice Brian Sykes (as he then was) in the Jamaican case, Tomlinson v Television Jamaica Ltd 2013 JMFC Full 5:

> There is no doubt that the introduction of direct horizontality, in time, will prove to be the most fundamental change to our legal system since 1655. The horizontal approach with all its implications will change private law in ways not yet appreciate

3.84. The Commission had special regard to the constitutional provisions and related jurisprudence in South Africa and Jamaica, where direct horizontality has been implemented.

3.85. In both jurisdictions, it has been recognised that fundamental rights will not apply in the same manner between private persons as it does between the State and an individual. This is because an individual has rights which must be given equal respect to that of another person. For example, in the aforementioned Tomlinson case, the Jamaican courts declined to find in favour of the claimant where he claimed that his freedom of expression, among other things, was violated when a private television station declined to air an advertisement which he sought to get them to air. One of the reasons for the court's decision concerned the fact that the private television station also enjoyed the constitutional right to freedom of expression, which protected their ability to make editorial decisions as to what they wished to appear on their channel.

3.86. Therefore, in applying fundamental rights horizontally, the Commission agrees that in each individual instance, the nature and content of the particular right must be considered, alongside the nature and extent of the duties imposed by that right on private persons. In taking this approach, and consequently in framing the attendant proposed constitutional provision in this way, the Commission believes this will not lead to the proverbial opening of the floodgates.

3.87. The Commission is satisfied that its recommendation, concerning direct horizontality, will mark a watershed moment in the development of fundamental rights law in Barbados and will open new vistas for persons who feel that their human rights have been breached, no matter by whom.

Recommendation

3.88. The Commission recommends that the fundamental rights should bind, and be enforceable against, private persons to the extent that they may be applicable, given the nature of the right and the nature of the duties imposed by the right.

INCLUSION OF SOCIAL AND ECONOMIC RIGHTS

3.89. A consistent theme which has emerged over the course of this chapter is that the central objective of the protection of fundamental rights is the promotion of human dignity. The fundamental rights discussed up to this point protect the liberty of the individual from excessive interference by the state: the right to associate with others, to hold one's own beliefs, to be protected from arbitrary detention and so forth. They also facilitate one's participation in civic life: for example, the right to vote and the right to speak freely. These are critical to ensuring the dignity of persons because the freedom from domination is the central human aspiration – and particularly poignant in a society with our history.

3.90. However, these aspects alone do not exhaust what it means to live with dignity. To protect those rights and freedoms alone would be a poor thing for a person who is hungry, or homeless, or is in ill-health and has no hope of getting medical care, because person cannot live with dignity without the ability to eat, to be healthy and to be housed. Clearly then, there is a gap in the current framework for the protection of human rights if it does not address these – more basic and very essential – aspects of human flourishing. Indeed, psychological theory illustrated by models such as Maslow's hierarchy of needs, suggests that our needs as humans have a fundamental hierarchy and before persons can achieve the ultimate goal of self-actualisation their basic needs – safety, security and physiological requirements – must first be met.

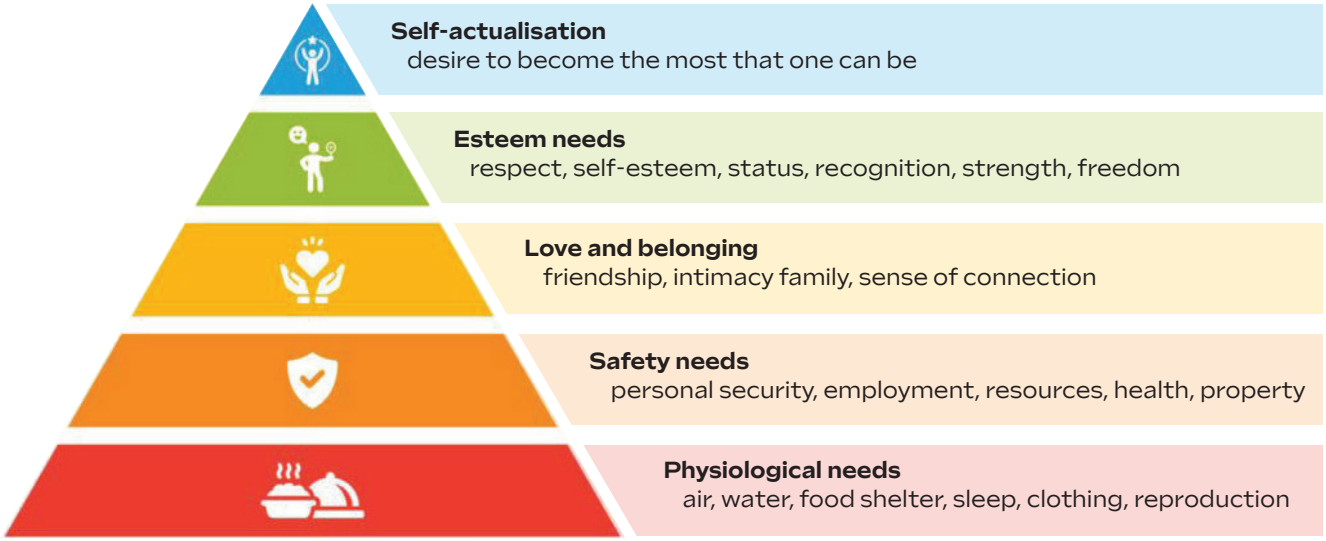


Figure 3.1 Illustration of Maslow Hierarchy of Needs.

3.91. Therefore, the Commission determined that it was important for a new Bill of Rights to reflect all dimensions of the struggle to promote human dignity, and that required the constitutional recognition and protection of additional rights aimed at ensuring that persons are able to enjoy certain minimum standards of life. In the Commission's view, these related to the following:

3.91.1. The right to have access to education;

3.91.2. the right to have access to adequate food of acceptable quality and clean and safe water;

3.91.3. the right to have access to health care services;

3.91.4. the right to have access to adequate housing; and

3.91.5. the right to a safe and healthy environment.

3.92. A marked difference, though, between these rights and the ones which the Constitution has hitherto protected is the nature of the obligations which are imposed on the State. The traditional (or civil and political) rights generally impose "negative" obligations, meaning that they simply require the State not to do something. For example, at a simplistic level, the freedom of expression requires the State to refrain from preventing people from expressing themselves or punishing them for doing so. It does not require the State to provide persons with microphones as it were.

3.93. Clearly though, the rights set out in paragraph 3.91 are quite different. Those rights do impose obligations on the state to do something: to provide education, for example. However, such obligations require the state to expend resources in circumstances where there are many competing demands on the State's purse. It would therefore be untenable for the constitution to require that the government provide a house to every person, because to do so, if even possible, would almost certainly require that every other government service be neglected. A constitution could not require that.

3.94. Therefore, in recommending that these new rights be incorporated into our constitution, the Commission acknowledged that they are substantively different from the rights to which we are accustomed. That does not mean that they are of a lower order; they are equal to the traditional rights, but simply different in nature.

3.95. That difference in nature requires a different approach to defining the scope of these economic and social rights. In international human rights law dealing with these kinds of rights, the principle of "progressive realisation" has been developed. This principle has been incorporated into national constitutions around the world, and the Commission paid particular attention to its application in the Constitution of South Africa.

3.96. The principle of progressive realisation holds that the State must take reasonable steps – by legislation, government policy and otherwise – towards achieving the right. Thus, fully realising the right may not not be immediate, but it it will occur over time, or "progressively". This principle requires the State to act within its available resources only.

3.97. A helpful illustration would be the right to have access to adequate food. This right would not require that hunger be eradicated immediately and that every person in the society be given three meals a day. Though desirable, that may be unattainable. Raher, progressive realisation would require the State to be intentional in charting a course of action towards the attainment of the goal of zero hunger. It would require the State to design and implement, over time, a clear programme to that end and dedicate such resources as may be available in service thereof, paying particular attention in designing and implementing the policy, to address the needs of the most vulnerable.

3.98. The Commission notes the concern that the protection of these rights might impose a financial burden on the State. However, as noted above the framing and limitation of these rights mitigate against that. In any event, unlike other nations where these rights have been constitutionalised, Barbados has a long and proud history of maintaining a fairly high level of human development through the extensive provision of government services, several of which are free at the point of delivery, among these education and healthcare. Therefore, while not hitherto constitutional rights, successive governments have ensured access to education, healthcare, safe drinking water and housing. Hunger and malnutrition, once prevalent in the colonial period, are not well-known today; and increasingly, food security, which includes ensuring access to nutritious food, is recognised as an imperative.

3.99. The point of constitutionalising these rights is to firmly entrench the existing Barbadian social compact which seeks to ensure that a person's basic needs are met, and to prevent against future backsliding on these hard-won human development gains.

Recommendations

3.100. The Commission recommends that:

3.100.1. The new constitution should provide that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the following rights:

3.100.1.1. The right to have access to education;

3.100.1.2. The right to have adequate food of acceptable quality and clean and safe water;

3.100.1.3. The right to have access to health care service;

3.100.1.4. The right to have access to adequate housing; and

3.100.1.5 The right to a safe and healthy environment.

3.100.2 When the State asserts that it does not have the resources to implement the right, the court should consider the following:

3.100.2.1. the State must show that the resources are not available;

3.100.2.2. in allocating resources, the State must give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and

3.100.2.3. the court may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

Right to Access to Education

3.101. The Commission recognised that public education is the bedrock of modern Barbados, has been a primary driver of the country's economic development and was the catalyst for upward social mobility. The centrality of education as an institution in our society is really a part of our national identity. The Commission, therefore, felt that protecting a right to access education should be an important part of our republican constitution.

3.102. Specifically, the Commission considered that it was important for the new constitution to protect the following:

3.102.1. The right to free education at the early childhood, primary and secondary level;

3.102.2. The right to access further education and higher education;[6] and

3.102.3. The right to access education for persons unable to complete secondary education.

3.103. Free education up to and including secondary education has become such a basic feature of Barbadian life for more than sixty years that the Commission feels comfortable in recommending that the Constitution require the state to provide education at those three levels free at the point of delivery.

[6] For the avoidance of doubt, the Commission understands higher education to refer to academic education after the secondary level in the context of universities and colleges awarding academic degrees, while further education refers to post-secondary education that is technical or vocational in nature.

3.104. With respect to further education and higher education, the Commission is satisfied that the Constitution needs to protect the right of persons to access these equally important types of education, and consequently require the government to ensure that it has a policy to secure access to such education. For the avoidance of doubt, this is not a right to free education at these two levels, simply to access.

3.105. Finally, consistent with the Commission's view that all persons must equally enjoy the benefit of the fundamental rights, it was also felt important to safeguard the right to access education of those persons who were unable to complete their formal education for whatever reason; and therefore, the state should be required to devise and implement a plan to ensure that access.

3.106. The Commission also recommends that provision be made to protect the right of a parent or guardian to make arrangements for the education of their child or ward outside of the public system if they so choose, which is consistent with their general entitlement to provide for the upbringing of their child. The Commission also recommends the protection of the right of persons to establish private schools, provided that those schools do not discriminate in their admissions policy and that they maintain standards comparable or not inferior to schools in the public system.

3.107. Finally, the Commission recommends that the new constitution provide for the State to be able to require schools and educational institutions to teach subjects relating to health, civic education and other issues of national interest. This is to ensure that active citizenship is promoted within schools.

Right to Safe and Healthy Environment

3.108. As a small island nation, and a large-ocean state, a symbiotic relationship between the inhabitants of Barbados and our environment is critical. Therefore, protecting the right of persons on this island to an environment that is safe and not injurious to health, and that is protected for the benefit of future generations, is an important step in the further expansion of fundamental rights in a new republican constitution.

3.109. As a result, the Commission has agreed to recommend that the new constitution should make provision for the State to be required to take reasonable legislative and other measures:

3.109.1. to protect the environment from pollution and ecological degradation;

3.109.2. to promote environmental conservation; and

3.109.3. to facilitate development and the use of natural resources in a way that is ecologically sustainable, while also balancing the need to pursue justifiable economic and social development.

Rights of Persons with Disabilities

3.110. The Commission received several submissions on the issue of the rights of persons with disabilities, including representations made by the Barbados Council for the Disabled. The Commission also considered the fact that Barbados is a state party to the United Nations Convention on the Rights of Persons with Disabilities, which requires Barbados to undertake reasonable measures to promote the full realisation of the rights and freedoms of persons with disabilities.

3.111. Therefore, in the pursuit of a republican Barbados, characterised by equality and non-discrimination, it was felt that it was important, at the constitutional level, to provide for certain specific protections for the rights of persons with disabilities, recognising the traditional silence of the law in respect of this historically marginalised group.

3.112. Therefore, the Commission, influenced by the Constitution of Kenya, recommends that the new constitution protect the following rights of persons with disabilities:

3.112.1. the right to be treated with dignity and respect;

3.112.2. the right to be addressed and referred to in a manner that is not demeaning;

3.112.3. the right to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

3.112.4. the right to reasonable access to all places, public transport and information;

3.112.5. the right to use sign language, braille or other appropriate means of communication; and

3.112.6. the right to access materials and devices to overcome constraints arising from the person's disability.

EXCEPTIONS TO THE FUNDAMENTAL RIGHTS AND FREEDOMS

Emergency Provisions

3.113. The Constitution presently recognises that, from time to time, extreme circumstances may arise requiring the taking of decisive action by the State in order to safeguard the Nation. During such critical moments, when the Nation faces an existential crisis, it may be necessary to derogate from certain fundamental rights, for example the freedom of movement. This is permissible because fundamental rights can only really be enjoyed by a person in a stable society. Therefore, the taking of measures to stabilise the society, even if at the expense of specified limits on fundamental rights, is rendered necessary. Of course, such derogations must be objectively necessary, for a limited time, and not more invasive than the circumstances require.

3.114. The need for the Constitution to provide for states of emergency was underscored during the COVID-19 pandemic, when the taking of certain measures became essential to the preservation of life, public health and public order.

3.115. During the period of the pandemic, a number of constitutional cases were filed, both in Barbados and across the region. The outcomes of these cases, some of which were appealed to the region's highest courts, have built out the constitutional jurisprudence on the limitation of fundamental rights during periods of public emergency.

3.116. To that end, the Commission determined that no further action was required and the existing provisions should be retained.

Recommendation

3.117. The Commission recommends that the current constitutional provisions for periods of public emergency should be retained.

Special Acts of Parliament

3.118. Section 13 of the Constitution of Trinidad and Tobago provides for the power of Parliament to enact laws that are inconsistent with the fundamental rights and freedoms, provided that the law is reasonably justifiable in a free and democratic society and has been passed by a three-fifths majority in both Houses of Parliament.

3.119. The Commission considered the inclusion of a similar provision in the new constitution, given the changed structure of the proposed Bill of Rights.

3.120. Ultimately, the Commission agreed that there was no need for such a provision, which had caused some confusion in Trinidad as to whether that was the only method by which Parliament could derogate from fundamental rights, and there has been a recent recommendation for its repeal by the National Advisory Committee on Constitutional Reform.

3.121. In the Commission's proposed Bill of Rights, all fundamental rights are subject to reasonably justifiable limitations. That means, in essence, that those rights, by their very nature, are already limited along those lines. Therefore, it is open to Parliament to enact laws which are reasonably justifiable, and it would ultimately be for the courts to determine whether Parliament has struck the appropriate balance. An express provision to that effect would therefore be unnecessary and could potentially lead to some confusion.

ESTABLISHMENT OF HUMAN RIGHTS COMMISSION

3.122. As the Commission has sought to modernise and broaden the protection of fundamental rights in the new constitution, one matter which exercised the minds of Commissioners was the relationship between rights in the constitutional text and the lived experience of people. Professor Richard Albert, who delivered a public lecture facilitated by the Commission, brought to our attention an interesting phenomenon, whereby many of the nations of the world which are highly ranked in global democracy and quality of life indices have constitutions which protect few rights. On the other hand, there are states with constitutions protecting dozens of rights but nevertheless are countries with weaker democracies or lower quality of life and citizen satisfaction.

3.123. It is not within the Commission's remit to unearth the possible reasons for this apparent dichotomy, but it does appear to the Commission that our national success in fully realising the fundamental rights and freedoms depends both on a modern, inclusive Bill of Rights as well as a society with a vibrant culture of human rights. Indeed, it is clear to the Commission that the public has significant interest in the issue of human rights. More than two-thirds of the submissions made to the Commission included recommendations or commentary related to fundamental rights.

3.124. To this end, the Commission, in looking at the example of other jurisdictions, considered the feasibility of the establishment of a Human Rights Commission, which would be tasked with promoting respect for human rights and investigating and reporting on the observance of human rights in various spheres of national life. In this connection, the Human Rights Commission would be responsible for raising awareness among the public about human rights.

3.125. The Commission would also be tasked with receiving and investigating complaints concerning alleged violations of human rights. This would be without prejudice to the constitutional right of persons to seek redress for breaches of rights in the High Court.

3.126. The Human Rights Commission would not be a replacement for the Ombudsman. The latter is responsible for investigating and reporting on allegations of maladministration and administrative mistreatment or unfairness. The Human Rights Commission's focus would be on fundamental rights.

3.127. It must however be noted that to be truly effective, the Human Rights Commission must be adequately resourced from the outset, or else the public will not be confident in its ability to fulfil its mandate. The institution must also be respected by the other arms of the State in order to demonstrate to the public that the Commission is capable of providing them with assistance.

3.128. Naturally, the Human Rights Commission must have a degree of autonomy from the rest of Government and therefore is further discussed in Chapter 9 of this report, which addresses the Independent Regulatory and Oversight Institutions.

Recommendations

3.129. The Commission recommends that:

3.129.1. A Human Rights Commission should be established for Barbados.

3.129.2. The Human Rights Commission should be charged, among other things, with the responsibility to:

3.129.2.1. promote respect for human rights and develop a culture of human rights;

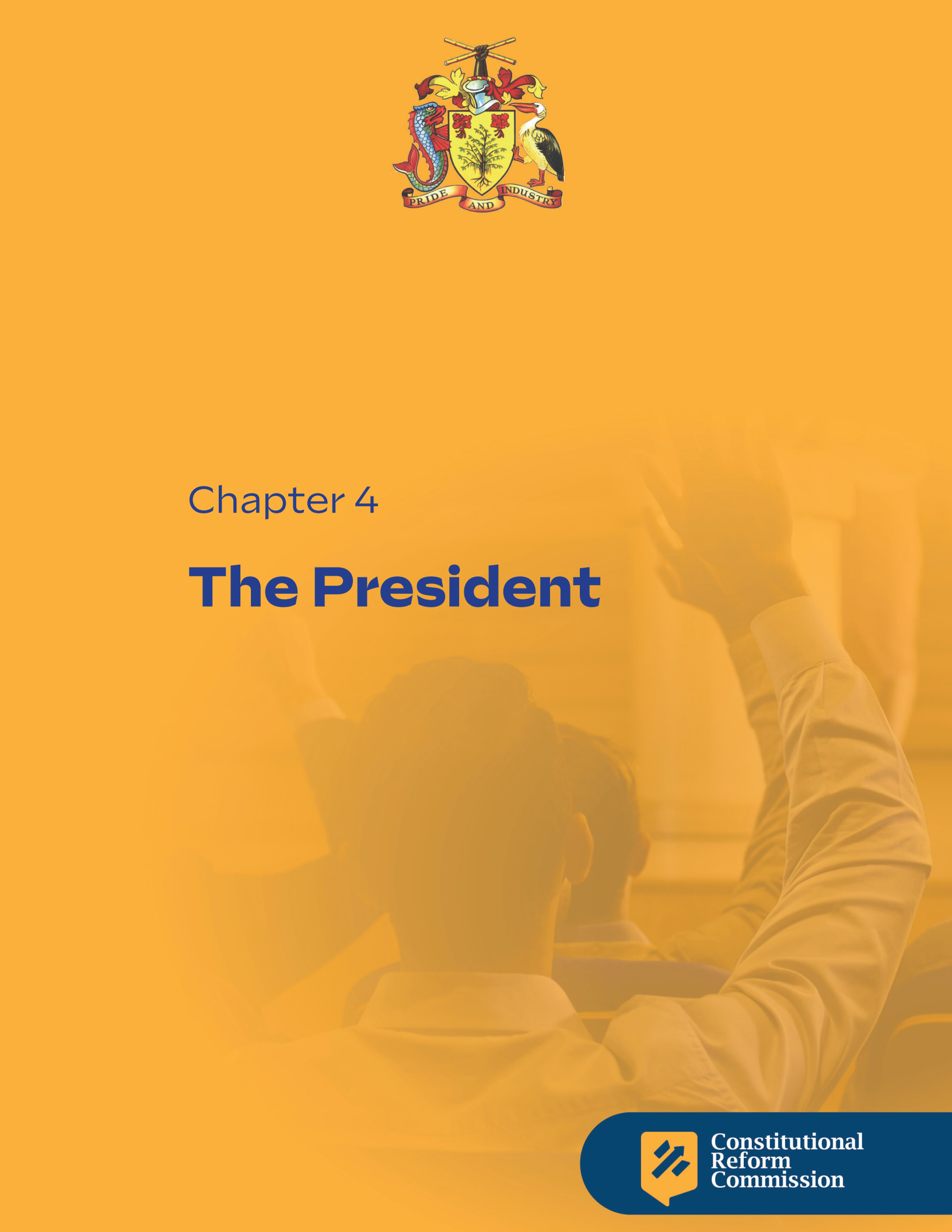
3.129.2.2. monitor, investigate and report on the observance of human rights in all spheres of life;

3.129.2.3. receive and investigate complaints of alleged human rights abuses and take steps to secure redress; and

3.129.2.4. act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.

Chapter 4

The President



Constitutional Reform Commission

INTRODUCTION

4.1. On November 30, 2021, Barbados transitioned to republican status, replacing the late Queen as Head of State with a President, and vesting in the State the rights, liabilities, prerogatives, privileges and obligations previously attaching to the Crown.

4.2. On that day, the system of government operating in Barbados transitioned from that of a constitutional monarchy to a parliamentary republic. However, the substance of our system has been retained, particularly the central role of Parliament.

4.3. In the course of the Commission's work, a key question in relation to the President concerned whether Barbados should retain its parliamentary government or move towards a presidential, or semi-presidential system. The majority of the Commission ultimately determined that the present system should be retained. It was generally agreed that parliamentary government continued to be the most appropriate and desirable form of government for our particular circumstances.

4.4. The Commission's ultimate position on this matter was inspired by its perspective that the office of the President, as Head of State, continues to be a symbol of national unity, around which all Barbadians, regardless of political opinion, can rally. To this end, the Commission has proposed changes to the term of office of the President. Given that the office of President is now only three years old, the Commission determined that the other provisions relating to the office were largely acceptable and ought to be retained.

CONSTITUTIONAL POSITION OF THE PRESIDENT

4.5. The parliamentary system of government operating in Barbados places Parliament at the centre of national governance. The control and direction of the Government is vested in a Cabinet, which is constituted in a manner reflecting the majority opinion of the House of Assembly. This Cabinet, consisting of members of the Parliament, exercises responsibility for the management of the public affairs. Because of this role in leading the Government, the Prime Minister as chairman of the Cabinet, is often referred to as the head of government.

4.6. This office in the executive – of head of government – exists alongside the office of Head of State. The President, a non-partisan figure, acts predominantly on the advice of the Cabinet in exercising the executive authority of Barbados vested in the office by the Constitution. The Presidency is not ceremonial; nor is it "non-executive".

4.7. In this arrangement, Parliament – specifically the House of Assembly – is the institution of government endowed with direct democratic legitimacy, as a body directly elected by the People. It is from this single source that the other institutions of the government derive democratic legitimacy.

4.8. In our system, the separation between executive and legislature is less fixed, and especially due to the small size of our Parliament, the executive, in the form of the Cabinet, comes to dominate Parliament.

4.9. On the other hand, a presidential system of government creates an office of the President with its own independent relationship with the People, separate from Parliament, and therefore creates a more rigid separation between the executive (led by the President in an effective and functional sense) and the legislature. It should be noted that there are also mixed systems with elements of presidentialism and parliamentarism.

4.10. In approaching its deliberations on the model to be preferred for Barbados, the leading consideration of the Commission was that the model chosen had to be compatible with the circumstances of Barbados: our historical, political, economic, social and cultural conditions.

4.11. The institution of Parliament has long existed in Barbados, as is noted in Chapter 5, and has always enjoyed a pre-eminent place in the governance of this Island. This fact alone does not commend the retention of parliamentary government, but it is relevant to consider the fact that seeds of that system of government have been long planted and have blossomed well since then.

4.12. It must be noted, in this connection, that Barbados enjoys a reputation for an historically stable government, with a strong democracy, among the nations of the developing world. The strength of our institutions of governance, and their longevity, which have redounded to the benefit of Barbados, must be considered when contemplating changes thereto.

4.13. Presidentialism creates an alternative centre of power in the government and can give rise to tension in the relations between executive and legislature. The Commission acknowledges that, in some states, such tension, through more rigid separation of powers, may be a good thing as the branches more effectively act as a check on each other. On the other hand, there are states where this tension can result in costly standoffs.

4.14. However, the purpose of reforming the system of government must be to further or better secure democracy in this island. The Commission is not convinced that a more presidential model will achieve that, nor that the perceived benefits of such a model would outweigh the possible harms. This is against the backdrop of the already strong democracy achieved by parliamentarism in the Barbadian context.

4.15. Presidentialism would further accentuate the centrality of a single figure in national, political life. In circumstances where individuals are concerned about the office of Prime Minister enjoying great power, it would be peculiar to invest effective powers in an office of President, who is a single person, unlike a Prime Minister who must negotiate with his Cabinet colleagues (most of whom are directly elected MPs), Parliament and his political party. A President with a fixed term, independent of Parliament, would have much fewer of these constraints.

4.16. Presidentialism also creates a rigidity, where parliamentarism engenders flexibility. Divided power may be an attractive notion in theory, and may well be beneficial in other contexts, but a small nation, in which Government is the principal national actor, cannot tolerate gridlock and paralysis. The great attraction of parliamentarism is that, by its nature, it facilitates consensus between executive and legislature and ensures that the engine of government continues to run.

4.17. Perhaps most significantly though, vesting functional responsibility for managing the Government in the President would necessarily entail the loss of the most critical function presently performed by the office of the President: being a symbol of unity.

4.18. The exercise of the powers of government, and popular election, necessarily invites controversy, divided opinion and partisanship. Thus, endowing the President with personal executive functions would require that office to descend into the political arena. Rather than being a rallying point for the society, it becomes a point of polarisation, loved by a section of the community and disliked by another.

4.19. The fundamental importance of the President as a symbol of continuity and unity cannot be overstated. There must be at least one office in the highest echelons of the state to which all Barbadians can pay regard, in common enterprise, regardless of our differences. In an increasingly polarised world, there is an essentiality about this function of the office of the President, as a symbol of patriotism and national unity.

4.20. Indeed, this vision of the office of the President is a part of the rationale for the republican transition. It was felt that the people of Barbados should be able to see themselves reflected in their Head of State. Thus, in 2021, this country replaced a remote Head of State with a President, born in this country, whose life story is representative of the national story of social upliftment, and whose sterling service to Barbados in various capacities provides a point of inspiration for all citizens. Therein lies the profound and nationally significant purpose of this office.

4.21. No system of government is perfect. However, the majority of the Commission is convinced that a parliamentary system of government with a President symbolising national unity is most consistent with the history and future of Barbados.

4.22. The Deputy Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.

Recommendations

4.23. The Commission recommends that:

4.23.1. The President should continue to be the Head of State of Barbados and the head of the armed forces.

4.23.2. The office of President should continue to be an apolitical, non-partisan office and a unifying figure for the nation.

4.23.3. Barbados should continue to be a parliamentary republic, with the effective management of the day-to-day affairs of the Government vested in the Cabinet.

ELECTION OF THE PRESIDENT

4.24. Currently, the President is elected by Parliament. The existing provisions create a mechanism for the Prime Minister and Leader of the Opposition to make a joint nomination, failing which each may make an individual nomination (or any ten (10) Members of Parliament acting jointly). On the day designated for the election, the two Houses meet together in a joint session, and where a joint nomination has been made, the Speaker, as the presiding officer, declares the joint nominee elected, unless there is an objection.

4.25. Where there is an objection, or where there is no joint nomination, each House meets separately, and a candidate must win two-thirds of the vote in each House in order to be elected.

4.26. There was robust discussion within the Commission about the desirability of providing for the President to be directly elected by the public. It was suggested that this may be more consistent with a republican form of government and endow the office of the President with direct democratic legitimacy and the imprimatur of popular election.

4.27. However, the majority of the Commission ultimately rejected this position. The vision for the office of the President set out above – a symbol of national unity – necessitated that the officeholder remain above the arena. To require a national election would invite into the presidential election process the unfortunate aspects of such an electoral exercise, not least of which the acrimony and partisanship which often attend elections. It would be undesirable for the office of the President to be dragged into such a situation.

4.28. Further, a direct election for the President, by providing a direct mandate from the People, could well establish an alternative centre of power in the Government which may unsettle the traditional relationship of comity which has existed between the President and the Cabinet, as the President's responsible ministers on whose advice he must act in our system. This too would be an undesirable possibility.

4.29. For these reasons, the majority of the Commission endorses the retention of the current system of election. Ours is a representative democracy. Therefore, the People's Parliament is well placed to elect the President on the People's behalf.

4.30. The Commission also adopts without change the present method of election, in particular the joint nomination procedure. It is hoped that in the future the holders of the office of Prime Minister and Leader of the Opposition can continue to come to a common understanding in respect of this high office so that no actions are taken to diminish in the slightest the dignity of the office of the President, such as by shrouding the election of the President in political controversy.

4.31. **The Deputy Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.**

Recommendation

4.32. The Commission recommends that the present system for the election of the President by Parliament should be retained.

QUALIFICATIONS AND DISQUALIFICATIONS

4.33. The Commission considered the qualifications and disqualifications for the office of the President set out in the Constitution, cognisant of the fact that the constitutional text cannot adequately delineate what is perhaps the most important qualification which has characterised every holder of the office of Governor-General, and now President: being persons of high integrity, who gave distinguished service to Barbados in various capacities throughout their lives before appointment.

Qualifications

4.34. Presently, section 29 of the Constitution restricts the eligibility for election as President to citizens by birth or descent. This excludes citizens by registration. Given the view of the majority, expressed in Chapter 2, relating to the equality of citizenship, the Commission can see no justifiable reason why a class of citizens should be absolutely prohibited from ascending to the office of President.

4.35. This is especially so considering that citizens by descent are eligible to hold the office. Citizenship by descent is an automatic right, so it is possible for a person to be a citizen by descent without having ever had to live here for any period of time. By contrast, citizens by registration must have some connection with Barbados by residence in order to qualify for that status. Indeed, citizens by registration are able to pass on their Barbadian citizenship to their children born overseas, which would mean, under the current provisions that the child of a citizen by registration, born overseas and never having lived in Barbados, would be eligible to be elected President, but the citizen by registration would not. This is an obviously unsupportable state of affairs which could not have been the intention.

4.36. The majority of the Commission believes that every citizen of Barbados ought to have equal rights and entitlements and therefore any citizen of Barbados should be eligible to be elected President. The majority is unable to discern a justifiable reason to prohibit this specific class of citizens from holding office as President. As reflected in Chapter 2, in the context of dual nationals, the type of citizenship one holds reveals nothing of one's character or suitability for office. It is therefore an unsafe ground on which to exclude a person.

4.37. In order to serve as President, one must be elected with supermajority support in Parliament. That is intended to act as the mechanism to safeguard the office of the President. Therefore, if it is felt that Parliament should be prohibited from even considering a person from a class of citizens for the office of President, then that suggests a deeper lack of confidence in the chosen election mechanism which would need to be otherwise addressed.

4.38. The majority, however, is confident that the mechanism being retained, which seeks to ensure cross-party support in Parliament, for presidential nominees, is a sufficient filter to ensure that Barbadian Heads of State continue to be persons of the greatest distinction.

4.39. **The Chairman expresses a dissenting opinion from this recommendation which may found in Appendix A.**

Additional Qualifications

4.40. It was put to the Commission that the Constitution should prescribe a minimum qualifying age and a period of residence in Barbados as additional eligibility requirements. The majority did not agree with either recommendation.

4.41. In the case of the minimum qualifying age, the Commission recognised that because the President should generally be a person of great distinction who has served in high office in the State or in a profession or vocation, this will usually mean that officeholders will have attained a certain age. This is as it ought to be. However, the majority sees no point in prescribing a particular age, again for the reason that the power to elect the President is vested in Parliament, whose members can be called upon to exercise their judgement and discernment. Whatever age might be selected would be relatively arbitrary and would deprive Parliament of the freedom of choice, for example, if circumstances arose which made a particular candidate in every respect desirable but who falls short of the mandatory age by a year.

4.42. As a general rule, the Commission has avoided being more prescriptive than necessary, recognising that, in order to endure, the Constitution must be sufficiently flexible to enable the constitutional actors to negotiate new developments unseen to those who wrote it.

4.43. For similar reasons, the majority declined to support prescribing a minimum period of residence. It would obviously be desirable that a person elected as President should have had some substantial connection to Barbados by residence herein prior to election. But again, the majority is not convinced that this requirement needs to be written down in the constitutional text. Were it to be attempted to definitively express every desirable requirement, the Constitution would become unwieldy and rigid, and unable to meet new issues.

4.44. For 55 years, the person holding the office of Prime Minister acted alone in advising Queen Elizabeth II as to who should be appointed as Governor-General. Every person appointed to that office by Her late Majesty were persons of great distinction who served faithfully as Governor-General. Given that history, the Commission felt that the present, more inclusive process would equally produce a suitable candidate for the office of the President.

Recommendation

4.45. The Commission recommends that any adult citizen of Barbados should be eligible to serve as President, subject to the disqualifications set out below.

Disqualifications

4.46. Section 29 of the Constitution disqualifies members of either House of Parliament from being elected as President; or persons who have served in either House within the preceding 12 months; or persons who would be disqualified from serving in either House.

4.47. The Commission agreed that these disqualifications should be retained. This is not to suggest that persons who hold distinguished office as legislators should be viewed with suspicion or contempt. However, the reality of the office of President is that there ought to be some cooling-off time between engaging in the cut and thrust of political life and the high office of President. For this reason, the Commission supported the retention of the 12-month "cooling-off" period.

Recommendation

4.48. The Commission recommends that a person should not be eligible to be elected President if he or she is a member of the House of Assembly or Senate, or was a member of either House within the preceding year, or is disqualified under the Constitution from being elected as a Member of Parliament.

TERM OF OFFICE

4.49. Section 34 of the Constitution presently fixes the term of the President at four years and provides that the President is eligible for re-election.

Length of Term

4.50. The four-year term length of the President places Barbados at the lower end of the scale when compared with other parliamentary republics with Presidents who are not directly elected. The Commission's research suggests that there are twenty-six (26) such countries in the world, other than Barbados. Of those, only 3 have a four-year term length: Iraq, Latvia and Somalia. Only one (1) country, Fiji, has a shorter term (three years). The vast majority of the countries, seventeen (17), have term lengths of five (5) years.

4.51. The Commission felt that the current four-year term length was too short and ran too concurrently with the parliamentary term. is the Commission viewed this as undesirable for the office of the President, given its role in national life.

4.52. The Commission therefore agreed that seven (7) years was a more appropriate term length. In this regard, the Commission concurs with the similar recommendation made by the Forde Commission.

4.53. In particular, the Commission had regard to the length of tenure of the Governors-General as a suitable gauge for an adequate length. The following table shows this information:[7]

Table 4.1: Table showing the length of service of the Governors-General of Barbados

Governor-General	Length of Service
Sir Winston Scott†	9 years, 82 days
Sir Deighton Ward†	7 years, 53 days
Sir Hugh Springer	6 years, 104 days
Dame Nita Barrow†	5 years, 195 days
Sir Clifford Husbands	15 years, 151 days
Sir Elliott Belgrave	5 years, 29 days

† denotes that the individual died in office

[7] For the purposes of Table 4.1, Sir John Stow and Dame Sandra Mason have not been included. Sir John was this Island's last Governor and, on that basis, became the first Governor-General. His tenure was short and was plainly transitional. Dame Sandra was this Island's last Governor-General and Her Excellency's distinguished service in that office was terminated by the republican transition which abolished that office and Her Excellency then assumed the office of President. Consequently, these are singular instances and would not be natural comparators for the purpose of analysis.

4.54. Table 4.1 yields an average term of service of the Governors-General of Barbados of 8 years, 1 month and 11 days. Sir Clifford Husbands enjoyed a particularly long period of service, which is a statistical outlier. Accounting for this, when his tenure is removed, the average becomes 6 years, 7 months, 28 days.

4.55. Taking account of this information, the Commission is fortified in the view that seven (7) years is an appropriate term length and is consistent with the average tenure of the Governors-General.

Recommendation

4.56. The Commission recommends that the term of office for the President should be increased to seven (7) years.

Renewal of Tenure

4.57. The Forde Commission recommended that the proposed seven-year term be "fixed". This Commission considered whether the office of the President should be eligible for re-election. In particular, it was considered that where re-election is permitted, the failure to renew a term can create an awkward situation, which would be an unfortunate conclusion to the tenure of a President.

4.58. Nevertheless, the majority of the Commission was satisfied that, consistent with its position against over-prescription, the possibility of renewal should be left open as it would be unfortunate for a particularly effective holder of the Presidency to be forced to retire at the conclusion of a single term if they have the capacity to continue to serve.

4.59. However, the Commission did agree to set the process for renewal on clearer footing. Presently, section 34(3) of the Constitution provides for the Prime Minister and Leader of the Opposition to grant an incumbent President an extension in office beyond the set term for a period not exceeding four (4) years. The Commission regarded this to be an untidy arrangement. Similar sentiments are expressed in Chapter 7 concerning a similar extension of tenure for Judges. It is not desirable for the holder of the high office of President to have to seek an extension from the Prime Minister and Leader of the Opposition.

4.60. The Chairman express a dissenting opinion from the majority's recommendation regarding the possibility of re-election, which may be found in Appendix A.

4.61. Commissioners Jemmott and Kothdiwala also express a dissenting opinion in this matter, which may be found in Appendix A.

Recommendations

4.62. The Commission recommends that the President should be able to seek re-election.

CONDITIONS OF OFFICE

4.63. The Commission was satisfied that the present constitutional provisions relating to the conditions of office of the President, the personal staff and the immunities attaching to the office were adequate and should be retained.

4.64. However, the Commission wishes to draw attention to the fact that the office of the President ought to have greater resources available to it, to better facilitate the function of the office. In particular, the Commission invites Government to consider providing for the President to have recourse to independent legal counsel, outside of the Solicitor-General's chambers. Additionally, the President's Private Secretary has significant responsibilities, and so, it may be desirable to explore the employment of additional persons within the Office of the President to assist the Private Secretary and ultimately aid the President in the office's important functions, especially as relates to the public service.

Recommendations

4.65. The Commission recommends that:

4.65.1. The present constitutional provisions pertaining to the conditions of office, the personal staff to the President and the immunities of the President should be retained.

4.65.2. Government should examine ways to augment the resources available to the office of the President to better facilitate the exercise of that office's functions.

REMOVAL OF THE PRESIDENT

4.66. The President enjoys security of tenure, enforced by a complicated process for removal. This process prescribes certain grounds for removal and requires the passage of a motion supported by two-thirds of the members in each House to commence an investigation into removal. A tribunal is then required to be empanelled, including the Chief Justice, to investigate the matter. Finally, each House must consider the report and the President is removed if a two-thirds majority in each House support such removal. Clearly, this sets the bar for removal quite high, ensuring that such a controversial proceeding would only be soberly initiated.

4.67. This arrangement is unlike that which obtained in relation to the Governor-General, who could be dismissed by the Sovereign, on the advice of the Prime Minister, immediately.

4.68. As a high officer of State, and one performing critical constitutional functions, including certain reserve powers, the Commission believes that providing security of tenure for the office of the President is appropriate.

Recommendation

4.69. The Commission recommends that the present provisions relating to the removal from office of the President should be retained.

PROVISIONS FOR AN ACTING PRESIDENT

4.70. Whenever the President is absent from the country, on leave, or otherwise unable to perform the functions of the office, the Prime Minister designates a person to serve as Acting President, after consulting the Leader of the Opposition.

4.71. This situation is different from the provisions which obtained prior to 2021 as it related to the temporary exercise of the Governor-General's functions. The former section 29 of the Constitution provided for Her late Majesty to designate a person to act as Governor-General. This function would usually be exercised on the advice of the Prime Minister. If no person was designated, for example, if the Prime Minister tendered no advice to the Sovereign, the Chief Justice would act, and if he was unavailable, the President of the Senate would be called upon.

4.72. The majority of the Commission was satisfied that the current, post-2021 provision for the Acting President was appropriate. In the ordinary course of events, on several occasions annually there is a need for an Acting President, as a result of the President being on leave, or for any other purpose. It would therefore be unproductive for a person holding a substantive office in the State to be called away from those duties every time the President is on leave or ill.

4.73. However, the majority felt that a lacuna existed in the provision, in that it did not seem to contemplate the possibility that the Prime Minister may also be incapacitated, and therefore unable to consult the Leader of the Opposition or designate any person.

4.74. Therefore, the majority felt that a version of the pre-2021 arrangements should be incorporated, such that if the Prime Minister does not designate any person to act, then the President of the Senate would act as President. If the President of the Senate was unable to serve, then the acting presidency would fall to the Speaker of the House, and if he too was unable, then to the Deputy President of the Senate.

4.75. The Commission declined to include the Chief Justice in the above list because it was felt that the Chief Justice performed a full-time function as head of the judiciary and as a judge of the Court of Appeal, so that calling away the Chief Justice to act as President would have a consequential effect upon the courts.

4.76. The presiding officers of both Houses of Parliament (and the deputy presiding officer of the Senate) perform important constitutional functions, but these are not full-time responsibilities and in any event, another member in either House can be called up to act as the presiding officer. It was also felt more appropriate, given the flexible separation between executive and legislature, for an officer of the legislature to be called to act as President (who heads the executive), rather than a judicial officer.

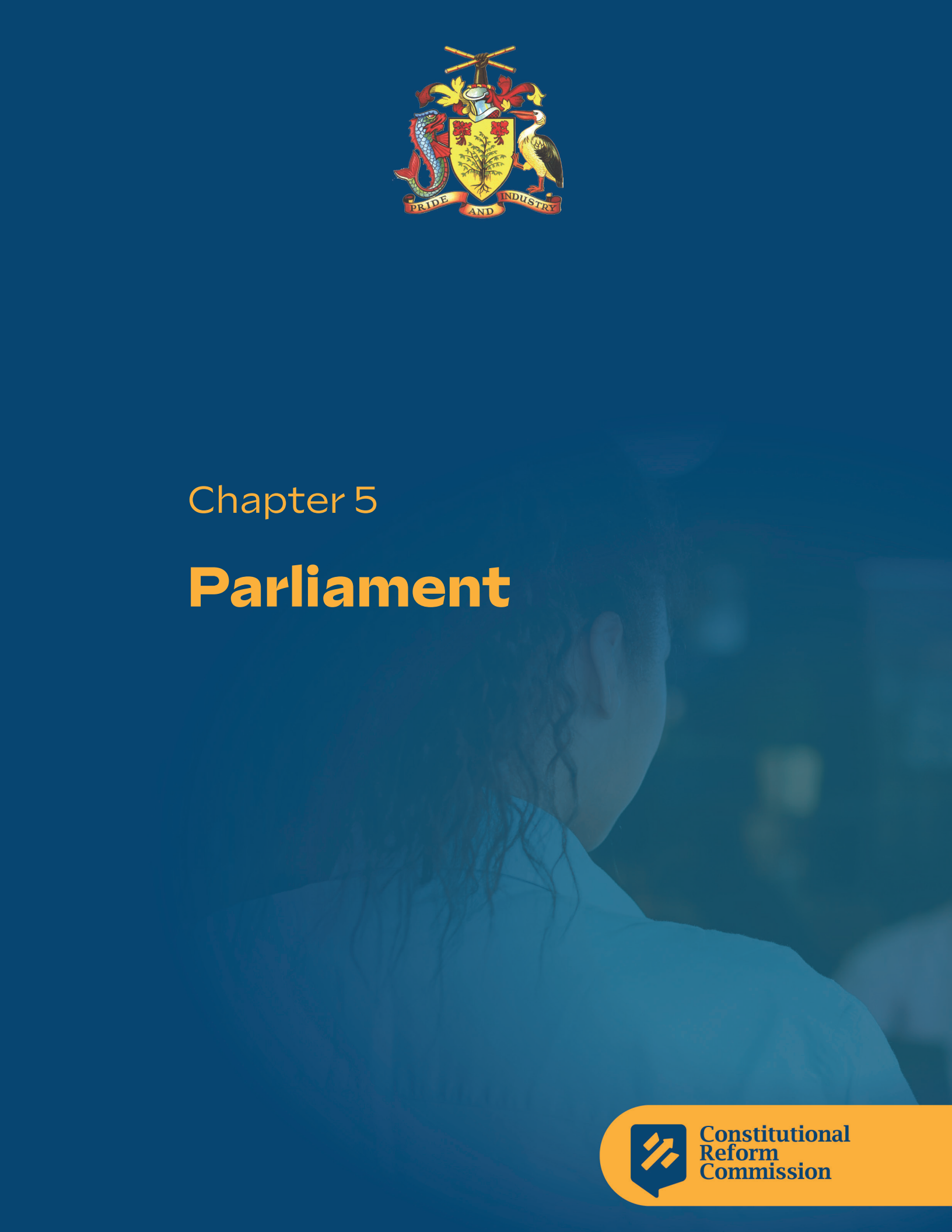
4.77. The Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.

Recommendations

4.78. The Commission recommends that:

4.78.1. Whenever there is a vacancy in the office of the President, or the sitting President is unable to perform the functions of the office or is on leave, then the Prime Minister, after consulting the Leader of the Opposition, shall designate a person to serve as Acting President.

4.78.2. When no person has been designated by the Prime Minister to serve as Acting President, then the President of the Senate shall act as President. However, if he is unable to serve, then the Speaker shall assume the office of Acting President; and if the Speaker is unavailable, then the Deputy President of the Senate shall act as President.



Chapter 5

Parliament

Constitutional Reform Commission

INTRODUCTION

5.1. No independent country on this side of the Atlantic Ocean can claim a longer tradition of parliamentary government than Barbados. Indeed, of the independent member states of the Commonwealth of Nations, outside of the United Kingdom, Barbados has the oldest continuous Parliament. Since June 26, 1639, there has been a legislature for Barbados, and across those 385 years, it has included an elected House.

5.2. It would however be a mistake to conflate the 385-year existence of the House of Assembly with the idea that a democracy has existed in Barbados for that entire time. Indeed, for the first 300 years of its existence, that Parliament was one of the leading instruments of the oppression of the majority of the population. This endured as a result of the undemocratic means by which that Parliament was constituted, as a result of the denial of political enfranchisement to the masses.

5.3. On the other hand, the Barbados Parliament is the same institution which enacted such transformational and empowering legislation as the Representation of the People Act in 1950, which granted universal adult suffrage, and the National Insurance and Social Security Act in 1967, among many others. Additionally, Parliament has, since the 1937 People's Rebellion increasingly become democratic and representative.

5.4. The Commission had to contend with this complicated legacy of parliamentary government. The Commission recognised that the Barbados Parliament has been fashioned substantially on the model adopted by the United Kingdom, which has exercised the greatest influence upon the structure, procedure and practices of our Parliament. At the outset of its deliberations, the Commission considered whether the parliamentary system of governance was best suited to Barbados, given our recent status as a democratic republic and its relevance for the future.

5.5. The Commission deliberated on a wide array of constitutional matters related to the Parliament of Barbados, including the retention of bicameralism, new modalities for the constitution of the Senate, alternative compositions in the House of Assembly, the eligibility requirements to serve in Parliament, the continued role of the President in the legislative process, the question of recalling members of Parliament and fixing the parliamentary term.

5.6. The majority of the Commission largely felt that Parliament remained a viable instrument for the expression of the democratic will of the People of Barbados, subject to certain changes.

5.7. The Commission was conscious of the fact that the Parliament of Barbados is small. As a result, in seeking to hold Government to account, Parliament is at a decided disadvantage, compared to legislatures in other countries with hundreds of members. This inescapable reality means that the Commission had to have regard to additional means to strengthen state accountability in other areas (as may be seen in the Commission's recommendations on fundamental rights and freedoms, the judiciary and the independent regulatory and oversight institutions) while retaining the central place of the People's Parliament to make law and exercise some oversight of the Executive.

STRUCTURE OF PARLIAMENT

5.8. Parliament consists of two chambers – the Senate and the House of Assembly – and is therefore bicameral. Its central function is to make law "for the peace, order and good government of Barbados". Each House is intended to serve a particular purpose. The House of Assembly, an elected House, is the central institution in our representative democracy, as the House constituted by the People themselves. That House, therefore, exists to reflect the popular will of the People in the legislative process. The Senate, a second chamber, is expected to perform a review function; to bring to bear further consideration upon the laws to be passed.

5.9. Most submissions received by the Commission on this matter proposed the retention of a second chamber. This was a view with which the Commission agreed. In the 60 years since the establishment of the Senate (it having been first established in 1964), it has served an important role in the legislative process. A section of popular opinion believes the chamber to be a "rubber-stamping" body. The Commission, however, suggests that when proper regard is had to the actual role which it is expected to play, this criticism may not be seen as altogether fair. In records of each session of Parliament over the years, one can find instances in which the Senate has amended a Bill passed by the Lower House and sought that House's concurrence in those amendments. It is therefore actively performing its central function: that of review.

5.10. Moreover, as mentioned above, the most significant challenge faced by a system of parliamentary government in a small nation is the small size of the Parliament. Effective parliamentary government – where Parliament exercises a robust accountability function – requires a critical mass of parliamentarians. But in our case, between both Houses presently, there are only fifty-one (51) members, a fairly large number of whom may also serve in the Executive (an arrangement which the Commission does not propose to end). In these circumstances, it would not be desirable to abolish one of the Houses, given the already small numbers.

Recommendation

5.11. The Commission recommends that the Parliament of Barbados should continue to be bicameral and consist of the Senate and the House of Assembly.

THE SENATE

5.12. The Commission received a number of submissions relating to the reform of the Senate. Several of those called for the Senate to consist of members elected either on a proportional basis or to represent each parish, or a combination of both of these. Some of these submissions calling for an elected Senate nevertheless proposed the retention of some Senators appointed by the President.

5.13. As the Commission approached this matter, it first considered the role and function of the Senate in the legislative process. An elected chamber, typically, has full legislative rights, with the power to initiate and block any legislation. Therefore, where there are two elected chambers, these typically act as a check on each other. Another quintessential characteristic of an elected chamber is that it is often a more "political" chamber, as its members cast a keen eye to re-election.

5.14. That is not however the case with an appointed chamber, like the Senate, which serves the review function mentioned above. It exists to bring a different range of opinion to bear upon the consideration of legislative measures.

5.15. The majority of the Commission felt that Barbados was well served by such a chamber, which brought to bear on the legislative process a distinct value alongside an elected chamber.

5.16. The Commission had robust discussion on this matter and heard strongly-held views that every legislator should carry the imprimatur of the People expressed through election, as this was most reflective of a republican form of government. The majority of the Commission disagreed, believing that the People's interests were already being represented under the current structure: directly in the House of Assembly, and indirectly in the Senate.

5.17. Were the Senate to be elected, it would likely be on the basis of the same set of votes at a general election. It would therefore beg the question of why two Houses should be constituted on the same basis, likely producing similar compositions. It would also be unsupportable to elect the Senate, or a portion thereof, at different intervals to the House as this could result in divided control of the two Houses, creating untenable gridlock for a small country.

5.18. Additionally, the appointed nature of the Senate, particularly the presence of the "Independent Senators" facilitates the participation of a more diverse set of persons, which may not always be possible considering that the cut and thrust of elective politics may dissuade some from participating.

5.19. It does not therefore appear to the majority that the advantage of an elected, or partly elected, Senate would be sufficiently decisive to warrant changing the current system, which is, as mentioned above, fulfilling the purpose for which it exists.

5.20. The Deputy Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.

Recommendation

5.21. The Commission recommends that the Senate continue to be constituted by appointment.

Constitutional Position of the Senate

5.22. Based on the Commission's recommendation that the Senate continue to be constituted by appointment, it is proposed that its current constitutional position vis-à-vis the House of Assembly be retained. As an appointed chamber, the Senate is expected to perform a review function, but it should not be able to override the will of the elected House. Therefore, the Commission recommends the retention of the current constitutional provisions allowing the House of Assembly to prevail over the Senate in relation to measures other than Bills to alter the Constitution.

Recommendations

5.23. The Commission recommends that:

5.23.1. The Senate should continue to be the Upper House of Parliament, primarily designed to exercise a reviewing function of the enactments passed by the democratically elected members of the House of Assembly.

5.23.2. The current provisions enabling a law, other than a constitutional amendment, to be enacted even if the measure is defeated in the Senate should be retained.

Composition of the Senate

5.24. Of the submissions received recommending the retention of an appointed Senate, several called for an alteration in its composition; while others called for the total number of Senators to be increased. The Commission concurred with the former recommendation, but in respect of the latter, felt that the current size was adequate.

5.25. With respect to the total number of Senators, the majority of the Commission was not convinced of the need to increase that number. The Commission did hear several views on this matter during its deliberations, including representations for an increase in the number, to augment the size of an already small Parliament and provide a larger pool of persons to constitute several standing joint select committees. However, the majority was of the view that an increase was unnecessary given the current functions of the Senate, and instead considered that in retaining the current numbers, Parliament could give consideration to providing additional resources and support to Senators to assist them in the better execution of their legislative duties.

5.26. With respect to the composition of the Senate, the Commission considered the fact that Barbados' position is quite unique in the Commonwealth Caribbean as nowhere else is there such a significant numerical and proportional difference between the number of "Independent" and "Opposition" Senators. It is indeed quite rare in the Commonwealth for a Head of State to appoint a full one-third of a legislative chamber in his or her own discretion.

5.27. The Commission felt that the current number of Opposition Senators – two (2) – was too small. This situation placed significant burden on those individuals. Their small number requires the Opposition Senators, in particular the Leader of Opposition Business, to be prepared to speak on almost every measure, and thus may often have to provide the opposition's reply on several occasions in one sitting. This can become quite onerous and imposes burden on the Opposition Senators which is not equally shared by their Government or Independent colleagues. This state of affairs serves to impair the effectiveness of the opposition in the Senate, whose role is an essential part of parliamentary government.

5.28. Therefore, the Commission agreed that the number of Opposition Senators should be increased to four (4). Given the Commission's preceding recommendation to retain the total number of 21, this increase in the Opposition bench consequentially necessitates a reduction in the number of Independent Senators to five (5).

5.29. The Commission does not recommend any change to the method of appointing Opposition Senators. The rare situation where there is no Leader of the Opposition would be addressed by the Commission's recommendation in Chapter 6 concerning vacancies in that office. Secondly, the rarer instance of there being more than one opposition group in the House of Assembly is a transitory phenomenon in a Parliament which is often resolved at the following election. There is therefore no compelling reason to alter the mechanism for appointing Opposition Senators.

5.30. The Commission does not recommend any change to the number of Government Senators. To maintain stability the Government must retain a majority of the seats in the Senate, without which unacceptable gridlock and potential confusion result. The Commission also did not believe that there was any need to further increase the Government bench.

5.31. With respect to the Independent Senators, the Commission received some submissions suggesting that the President's discretion in relation to these appointments should be circumscribed by defining the interests to be represented. The Commission did not consider this to be appropriate. There are a plethora of interests which can lay justifiable claim to a need to be represented in the Senate. But there are only a limited number of seats available. Thus, in seeking to confer preference on some groups, inevitably many others would be omitted. Further, the future developments in our society are not known to us now, so that a list of interests fashioned today may not reflect a future Barbados. Therefore, the Commission felt that the President's discretion in this matter was proper, as it enables a President to take stock of the national circumstances existing at that time and make a decision as to who should serve in the Senate. The Independent Senators appointed by the Governors-General, and now the President, have generally added to the quality of debate and consideration in the Senate, and there is thus little in that history to suggest that the arrangements should be altered.

Recommendations

5.32. The Commission recommends that:

5.32.1. The Senate should continue to consist of twenty-one (21) members.

5.32.2. The composition of the Senate should be altered to increase the number of Opposition Senators. The new composition should be as follows:

5.32.2.1. Twelve (12) Senators appointed on the advice of the Prime Minister ("Government Senators");

5.32.2.2. Four (4) Senators appointed on the advice of the Leader of the Opposition ("Opposition Senators"); and

5.32.2.3. Five (5) Senators appointed in the President's own discretion ("Independent Senators").

Securing Equal Representation in the Senate

5.33. The fundamental and inalienable right of women to participate in the structures of governance in Barbados was not recognised by the law until 1944 when the right to vote was given to women (however still subject to income qualifications). Franchise was further extended to women in 1948, when Parliament enacted a law allowing women to sit in Parliament. The first to do so was Ms Muriel Hanschell as a member of the nominated Legislative Council, and the first female MP came in 1951 with the election of Edna (later Dame Edna) Bourne.

5.34. Since then, a total of seventeen (17) women have served in the House of Assembly. Presently, that chamber has its highest proportion of female MPs ever, with 8 out of 30 MPs being women (or approximately 27%). That is still significantly short of gender parity.

5.35. Likewise in the Senate, there are seven (7) female Senators presently, a historical record. That is also well short of gender parity, as women still only constitute 33% of that chamber.

5.36. According to the Population and Housing Census 2021, conducted by the Barbados Statistical Service, 51.68% of our total population is female. In the view of the majority of the Commission, there is no justifiable reason why there should continue to be such a significant gap between the sex ratio in the population at large and in Parliament. The People's Parliament ought to better reflect the People themselves.

5.37. It is for this reason that the majority of the Commission has determined that the new constitution should require equal representation of the sexes in the Senate, reflecting the country at large. The majority understands that there may be a view that such representation should be allowed to occur organically. That is however not a sustainable argument. Women have been given the right to sit in Parliament since 1948, or some 76 years ago. Yet, in almost eight decades, the furthest we have reached as a society towards this goal is having a little more than one-third of the Senate be women, which has only been the case for the last two years.

5.38. A critical look at Barbadian society would confirm that there is no paucity of eminently qualified women capable of serving. Therefore, decisive action is required to ensure that every Barbadian, regardless of sex, has a fair chance, including at being represented in Parliament. This is entirely consistent with the Commission's resolute commitment to non-discrimination. If there is no justifiable reason why women should not have equal representation in the Senate, then there is no justifiable reason why we should not require it to be so.

5.39. However, it must be clear that the majority's proposes a gender-neutral quota, meaning that the Commission recommends that there be a minimum number of ten (10) Senators of both sexes. This therefore secures the representation of women and men in the Senate, and is consequently of benefit to both sexes.

5.40. Thus, the majority proposes that the Prime Minister be required to recommend the appointment of six (6) men and six (6) women as Government Senators and similarly the Opposition Leader be required to recommend the appointment of two (2) men and two (2) women as Opposition Senators. In respect of the Independent Senators, there is an odd number of such senators – five (5). Therefore, the majority recommends that there be no less than two (2) male and two (2) female Independent Senators, with the additional Senator within the President's discretion.

5.41. The majority acknowledges that there may be other demographics which might merit special provision, for example youth and disabled communities. However, the Commission makes no recommendation in this regard, leaving the matter to future generations to further build out an even more representative Senate.

Recommendation

5.42. The Commission recommends that in making the appointments to the Senate, the following gender quota be observed:

5.42.1. There should be six (6) Government Senators of either sex;

5.42.2. There should be two (2) Opposition Senators of either sex; and

5.42.3. There should be no less than two (2) Independent Senators of either sex.

THE HOUSE OF ASSEMBLY

5.43. The House of Assembly is perhaps the defining institution of Barbados' representative democracy. Thus, the Commission determined that its reform at the level of the Constitution must be approached soberly and within the full context of its role and function, including that of its members.

5.44. In our present system, the Members of Parliament really perform two distinct functions: one, as constituency representatives; and secondly as legislators. In the first role, MPs are expected to be advocates for their constituents in Parliament, among their colleagues and in the country at large and to seek to assist constituents in the resolution of their common problems. Of course, practice has developed which places significantly more responsibilities, and expectations, on the MP as constituency representative. The Commission considers that the desirability of this perception of the MP as a cure for all problems may be worthy of interrogation by another entity and in public discourse.

5.45. The MP is also a legislator, charged with ensuring that the laws enacted by Parliament are for the peace, order and good government of Barbados. In this role, he or she must be conversant with every measure introduced in the House, having carefully read every piece of legislation to ensure its soundness. This is a demanding responsibility, particularly when paired with the significant demands placed on him or her in the constituency role.

5.46. For a section of MPs, there is the additional and weighty responsibility of ministerial office, which further reduces the time available for the execution of constituency or legislative functions.

5.47. The Commission had regard to these roles and functions in determining whether reform was necessary or desirable. Clearly, the second function – the legislative function – would be retained no matter how the House of Assembly was elected or constituted. However, the first function – that of constituency representative – would invariably be affected by changes in the method of election, or in the composition of the House.

5.48. The Commission believed strongly that, for all of its several faults, the constituency-based system which operates presently had much to commend it, and was, in any event, the best of the available options. The Commission heard representations that there is something uniquely profound about the personal nature of the present system, that allows constituents to vote for a person to represent them in the House. It was the clearest and most distinct expression of a representative democracy, in which the people delegate their political power to a person to exercise on their behalf. That person ultimately elected bears a personal responsibility to their constituents, for the exercise of their political power. That personal responsibility is easily lost and finds no ready analogy in alternative systems such as party list proportional representation, which further empowers and entrenches the political party at the expense of personal representation. There may well come a time in Barbados' development where that personal representation becomes less relevant. The Commission does not believe that that time has yet come. The constituency-based system remains a sound mechanism through which to effect the representation of the People in their Government.

Requiring a Certain Number of Constituencies

5.49. The Commission received a submission calling for the total number of constituencies to be an odd number, because of the challenges which may arise if two political parties win the same number of seats in a House of Assembly with an even number of seats. There are presently 30 constituencies.

5.50. In principle, the Commission felt that maintaining an odd number of constituencies was an idea with merit. However, given that there is presently an even number of constituencies, for the Commission to recommend that the new constitution require an odd number of seats, would necessarily entail the abolition of an existing constituency or the creation of a new one, which would have consequential effects for the boundaries of other constituencies.

5.51. The Electoral and Boundaries Commission is the institution empowered by the Constitution to review and recommend changes to constituency boundaries. That Commission has the experience, expertise and necessary information required to make informed recommendations concerning boundary changes. This Commission is not similarly equipped and therefore is unable to make any such recommendation. It is properly a matter for the Electoral and Boundaries Commission.

5.52. In any event, the Constitution simply provides the minimum number of seats, presently set at 30. There is, therefore, no barrier to having a number of seats greater than 30, odd or even.

National Members of Parliament

5.53. The Commission received several submissions recommending the introduction of a mixed member system, whereby "National MPs" would be introduced alongside the existing constituency MPs. Various mechanisms for electing these National MPs were proposed. Interestingly, the introduction of National MPs was also supported by both major political parties:

5.53.1. The Democratic Labour Party, in a written submission to the Commission dated 15 December, 2023, suggested that a party list proportional representation system be adopted, which would involve the political parties preparing a list of candidates to fill the National MP seats and the parties being allocated National seats based on the proportion of total votes won in the general election.

. 5.53.2 The Commission became aware of a submission made by the Barbados Labour Party, at a public forum, to the Parliamentary Reform Commission recommending the addition of National MPs elected directly at general elections. Therefore, individual candidates would run nationally, rather than there being a party list. A unique feature of this proposal would be that the Prime Minister would have to be a National MP.

5.54. The Commission considered these proposals but the majority of the Commission ultimately determined that National MPs should not be added to the House of Assembly. As previously stated, there is a special and personal relationship that exists between a constituency representative and their constituents who have delegated the exercise of their political power to that representative. National MPs would have no similar relationship (having been elected nationally) and would therefore exist somewhat at large. The Commission was satisfied that these two classes of elected representative would not be sufficiently equal to justify their inclusion in a single chamber together.

5.55. Additionally, the majority was concerned that the presence of National MPs, with a concomitantly larger national mandate, could serve to diminish the position of the constituency MP, as it may be the case that senior members of the parliamentary parties would come from National MPs, given the wider base of support, rather than the constituency MPs.

5.56. Finally, National MPs would inevitably have a less direct relationship with the electorate as compared to constituency MPs. This would create an inequality of burdens in the House as constituency MPs would be required to perform both the constituency representation and legislative function, while national MPs would have no equivalent constituency representation function.

5.57. Beyond these points, the mechanisms of such a system were considered.

5.58. Firstly, the Commission was not prepared to accept the desirability of a party list proportional representation (PR) system. In the jurisdictions with that system used as common examples, there are often more developed internal democratic structures within political parties. The reality of a small country is that internal party structures are often more under-developed, enabling the Political Leader to have much greater control than in a more developed political party. Thus, a party list PR system could simply further entrench the party leader's dominance. It would also mean that MPs elected in this way would not have an independent base of support, as a constituency MP might have in his constituency, and his presence and placement on the party list would be out of his control. Of course, a Political Leader also exercises outsized influence in the current constituency-based system, but a few factors exist to check some of that power which would be absent in a list PR system.

5.59. The majority also considered the proposed mechanism of individual candidates standing for election as National MPs. This was likely a more desirable system than list PR, but given that multiple members would need to be elected, this would likely create an unwieldy maze of choices for the electorate to wade through (and a complicated ballot paper). It would also introduce some uncertainty into the system given the real and likely possibility of split-ticket voting.

5.60. The Deputy Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.

"Top-Up" Members of Parliament

5.61. The Commission received submissions recommending that, if the composition or method of election for the House was not altered, some consideration should be given to introducing "top-up" MPs, where no Opposition MPs have been elected, or a small number, which would enable greater opposition representation. The Commission considers that the system proposed in Chapter 6 for instances where there is no Leader of the Opposition is an adequate solution to a rare situation. In addition, the Commission did not believe that a sufficient case had been made out to justify going around, or behind, the express will of the People in a general election to introduce the participation of candidates in the House who had lost in that election.

Equal Representation of the Sexes in the House of Assembly

5.62. As reflected above, the Commission recommends that there be an equal number of men and women in the Senate (equal as far as possible in a chamber with an odd number of Senators). The Commission considered a similar arrangement for the House of Assembly.

In principle, it was agreed that, for the same reason as articulated above, there ought to be more equal representation of the sexes in the Lower House. However, the method by which the House is elected poses greater practical challenges than are present in the case of an appointed chamber.

5.63. This is especially so given that the Commission does not propose to alter the method of election to the House or introduce National MPs. If, for example, a party-list proportional representation system was used, then a constitution could require that a certain number of positions on the party list be filled by women. It is however different where the House of Assembly is actually constituted by 30 individual elections, taking place in each constituency. The political parties therefore do not assemble party lists but make decisions on a constituency-by-constituency basis as to their candidates.

5.64. Therefore, the Commission identifies as a national goal, equal representation in the House, but makes no recommendation for constitutional amendment in this regard.

Overseas Voting

5.65. The Commission received several submissions calling for citizens of Barbados who are domiciled overseas to be able to vote in general elections in Barbados.

5.66. From the outset, it must be noted that the nothing in the Constitution or the Representation of the People Act, Cap.12 would restrict a person, who appears on the Register of Electors, from voting in a general election, provided that he or she be in Barbados on polling day.

5.67. Therefore, the concerns expressed to the Commission really centred on section 9(1)(c) of the Representation of the People Act which enables the Electoral and Boundaries Commission to remove a person from the Electoral Register if he or she has been absent from Barbados for 5 years or more. Likewise, a Barbadian citizen living abroad, for example a citizen by descent, would be unable to register as an elector, because section 7(1)(d) of that Act requires that a person have resided in a constituency for 3 months previous. To the extent that these provisions in the Act create the barrier to the full electoral participation of members of the diaspora within the confines of the current electoral structure, no amendment to the Constitution is required.

5.68. Said differently, it would be a matter for Parliament to amend the Representation of the People Act in order to permit members of the diaspora to vote in one of the existing constituencies in Barbados, including the modality by which that would occur.

5.69. However, other avenues to secure diaspora participation, outside of the current structure, were represented to the Commission. Notably, these included the inclusion of a "diaspora constituency" in the House of Assembly, or the appointment of a Senator representing the diaspora. In relation a diaspora senator, as addressed earlier in this Chapter, the Commission is satisfied that the President's discretion to appoint Independent Senators should be retained and so it would be for the President, in their judgement to determine the interests to be represented, including the diaspora interest.

5.70. With respect to the creation of a separate constituency comprising voters living in the diaspora, this might require constitutional change. It appears to the Commission that the Constitution proceeds on the basis that the House of Assembly consists of members elected from geographically defined constituencies located in Barbados. For example, section 41D(1) of the Constitution requires the division of Barbados into constituencies, in accordance with rules set out in the Third Schedule, in particular a mathematical formula that seeks to maintain proportionality in the size of constituencies. This structure would not accommodate a separate diaspora constituency which would not have a geographical basis in Barbados and would almost certainly be vastly larger than any existing constituency. Indeed, while there is no available recent statistics on the total size of the diaspora, it is quite possible that a diaspora constituency could outnumber the total electorate of Barbados altogether.

5.71. As the Commission considered a constitutional amendment to give effect to this separate diaspora constituency, regard was had to the fact that this system already exists in several countries, including France and Italy. For example, in France, there are eleven (11) constituencies reserved for French citizens domiciled abroad for various regions of the world, with a total of 1.7 million voters making up those constituencies. The French National Assembly consists of 577 seats, meaning that the diaspora seats account for 1.9% of the total seats, and are not usually decisive for the balance of power.

5.72. There is, clearly then, a material difference between the House of Assembly of Barbados and the French National Assembly. In a House of Assembly with a mere thirty (30) seats, it is a distinct possibility that a single additional seat could be decisive for the balance of power in the House and thereby distort the outcome of an election. This would not be a desirable state of affairs, particularly when one considers that the make-up of that constituency would comprise persons whose primary residence is not Barbados.

Recommendations

5.73. The Commission recommends that::

5.73.1. The House of Assembly should continue to have a minimum of thirty (30) members, subject to any further changes to the boundaries of constituencies, which may result in an increase in the number of Members of Parliament.

5.73.2. The members of the House of Assembly should continue to be elected by the first-past-the-post system.

ELIGIBILITY REQUIREMENTS FOR PARLIAMENTARIANS

5.74. The Constitution presently prescribes several qualifications and disqualifications for election to the House, or appointment to the Senate. The Commission reviewed these eligibility requirements and largely found that they were satisfactory and therefore proposes no change, except with respect to the minimum qualifying age and criminal convictions.

5.75. There was some discussion of the now-repealed prohibition on dual nationals serving in Parliament. That disqualification was removed by Constitution (Amendment) Act, 2018-15. The majority of the Commission found no justifiable reason to reintroduce that disqualification, for the reasons already stated earlier in this Report in Chapters 2 and 4, relating to dual nationals. Every citizen of Barbados ought to have equal rights, otherwise we would be creating first-class and second-class citizens. The majority did not find that to be a defensible proposition.

5.76. The Chairman dissents from the latter part of the Commission's recommendation, relating to dual nationals, and that dissenting opinion may be found in Appendix A.

Recommendation

5.77. The Commission recommends that the existing qualifications and disqualifications for membership of the House of Assembly and the Senate should be retained, subject to the recommendations set out below.

Minimum Qualifying Age

5.78. Presently, the Constitution prescribes that a person is qualified for election to the House (section 43(a)) or appointment to the Senate (section 37) where he has attained the age of twenty-one (21) years old. The minimum voting age is eighteen (18) years old.

5.79. The Forde Commission considered amendments to this requirement and proposed a change for both Houses. For the House of Assembly, that Commission recommended the minimum age be lowered to eighteen (18) years old, as that age is in line with the voting age. However, for the Senate, the Forde Commission recommended an increase in the age to twenty-five (25) "on the grounds that persons should have more experience before qualifying for appointment to an institution which performs the reviewing role of the Senate".

5.80. More recently, Government introduced the Constitution (Amendment) Bill, 2022 to set the minimum qualifying age for both chambers at eighteen (18). Though passed by the House of Assembly, that Bill has since been withdrawn.

5.81. The Commission concurs with the recommendation of the Forde Commission as far as it relates to membership of the House of Assembly. There is no good reason for there to be a class of persons able to vote but unable to themselves stand for election. Indeed, because the House is an elected chamber, the ultimate judges of a person's merit to sit in the House is the People acting in their collective wisdom. There is no justifiable reason to narrow the democratic choice of the People.

5.82. The Commission however does not agree with the view that the minimum qualifying age should be increased, and in fact proposes that it be reduced to eighteen (18), in line with the House of Assembly. Cogent reasons have not been articulated to justify why a specific class of persons – otherwise able to exercise franchise – should be definitively prohibited from serving as a legislator. As with dual nationals, citizens of Barbados between the age of 18 and 21 should have full political rights, on equal plane with any other adult citizen, otherwise the law diminishes the citizenship and equality of those persons. Indeed, the preamble to the new constitution proposed by the Commission and set out in Chapter 1 declares the commitment of the people of Barbados to the preservation of democracy, characterised by, among other things, "the ability of every person to participate in all institutions of national life, to the full extent of their capacity".

5.83. It must be noted that simply reducing the minimum qualifying age to eighteen (18), will not lead to a sudden deluge of 18-year-olds sitting in the Senate, who might be unqualified so to sit. The minimum age has been twenty-one (21) for the last 58 years, but never has there been a 21- or 22-year-old Senator. Ultimately, the Senate is a chamber constituted by nominations from the Prime Minister, Opposition Leader and President. These high officeholders are entrusted with exercising a panoply of powers and should equally be able to make sober judgements as to who should sit in the Senate.

Recommendation

5.84. The Commission recommends that the minimum qualifying age for election to the House of Assembly, and appointment to the Senate, should be lowered to eighteen (18) years.

Persons Convicted of Criminal Offences

5.85. Presently, section 38(1)(a) of the Constitution bars persons who have been convicted of an offence involving dishonesty, within the preceding ten (10) years, from being appointed to the Senate. This does not apply to persons who have appealed such conviction or have been pardoned.

5.86. The Commission felt that the restriction of this provision to offences involving dishonesty alone set the bar too low. There were a range of other offences for which a person may have been convicted that would result in fair-minded observers believing that there should, at least, be some cooling off period between any such conviction and the ability to serve as a legislator in Parliament.

5.87. For that reason, the Commission recommends that the provision be broadened to include any offence. The time limit of ten (10) years is proposed to be retained. The Commission also proposes that this disqualification also apply to membership of the House of Assembly.

Recommendation

5.88. The Commission recommends that a person convicted of a criminal offence, by a court of competent jurisdiction in Barbados or in any part of the Commonwealth, within the preceding ten (10) years, should be disqualified from appointment to the Senate or election to the House of Assembly.

RECALL OF MEMBERS OF PARLIAMENT AND "CROSSING THE FLOOR"

5.89. The Commission received several submissions recommending that the new constitution make provision for the recall of Members of Parliament by their constituents during the parliamentary term.

5.90. In this regard, the Commission agrees with the Forde Commission that

> The potential for abuse and creation of instability in the political culture outweighs any perceived value that such a right might provide.

5.91. Membership of the House of Assembly is already subject to mechanisms of accountability, most importantly, quintennial general elections. Barbadian history suggests that members of the electorate in the several constituencies have not been shy in pronouncing their judgement on an incumbent MP in a general election, including in respect of MPs who have served in senior ministerial offices and even as Prime Minister.

5.92. The confusion wrought by a mechanism for recall would likely create greater harm than the accountability benefits imagined by its proponents. Further, as a practical matter, the threshold to trigger the successful recall of an MP would have to be set at a sufficiently high level to prevent abuse. However, this would invariably frustrate the accountability purpose as it would make the possibility of recall more remote.

5.93. Related to the proposals for recall, the Commission also received a few submissions calling for the Constitution to restrict an MP from defecting from his political party ("crossing the floor"), either by providing that such defection is a ground to trigger a recall petition, or that a defection should lead to a by-election outright.

5.94. The Commission declined to adopt these submissions. It is no doubt true that the political parties now exercise greater influence than individual candidates over the choice of electors at elections. However, the reality is that in our system, formally speaking, it is individuals who are elected as MPs, not party representatives. Those individuals have a freedom of association, which includes the right to belong to a political party of their choice. Since the introduction of single-member constituencies in 1971, there have been 13 Members of Parliament who have "crossed the floor". Except one (and not counting another who is an incumbent MP and has not yet faced an election), each of them who have run for re-election in the next election after defection have lost. Clearly, the political system has organically resolved these relatively unusual occurrences and so it is not clear that any constitutional provision need to be made in this regard.

Recommendation

5.95. The Commission does not recommend the introduction of any mechanism for the recall of individual Members of Parliament, nor does the Commission recommend the removal of a Member of Parliament where that Member of Parliament defects from the political party of which they were a member when they were elected ("crosses the floor").

PARLIAMENTARY TERM

5.96. Presently, a Parliament, from the date of its first sitting after a dissolution, may continue to sit for a period of five years. However, it may be earlier dissolved by the President, acting on the advice of the Prime Minister. Within three months of a dissolution, there must be a general election.

5.97. The duration of the parliamentary term was a matter which engaged the attention of several of the persons who made submissions to the Commission.

5.98. Seventeen (17) submissions called for a five-year fixed term for Parliament, without the possibility of earlier dissolution on the advice of the Prime Minister.

5.99. Three (3) submissions recommended that an earlier dissolution remain possible, but by different means:

5.99.1. One suggested that the Prime Minister be able to advise a dissolution after 3.5 years have passed since the last general election; and, the President could dissolve Parliament before the lapse of 3.5 years provided that both the Prime Minister and Leader of the Opposition agree;

5.99.2. Another proposed that a mechanism be introduced for the President to ascertain the majority opinion of the House if the Prime Minister seeks an early dissolution; and

5.99.3. In a similar vein, the final submission suggested that after 3.5 years have elapsed since the last general election, Parliament, acting by a two-thirds majority could dissolve Parliament.

5.100. One submission recommended the retention of the present arrangements, but that the period between dissolution and the holding of an election should be increased to a minimum of eight (8) weeks.

5.101. The Commission carefully considered these various proposals, but ultimately concluded that there was no compelling reason to alter the present arrangement.

5.102. Suggestions to restrict the power to advise an early dissolution appear to advance on the premise that the power is vulnerable to abuse, which may have some deleterious impact on the democratic system. However, that position does not adequately take account of the fact that the inevitable consequence of advising a dissolution is a general election. The Commission is challenged to accept that the participation of the electorate in a free and fair election, at any time, is undesirable or deleterious to democracy.

5.103. Ultimately, political parties are entities established for the principal purpose of contesting elections. The state of readiness of political parties for an election is not a matter for the Constitution to consider, but rather an internal matter for a political party.

5.104. The Commission, therefore, did not see that there was a need to circumscribe the power to advise a dissolution, whether absolutely or by restricting a dissolution within a certain time after an election. It cannot be known now what circumstances may arise in national life in the future. A Prime Minister may have justifiable reasons for going back to the country if it is felt that a new or refreshed mandate is required, or new circumstances have arisen, or the political composition of the House of Assembly during the parliamentary term has changed, such that is desirable to seek a reset.

5.105. A Prime Minister, as leader of the government, of the House and of the country, is eminently placed to exercise the political judgement necessary, relating to the dissolution of Parliament. To require the involvement of a parliamentary supermajority or the Leader of the Opposition would be to effect a restriction of an early dissolution by the backdoor.

5.106. It must also be emphasised that, in reality, an early dissolution can really ever be a complete surprise. General elections are significant logistical exercises. Therefore, before an election is called, the state of readiness of the Electoral and Boundaries Commission is usually discreetly ascertained and there is generally a change in the nature and quality of political intercourse in the lead-up to a dissolution. Thus, while the exact date may be known only to one or a few persons until it is announced, it is often the case that those paying attention – and clearly opposition parties would be paying closest attention – will begin to get a sense of an impending election.

5.107. The Commission also declined to remove the ability of a Prime Minister defeated in a motion of no confidence from advising a dissolution. In such circumstances, the political complexion of the House would clearly have changed since the previous election and a Prime Minister would therefore be within his rights to take the matter back to the country.

5.108. In the final analysis, the concrete expression of the popular will, through a general election, is the result of a dissolution. That could not be an objectionable thing.

5.109. The Deputy Chairman expresses a dissenting opinion from the majority's recommendvation, which may be found in Appendix A.

Recommendations

5.110. The Commission recommends that::

5.110.1. The maximum life of a Parliament should continue to be five (5) years

5.110.2. The ability to dissolve Parliament before the elapse of five (5) years should continue to vest in the President, acting on the advice of the Prime Minister.

5.110.3. The power to prorogue Parliament should continue to vest in the President, acting on the advice of the Prime Minister.

POWER OF ASSENT

5.111. Section 58 of the current Constitution provides that before a Bill becomes law, it must be submitted for the assent of the President after its passage by both Houses. In the exercise of this power, section 58(3) suggests that the President "shall signify that he assents or that he withholds assent". This might suggest that the President has some discretion in the matter and that it could be open to the President, acting alone, to exercise a veto and withhold assent from a Bill validly passed by Parliament.

5.112. The inclusion of Section 58 in the Constitution was an attempt to codify the formal position in the United Kingdom at the time. There, the requirement for royal assent for Bills has survived the long struggle between Sovereign and Parliament. Before the development of modern parliamentary government, the Sovereign had the preeminent role in law-making. With the gradual emergence of the institution we now know as Parliament, the Sovereign's position was progressively weakened. Notwithstanding the gradual entrenchment of Parliament's position, monarchs up to William III continued to regularly withhold assent. However, the last occasion on which assent has been withheld from a Bill in the United Kingdom was in 1708 when Queen Anne withheld assent from the Scottish Militia Bill.

5.113. It is a matter of active debate as to whether the King still has the power to withhold assent in his own right, or whether He must act upon the advice of his Ministers in this regard, or whether the power to withhold has fallen into desuetude altogether. This is not a matter for the Commission to resolve, except to note the history and the current debates.

5.114. The subsisting requirement of royal assent pays formal regard to the idea that the sovereignty over the United Kingdom (and thus the power to make law) is vested in the King. On this basis, it is unsurprising that the requirement for assent was included in the Independence Constitution, given that this country, at that time, became a constitutional monarchy, inheriting some of those positions.

5.115. Against this background, the Commission considered that the retention of the power of assent was anachronistic and not in keeping with a republican form of government. The President is not the King; and sovereignty over this Island is not vested in the President. There is therefore no particular reason why, in the new context, a President should exercise this power, which emerged for very specific reasons in the United Kingdom.

5.116. The Commission could not conceive of an instance where the use of the power to withhold assent (provided that such a power in fact exists) would be justifiable. Even if a President believes a Bill to be inconsistent with the Constitution, the Commission considers that the appropriate and exclusive forum for the determination of unconstitutionality is the courts, endowed with the power of judicial review. It cannot be justifiable to accept that a single person acting alone, regardless of the high office they hold, should be able to block the legislation of a democratic Parliament.

5.117. For these reasons, the Commission recommends that the requirement of assent be discontinued. Instead, the Commission proposes that Bills become law once they have been certified as having been validly passed by the Speaker and the President of the Senate. A similar arrangement obtains in certain of the Commonwealth Pacific nations (although those jurisdictions have a unicameral legislature).

Recommendations

5.118. The Commission recommends that::

5.118.1. The inherited monarchical power of the Head of State to assent to or withhold assent from Bills passed by Parliament should be discontinued.

5.118.2. In order for Bill to become law as Acts of Parliament, once passed by both Houses of Parliament (or in certain cases, only the House of Assembly) in accordance with the Constitution and other law, a Bill must be certified by the Speaker and the President of the Senate as having been validly passed, and thereafter published in the Official Gazette.

ATTENDANCE OF MINISTERS IN EITHER HOUSE

5.119. The Commission considered the introduction of constitutional provision to permit a Minister to attend sittings of the other House, of which he or she is not a member, for the purpose of assisting that other House in relation to matters falling under his or her purview. This is done in other jurisdictions, prominently Trinidad and Tobago. In such cases, the Minister does not have the right to vote in that other House, but has full speaking rights.

5.120. The Commission considered that this arrangement may be useful, particularly for the Senate, as few Ministers are appointed from that chamber, meaning that the Senate could benefit from the attendance of a Minister, who is a member of the House of Assembly, at a sitting in relation a measure connected with his portfolio.

5.121. Nevertheless, this matter could be provided for by the Houses in their Standing Orders. Parliament should be permitted, as it always has, to regulate its own procedure and the conduct of its internal business. There is therefore no need to provide for this matter in the Constitution. It is for Parliament to consider the desirability of such an arrangement.

Recommendation

5.122. The Commission recommends that no constitutional provision need be made to permit a Minister to attend a sitting of the House of which he is not a member. Instead, Parliament may explore the desirability of such a course of action and provide for it in the Standing Orders of both Houses.

POLITICAL PARTIES

5.123. It cannot be denied that political parties play a central role in Barbados' democracy and in the institution of Parliament. While this is so, the Constitution does not explicitly acknowledge this role, and it has been represented to the Commission that the new constitution should "recognise" political parties.

5.124. From the outset it must be noted that the right to freedom of association in the Bill of Rights guarantees the right of a person to form and belong to, among others, political parties. Therefore, the fact of the existence of political parties is "recognised", as such, already.

5.125. The Commission nevertheless understands that there is a view that the Constitution, in its provisions relating to Parliament, should more actively recognise the role of political parties in Parliament. The Commission does not agree that this is necessary. The present constitutional provisions relating to Parliament are adequate and do not create challenges as it relates to political parties in Parliament.

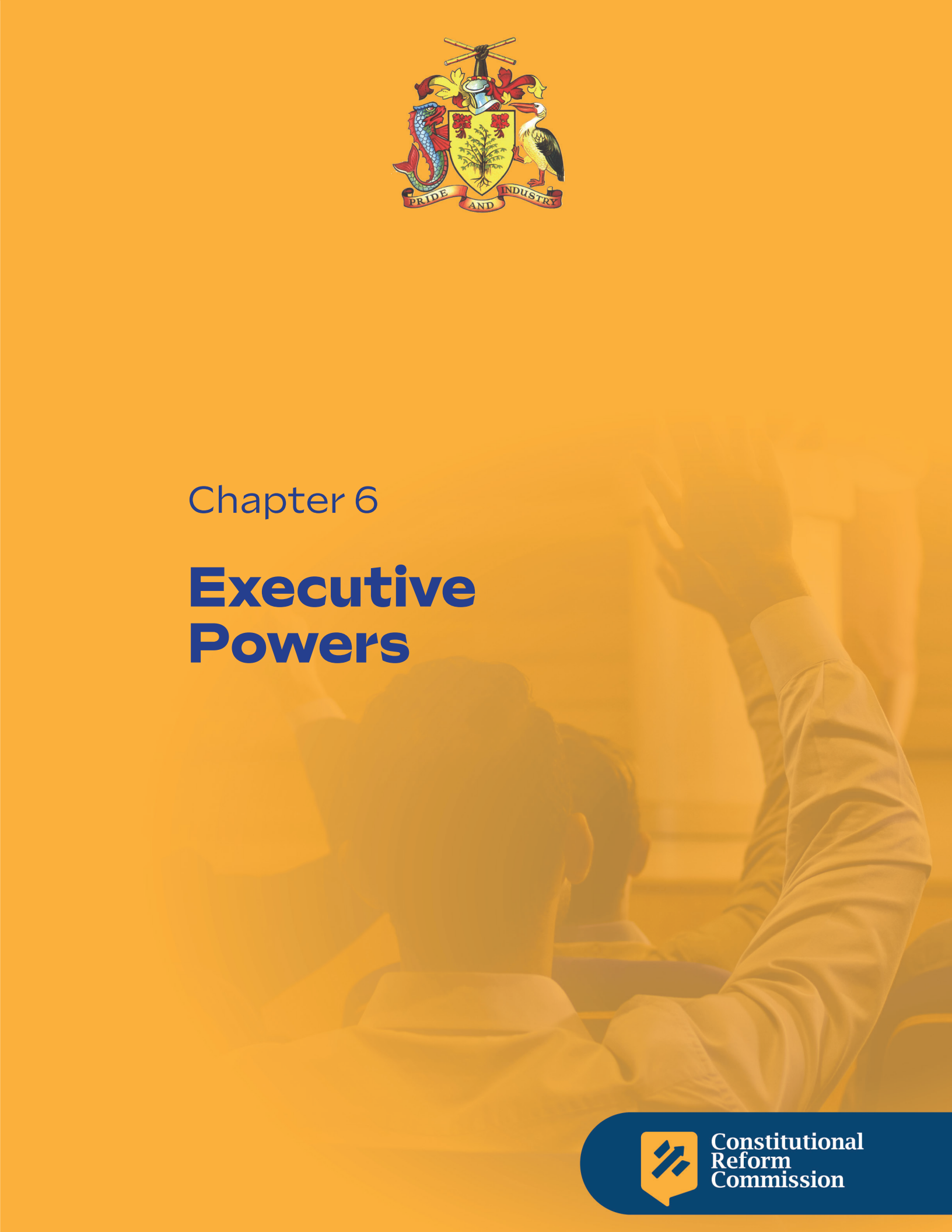
5.126. However, the concerns represented to the Commission appear to relate instead to the regulation of political parties. The detailed regime for such regulation is clearly not a matter for the Constitution, but the Commission still recognises its importance. As a result, the Commission recommends that the new constitution include provision requiring that Parliament pass laws to comprehensively regulate political parties and campaign financing.

Recommendation

5.127. The Commission recommends that the Constitution require Parliament to enact laws to regulate the existence, operation and financing of political parties, as well as the financing and spending of candidates for election to the House of Assembly.

Chapter 6

Executive Powers



Constitutional Reform Commission

INTRODUCTION

6.1. As noted in Chapter 4, Barbados' parliamentary system of government entails that executive authority is vested in the President, but in the exercise thereof, the President typically acts on the advice of the Cabinet (and in respect of certain, specific functions, on the advice of others).

6.2. Therefore, functionally, the executive branch is led by the Cabinet, charged with the direction and control of the Government. In approaching its deliberations on this body, the Commission carefully balanced the need to ensure that the Executive remained accountable with the imperative to avoid the paralysis which the imposition of too stringent restraints might cause.

6.3. One common submission made to the Commission was the perception that "too much" power was presently vested in the office of Prime Minister. The Commission believes that the Prime Minister, as head of the government, must have a sufficiently wide scope of action to ensure the effective running of the government. The Commission also recognises that all state powers are subject to constraints. At present, the office of Prime Minister is subject to a number of constraints, such as public opinion, parliamentary support, the Constitution and other laws. The Commission has recommended modification to the constitutional provisions, in relation to the appointment of key officeholders, which will provide greater transparency in these appointments.

6.4. This Chapter also focuses on other persons and institutions exercising executive powers including:

6.4.1. The Presidential Advisory Council, which is intended to replace the Privy Council, to advise the President on the exercise of that office's discretionary powers, in particular the power presently known as the prerogative of mercy;

6.4.2. The proposed Constitutional Offices Commission to institutionalise a mechanism of consultation in the process of recommending appointments to key constitutional offices; and

6.4.3. The Director of Public Prosecutions, who is an independent member of the executive, chiefly in charge of exercising the state's prosecutorial powers.

6.5. The Commission's recommendations relating to the office of the Leader of the Opposition are also included in this Chapter. While the Opposition Leader is not an officer of the Executive, the constitutional provisions relating to the office are included in the Chapter on executive powers, and so for convenience is also included in this Chapter for the purposes of the Report.

CABINET

6.6. Several of the submissions received by the Commission relating to the Cabinet concerned suggestions to alter the method of appointing the Prime Minister and Ministers, the imposition of term limits and limiting the size of the Cabinet. The Commission ultimately did not agree that such changes would improve the system of governance in Barbados, for reasons set out below.

6.7. In keeping with the principles of good governance, the Commission did see the value in buttressing the system of ministerial accountability, and consequently recommends the creation of a Code of Conduct for Ministers and Parliamentary Secretaries. The observance of this Code would be monitored by Parliament and alleged breaches could be investigated by the Integrity Commission.

Recommendation

6.8. The Commission recommends that the existing constitutional provisions relating to the Cabinet be retained, and that additional provision be made in the new constitution for a Code of Conduct for Ministers and Parliamentary Secretaries.

Appointment of the Prime Minister and Ministers

Appointment of the Prime Minister

6.9. Presently, the person appointed by the President as Prime Minister is the person who, in the President's opinion, is best able to command the confidence of a majority of the members in the House of Assembly.

6.10. In practice, members of the House are affiliated with a political party, and the Political Leader of the party with the majority of seats is typically appointed as the Prime Minister.

6.11. The Commission received three written submissions proposing that the Prime Minister be instead directly elected. One of these submissions recommended a variation of this, suggesting that, for the purposes of general elections, a section be included on the ballot paper enabling voters to express their "preferred option for Prime Minister".

6.12. The Commission did not agree that this was necessary or desirable. In our system of government, as pointed out above, the Prime Minister holds office on the basis of their support in the House of Assembly. However, electing the Prime Minister directly, without reference to the political composition of the House, could create problems in particular where there is a divergence between the results in the House and the preferred prime ministerial candidate. The Commission is not aware that any country presently appoints a Prime Minister in this manner. Notably, Israel implemented a system of direct election in 1996, but by 2001, the Israelis discontinued direct election and reverted to the previous position, due to the failure of the system and the instability which it created.

6.13. The Commission is also unconvinced that direct election of the Prime Minister would be any more democratic than the present system. The electorate votes for representatives and the Prime Minister arises from that process. This already provides a democratic approach to the selection of the Prime Minister.

6.14. As a more practical point, the entrenchment of the party system means that on polling day, the electorate is aware of the person likely to become Prime Minister depending on which party "wins" the election. Indeed, it has been noted that the identity of the party leaders has, over the years, assumed greater influence over the voters. As a result, voters may vote with that in mind.

Recommendation

6.15. The Commission recommends that the present system of appointment of the Prime Minister be retained.

Appointment of Ministers

6.16. Ministers are presently appointed on the advice of the Prime Minister and assigned responsibility for the several parts of the business of government.

6.17. The following representations were made to the Commission for altering the manner of appointment of Ministers:

6.17.1. Ministers should not be drawn from Parliament, but appointed from outside Parliament on the advice of the Prime Minister;

6.17.2. Ministers should be directly elected in general elections; or

6.17.3. Ministers should only be appointed from the House of Assembly.

6.18. Each of these will be dealt with in turn.

Drawing ministers from outside Parliament

6.19. This proposal was clearly intended to take account of the fact that the small size of our Parliament accentuates executive dominance of the legislature, as the small pool of persons from which the Prime Minister can appoint ministers means that a significant number of parliamentarians are often also ministers.

6.20. Drawing ministers from outside Parliament is not however an acceptable solution. While a few Ministers are typically drawn from the Senate, the overwhelming majority come from the House of Assembly, and are thus elected by and accountable to the People. Such persons, if they wish to win re-election and remain in government, must be keenly aware of public opinion. A Cabinet constituted of persons freed from these constraints is not consistent with our system of government, which requires that those charged with managing the public affairs be elected by the People (provided that two or three may have indirect democratic legitimacy by virtue

Direct election of Ministers

6.21. The Commission did not find that the direct election of Ministers was advisable. A Prime Minister, as head of the government, needs to have the ability to select Ministers to carry out the policy of the government, in order to ensure the stability and effectiveness of the Administration. Direct election of Ministers would significantly impair a Prime Minister's control over the make-up of his Cabinet, which would not be beneficial to the national interest.

Drawing Ministers only from the House of Assembly

6.22. As a general principle, as acknowledged above, it is most desirable for Ministers to be appointed from among elected parliamentarians. However, the realities of a small Parliament, and the critical mass problem referred to in Chapter 5, require that a few ministers be drawn from the Senate.

6.23. There are typically three or four Ministers appointed from the Senate, and usually a few of that number are not line ministers, but ministers of state or ministers in a ministry. This is a fairly small proportion of the overall number of Ministers. Additionally, these Senators are appointed to the Senate on the advice of the Prime Minister, who holds his position by virtue of his command of the majority support of the People's representatives. In this way, they can be said to enjoy indirect democratic legitimacy.

6.24. Finally, most business before the Senate is government business, requiring a Minister to lead off debate on the Bills and resolutions proposed. Thus, the presence of some Ministers in the Senate is essential.

6.25. The Deputy Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.

Recommendation

6.26. The Commission recommends that the present system for the appointment of Ministers be retained.

Term Limits

6.27. The matter of limiting the number of terms which a Prime Minister may serve engaged the attention of the Commission. In terms of written submissions received, fourteen (14) recommended the imposition of a term limit (most suggested a two-term limit, and a few suggested three), while four (4) suggested that no limit should be imposed.

6.28. Term limits for Prime Ministers in systems similar to ours are quite unusual:

6.28.1. Of the forty-one (41) parliamentary republics in the world, none have imposed term limits on the Prime Minister; and

6.28.2. Of the twenty-seven (27) constitutional monarchies globally, only two (2) have imposed term limits on the Prime Minister: Belize (3 terms) and Thailand (2 terms).

6.29. The Commission ultimately agreed that no term limit should be imposed on the office of Prime Minister. While the Prime Minister is not directly elected, the party system which has developed means that on polling day, the electorate goes to the polls with a reasonable idea of the two persons who may become Prime Minister after the election.

6.30. The Commission was therefore satisfied that there was already a kind of term limit imposed on the office by the electorate. In Barbados' history, every Prime Minister, other than the incumbent who is still in office, has eventually suffered defeat at the polls – bar two who died in office. Therefore, the People of Barbados have long been prepared to end the tenure of a Prime Minister who they no longer wish to see continue in office. There is therefore no need to create a constitutional requirement to stifle the free choice of the electorate.

Recommendation

6.31. The Commission recommends that no term limit be imposed on the office of Prime Minister.

Establishing the Office of Deputy Prime Minister

6.32. Since Independence, successive Prime Ministers have occasionally designated a Minister as "Deputy Prime Minister". Much like in the United Kingdom, this post has no constitutional or legal footing, but is a method available to a Prime Minister to organise the business of his Administration.

6.33. As a result, there have been periods when no such Deputy Prime Minister has been designated. Neither Sir Harold St. John nor the Rt Hon Freundel Stuart formally designated a Deputy Prime Minister. David Thompson and Mia Mottley did not initially name a deputy, though both did later in their respective tenures.

6.34. The office of Deputy Prime Minister has no set duties or responsibilities; these are shaped according to the particular Prime Minister whom the Deputy serves.

6.35. Three (3) written submissions made to the Commission requested that this office of Deputy Prime Minister be established in the Constitution. The rationale for these proposals generally related to the creation of certainty in the event of vacancies in the office of Prime Minister.

6.36. Regrettably, three (3) Prime Ministers have died in office. Incidentally, on each such occasion there was a designated Deputy Prime Minister. As it happened, each of those deputies were ultimately elevated to the premiership. However, the appointment of these three individuals as Prime Minister did not, formally speaking, have anything to do with their role as Deputy Prime Minister. The essential requirement for any person to be appointed Prime Minister, in whatever circumstances, is that they command the confidence of the House of Assembly. Clearly, because there must always be a Prime Minister, in extraordinary and sudden moments of crisis, the President may not seek to ascertain the opinion of the whole House but may consult with senior members of the Government in order to establish the person most likely to command the governing party's confidence.

6.37. In any event, in our system there can be no automatic succession to the premiership. Indeed, to believe that a Deputy Prime Minister would automatically succeed to the ultimate office would enable a Prime Minister to bequeath that office to another, without reference to the opinion of the House. That is not supportable.

6.38. It is also the case that the designation of a Minister as Deputy Prime Minister does not necessarily say anything about the succession plan in the government. It may well be that the Prime Minister, in organising their government, designates a Deputy to assist him/her in managing the Cabinet, or even the Party, and could therefore be simply a choice of organisational management. Equally, it is also a Prime Minister's decision to name a Deputy at all. For various legitimate reasons, conferring precedence upon one Minister may not be advisable for a Prime Minister at a particular time.

6.39. In sum, the Commission sees no compelling reason to constitutionally require a Prime Minister to designate a Deputy, nor to establish such an office in the Constitution.

Recommendation

6.40. The Commission recommends that the office of Deputy Prime Minister should not be provided for in the Constitution but should continue to be at the discretion of the Prime Minister.

Limiting the Size of the Cabinet

6.41. The Commission received eleven (11) written submissions recommending that a limit be imposed on the number of Ministers.[8] Four (4) of those submissions suggested an absolute, numerical cap; while another four (4) called for a proportional limit, i.e., a that the number of Ministers should not exceed a certain proportion of the total members of the House of Assembly, or of both Houses combined.

6.42. The Commission considered this recommendation, acknowledging that the small size of Parliament accentuates the executive dominance which is a feature of parliamentary government, and therefore these submissions were intended to ensure that there was a sufficient number of parliamentarians not in the Executive.

6.43. The operation of the principle that the Cabinet is accountable to Parliament may be impeded if a large number of parliamentarians are also in the Cabinet. However, to approach the matter in that way alone is to use a single lens.

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8 Various submissions made slightly different recommendations. Some recommended limiting the size of the Cabinet (which consists of Ministers, but does not ordinarily include Ministers of State or Parliamentary Secretaries in its regular membership), while others recommending limiting the number of Ministers (which might have been intended to include Ministers of State) and yet others suggested limits to the "payroll vote", which would include Parliamentary Secretaries.

6.44. The flip side of a small Parliament is that there is a small pool of persons from which the Prime Minister can constitute the Cabinet. Notwithstanding this, as government has developed over the years to perform even more functions in national life, there is a critical mass of Ministers needed to effectively manage the public affairs. Consequently, any attempt to limit the number of Ministers must take account of this inescapable reality.

6.45. Secondly, a Prime Minister must have regard to a great many factors when constituting their Cabinet. One of them is the fact that the pool of persons available to choose from is even smaller than the total number of parliamentarians, as not all parliamentarians are on the government side.

6.46. Therefore, a Prime Minister with a narrow majority will inevitably select a numerically smaller Cabinet, but because of the critical mass problem, it will likely constitute the vast majority of the Government bench. Thus, a Prime Minister with sixteen (16) seats in the House may appoint up to thirteen (13) of them to ministerial office, but that would be some 81% of the Government bench. On the other hand, a Prime Minister with 29 seats in the House might appoint 20 MPs to ministerial office. That would be numerically larger than the first Prime Minister's Cabinet, but as a proportion of the Government bench, it would be less (69%).

6.47. It is therefore an error to singularly conceive of the Cabinet in terms of the whole of Parliament. In either case above, a Prime Minister, as head of the government, ought to have the ability to take account of a wide range of factors in selecting his Cabinet. To the extent that Cabinet is responsible for the direction and control of the Government, the Prime Minister's freedom to fashion a Cabinet fit for the times is in the national interest.

6.48. The idea of limiting the number of ministerial offices is not entirely without merit, and as pointed out above, is well-intentioned. In the United Kingdom, the Ministerial and Other Salaries Act 1975 creates a numerical limit on the number of ministerial salaries which may be paid (and implicitly the number of Ministers who can be appointed). However, the Parliament of the United Kingdom consists of a House of Commons with 650 members and a House of Lords with a formally unlimited number of members currently around 800. The critical mass problem is therefore not present for a Prime Minister of the United Kingdom.

6.49. In sum, imposing a constitutional limit on the number of Ministers would not be an advisable move for Barbados and consequently the Commission recommends that no such limit be imposed.

Recommendation

6.50. The Commission recommends that no numerical limit on the number of Ministers should be fixed in the Constitution.

Code of Conduct for Ministers

6.51. The preceding section on limiting the number of Ministers suggested that this proposal was made to the Commission with a view to protecting the principle of ministerial accountability to Parliament. As acknowledged above, the inescapable constraints of size make interventions such as that one unsuitable.

6.52. Nonetheless, the Commission is keenly aware of the fact that an essential characteristic of our system of government is ministerial accountability. Different ways therefore need to be identified to accomplish this given these constraints.

6.53. For this reason, the Commission had regard to the creation of a code of conduct for Ministers and Parliamentary Secretaries. The Commission is advised that a code of conduct already exists, but the majority of the Commission believes that the requirement for such a code should now be provided for in the Constitution. The majority also recommends that the Code be binding on Ministers and Parliamentary Secretaries. The Prime Minister would be required to prepare the Code and it would be laid before both Houses for affirmative resolution.

6.54. It is also proposed that either House, or a committee of either House, be empowered to request that the Integrity Commission investigate alleged breaches of the Code by a Minister or Parliamentary Secretary. The Integrity Commission, which could also launch an investigation on its own initiative, would then report back to the House of which the Minister is a member and that House should within sixty (60) days consider the report.

6.55. This recommendation is intended to promote deeper accountability. Specifically, empowering the Integrity Commission to investigate alleged breaches ensures that the Code does not create a self-regulating regime, which can be ineffective. Additionally, the majority considers it important for the Code to be binding in order for the accountability regime to effectual. Finally, requiring the Code, and amendments, to be approved by Parliament promotes inter-branch accountability and enables Parliament to exercise a check and balance role, which further promotes separation of powers and the rule of law.

6.56. Commissioners Jemmott and Kothdiwala express a dissenting opinion from a part of the majority's recommendation, which may be found in Appendix A.

Recommendations

6.57. The Commission recommends that::

6.57.1. The Prime Minister should be required to prepare a Code of Conduct for Ministers and Parliamentary Secretaries, which shall be binding on the Ministers and Parliamentary Secretaries. The Code of Conduct should be laid before both Houses.

6.57.2. The Integrity Commission should be empowered to investigate and report on alleged breaches of the aforementioned Code of Conduct.

LEADER OF THE OPPOSITION

6.58. The office of Leader of the Opposition serves an important function under the Constitution and our political system generally. Under the Constitution, holder of the office is required to tender advice to the President in relation to certain matters and is entitled to be consulted on others. In our political system, the Opposition Leader is the leading person in Parliament to hold Government to account.

6.59. Presently, the person appointed as Leader of the Opposition is the person who, in the President's opinion, is supported by the majority of the members of the House who do not support the Government.

6.60. In practice, this usually means that the Political Leader of the political party which did not win a majority of the seats at the general election becomes Leader of the Opposition. Since Independence, there have been three instances where that has not been the case, all as a result of members "crossing the floor". On the first such occasion, there was already a parliamentary opposition in place, which was then reduced to third party status within Parliament. On the latter two occasions, the Government bench initially comprised the whole of the House, so the defection of a member resulted in their appointment as Opposition Leader, as the only member not supporting the Government.

6.61. These three instances were unusual occurrences. While the third mentioned situation is still subsisting, the political system demonstrated its ability to organically accommodate the first two occurrences and ultimately reverted to the ordinary course of things. Therefore, the Commission was not convinced that there needed to be a change to the method of appointment of a Leader of the Opposition, in circumstances where there are members of the House who do not support the Government, regardless of how they have come to the opposition benches.

Provision for Vacancies in the Office of Leader of the Opposition

6.62. The matter which engaged the greater attention of the Commission concerned instances where the office of Leader of the Opposition is vacant by virtue of no person being qualified or willing to hold the office. Once a hypothetical scenario, recent history has suggested that such is a possible, even if quite rare occurrence.

6.63. Presently, section 75 of the Constitution contemplates this possibility. It provides that whenever the Constitution provides for the Leader of the Opposition to tender advice or be consulted then the following shall occur:

6.63.1. Where the President is required to act on the Opposition Leader's advice, the President is instead to act in his own discretion (such as in the appointment of the two Senators referred to as "opposition senators"); and

6.63.2. Where the Prime Minister is required to consult the Opposition Leader before tendering advice to the President, the President shall simply act on the advice of the Prime Minister.

6.64. The concern, on the part of some, is that this provision may not adequately ensure that the views of those not supporting the government are properly taken account of in the absence of an Opposition Leader.

6.65. From the outset, two things must be pointed out. Firstly, a vacancy in the office of Leader of the Opposition would usually mean that the People of Barbados, across the several constituencies returned to Parliament persons of a single political persuasion. Whatever might be thought of this choice, it would reflect the decision of the People. For this reason, as noted in Chapter 5, the Commission did not think it was an appropriate solution to still appoint persons from an opposing political party to the House of Assembly, notwithstanding the result of an election. To do so would tend to subvert the will of the People expressed in that election result.

6.66. Secondly, there is nothing in the present provisions that inhibit informal consultation with opposition political parties. It may be seen as unfortunate that a need has arisen to formally write down what could be regulated by the development of constitutional convention.

6.67. While rare, the instance of possible vacancies in the office have arisen and therefore the Commission recommends that different provision be made in the case of such vacancies to better ensure the continued representation of opposition views in such an event.

6.68. For this purpose, the Commission felt that the formula set out in the *Constitution (Amendment) Bill 2022*[9] was useful and ought to be adopted.

6.69. It provides that where there is no Leader of the Opposition, the functions of tendering advice or being consulted shall be undertaken by the opposition political party which gained the greatest number of votes in the preceding election among the political parties not forming the government. This party would be required to designate a person in writing to tender advice or be consulted on its behalf.

6.70. Where the highest scoring opposition party declined to tender advice or be consulted, the next highest-scoring parties in succession would be consulted or their advice sought. In the event that no qualified party tendered advice or facilitated consultation, the President or Prime Minister, as the case may be, would act in their own discretion.

6.71. At the time the aforementioned Bill was introduced, some concerns were raised relating thereto.

6.72. Firstly, questions were asked concerning the use of the expression "political party" and its interpretation given the current paucity of constitutional provisions for political parties:

6.72.1. The Commission recommends, in Chapter 5, that the Constitution make provision requiring Parliament to enact laws for the registration and regulation of political parties. Therefore, it is recommended that there be a legal framework relating to political parties which would dispense with this issue.

9 This Bill was withdrawn without being passed.

6.72.2. Additionally, even in the absence of such a framework, as a matter of practice, the Electoral and Boundaries Commission (EBC) takes note of the political party to which candidates express affiliation. Therefore, in the reports of the EBC on general elections, a total number of votes is usually assigned to political parties on the basis of the performance of "their" candidates. In this way, a President, seeking the advice of the EB, could ascertain the opposition party with the greatest number of votes nationally. For this reason, this Commission recommends that additional provision be made for the President to consult the Chairman of the EBC whenever he considers the identity of the relevant opposition party doubtful.

6.73. Secondly, concerns were raised as to what would happen if, during the life of the Parliament, a member of the House later "crossed the floor", thereby entitling that person to become Leader of the Opposition. In such a case, that person would become Opposition Leader and assume all the functions of that office. The provisions discussed above would only be engaged when there is a vacancy in the office. Therefore, if there ceased to be a vacancy, and a person became qualified and willing to assume the office, then these special provisions would cease to be operative.

Recommendations

6.74. The Commission recommends that::

6.74.1. The current constitutional provisions relating to the appointment and tenure of the Leader of the Opposition should be retained.

6.74.2. Where there is no Leader of the Opposition, whenever the Constitution or any law requires the Leader of the Opposition to tender advice or be consulted, that advice shall be tendered by, or consultation had with, a person designated in writing by the political party gaining the highest number of votes in the previous election but not forming the government.

PRIVY COUNCIL

6.75. There is a Privy Council for Barbados which was continued after the republican transition. It has relatively few functions, by comparison to its British progenitor, and essentially advises the President on the appeals of public officers against adverse decisions of the Service Commissions and petitions for mercy from persons convicted of offences.

6.76. The Commission recognises the value of a body to advise the President in the execution of the President's functions and wishes to expand the responsibilities of this body as set out further below. However, the majority of the Commission believes that the appellation "Privy Council" was not consistent with Barbados' new republican status and therefore recommends that the body be renamed the "Presidential Advisory Council".

Recommendation

6.77. The Commission recommends that the Privy Council should be succeeded by a Presidential Advisory Council.

Membership of the Presidential Advisory Council

6.78. Presently, section 76 of the Constitution provides that the Privy Council consists of such number of persons as the President determines, after consultation with the Prime Minister.

6.79. The Commission felt that the President should retain a discretion over the ultimate size of the Presidential Advisory Council but preferred that a minimum number of members be set to ensure some measure of standardisation. The Commission recommends seven members as an appropriate minimum.

6.80. With respect to the term of office, the Constitution presently provides that a member of the Privy Council serves for a term of fifteen (15) years, or until attaining the age of 75, whichever is the earlier. The Commission felt that the term of office of members should be brought more in line with the term of the President, so that a new President has the opportunity to appoint members of the body which ultimately will be advising them. Therefore, the Commission recommends that the term of members be reduced to seven (7) years, and that it be renewable.

6.81. Finally, the Commission believes that a new President should enjoy the right to have the body advising them constituted of persons acceptable to them. Therefore, the Commission recommends that when a new President assumes office, the offices of members of the Presidential Advisory Council should fall vacant, notwithstanding that their term may not yet be expired, unless the President permits the member to complete their term.

Recommendations

6.82. The Commission recommends that:

6.82.1. The Presidential Advisory Council should consist of no less than seven (7) persons appointed by the President, after consultation with the Prime Minister.

6.82.2. A member of the Presidential Advisory Council should serve for a renewable term of seven years.

6.82.23 Notwithstanding the preceding recommendation, whenever a new President assumes office, the members of the Presidential Advisory Council shall cease to be members unless the new President grants leave for the member to complete his term of office.

Function of the Presidential Advisory Council

6.83. The Commission felt that the scope of functions of the Privy Council should be broadened for the Presidential Advisory Council, and that consequently, the President should be able to refer any matter to the Council for its advice, relating to the exercise of any of the President's discretionary powers. As the body is only advisory, and because the discretionary powers of the President are conferred by the Constitution or other law upon the President to exercise, the advice tendered by the Council would not be binding on the President, nor would the President be required to seek the Council's advice, except where the Constitution or the law so require.

6.84. One example of such a requirement would be in relation to the prerogative of mercy. The President exercises this power on behalf of the State, and in so doing acts in accordance with the advice of the Privy Council presently, and the Commission proposes that the Presidential Advisory Council assume this function.

6.85. Finally, the Commission recommends that the public service appellate function of the Privy Council be discontinued for the Presidential Advisory Council. The Privy Council came to exercise this function because civil servants, as they were then known, were historically regarded to be servants of the Crown. Control over civil service personnel matters was among the last powers reserved to the Governor prior to Independence. After 1966, the Governor-General, as the Sovereign's personal representative, thus exercised functions relating to civil service appeals on the advice of the Privy Council. The Crown in right of Barbados has since ceased to exist and has been replaced by the State. There is no particular reason why this function thus needs to be exercised by the Presidential Advisory Council.

6.86. In Chapter 8, the Commission recommends the urgent operationalisation of the Public Service Appeal Board and proposes that an expanded Appeal Board have the jurisdiction to hear and dispose of appeals. For a modern Public Service, the human resource functions ought to be professionalised and so the Commission believes a standing body focussed on hearing appeals is preferrable.

Recommendation

6.87. The Commission recommends that the Presidential Advisory Council should be charged with providing advice to the President on any matter referred to it by the President. For the avoidance of doubt, the President is not required to seek the advice of the Council on any matter, nor is the President bound to accept any advice given.

PREROGATIVE OF MERCY

6.88. The Commission is satisfied that the state should continue to have the power to render mercy to persons convicted of offences. Likewise, the Commission recommends that the constitutional provisions relating to the exercise of the prerogative of mercy should be retained, provided that it should now be exercised by the President on the advice of the Presidential Advisory Council, as the successor to the Privy Council.

6.89. The Commission does however consider that, consistent with Barbados' republican status, the reference to the power as the "prerogative of mercy" should be discontinued, and reference instead be made to the power of pardon, clemency etc. Technically, as the exercise of this power is provided for in the Constitution, it is not a prerogative power, in the sense that prerogative powers are residual executive powers of the Sovereign unregulated by statute. Therefore, legislating in an area once covered by prerogative power, necessarily entails that the power loses its character as prerogative and is instead now a statutory, or in this case, constitutional power.

Recommendation

6.90. The Commission recommends that the current constitutional provisions relating to the exercise of the prerogative of mercy should be retained, provided that it be referred to as the power of pardon, clemency etc.

CONSTITUTIONAL OFFICES COMMISSION

6.91. A common concern articulated by persons making submissions to the Commission was the perceived accumulation of powers in the office of the Prime Minister. A review of the reports of the Cox and Forde Commissions suggest that these concerns were also shared by persons making submissions to those Commissions.

6.92. One area in which it might be said that the Prime Minister has great influence is in relation to the appointment of certain constitutional officeholders, who perform functions for which varying degrees of independence are required. Presently, the Prime Minister advises the President on the appointment of the Chief Justice and Judges, the majority of the members of the Electoral and Boundaries Commission and the members of the Service Commissions.

6.93. In tendering advice to the President in these matters, the Prime Minister is usually required to "consult" the Leader of the Opposition. However, section 34G of the Constitution clarifies that where the Leader of the Opposition disagrees with the Prime Minister's advice, the President must nevertheless act upon that advice. It has been suggested that in practice, consultation has occasionally been a simple matter of the Leader of the Opposition being informed of the intended recommendation.

6.94. The Commission believes that this system is not entirely satisfactory. Firstly, it does not create a requirement for genuine consultation and dialogue between these two leaders. Secondly, the current system lacks structure and, in reality, can be done in an ad hoc manner which does not ultimately benefit the process. Thirdly, the consultation relates to appointments to offices, which should typically require some standardisation, for example, the receipt of applications, an interview process and merit-based selection. However, the current system is silent on this, meaning that these critical offices can be filled by an opaque and antiquated "tap on the shoulder".

6.95. The Commission considers that a republican constitution requires a better and more transparent system for appointing these key officeholders.

6.96. For this reason, the majority of the Commission proposes the creation of a Constitutional Offices Commission to provide an institutional mechanism for bipartisan consultation on filling vacancies in these offices.

6.97. The Chairman expresses a dissenting opinion from the recommendation of the majority, which may be found in Appendix A.

Recommendation

6.98. The Commission recommends that a Constitutional Offices Commission should be established

Function of the Constitutional Offices Commission

6.99. As aforementioned, the Commission recommends a Constitutional Offices Commission for the purpose of advising the President on the appointment of key officeholders set out in paragraph 6.102.

6.100. By proposing this institutional mechanism, the Commission intends that it can facilitate genuine dialogue between the Government and Opposition with a view to nominating persons for appointments to these offices who are of great distinction and nationally accepted.

6.101. The success of the Constitutional Offices Commission in achieving this goal will very much depend upon the seriousness which its members attach to the value of building consensus. Because of the nature of the offices proposed to be within the jurisdiction of the Constitutional Offices Commission, it is hoped that this will inspire participants in the process to meaningfully collaborate on issues of importance, which has long been the Barbadian way.

6.102. The Commission recommends that the offices for which the Constitutional Offices Commission would make recommendations should be as follows:

6.102.1. The Chief Justice, for reasons explained in Chapter 7;

6.102.2. The members of the Service Commissions, as these officeholders serve an important function in maintaining the impartiality of Public Service;

6.102.3. The members of the Public Service Appeal Board, who will exercise quasi-judicial functions in adjudicating the employment rights of public officers on appeal;

6.102.4. The Chairman and Deputy Chairman of the Electoral and Boundaries Commission, for reasons explained in Chapter 9;

6.102.5. The members of the Human Rights Commission, as this Commission is intended to be an advocate for human rights, even against the State, and so a measure of independence is important;

6.102.6. The Ombudsman, who is responsible for investigating maladministration and administrative unfairness and who also requires a measure of independence; and

6.102.7 Any other offices designated by law, being offices for which it is considered important to have bipartisan unity in relation to its membership.

6.103. It is anticipated that the introduction of the Constitutional Offices Commission will entail a dilution of prime ministerial power in this regard, as the process will no longer simply require a Prime Minister to inform the Leader of the Opposition of his intentions.

6.104. Instead, the Constitutional Offices Commission, which would regulate its own procedure, should examine ways to give structure and transparency to the appointments process, through the introduction of a professionalised process involving advertisement, applications, interviews and informed selection.

Recommendation

6.105. The Commission recommends that the Constitutional Offices Commission be charged with making recommendations to the President of the appointment of key officeholders under the Constitution, including:

6.105.1. The Chief Justice;

6.105.2. The Chairman and Deputy Chairman of the Electoral and Boundaries Commission;

6.105.3. The members of the Service Commissions;

6.105.4. The members of the Public Service Appeal Board;

6.105.5. The members of the Human Rights Commission; and

6.105.6. The Ombudsman.

Membership of the Constitutional Offices Commission

6.106. Naturally, the Constitutional Offices Commission should include the Prime Minister and Leader of the Opposition. The Commission recommends that the Prime Minister chair the body. Additionally, the Attorney-General should be included, as the government's principal legal adviser.

6.107. There should also be provision for appointed members:

6.107.1. Two (2) appointed on the advice of the Prime Minister;

6.107.2. One (1) appointed on the advice of the Leader of the Opposition; and

6.107.3. One (1) appointed by the President, in his own discretion.

6.108. The appointed members, who would likely be distinguished persons in their own right, would hopefully add value to a professionalised appointments process, in particular in the ultimate selection of nominees.

6.109. It is recommended that these appointed members hold office for a term of five (5) years, provided that if a new Prime Minister, Leader of the Opposition or President assumes office, the member(s) appointed by the previous officeholder would vacate their seat to enable the new officeholder to appoint a person acceptable to them.

6.110. Finally, if there is a vacancy in the office of Leader of the Opposition, the seat reserved for that office should instead be held by the person who has been designated as the representative of the opposition political party referred to in paragraph 6.69.

Recommendations

6.111. The Commission recommends that:

6.111.1. The Constitutional Offices Commission should consist of:

6.111.1.1. The Prime Minister;

6.111.1.2. The Attorney-General;

6.111.1.3. The Leader of the Opposition;

6.111.1.4. Two (2) members appointed on the advice of the Prime Minister;

6.111.1.5. One (1) member appointed on the advice of the Leader of the Opposition; and

6.111.1.6. One (1) member appointed in the President's own discretion.

6.111.2. An appointed member of the Constitutional Offices Commission should serve for a renewable term of five years, provided that where a new Prime Minister, Leader of the Opposition or President assumes office, the members appointed by the previous officeholder shall cease to hold office.

6.111.3. Where there is no Leader of the Opposition, the seat reserved for the Leader of the Opposition on the Constitutional Offices Commission should be held by the person designated as the representative of the opposition political party gaining the highest number of votes in the previous election but not forming the government (in accordance with the recommendation set out in paragraph 6.74.2).

DIRECTOR OF PUBLIC PROSECUTIONS

6.112. The Director of Public Prosecutions (DPP) serves a critical role in the State, and though an officer of the Executive, must have sufficient independence and autonomy from the political directorate to prevent political abuse of the prosecutorial power. The Commission largely felt that the constitutional provisions relating to the office of the DPP were satisfactory.

6.113. The Commission did consider the provisions of section 79A, which was inserted into the Constitution by the controversial 1974 amendments. Section 79 provides that the DPP is not subject to the direction or control of any other person or authority in the execution of their functions. Notwithstanding, section 79A permits the Attorney-General to issue general or special directions to the DPP in relation to certain offences. The offences generally concern matters of national security (such as treason, sedition and offences relating to official secrets) or the foreign relations of Barbados (such as piracy or slave trading which are internationally unlawful).

6.114. The Cox Commission recommended the repeal of section 79A, while the Forde Commission proposed that in respect of those offences, the DPP be required to consult with the Attorney-General, but still retain an independent discretion.

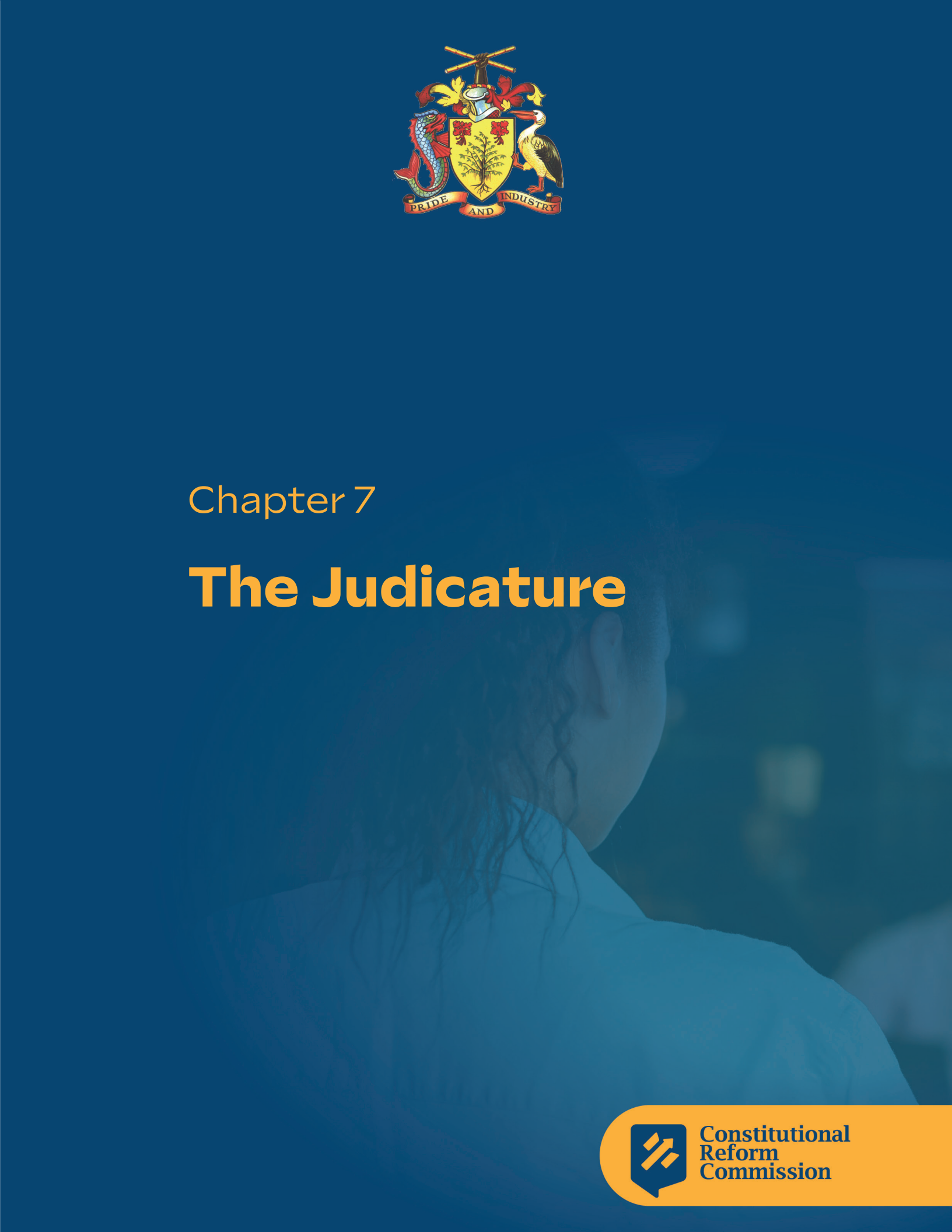
6.115. While the provision may have been viewed with some ambivalence at the time, the passage of 50 years since its enactment has shown that section 79A has not been the subject of abuse. The offences set out in section 79A concern matters of sensitive import liable to affect the peaceful relations of Barbados with other states and the international community, or interfere with the security of Barbados. The Executive has a legitimate interest in the foreign relations and national security of Barbados, and the Attorney-General as the Government's principal legal adviser is well-placed to issue directions in this regard.

Recommendation

6.116. The Commission recommends that the current constitutional provisions concerning the Director of Public Prosecutions should be retained.

Chapter 7

The Judicature



Constitutional Reform Commission

INTRODUCTION

7.1. The courts are among the most important of our national institutions for the purposes of safeguarding our democracy and securing the rule of law. The insulation of judicial officers from external pressure, and the maintenance of high standards with the judiciary, are therefore vital for the sustainability of our constitutional democracy.

7.2. It is with this in mind that the Commission approached its deliberations on the Judicature of Barbados. The Commission noted that Barbados has had a long tradition of an independent judiciary, comprised of judges of outstanding quality. Generally, political interference in the judiciary has been minimal, certainly relative to other jurisdictions. This is a proud legacy which the Commission felt must be enhanced and further secured in a republican Barbados.

7.3. On the other side of the equation, the Commission also took notice of the dissatisfaction voiced among sections of the public with perceived delays in accessing justice. These concerns, also echoed on several occasions by Barbados' highest court, the Caribbean Court of Justice, no doubt have some impact on public confidence in the judicial system. The Commission recognises that the responsibility for improving the speed with which matters progress through the system is shared by several actors in the space.

7.4. Finally, the Commission was conscious of the fact that further securing the independence of the judiciary, and improving efficiency in the system, could not be achieved solely through constitutional amendment, but also requires administrative and other formal measures, as well as less formal approaches.

7.5. Nevertheless, at the constitutional level, the Commission based its approach to the judicature on three broad pillars:

7.5.1. Further securing judicial independence – to be achieved through altering the mechanism for judicial appointment, fixing the age of retirement and proposing the creation of an autonomous department to give greater administrative and financial independence to the judiciary;

7.5.2. Better promoting judicial accountability – to be achieved through a more transparent system for judicial discipline; and

7.5.3. Improving the efficiency of the court system – to be achieved through decentralising leadership in the judicial system, proposing the creation of an autonomous department to give the judiciary greater control over their affairs and resources, and recommending the creation of standards of performance for the judiciary.

STRUCTURE OF THE JUDICATURE

7.6. Presently, the judicature of Barbados consists of:

7.6.1. The Caribbean Court of Justice;

7.6.2. The Supreme Court, consisting of –

7.6.2.1. The Court of Appeal, and

7.6.2.2. The High Court; and

7.6.3. The Magistrates' Courts.

7.7. The CCJ is the apex court and final court of appeal for Barbados. It has two jurisdictions:

7.7.1. The appellate jurisdiction enables it to hear appeals in civil and criminal matters from the Court of Appeal; while

7.7.2. The original jurisdiction refers to the CCJ's role in interpreting the Revised Treaty of Chaguaramas, the governing charter for the Caribbean Community, including the CARICOM Single Market and Economy.

7.8. Barbados played a leading role in its establishment in 2005, at which time, appeals from this country to the Judicial Committee of the UK Privy Council were discontinued and those appellate functions transferred to the CCJ. Since its establishment, the CCJ has performed creditably as it has set about on the intentional development of an indigenous Caribbean body of law. Its constitutional jurisprudence has gone some way in fully unleashing the promise of our Constitution and its judgements, both in civil and criminal matters, have evinced an acute understanding of how law applies to life in a Caribbean, and Barbadian, context. The CCJ has made significant steps in improving access to justice at the apex court level for ordinary people. It has also sought, generally, to model good judicial practice in particular as it concerns the timeliness of judgements.

7.9. For these reasons, the Commission, without hesitation, recommends that the CCJ continue to be this country's final court of appeal.

7.10. The Commission also recommends the retention of the Supreme Court, with its two constituent courts, but makes additional recommendations concerning its structure, which are set out in the succeeding section.

7.11. The Commission also agrees that the new constitution should continue to reflect that the Magistracy forms part of the judicature of Barbados, a fact which has been given express constitutional recognition since 2003. The Commission recognises that the Magistrates' Courts form the backbone of our judicial system, often being on the frontline of the administration of justice. Magistrates, consequently, deserve the respect they are entitled to as judicial officers.

7.12. The Commission determined that no further action was required at the constitutional level, but nevertheless wishes to place on record that a detailed and comprehensive study should be undertaken by Government to review, among other matters, the continued viability of the system of districts in the 21st century, the terms and conditions of service of Magistrates, increasing the administrative independence of the Magistracy by empowering the Chief Magistrate as it relates to the management of the magistracy, and ensuring appropriate respect for magistrates as judicial officers, rather than as members of the Public Service

Recommendation

7.13. The Commission recommends that the present hierarchy of the courts be retained

The Structure of the Supreme Court

7.14. As mentioned above, the Supreme Court is a superior court of record and consists of the Court of Appeal and the High Court.[10] The High Court is a court of first instance, with general jurisdiction in criminal and civil matters. The Court of Appeal is an intermediate appellate court, and hears appeals from decisions of the High Court, the Magistrates' Courts, and tribunals such as the Employment Rights Tribunal and the Severance Payments Tribunals.

7.15. While the general structure of the Supreme Court has remained, there have been several important changes since independence.

7.16. Before 1990, the judiciary consisted of the Chief Justice and a number of puisne judges. The Chief Justice and those puisne judges generally heard matters at first instance. Whenever a person appealed a decision rendered by the High Court, three puisne judges would sit together to hear the appeal, thereby constituting the Court of Appeal. As a result, there was no "standing" Court of Appeal, in the sense of having its own bench of Judges who solely heard appeals.

7.17. This changed in 1990, with amendments to the Constitution and the Supreme Court of Judicature Act, Cap.117A, which created the distinct offices of Judge of the High Court and Justice of Appeal. Since then, the High Court consists of Judges of the High Court who only sit in that Court, while the Court of Appeal is populated by Justices of Appeal. The Chief Justice may sit in either court.

[10] A superior court is one which is able to exercise general jurisdiction in civil and criminal matters (i.e., is capable of hearing any kind of case), as opposed to a court which has a limited jurisdiction (e.g., the Magistrates' Courts only has criminal jurisdiction in summary matters and civil jurisdiction in matters where the claim does not exceed $10,000).

7.18. Another significant change has been the increase in the number of judges. Today, there are thirteen (13) Judges of the High Court, sitting across four (4) divisions: civil, criminal, family and commercial. In the Court of Appeal, there are now six (6) judges, including the Chief Justice, which means that that Court can now sit with two panels hearing appeals concurrently.

7.19. The outline of these developments demonstrates that when the drafters of the current Constitution set about drafting the provisions on the judicature in our Constitution, they were doing so in relation to a Supreme Court which was markedly different to what obtains today.

7.20. The development of both courts since 1990, in particular, has increased the workload of each and has created a more complicated structure to manage. Indeed, increasingly, these complexities have required recent Chief Justices to dedicate greater time to the management responsibilities, as compared to early holders of the office who were able to spend more time on the Bench.

7.21. Presently, the Chief Justice is the overall head of the judiciary and exercises several functions in that regard. For example, the Chief Justice chairs the Rules Committee and the Judicial Council. In the High Court, the Chief Justice may assign any part of the business of the Court to a particular Judge of the High Court. In respect of the Magistrates' Courts, the Chief Justice is responsible for assigning magistrates to the several magisterial districts on the Island and may also appoint the time and place of sitting of these magistrates. The administrative business of the courts is managed by the Court Service of the Registration Department, headed by the Registrar.

7.22. The Chief Justice, then, has leadership responsibilities in respect of the Magistrates' Courts (there are 11 Magistrates) and both courts of the Supreme Court. This is in addition to the judicial functions which the Chief Justice exercises, primarily sitting in the Court of Appeal and occasionally sitting at first instance in the High Court.

7.23. Throughout our history, the persons who have held the office of Chief Justice have faithfully performed these many functions. However, modern management practice suggests that efficiency gains may result from vesting decision-making power in those persons who have a closer, functional relationship to the things and people under their management. This allows for a more hands-on approach, which may not always be possible when one manages a whole system.

7.24. For this reason, the majority of the Commission is satisfied that the judicature of Barbados has developed to the point where it is both desirable and necessary for each of the courts to have its own administrative leader, while retaining the overall headship of the courts in the Chief Justice. This will enable each Court to be actively led by a judicial officer who sits in that Court and who is better able to model, set and monitor standards of performance and undertake the various administrative and management functions appertaining to that Court.

7.25. This recommendation is not a novel approach. Throughout the Commonwealth, it is fairly standard practice for each level in the hierarchy of the courts to have its own leader. Examples are set out in the Table below.

Table 7.1: Table showing judicial leadership structures in select Commonwealth jurisdictions

Region/Jurisdiction	Structure
Commonwealth Africa	• Botswana – the Chief Justice is the head of the judiciary and sits in the High Court and there is a President for the Court of Appeal. • Kenya – the Supreme Court (which is the apex court) and the Court of Appeal each have its own President, and the High Court also has its own leader, styled the Principal Judge of the High Court. • South Africa – the Chief Justice is the head of the judiciary and sits in the Constitutional Court, and the Court of Appeal and the divisions of the High Court each have their own President.
Commonwealth Caribbean	• The Bahamas, Belize and Jamaica – the Chief Justice is the overall head of the judiciary and sits in the High Court, while there is a President for the Court of Appeal. • Guyana – the Chief Justice sits in the High Court, but there is a Chancellor who is the President of the Court of Appeal and the overall head of the judiciary.[11]

[11] For completeness, Trinidad and Tobago and the Eastern Caribbean constitute their judicatures in a similar manner as Barbados presently does.

Region/Jurisdiction	Structure
England and Wales	• The Lady Chief Justice is the overall head of the judiciary. • In the Court of Appeal, there are two divisions – Civil and Criminal – and each have their own head: the Lord Chief Justice heads the Criminal Division, and the Master of the Rolls is the President of the Civil Division. • In the High Court, there are three Divisions each with its own head. • Each of the tribunals have their own President and overseeing the whole tribunal system is a Senior President of Tribunals

7.26. The majority of the Commission determined that the Chief Justice should remain the overall head of the judiciary and the President of the Court of Appeal. Therefore, the Commission proposes the creation of the office of President of the High Court, to be the administrative leader of the High Court, responsible for that Court's day-to-day management and administration, without prejudice to the overall responsibility of the Chief Justice.

7.27. The majority's recommendation in this regard should be viewed in light of its recommendation relating to the proposed Court Services Department, set out later in this Chapter. Both of these recommendations are intended to promote greater efficiency in the Supreme Court.

7.28. There is presently no adequate system for monitoring or measuring the workload of Judges. An unevenness in the distribution of the workload in the High Court may be occasionally gleaned from the Court List. This is suggestive of a deficit in the effective management of the Courts, due to the cumbersome nature of the current system which creates challenges for a single person to manage, especially where the officeholder typically sits in only one of the Courts.

7.29. The majority's proposal thus seeks to place greater emphasis on the management, monitoring and administration of each of the Courts. The appointment of separate heads would require each to manage, lead and organize the resources, skills and business of each Branch and will be held accountable for the delivery of performance and the meeting of targets.

7.30. It is therefore hoped that this will improve the ability of both Courts to render justice effectively and efficiently, facilitate greater autonomy between the Courts, promote accountability for judicial performance and foster public confidence in the administration of justice.

7.31. The Chairman expresses a dissenting opinion from the majority's recommendation, which may be found in Appendix A.

Recommendations

7.32. The Commission recommends that:

7.32.1. The Supreme Court should continue to consist of the Court of Appeal and High Court.

7.32.2. The Chief Justice should continue to be the overall head of the judiciary and sit in the Court of Appeal as President of that Court, together with the Justices of Appeal, of such number as Parliament may, by law, determine.

7.32.3. The High Court should consist of a President of the High Court, as that court's administrative head, together with the other Judges of the High Court, of such number as Parliament may, by law, determine.

7.32.4. The Supreme Court of Judicature Act, Cap.117A should be amended to align its provisions with these recommendations.

APPOINTMENT OF JUDGES

7.33. Presently, all Judges are appointed by the President, on the advice of the Prime Minister after the Prime Minister consults the Leader of the Opposition. In practice, it is the advice of the Prime Minister which is decisive. This was not the case at Independence. Originally, the Chief Justice was appointed in this manner, but the other Judges were appointed on the advice of the Judicial and Legal Services Commission, and thus, without reference to either the Prime Minister or Leader of the Opposition. This was changed, to some controversy, in 1974 when the Constitution was amended for the first time since its enactment.

7.34. Apart from the significant political involvement in judicial appointments, from the point of view of the public, the process leading to those appointments was quite opaque. Neither the Constitution nor any law required the advertising of vacancies, the holding of interviews or any other such mechanism which might have provided some structure to the appointment process.

7.35. Both in 1974 and since, political parties, members of civil society and individuals have called for the rolling back of this amendment and the removal, or at least the dilution of the power of the Prime Minister in relation to judicial appointments.

7.36. The Commission encountered this in its own work. Seven (7) submissions were received on the matter of judicial appointments, all of which recommended the repeal of the 1974 amendments.

7.37. Both of our predecessor Constitution Commissions similarly recommended changes be made to the current arrangement. The Cox Commission recommended that the original position before 1974 be restored. The Forde Commission agreed, except that for the Chief Justice, it was recommended that the President act on a joint recommendation of the Prime Minister and Leader of the Opposition, failing which the President would appoint a person in his own discretion from among the persons considered for the office by the Judicial and Legal Service Commission.

7.38. Perhaps responding to several decades of public conversation about this matter, Parliament, in 2019, amended the Supreme Court of Judicature Act, Cap.117A to create a Judicial Appointments Committee. This Committee is charged with making non-binding recommendations to the Prime Minister whenever a judicial vacancy arises. In a significant innovation, this Committee has, since its establishment, advertised vacancies throughout the Commonwealth, held interviews and made recommendations. The information available to the Commission suggests that the current Prime Minister has accepted every recommendation of the Committee.

7.39. However, as a demonstration of the limits of the present arrangement, under the Supreme Court of Judicature Act, as amended, there is no requirement, per se, for a Prime Minister to accept the recommendation of the Committee, even where that recommendation is arrived at after advertisements, interviews and due consideration. Further, the Committee is only called upon to make a recommendation to fill a vacancy where the Prime Minister determines that the Committee should be activated. Consequently, since 2019, a few judicial appointments have been made that did not involve the Judicial Appointments Committee, usually for reasons of time, according to the information available to the Commission.

7.40. A not insignificant point, additionally, is that the present system ushered in by the 2019 amendments, while an improvement over the previous state of affairs, is not provided for at the level of the Constitution and is therefore subject to comparatively easier change in the future.

7.41. Therefore, as the Commission has sought to enhance the independence of the judiciary, the Commission considered that it was important that the new constitution reflected a mechanism for judicial appointments which could be seen as transparent, objectively fair and acceptable in a republican context.

7.42. The Commission is clear in its view that the current arrangements have not led to a diminution in judicial independence in Barbados, but it is nevertheless important that the new constitution seek to safeguard our cherished institutions for the future. In this regard, the Commission agrees with the comments made in this regard by the Forde Commission in its report, which bear repeating:

> 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. ... The judiciary should be guaranteed the appearance as well as the substance of independence.

7.43. In these premises, the Commission recommends significant changes to the current system of judicial appointments, which is set out in further detail below.

Appointment of the Chief Justice

7.44. The Commission considered a wide range of alternatives to the current position. One submission made to the Commission recommended that the Chief Justice be appointed on the advice of the Judicial and Legal Service Commission (JLSC), while another recommended the creation of a special body consisting of sitting and retired judges to advise the President on judicial appointments.

7.45. The Commission also reviewed the arrangements for judicial appointments in twenty-one (21) Commonwealth jurisdictions. Common themes emerged from this review. In many jurisdictions surveyed, the highest judicial officers are often appointed with varying degrees of political involvement. This usually involves "consultation" between the leaders of the government and opposition. Conversely, judicial officers outside of the upper echelon of Chief Justice or the Court of Appeal are often appointed on the advice of judicial service commission-type bodies, with less political input.

7.46. The majority of the Commission thought that these jurisdictional comparisons were instructive. The Chief Justice serves as the head of one of this country's branches of government. The office of Chief Justice is not therefore simply a judicial office, but also has an important function in the overall architecture of the State, as well as having an influence over the shape and direction of the branch of the government which he leads.

7.47. In a representative democracy, it is important that the people, through their representatives, have a meaningful input in the selection of the head of a branch of government. By comparison, the Executive is led, formally, by the President, and functionally by the Prime Minister. The President is elected by the people's representatives in Parliament and the Prime Minister is elected, indirectly, by the people in general elections. While the Commission does not entertain the undesirable prospect of electing the Chief Justice, there is value to be gained in involving the people's representatives in the choice of that high officeholder.

7.48. The majority therefore recommends a novel innovation, whereby the Chief Justice will be appointed on the advice of the proposed Constitutional Offices Commission, an institution which is described more fulsomely in Chapter 6. The Constitutional Offices Commission, which would include the Prime Minister and Leader of the Opposition, is intended to promote a more consensual process leading to recommendations. As pointed out in Chapter 6, the challenge with the current arrangement of "consultation" between the Prime Minister and Leader of the Opposition is that it is effectively little more than a requirement for the Prime Minister to inform the Opposition Leader of their intentions. It is hoped that the effect of the Constitutional Offices Commission will require both of these officeholders – each representing a section of public opinion – and the other members of that body to discuss appointments meaningfully and arrive at a recommendation that is genuinely the product of consultation.

7.49. This structure achieves the spirit of the recommendation of the Forde Commission mentioned above and also is consistent with practice in other Commonwealth jurisdictions where there is a degree of political involvement. It however goes further in institutionalizing a structure for consensus, rather than on ad hoc basis.

7.50. The Chairman expresses a dissenting opinion from the majority's recommendation which may be found in Appendix A.

Recommendation

7.51. The Commission recommends that the Chief Justice should be appointed by the President, on the advice of the Constitutional Offices Commission.

Appointment of the President of the High Court

7.52. As explained in the preceding section on the proposed changes to the structure of the Supreme Court, the Commission is recommending the creation of an office of President of the High Court. It is intended that this officeholder will have responsibility for the day-to-day management and direction of the administration of the High Court, in addition to judicial duties.

7.53. Given the particular responsibilities of this role, the majority of the Commission recommends that this officeholder be appointed on the advice of the Judicial and Legal Services Commission. The Commission proposes that the Judicial and Legal Service Commission have responsibility for setting and monitoring standards of judicial performance.

7.54. Consequently, the Commission is satisfied that this Service Commission is well-placed to understand the needs of the High Court and should have an adequate appreciation of the skills and aptitude of potential candidates.

Recommendation

7.55. The Commission recommends that the President of the High Court should be appointed by the President from among the Judges of the High Court, on the advice of the Judicial and Legal Services Commission.

Appointment of Judges

7.56. Having examined the special circumstance of the leaders of the judiciary, the Commission next considered the mechanism for the appointment of the other judges. The majority of the Commission agreed with the persons who made submissions, as well as with the practice in other Commonwealth jurisdictions which were considered, that there was no need for the involvement of politicians in the appointment of judicial officers.

7.57. Consequently, the majority recommends a partial reversion to the pre-1974 arrangements, in that judges should be appointed by the Judicial and Legal Services Commission. It is however characterized as a partial reversion because the Commission has also recommended significant changes to the composition of the JLSC, which is explained further in Chapter 8. With this expanded membership, the Commission believes that the process of judicial appointments will now be benefited by wider involvement of eminent and respected persons in the field of the law as well as persons with other qualifications.

7.58. **The Chairman expresses a dissenting opinion from the majority's recommendation which may be found in Appendix A.**

Recommendation

7.59. **The Commission recommends that the Justices of Appeal and the Judges of the High Court should be appointed by the President, on the advice of the Judicial and Legal Services Commission.**

Judicial Appointments Procedure

7.60. The Commission noted the approach of the Judicial Appointments Committee thus far in making recommendations on filling judicial vacancies. The Commission felt that this model of practice was worthy of replication. In particular, the Commission endorsed the practice of advertising judicial vacancies widely, including internationally, designing a comprehensive application form, requesting referees and holding interviews. This robust approach has professionalised the appointments process and would lead to greater transparency and is consistent with best practices in the field of human resources.

7.61. The Commission therefore considers that this approach should be continued by the newly constituted Judicial and Legal Services Commission and that the Supreme Court of Judicature Act should be amended to provide for this process.

Recommendation

7.62. The Commission recommends that the process for judicial appointments should be set out in the Supreme Court of Judicature Act.

TENURE OF JUDGES

7.63. Presently, all Judges serve until they reach the constitutionally set age of retirement, or they sooner resign or are removed. The security of tenure of judicial officers is an important element of judicial independence. While other models of judicial tenure exist (such as fixed terms and lifetime tenure), the Commission was generally satisfied that the present arrangement, whereby judges serve until a mandatory retiring age, continued to be satisfactory. The Commission however proposes an important change in respect of the possibility of extending tenure beyond that retirement age. This is intended to further shore up both the substance and appearance of judicial independence. Finally, as will be seen next, the Commission recommends a new arrangement for the tenure of the judicial leadership.

The Chief Justice and President of the High Court

7.64. As stated above, the Commission felt that the present mandatory retirement age system was generally satisfactory as it related to ordinary judges. However, the Commission was persuaded that there was a material difference as it concerns the judicial leadership, i.e., the Chief Justice and proposed President of the High Court. These officeholders do not only exercise judicial functions but are critical to the overall effective functioning of the judicial system.

7.65. It is important that such officeholders remain continually engaged and able to deliver effectively. It is for this reason that the majority of the Commission considered and ultimately accepted the view that the two leaders of the judiciary should hold their office for a fixed term, in the case of the Chief Justice, for seven years, and in the case of the President of the High Court, five years. It is proposed that these terms be non-renewable, and at the end of the term, the persons holding these roles should be able to continue to sit as Judges in their respective courts.

7.66. The majority of the Commission recommends that the proposed terms be non-renewable so as to avoid the potentially awkward situation which might arise in the case of a non-renewal of tenure, which could lead to an adverse reflection on the tenure of that officeholder in the popular imagination. Additionally, the majority felt that judicial independence, especially at the level of leadership, would be better secured if the two officeholders were not required to have to seek out a renewal of their term from whatever authority would be vested with recommending renewal. Age and merit permitting, a person who has served as President of the High Court might later be elevated to the Court of Appeal, or even to the Chief Justiceship. It is hoped that this proposal will create a clearer career pathway for top performers, bringing more mobility within the system.

7.67. Nevertheless, simply because the Chief Justice or President of the High Court has concluded their tenure in judicial leadership does not mean that they have nothing left to offer. Therefore, the majority of the Commission has proposed that, if the officeholders have not yet reached the general age of retirement, they should be able to continue to sit as a Judge in their respective Court, recognizing however their special status as a former Chief Justice or President, and consequently, the majority accepts the view that they should be entitled to continue to receive the salary and allowances to which they were previously entitled when they held those offices. This proposal is not without precedent and is currently applies in relation to the office of Chief Justice in Kenya.

7.68. This proposal is intended to reduce stagnation and would allow the leadership of each Court to be refreshed continuously, thereby promoting greater innovation and growth in the system. A former Head would have had the distinction and satisfaction of completing their term of office and return to their substantive judicial role. It would promote a healthy competition among Judges to perform and excel and any promotion to the higher appellate courts would be more transparent, since the measurement of performance would be more objectively determined.

7.69. Judges would be able to take ownership in the collective responsibility of the Branch's performance. The rotation back into the system of mainstream judging will also promote a fairer and stronger system since all Judges will feel that by dint of performance, they too can aspire to lead any of the two Courts in the future, as a result of there being more frequent vacancies in those leadership positions.

7.70. As a final point, it is important to view this recommendation within the larger context of senior leadership in the State. In addition to the Chief Justice, two other officeholders sit at the pinnacle of the State: the President and the Prime Minister. In our new republican system, the President is subject to a fixed term and a term limit. This ensures renewal in that office from time to time, because that office is not subject to the vagaries of popular election. However, in relation to the office of Prime Minister, as set out in the preceding Chapter, the Commission has declined to recommend term limits. This was because the Commission determined that there already existed sufficient checks on the length of tenure of a Prime Minister which promote continuous refreshing in the occupancy of that office: firstly, their parliamentary party, and ultimately, the electorate. Therefore, the position of the two judicial leaders can be better approximated to that of the President, in that there is an absence of these two checks on tenure length. There is thus less possibility for continuous renewal in those offices, which instead would be facilitated by the setting of a fixed term.

7.71. The Chairman expresses a dissenting opinion from the majority's recommendation which may be found in Appendix A.

Recommendations

7.72. The Commission recommends that:

7.72.1. The Chief Justice should serve for a non-renewable term of seven (7) years, or until the age of retirement set out below, whichever is the earlier. Where the Chief Justice has completed his term, but has not yet reached the age of retirement, he may continue to sit as Justice of Appeal.

7.72.2. The President of the High Court should serve for a non-renewable term of five (5) years, after which the holder of that office may revert to sitting as a senior Judge of the High Court.

Judges of the Supreme Court

7.73. There is presently a different age of retirement for Judges of the High Court and Justices of Appeal: for Judges of the High Court it is presently 65 years, while it is 70 years for Justices of Appeal.

7.74. Like the Forde Commission, this Commission has been unable to find an objective justification for this difference. In this regard, the arrangement in other jurisdictions was considered. The Commission selected forty-two (42) of the fifty-six (56) Commonwealth member states as a sample for analysis in this matter.[12] Of these 42, thirty-three (33) countries (or 79%) had a standardized retiring age for judicial officers (or national or federal judges, in the case of certain jurisdictions). Consequently, the Commission recommends that the retiring age for judges of the two courts be standardized.

7.75. The Commission wrestled with the specific retirement age which should be set. The Commission was satisfied that 65 years old was too low, given that many persons continue to make valuable contributions well beyond this age. Some consideration was given to the age of 70 years, but the Commission ultimately felt that 72 years old was appropriate, and in this regard, concurs with the similar recommendation of the Forde Commission.

[12] The six independent member states of the OECS were counted as one for this purpose as they have a common court.

The Possibility of Extension

7.76. The Constitution currently provides for the tenure of a judge to be extended for up to two years beyond the retiring age. The decision on whether to extend the tenure is effectively exercised by the Prime Minister, on whose advice the President acts in this matter.

7.77. The Commission determined that requiring a Judge to seek an extension to their tenure from the Prime Minister was not entirely consistent with the principles of judicial independence and that this practice should therefore be discontinued. The Commission was also alive to the reality that a refusal to extend tenure can create unnecessary public controversy, which would be a regrettable conclusion to a judicial officer's service.

Holding-Over

7.78. The Commission examined the constitutional provision permitting a judicial officer who has retired or resigned to, nonetheless, deliver judgements or do other things necessary in relation to matters which started before him or her prior to retirement or resignation. The Forde Commission recommended that this "holding-over" period be limited to six (6) months. Though there was robust discussion on this point within this Commission, it was ultimately determined that prescribing an arbitrary time-period was not necessary. It is hoped that the other reforms being proposed will help to create a system in which judicial business can be more effectively managed to ensure that a Judge does not have too many outstanding matters as they approach retirement. As the retirement age is now proposed to be fixed and certain, this will hopefully lead to better planning in this regard.

Recommendations

7.79. The Commission recommends that:

7.79.1. The age of retirement for Justices of Appeal and Judges of the High Court should be standardised and set at 72 years old.

7.79.2. The discretionary power of the President, acting on the advice of the Prime Minister, to extend a Judge's tenure for two (2) years beyond the retirement age should be discontinued.

DISCIPLINE OF JUDGES

7.80. The role of the judiciary in maintaining constitutional democracy could never be overstated. For this reason, their independence is critical. Equally, though, in a democratic state, every part of the state must be accountable for their performance and there must be a fair and transparent system to resolve complaints relating to that performance. Of course, this must be undertaken in a way that still respects and preserves the overall independence of the judiciary.

7.81. Currently, the Constitution makes fairly limited provision for the discipline of judges, in that the only sanction which may be imposed on a judicial officer is removal. However, removal of a person from office ought to be an option of last resort, after all other avenues have been exhausted, or where conduct is so egregious that it is merited. But when removal is the only sanction which can formally be applied this tends to frustrate effective accountability. Very few actions will on their own justify the removal of a person from office, and so where that is the only penalty, then no accountability is likely to result.

7.82. For this reason, the Commission recommends that a new system of judicial discipline be established which will enable the bodies charged with discipline to more effectively tailor the disciplinary measure (where merited) to the particular charges. This would require provision authorising the imposition of measures short of removal, such as the issuance of formal warnings, or reprimands, or suspensions, which are some of the tools used in other jurisdictions.

7.83. Beyond this, a more transparent and objective procedure for judicial discipline needs to be developed which is further set out below. Finally, the Commission also proposes certain changes to the grounds for triggering disciplinary proceedings.

7.84. Collectively, these proposals are intended to shore up judicial accountability, thereby promoting public confidence in the administration of justice. These recommendations should not be viewed as an adverse reflection on the judges of Barbados, either today or in the past.

7.85. Rather, the judiciary, as a guarantor of the rule of law, must equally be subject to that high constitutional principle. Indeed, the creation of a fair and transparent process should also be to the benefit of judicial officers as it will confirm their rights in the disciplinary process, a lack of clarity around which has led to unfortunate controversies in other Caribbean jurisdictions.

Recommendation

7.86. The Commission recommends that the new constitution should make better provision for judicial discipline, in particular provision for disciplinary measures short of dismissal, such as the issuance of a formal warning or reprimand or a suspension.

Grounds for Triggering Disciplinary Proceedings

7.87. Since Independence, there have been two (2) primary grounds on which a judicial disciplinary proceeding might be started:

7.87.1. An allegation that a Judge is unable to discharge the functions of office, whether arising out of physical or mental health concerns or any other reason; and

7.87.2. An allegation that a Judge is guilty of misbehavior in office.

7.88. In 2019, Parliament created a third ground: a delay of more than six (6) months in the delivery of judgements. This was apparently a measure introduced in response to widespread concerns about significant delays encountered in judgements being rendered, and especially, in written judgments being provided.

7.89. While well-intentioned, the Commission has not been able to see that this amendment has led to any discernible improvement in the speed with which judgements have been delivered. Indeed, while the information available to the Commission suggests that complaints have been made about delays, it does not appear that any disciplinary proceedings have been initiated, at the time of writing.

7.90. This may be for several reasons, but perhaps one significant factor is the aforementioned limited scope of judicial discipline, in which removal is the only sanction. All things being equal, to seek to remove a Judge from office because they have delayed for more than six (6) months in handing down a judgement may be considered excessive or disproportionate.

7.91. Further, there is no particular magic about the six-month deadline. What amounts to a reasonable delay will turn on the particular circumstances of a specific matter, such that a delay of six (6) months may be unreasonable in some circumstances, but justifiable in others. The Commission was, therefore, inclined to take a more nuanced approach, recognising the need for there to be proportionality between disciplinary penalties and the conduct complained of. Therefore, the Commission recommends that the new ground created in the 2019 amendments be altered so that a disciplinary proceeding can be triggered where, in respect of a Judge, there are persistent delays of greater than six (6) months in the delivery of judgements. This increases the threshold as it requires a course of conduct, rather than delay in a single matter.

7.92. However, the Commission is cognisant of the fact that there may be cases in which the delay is so protracted and excessive, and without any justification, that disciplinary proceedings may be merited due to the particularly egregious circumstances. Therefore, the Commission proposes that provision be made for this circumstance. This emphasizes the case-by-case nature of the determination to be made and eschews setting an arbitrary timeframe.

Recommendation

7.93. The Commission recommends that the grounds for triggering a disciplinary proceeding against a judge should be:

7.93.1. Inability to discharge the functions of the office;

7.93.2. Misbehaviour;

7.93.3. Excessive or inordinate delay in the delivery of a judgement; or

7.93.4. Persistent delay of six (6) months or more in the delivery of judgements.

Disciplinary Procedure

7.94. Aspects of the disciplinary procedure presently provided for by the Constitution may be described as opaque. A disciplinary proceeding is triggered when the Chief Justice advises the President that the matter of removing a Judge should be investigated, at which time, the President appoints a tribunal to enquire into the matter. In the case of the Chief Justice himself, it is the Prime Minister who may trigger the proceeding.

7.95. There is however no objective basis set out for the exercise of the power of the Chief Justice or the Prime Minister to advise the President in this regard. In particular, the provisions do not seem to acknowledge that members of the public or attorneys-at-law may make complaints to those officeholders. There is therefore no constitutional obligation on either the Chief Justice or Prime Minister to consider complaints made, nor is any express provision made for a Judge complained about to make representations. Consequently, this first part of the disciplinary process appears deficient, particularly when measured against best practice in this area.

7.96. The Commission therefore considered alternative approaches, especially in light of its other recommendations, particularly concerning judicial appointments. Because the Commission proposes that a revamped Judicial and Legal Services Commission should be responsible for recommending judicial appointments, there is some merit in the idea that that body should equally have some role in the disciplinary process. Empowering an institution such as this is preferable to vesting that power in a single officeholder, such as the Prime Minister or Chief Justice.

7.97. The Commission thus recommends the following approach be set out in the Constitution:

7.97.1. The forum for receiving complaints alleging that any of the disciplinary grounds has arisen in relation to a Judge should be the Judicial and Legal Services Commission, to whom any person may file such a complaint.

7.97.2. The JLSC should investigate the complaint, giving both the complainant and the judge in question, full and adequate opportunity to make representations.

7.97.3. The JLSC may dispense with the complaint by determining –

7.97.3.1. That the complaint has merit, in which case,

7.97.3.1.1. If the JLSC determines that a prima facie case exists supporting the removal of the Judge, it shall inform the President of that finding and recommend that the matter of removal of the Judge be referred to the CCJ; or

7.97.3.1.2. If the JLSC determines that a sanction less than removal should be imposed, they may and impose that sanction.

7.97.3.2. That no sanction should be imposed.

7.97.4. If the JLSC recommends the referral of the question of removal to the CCJ, the President shall refer the question and the CCJ shall enquire into the matter and make its determination.

7.98. The proposed structure retains the current role of the Caribbean Court of Justice as the final decision-maker on the question of whether a Judge should be removed. This is desirable, given that such a matter is a question of serious import, so that the country's apex court, which also has the advantage of being outside Barbados, is the appropriate forum for the determination of such a matter.

7.99. The proposed structure also gives explicit recognition to a complainant and to the right of both complainant and Judge to a fair hearing throughout the process. It is anticipated that a party dissatisfied with a decision of the JLSC could apply for judicial review of that decision.

7.100. Finally, the proposed structure facilitates more effective accountability by creating a mechanism for the imposition of sanctions less than removal.

7.101. The disciplinary procedure set out above also seeks to respect judicial independence. The retention of the CCJ is important in this regard. Additionally, the reforms being recommended for the JLSC – in terms of its composition, its method of appointment and its independence – seek to ensure that that body has sufficient independence to faithfully and impartially execute the expected role. It therefore places the custody of the disciplinary process in the hands of a body that is both removed from the Executive and the Judiciary itself, rather than, as at present, in the hands of single officeholders.

Recommendations

7.102. The Commission recommends that:

7.102.1. The procedure for judicial discipline should be as follows –

7.102.1.1. Any person may file a complaint with the Judicial and Legal Services Commission alleging that any of the disciplinary grounds has arisen in relation to a Judge;

7.102.1.2. Upon receipt of a complaint, the Judicial and Legal Services Commission shall enquire into the matter and:

7.102.1.2.1. If the Commission determines that the complaint has merit and a sanction less than removal should be imposed, the Commission may impose that sanction,

7.102.1.2.2. If the Commission determines that the complaint has merit and a prima facie case supporting the removal of the Judge has been made out, the Commission shall advise the President that the question of removing the Judge should be referred to the Caribbean Court of Justice, or

7.102.1.2.3. If the Commission determines that no action needs to be taken, it shall inform the complainant and the Judge in question; and

7.102.1.3. Where the question of removal has been referred to the CCJ, the CCJ may determine whether the Judge in question should be removed, a lesser sanction should be imposed or that no action should be taken.

7.102.2. A person dissatisfied with a decision of the Judicial and Legal Services Commission in relation to the above may apply for the judicial review of that decision.

JUDICIAL INDEPENDENCE

7.103. Judicial independence is essential to public confidence in the administration of justice. There are several formal layers, including security of tenure, financial independence and administrative independence. The Constitution presently safeguards security of tenure through a fixed age of retirement and a difficult process for removal. Protection is also given to the salaries, allowances and other conditions of service of Judges against disadvantageous alteration. These are designed to insulate judges from pressure. The Commission recommends the retention of these and other measures, presently in the Constitution designed to promote judicial independence.

7.104. Thus, critical provision has been made for the independence of the individual judge, but it is also important to protect the independence of the institution of the courts. In this regard, the courts must have an adequate degree of independence in the management of its own affairs and resources and in the acquisition and spending of the monies needed to finance its operation. The Commission does not recommend that provision be made for these additional matters in the new constitution, in any great detail, but nevertheless, has given the matter considerable thought and sets out its recommendations below.

Recommendation

7.105. The Commission recommends that the current constitutional provisions protecting the security of tenure and salary and emoluments of the Judiciary should be retained.

Court Services Department

7.106. Presently, the Registrar of the Supreme Court is responsible for managing the administration of the Court. The Registrar – who has some judicial and quasi-judicial functions – is the head of department for the Registration Department, the responsibility for which is typically assigned to the Office of the Attorney-General, for the purpose of the assignment of responsibility for the business of government under section 72(1) of the Constitution.

7.107. The Cabinet Office bears responsibility for several of the administrative and human resource matters pertaining to the Judges. For example, a Judge must apply to be granted to vacation or duty leave by the President, and this is typically routed through the Cabinet Office. Many other basic conditions of service relating to Judges are within the control of the Cabinet Office. Judges are entitled to an official car (or a transportation allowance), but the maintenance of those cars is handled by the Cabinet Office, which inevitably has control over when, how and if funds will be allocated to address repairs and other issues, leading to an awkward situation where Judges have little control over something as basic as their transportation. A similar situation may be observed in terms of resources for judicial education and training.

7.108. This state of affairs is undesirable and unnecessary. The Judiciary is empowered to undertake one of the most significant functions in the State: dispensing justice. It is therefore inexplicable that they do not have sufficient autonomy over their own affairs.

7.109. It is with this in mind that the Commission considered a recent Act of Parliament enacted in the Commonwealth of the Bahamas, the Court Services Act, 2023-59, which created a body corporate, a Court Services Council, to manage the affairs of the Bahamian judiciary.

7.110. The Commission felt that that legislation had much to commend its adaptation for a Barbadian context. In particular, the Commission determined that a Court Services Department should be established and charged with the management of the operations, property and resources of the Supreme Court and the Magistrates' Courts. This Department should be empowered to recruit its own staff and determine their terms and conditions, provided that they are comparable to the main Public Service. This would enable the Courts to have greater control over its resources, including staffing, and lessen its reliance on other parts of government.

7.111. The Department should be under the leadership of the Chief Justice and managed by a Chief Executive Officer, similar to a Permanent Secretary for the Department. The Department would not be under the direction or control of any other authority, and therefore, no Minister would have responsibility for it.

7.112. Nevertheless, to ensure the Department remains accountable, it should be overseen by a Court Services Council, comprised in the manner set out in paragraph 7.115.5, and its accounts would be audited by the Office of the Auditor-General.

7.113. Giving greater financial and administrative autonomy to the judiciary may also result in some efficiency gains, as the Courts may be able to enact reforms to current practices that might otherwise be slowed down by the complex system requiring involvement of other parts of Government.

7.114. The Commission recommends that Government give urgent attention to this matter and in particular the enactment of legislation modelled on the Court Services Act, 2023-59 of the Laws of the Bahamas, and settling the administrative arrangements necessary to give effect to these recommendations. Enhancing judicial independence can only be of benefit to the rule of law.

Recommendations

7.115. The Commission recommends that:

7.115.1. Government may consider efforts to strengthen the administrative and financial independence of the Judiciary, through the creation of an autonomous Court Services Department, through legislation modelled on the Court Services Act, 2023-59 of the Laws of the Bahamas.

7.115.2. The Court Services Department should not be under the control and supervision of a Minister, but rather under the leadership of the Chief Justice as Head of the Judiciary, and managed by a Chief Executive Officer, akin to a Permanent Secretary for the Department.

7.115.3. The Department should be charged with the management of the operations, property and resources of the Supreme Court and the Magistrates' Courts. It should be able to recruit staff and set terms and conditions, separate from the main Public Service.

7.115.4. For the purposes of accountability, the management and operations of the Department should be overseen by a governing body known as the Court Services Council.

7.115.5. The Court Services Council should consist of:

7.115.5.1. The Chief Justice, who shall be the Chairman;

7.115.5.2. The President of the High Court;

7.115.5.3. The Chief Magistrate;

7.115.5.4. The Registrar of the Supreme Court, who shall be the secretary;

7.115.5.5. An attorney-at-law of not less than ten (10) years' call, appointed on the advice of the Barbados Bar Association;

7.115.5.6. A person holding qualifications in accounting or finance as may be prescribed, appointed by the Chief Justice; and

7.115.5.7. A person appointed on the advice of the Constitutional Offices Commission.

7.115.6. The appointed members of the Council should hold office for a term of four (4) years which may be renewed.

JUDICIAL AND LEGAL SERVICES COMMISSION

7.116. Several of the Commission's recommendations relating to the Judicature rely on a reconceptualization of the Judicial and Legal Services Commission (JLSC). Greater detail on the proposed new composition, appointment mechanism and tenure can be found in Chapter 8. For the purposes of this Chapter, the Commission conceives of the revamped JLSC playing a significant role in improving performance in the system and providing mechanisms for accountability.

7.117. The Commission proposes that the JLSC be responsible for establishing and monitoring standards and metrics relating to performance, conduct and other matters. This will create an objective basis for measuring the performance of the judiciary with the effect of creating greater efficiency in the dispensation of justice, thereby addressing many of the public concerns, especially as it relates to delays.

7.118. In relation these matters, Government may consider requiring the JLSC to report to Parliament on an annual basis as to these standards of performance and in particular the progress towards their attainment.

7.119. The Commission also envisages the JLSC being responsible for recommending judicial appointments in the Supreme Court, as well as the Magistrates' Courts, as it currently does. In this connection, the Commission recommends that the JLSC continue and further enhance the procedures initiated by the Judicial Appointments Committee, especially as it relates to the advertisement of vacancies, the conduct of interviews and other such elements of a robust selection process.

7.114. The Commission recommends that Government give urgent attention to this matter and in particular the enactment of legislation modelled on the Court Services Act, 2023-59 of the Laws of the Bahamas, and settling the administrative arrangements necessary to give effect to these recommendations. Enhancing judicial independence can only be of benefit to the rule of law.

Recommendations

7.120. The Commission recommends that:

7.120.1. In addition to its functions relating to legal officers in the Public Service, the Judicial and Legal Services Commission should also be charged with:

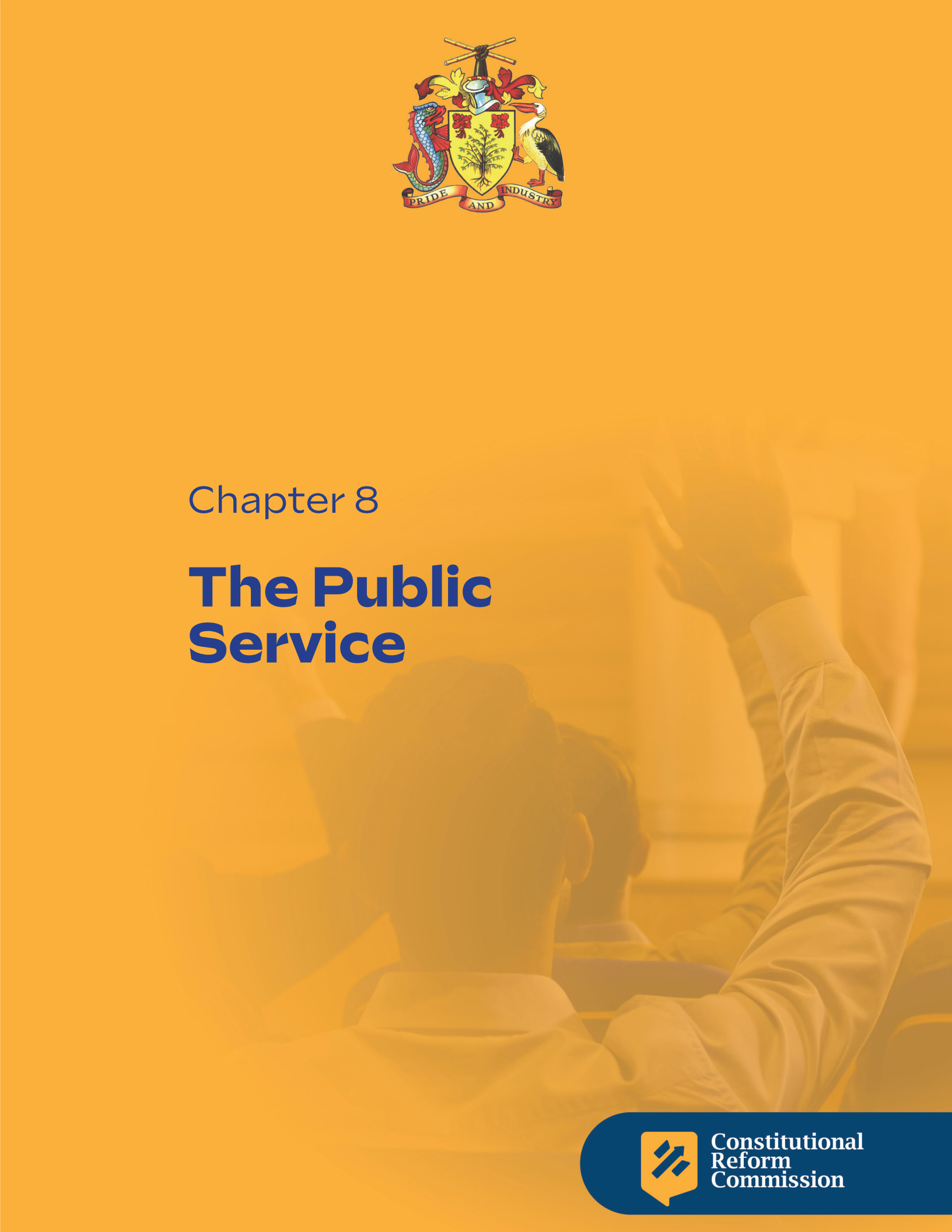
7.120.1.1. recommending appointments to the offices of Justices of Appeal, Judges of the High Court and Magistrates;

7.120.1.2. advertising judicial vacancies, conducting interviews and performing such other functions connected with the aforementioned function;

7.120.1.3. establishing and monitoring performance, conduct and other standards for the Judiciary;

7.120.1.4. preserving and maintaining the integrity of the judiciary; and

7.120.1.5. exercising disciplinary functions in relation to the Judiciary in accordance with the provisions set out in the Constitution.



Chapter 8

The Public Service

Constitutional Reform Commission

INTRODUCTION

8.1. The Public Service of Barbados is the implementing arm of Government, charged with carrying out the business of government and giving effect to the policies and programmes of the Government. Our constitutional democracy requires that the Public Service be under the general direction and management of the People's representatives serving as Ministers. However, good governance also requires some insulation of the Public Service and public officers from political influence in order to preserve the stability of the state and facilitate the seamless transfers of power.

8.2. Thus, preserving and promoting the insulation of the Public Service from political influence was a leading consideration of the Commission. Equally, the Commission took note of the need to improve efficiency and effectiveness in the Public Service.

8.3. The Commission recognises that there is a long-standing issue with respect to the efficiency and effectiveness of the Public Service. This issue is neither a matter for the Commission, nor for the Constitution itself and should be addressed by Government. Rather, as it relates to the Public Service, the Constitution is largely concerned with establishing the broad framework for managing the human resources of the State.

8.4. With this in mind, the Commission examined the provisions relating to:

8.4.1. the Service Commissions, including their proper functioning;

8.4.2. the powers of appointment, discipline and removal of public officers, including specifically in relation to certain public officers;

8.4.3. the need for a permanent, professional system of managing appeals from disciplinary decisions; and

8.4.4. values and principles for the Public Service.

THE SERVICE COMMISSIONS

8.5. There are four (4) Service Commissions currently provided for in the Constitution, and these predate Independence. These Service Commissions are responsible for advising on the appointment, discipline and dismissal of public officers. The objective of the Service Commissions is to provide professional advice on human resource matters for the public service and to provide insulation from undue interference by the political directorate. This is intended to promote a professional and meritocratic Public Service.

8.6. The Commission still sees value in maintaining the four (4) Service Commissions as currently contemplated by the Constitution:

8.6.1. The Administrative, General and Professional Service Commission, with responsibility for all public officers not covered below;

8.6.2. The Protective Services Commission, with responsibility for offices in the Police, Prison, Immigration, Security Guards and Customs Services;

8.6.3. The Teaching Service Commission, with responsibility for teachers; and

8.6.4. The Judicial and Legal Service Commission, with responsibility for public offices for which legal qualifications are required.

8.7. To the extent that the Service Commissions are supposed to provide the abovementioned political insulation, the Commission had regard to the method of appointment of the members of the Service Commissions. Presently, the predominant mechanism requires the President to act on the advice of the Prime Minister, after the latter consults the Leader of the Opposition. The nature and quality of the consultation between these two officeholders has already been addressed in Chapter 6. Consequently, the Commission believes that the independence of the Service Commissions would be further secured by having its members appointed on the advice of the proposed Constitutional Offices Commission.

8.8. Additionally, the Commission sees value in providing for a broader range of expertise to be available to the Service Commissions, and consequently recommends that, except for the Judicial and Legal Service Commission, one member of each Service Commission be appointed after the Constitutional Offices Commission consults with bodies which appear to it to represent the interests of labour.

8.9. Finally, the Commission recommends that the Teaching Service Commission be urgently operationalised. Fifty years have now passed since the enactment of the Barbados Constitution (Amendment) Act, 1974-34 which provided for the creation of a Teaching Service Commission. In that time, those provisions have still not been brought into force. The Commission agrees with the Forde Commission, which found 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.

8.10. The position of the Teaching Service is especially unique as a result of the interplay between the Service Commission, the Ministry of Education and the boards of secondary schools, which give rise to distinctive issues as compared to the main Public Service. Further, the Commission was made aware that the largest proportion of the Administrative General and Professional Services Commission's time is spent in dealing with matters related to the Teaching Service, which can be to the detriment of other areas of the Public Service. Further delay in the operationalisation of the Teaching Service Commission is untenable.

Recommendations

8.11. The Commission recommends that:

8.11.1. The Judicial and Legal Service Commission, the Administrative, General and Professional Service Commission and the Protective Services Commission should be retained.

8.11.2. The Teaching Service Commission should be urgently operationalised.

8.11.3. The composition of the Administrative, General and Professional Service Commission, the Protective Services Commission and the Teaching Service Commission should be retained, except that the Chairman and members of those Service Commissions should be appointed by the President on the advice of the Constitutional Offices Commission; and

8.11.3.1. In the case of one 1 member of each of the Commissions, that member should be appointed on the advice of the Constitutional Offices Commission (COC) after it has consulted with such bodies as the COC determines represent the interest of labour.

8.11.4. The Chairmen and members of the Service Commissions should continue to serve for a term of three (3) years and be eligible for reappointment.

Judicial and Legal Service Commission

8.12. The Commission recommends in Chapter 7 that the power of the President to appoint Judges once again be exercised on the advice of the Judicial and Legal Service Commission (JLSC). The Commission also proposes that the JLSC assume certain functions in relation to judicial discipline. These functions would be in addition to the present role of the JLSC concerning the appointment, discipline and removal of public officers holding offices requiring legal qualifications.

8.13. In light of the Commission's recommendation regarding the expanded work of the JLSC, the Commission recommends changes to the composition of the JLSC to ensure the necessary expertise is present.

8.14. The Commission recommends that the Chief Justice remain a member of the JLSC and that he be joined by the proposed President of the High Court. However, the Commission does not believe that the Chief Justice ought to chair the JLSC. The functions of the body, both in relation to judicial and public officers, are such that it is desirable for the JLSC to have a measure of separation from both the judiciary and the public service. Thus, while the Chief Justice, as head of the judiciary, has a legitimate interest in judicial appointments and discipline, the Commission does not think it necessary for that officeholder to chair, and thus, shape the JLSC.

8.15. The Commission also recommends that two (2) persons who have held office as judges of a court of record in any part of the Commonwealth should be included on the JLSC. Retired judicial officers are well-placed to understand the requirements of judicial office, as well legal office in the Public Service, and can be entrusted with sensitive functions.

8.16. Additionally, the Commission proposes that two (2) attorneys be appointed to the Commission: one (1) in active practice and one (1) no longer in active practice. Finally, the Commission recommends the inclusion of two (2) non-legally trained members to bring a balance of perspective to the JLSC.

8.17. The appointed members of the JLSC, other than the attorney in active practice, should be appointed on the advice of the Constitutional Offices Commission. In relation to the attorney in active practice, the Commission proposes that this person be appointed on the advice of the Barbados Bar Association.

8.18. Finally, the Commission regards a non-renewable term of six (6) years to be appropriate for the Chairman of the JLSC, in order to reflect the special impartiality of that office. The other appointed members should serve four-year terms and be eligible for reappointment.

Recommendations

8.19. The Commission recommends that:

8.19.1. The Judicial and Legal Service Commission should consist of:

8.19.1.1. A Chairman, appointed on the advice of the Constitutional Offices Commission;

8.19.1.2. The Chief Justice;

8.19.1.3. The President of the High Court;

8.19.1.4. Two persons who have held office as judges of a court of unlimited jurisdiction in any part of the Commonwealth, appointed on the advice of the Constitutional Offices Commission;

8.19.1.5. An attorney-at-law of at least ten (10) years' call, appointed on the advice of the Barbados Bar Association;

8.19.1.6. An attorney-at-law no longer in active practice, appointed on the advice of the Constitutional Offices Commission; and

8.19.1.7. Two (2) lay members, appointed on the advice of the Constitutional Offices Commission.

8.19.2. The Chairman of the Judicial and Legal Services Commission should serve for a non-renewable term of six (6) years.

8.19.3. The other appointed members of the Judicial and Legal Services Commission should serve for a four-year term.

Functioning of Service Commissions

8.20. The efficient dispensation of human resource matters in the Public Service is critical for maintaining morale in the Service. Representations were made to the Commission that systemic inadequacies create bottlenecks and other challenges in the system which greatly slow down the pace at which these matters can be administered.

8.21. The submissions made to the Commission suggest that the reasons for this are multi-faceted.

8.22. Firstly, all of the Service Commissions are serviced by a single secretariat, in the form of the People Resourcing and Compliance Directorate of the amalgamated Ministry of the Public Service, and formerly known as the Personnel Administration Division in the Ministry of the Civil Service. Presently, there are only forty-five (45) established posts in the Directorate according to the Public Service (General) Order, 2020 (S.I. 2020-41). Given that the overwhelming majority of public officers are within the responsibility of the Administrative, General and Professional Service Commission (AGPSC), most of the Directorate's time and resources are deployed in connection therewith.

8.23. Secondly, the current process features a high degree of centralisation. All matters of recruitment, transfer, promotion and discipline originate in the Ministries, Departments and Agencies (MDAs) which must transmit the material related thereto to the Directorate for submission to the relevant Service Commission. Unsurprisingly, bottlenecks in processing these matters result, as they must wind their way through several layers of government.

8.24. These arrangements do a disservice to public officers as well as to the abovementioned parties involved. It is clear that the Service Commissions require greater resources in order to function effectively.

8.25. With this in mind, the Commission considered recommending that the Chairperson and at least one (1) other member of each Service Commission be designated as full-time members with delegated authority to go to work every day to deal with the matters coming before the Service Commission. However, the majority of the Commission ultimately felt that this proposal should not be implemented at this time for various reasons, including that such a recommendation might create an unequal hierarchy among the membership of the Service Commissions with the part-time members being at a disadvantage.

8.26. Nonetheless, the Commission agreed that the independence of the Service Commissions from central government should be better secured. Accordingly, the Commission recommends that the Service Commissions be protected from being subject to the direction or control of any person or authority. Further, Government should urgently explore mechanisms to facilitate the adequate resourcing and capacity-building of the Service Commissions. To this end, the Commission recommends that each Service Commission be equipped with its own secretariat so that dedicated administrative and technical support is available to each Service Commission to enable it to effectively execute its functions. Each secretariat should be adequately staffed and operate independently of central government and of each other.

Recommendations

8.27. The Commission recommends that:

8.27.1. Government should explore mechanisms to better ensure the adequate resourcing and capacity of the Service Commissions to improve efficiency and better facilitate the conduct of human resource matters in the Public Service, for example, by providing each Service Commission with a dedicated secretariat.

8.27.2. The constitutional ouster clause for decisions of the Service Commissions should be repealed.

APPOINTMENT, DISCIPLINE AND REMOVAL OF PUBLIC OFFICERS

8.28. Matters relating to the appointment, transfer, promotion, discipline and removal of public officers are presently done on the advice of the Service Commissions. The Commissions may delegate those functions (except the function of removal) to a member of the Service Commission (usually the Chairman) or to any public officer, usually a Permanent Secretary, chief technical officer or head of department. The information available to the Commission suggests that the scope of delegation is often quite limited and, as presently operated, does not lead to discernible efficiency gains.

8.29. The Commission felt that the Service Commission structure remained useful. An impartial Public Service is critical to national development, and the Service Commissions enjoy sufficient insulation from the political directorate. It is also valuable that key decisions related to the Service are taken by persons with some distance from its day-to-day affairs, which is another facilitator of independence and impartiality.

8.30. Nevertheless, the Commission is satisfied that the size of the Public Service requires more meaningful delegation of powers to senior public officers, in order to ensure that the Service's human resource matters can be efficiently and expeditiously dealt with. This is without prejudice to the Service Commission's overarching and continuing responsibility, notwithstanding any delegation. The Commission believes that more meaningful delegations can be effected legislatively and administratively and so recommends that Government pursue mechanisms to achieve the same.

Recommendations

8.31. The Commission recommends that:

8.31.1. The current system in which the appointment, removal and discipline of public officers is generally exercised on the advice of Service Commissions should be retained.

8.31.2. The ability of the Service Commissions to delegate its powers of appointment and discipline in respect of certain offices should be retained.

Matters relating to Certain Officers

8.32. The Commission prescribes a special regime relating to certain senior public officers, which provides for varying degrees of prime ministerial involvement:

8.32.1. In relation to the offices of Permanent Secretary and offices of related grade, chief and deputy chief technical officers and head and deputy head of departments:

8.32.1.1. Appointments to such posts are to be done on the advice of the relevant Service Commission, after consultation with the Prime Minister, and

8.32.1.2. Transfers between these offices are to be done on the advice of the Prime Minister;

8.32.2. In relation to Ambassadors, High Commissioners and other officers serving as Barbados' principal representative in another country or to an international organization, the Prime Minister advises on appointments to and removal from these offices; and

8.32.3. In relation to offices in the Foreign Service (other than the principal representatives mentioned above) and other offices requiring the holder to reside outside of Barbados, the Prime Minister advises on transfers between these offices.

Permanent Secretaries and Officers of Related Grade

8.33. In relation to the category of senior public officers mentioned in paragraph 8.32.1, the offices of chief and deputy chief technical officers and heads and deputy heads of department were added in 1974. The Forde Commission recommended the removal of those offices from that special provision, and similar representations were also made to the Commission, for the reason that the provision tended to politicise the Service.

8.34. The Commission was not satisfied that in the fifty years since the 1974 amendments, the inclusion of these offices have, in an appreciable sense, led to a politicization of Public Service leadership. The offices included under section 99, and set out in paragraph 8.32.1, are all leadership positions playing a critical role in the implementation of Government policy, the creation of which is the principal responsibility of the Cabinet (chaired by the Prime Minister). The Prime Minister, as head of the government, has a legitimate interest in the holders of these critical offices.

8.35. It should be noted that, in relation to appointments to these offices, the Prime Minister need only be consulted (which is not binding on the Service Commission). The Commission considers it to be proper for the Prime Minister to have the power to transfer these officers to offices of related grade, as a part of the Prime Minister's prerogative to effectively arrange the business of government.

8.36. The Commission did agree with the recommendation of the Forde Commission that the definition of "Permanent Secretary" removed in 1974 should be re-inserted, as modified by the Forde Commission which would provide that

> "permanent secretary" means the public officer (whether or not styled "permanent secretary") who, subject to the general direction and control of a Minister, supervises any department of the Government, provided that
>
> a. two or more departments may be placed under the supervision of one Permanent Secretary; and

b. two or more Permanent Secretaries may be appointed to supervise any department of government for which a Minister has been assigned responsibility.

Offices in the Foreign Service

8.37. In relation to the offices listed at paragraph 8.323.2, the Commission was satisfied that the present arrangements set out in section 100 should be retained, except that the office of Consul-General should also be included.

8.38. Finally, in relation to the offices listed at paragraph 8.32.3, the Commission did not agree that any change was required. The representation of Barbados abroad is a matter which can implicate the international relations of Barbados. The Government, and the Prime Minister as its head, has a legitimate interest in such matters and the exercise of the Prime Minister's power in relation to transfers in those offices is acceptable.

Recommendation

8.39. The Commission recommends that the current mechanism for the appointment of certain public officers, being officers holding the most senior offices in the Service as well as persons holding office as senior diplomats abroad, should be retained.

PUBLIC SERVICE APPEALS

8.40. Presently, public servants dissatisfied with an adverse decision made by a Service Commission, in relation to them, concerning removal or the imposition of a disciplinary penalty, may appeal such decisions to the Privy Council. The Privy Council would consider the appeal and advise the President on the action to be taken.

8.41. The information available to the Commission suggests that very few appeals are made to the Privy Council. Representations were made to the Commission that the appeal process to the Privy Council was viewed by some as opaque, and there was particular concern about the lack of clear rules, for example surrounding the right to be represented.

8.42. In 2007, the Constitution was amended to provide for the establishment of a Public Service Appeal Board, which had been recommended by the Forde Commission. The Appeal Board would not have replaced the Privy Council's appellate function, but would be an alternative means of redress, without prejudice to the public officer's right to appeal to the Privy Council. However, to date, that Appeal Board has not been operationalised.

8.43. The Commission regards this situation as unsatisfactory. The Service Commissions no doubt strive to render fair and just decisions. Nevertheless, it is critical that public officers have a means to attain adequate redress where they feel aggrieved.

8.44. The Commission is not convinced that the proposed Presidential Advisory Council should retain the public service appellate function of the Privy Council. It would be preferable for public service appeals to be adjudicated by a permanent body dedicated to the hearing of those appeals, for which rules of procedure may be prescribed to ensure that the rights of public officers are adequately respected.

8.45. As a result, the Commission recommends that the Public Service Appeal Board be urgently operationalised.

8.46. Additionally, the Commission believes that the membership of the Board should be increased to a minimum of six (6) persons (from the present three) in order to enable more than one panel to sit and hear appeals concurrently. This recommendation seeks to prevent over-burdening the Board (if it only has sufficient numbers for one panel) which would necessarily slow down the speed with which decisions could be rendered.

8.47. Thus, the Commission recommends that the Board consist of:

8.47.1. A Chairperson, who shall have served as a judge in Barbados or any part of the Commonwealth;

8.47.2. A Deputy Chairperson, who shall be an attorney-at-law of not less than ten (10) years' call; and

8.47.3. Not less than four (4) other members, at least two (2) of whom shall be retired public officers.

8.48. Mindful of the practice with the Employment Rights Tribunal, the Commission also recommends that at least two (2) of the members mentioned in paragraph 8.47.3 should be appointed after consultation with interests representing labour.

8.49. Generally, the Commission proposes that the members of the Board be appointed by the President on the advice of the Constitutional Offices Commission.

Recommendations

8.50. The Commission recommends that:

8.50.1. Appeals to the Privy Council (or its successor) in relation to public service disciplinary matters should be discontinued.

8.50.2. The Public Service Appeal Board should be urgently operationalised as the forum for the hearing of appeals from recommendations of the Service Commissions.

8.50.3. In relation to the Public Service Appeal Board, the membership of the Board be increased to enable more than one panel to hear appeal concurrently.

8.50.4. The other existing provisions relating to the Public Service Appeal Board should be retained, provided that its members should be appointed on the advice of the Constitutional Offices Commission.

OTHER MATTERS

8.51. Beyond the matters addressed above, the Commission was satisfied that the other provisions of the Constitution relating to the public service were satisfactory at this time and ought to be retained.

8.52. The Commission also considered submissions made to it that the Constitution should set out values and principles for the Public Service. At present, the Public Service Act, Cap.29 prescribes some principles and values. The Commission felt that it was fitting that some of these should be set out in the new constitution to reflect the importance of the role of the public service in national development, as well as to define the expectations of public service. Thus, the Commission proposes that the new constitution recognize the values and principles of public service as set out in paragraph 8.58.2.

8.53. It is proposed that the values and principles to be set out apply not only to public officers in the sense of employees of Ministries and Department, but also to public employees more broadly, being persons employed by statutory corporations and government-controlled entities.

Recommendations

8.54. The Commission recommends that:

8.54.1. The other provisions of the current constitution relating to the public service, in particular concerning pensions, should be retained.

8.54.2. The new constitution should set out the values and principles of the public service, reflecting a Service that:

8.54.2.1. maintains the high standards of professionalism, ethics, impartiality and integrity;

8.54.2.2. ensures transparent, efficient, economic and effective use of public resources;

8.54.2.3. is committed to appointment and promotion on the basis of merit and impartiality;

8.54.2.4. provides frank, honest, impartial, comprehensive, accurate and timely advice to the Government;

8.54.2.5. faithfully and earnestly implements the policies and programmes of the Government;

8.54.2.6. provides and delivers services fairly, effectively, impartially, responsively and courteously to the public;

8.58.2.7. provides a workplace that promotes the fair treatment of its officers and establishes relations that value communication, consultation and co-operation with officers on matters affecting their workplace;

8.54.2.8. establishes conditions conducive to the good health, welfare and safety of its officers while at work;

8.54.2.9. is a development-oriented and career-based service characterised by good human-resource management practices to maximise employee potential;

8.54.2.10. adheres to the Constitution and other laws of Barbados and upholds the rule of law; and

8.54.2.11. promotes accountability for public administration.

Chapter 9

Independent Regulatory And Oversight Institutions

Constitutional Reform Commission

INTRODUCTION

9.1. Constitutions generally provide for several public bodies and officers that are politically neutral and independent from the executive, legislative and judicial branches of government. These institutions and officers are sometimes referred to as independent regulatory and oversight institutions. They serve a common purpose of safeguarding the integrity, quality and resilience of democratic governance, either by pursuing state accountability or regulating some area of activity that is essential for the maintenance of democracy.

9.2. The Constitution presently establishes a few such institutions, notably the Auditor-General, who is charged with auditing public accounts with a view to ensuring the observance of financial rules and the proper use of the public resources. Provision is also made for the Electoral and Boundaries Commission, which is responsible for the conduct of general elections, which is clearly a function which must be executed with the highest degree of impartiality and propriety.

9.3. A few of these institutions are also established by statute, such as the Ombudsman and the Integrity Commission.

9.4. Finally, the Commission also recommends the creation of a Human Rights Commission, discussion of which may be found in Chapter 3 and further below.

9.5. For the purposes of this Chapter, the five institutions referred to in paragraphs 9.2 to 9.4 will be referred to collectively as "the Institutions". There are other institutions established under the Constitution which serve an important role in preserving constitutional democracy and enjoy independence from other authorities, such as the Service Commissions and the Director of Public Prosecutions. These other institutions are addressed in other chapters of this report.

9.6. Because of the role and function of these Institutions, their independence from the rest of government is essential to their ability to faithfully perform their weighty responsibilities. Moreover, their effectiveness can be impaired by a lack of resources, a complaint often made in relation to the Offices of the Auditor-General and the Ombudsman. This is especially acute for a small nation like Barbados where there is an especially scarce set of available public resources to sustain a large number of institutions. This is an important factor which must be considered and is part of the reason why the Commission has been measured

PROTECTING THE INDEPENDENCE OF THESE INSTITUTIONS

9.7. The central recommendation of the Commission in respect of the institutions relates to the creation of a unified framework to protect their independence and autonomy and promote their effectiveness. This can be achieved by giving the institutions greater control over staffing and providing further insulation from central government, while also ensuring that these institutions are accountable to Parliament for the execution of their functions.

Independence from Central Government

9.8. The Constitution presently provides for a few institutions to be free from the "direction or control of any other person or authority" in the execution of their functions, for example, the Electoral and Boundaries Commission, the Director of Public Prosecutions and the Auditor-General. This provision seeks to insulate these institutions from being given directions from other authorities in government, which would be inimical to their ability to perform their functions. Naturally, section 117(10) of the Constitution makes clear that this does not inhibit the ability of the courts to inquire into whether these institutions have performed their functions lawfully.

9.9. The Commission proposes that this formulation be adopted for use in relation to all five institutions covered in this Chapter.

9.10. Additionally, section 72(1) of the Constitution provides that the President, on the advice of the Prime Minister, shall assign responsibility for any business of the government, including the administration of any department of Government, to the Prime Minister and other Ministers.

9.11. The most recent assignment of responsibility for the business of government was made by the President with effect from January 8, 2024 and published by Government Notice in the Official Gazette dated February 7, 2024. Therein, responsibility for the Integrity Commission and the Electoral and Boundaries Commission is assigned to the Prime Minister as the Minister responsible for the Cabinet Office, while the Prime Minister has also been assigned responsibility for the Ombudsman as the Minister responsible for the Prime Minister's Office. These assignments are typical and have historically been the same. Previously, responsibility for the Audit Department was assigned to the Minister of Finance, but in recent years, no Minister has been assigned responsibility for the Office of the Auditor General.

9.12. The Commission prefers this new approach applied to the Office of the Auditor General, and therefore recommends that, in line with the independence of these institutions, no Minister should be assigned responsibility for their business or administration.

9.13. The Commission also recommends that Government consider conferring, by legislation, indemnification against liability for the officers of these institutions for acts and omissions done in good faith and connected with their official duties.

9.14. Finally, the Commission recommends that the salaries and allowances of the staff of the Institutions, and their other expenditures, be a direct charge on the Consolidated Fund.

Staffing of the Institutions

9.15. The staff of the Electoral and Boundaries Commission and the Offices of the Auditor General and Ombudsman are public officers, over whom the powers of appointment, discipline and removal are exercised in accordance with the advice of the relevant Service Commission (in most cases, the Administrative, General and Professional Service Commission). The lack of control of these institutions over their staffing, and the reliance on central government for the performance of the human resource functions in relation thereto, can be an impediment to effectiveness, and also frustrate the autonomy of these institutions.

9.16. For example, the Commission was informed that as of May 2023, there were thirty (30) vacant posts in the Office of the Auditor General. Further, under the current system, it takes an average of two (2) years to fill a vacancy in the office once approvals have been obtained and funds budgeted. This obviously has an impact on the capabilities of the Office and its ability to effectively carry out its broad mandate, which includes financial and service auditing for Government and statutory entities.

9.17. Therefore, the Commission proposes that the Institutions be given greater control over their staffing, outside of central government. It is recommended that the following be done:

9.17.1. Parliament should prescribe the offices constituting these institutions, and the salaries and allowances payable to the holders of these offices.

9.17.2. The principal body of each Institution should be charged with making appointments to the offices prescribed for their institution. To ensure some regulation of the appointments, the Institutions would make these appointments after consultation with the relevant Service Commission.

9.17.3. Each Institution would be responsible for the discipline of its staff.

9.18. The proposed structure above seeks to strike a balance between the need for the Institutions to have greater control and autonomy, while also protecting against the creation of unaccountable institutions able to create offices and hire staff without any guardrails.

9.19. The Commission also recommends that the Public Service Appeal Board have the jurisdiction to hear appeals from aggrieved employees of these Institutions against disciplinary measures imposed on them.

Accountability of the Institutions

9.20. The rule of law requires that these Institutions be subject to effective oversight and accountability, considering that they serve a critical function in protecting constitutional democracy.

9.21. Therefore, the Commission recommends that the accounts of the Institutions, and their service delivery, should continue to be audited by the Office of the Auditor General. Naturally, this would not apply to the Audit Office itself. Instead, the present system should be continued in which an independent auditor audits that Office, as required under section 7(1)(f) of the Public Accounts Committee Act, Cap.10A.

9.22. Additionally, the institutions should be required to report to Parliament annually on their administration and operations. Such reports would be separate from the subject matter reports which some of the institutions are already required to file, for example, the Audit Report of the Auditor General which principally discloses the result of the Office's examination of the accounts of Government, or the Ombudsman's Report which provides information on the complaints made to that Office and the investigations undertaken and resolved.

9.23. The Commission also recommends that Parliament consider the establishment of a standing joint select committee to receive and examine these annual reports and generally to oversee the operation and administration of these institutions.

9.24. The function of this reporting is to provide a role for Parliament in the oversight of these institutions. Consequently, the Commission envisages the creation of a more effective regime of interlocking accountability.

Recommendations

9.25. The Commission recommends that the new constitution should provide that, in relation to the above-mentioned institutions –

9.25.1. They shall not be subject to the direction or control of any other person or authority, and that no Minister shall be assigned responsibility for their business or administration;

9.25.2. They be provided with adequate facilities and resources for the efficient discharge of their functions and responsibilities;

9.25.3. Parliament shall prescribe the offices constituting these institutions and the salaries and allowances of the holders of those offices;

9.25.4. The principal body of each institution shall be charged with making appointments to the offices prescribed for their institution from among a list submitted by the relevant Service Commission, and each institution shall be responsible for the discipline of its officers;

9.25.5. The Public Service Appeal Board should have the jurisdiction to hear appeals against disciplinary penalties imposed upon employees of these institutions;

9.25.6. The salaries and allowances of the staff, and the other expenses, should be charged on the Consolidated Fund;

9.25.7. Other than the office of the Auditor-General, the accounts of the institutions be audited and reported on annually by the Auditor-General; and

9.25.8. They shall be required to provide an annual report to Parliament on the administration and operations of the institutions, and those reports shall be examined by a joint select committee of Parliament appointed for that purpose.

THE HUMAN RIGHTS COMMISSION

9.26. The substantive matters relating to the proposed establishment of the Human Rights Commission may be found in Chapter 3. In brief, the Commission understands that its proposed significant expansion of the protection of fundamental rights and freedoms in the new constitution must be paired with the creation of a vibrant culture of human rights. In addition, the Commission also felt it important to provide another means of dispute resolution for persons who feel their rights have been violated, without prejudice to the High Court's jurisdiction in relation to the enforcement of the Bill of Rights.

9.27. The value of the Human Rights Commission also lies in its ability to champion the cause of human rights more broadly, and it ability to investigate systemic human rights issues, rather than individual issues alone.

9.28. Finally, the point must be made that while the Ombudsman and the Human Rights Commission would have a shared responsibility for defending the interests of the public, their roles are distinct. The Ombudsman principally is charged with the investigation of administrative injustice, while the Human Rights Commission would be charged with responsibility for, among other things, investigating alleged human rights abuses. In individual cases, there may be overlap in that a case of administrative injustice may also implicate a human rights concern, but in such matters, the expected maturity of the officers of both institutions should be capable to resolve any overlapping jurisdiction.

Recommendations

9.29. The Commission recommends that:

9.29.1. A Human Rights Commission should be established for Barbados.

9.29.2. The Human Rights Commission should be charged, among other things, with the responsibility to:

9.29.2.1. promote respect for human rights and develop a culture of human rights;

9.29.2.2. monitor, investigate and report on the observance of human rights in all spheres of life;

9.29.2.3. receive and investigate complaints of alleged human rights abuses and take steps to secure redress; and

9.29.2.4. act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.

THE ELECTORAL AND BOUNDARIES COMMISSION

9.30. The importance of the Electoral and Boundaries Commission (EBC) cannot be overstated, nor can the need to preserve and further strengthen its independence and autonomy. To that end, the Commission proposes changes to the method of appointment of the Chairman and Deputy Chairman of the EBC and to the procedure relating to the revision of constituency boundaries.

Membership of the Electoral and Boundaries Commission

9.31. The Electoral and Boundaries Commission is presently constituted in a bipartisan fashion with the Chairman and two (2) other members being appointed on the advice of the Prime Minister (after consultation with the Leader of the Opposition), and the Deputy Chairman and one (1) other member being appointed on the advice of the Leader of the Opposition (after consultation with the Prime Minister).

9.32. The bipartisan spirit which characterises the composition of the EBC is commendable. Given this Commission's recommendation for the creation of a Constitutional Offices Commission, the Commission considers it appropriate that the Chairman and Deputy Chairman of the EBC should be appointed on the advice of this body, the functions and composition of which are set out in Chapter 6. This is intended to further secure the independence of the EBC by promoting genuine cross-party consultation in the process of appointing its Chair and Deputy.

9.33. The Commission proposes that the Prime Minister continue to advise on the appointment of two other members, and the Leader of the Opposition on one other member.

9.34. Finally, the Commission considered the five-year term of members to be acceptable and consequently recommends its retention.

Recommendations

9.35. The Commission recommends that:

9.35.1. The Electoral and Boundaries Commission should consist of:

9.35.1.1. The Chairman and Deputy Chairman, appointed on the advice of the Constitutional Offices Commission;

9.35.1.2. Two (2) members appointed on the advice of the Prime Minister after consultation with the Leader of the Opposition; and

9.35.1.3. One (1) member appointed on the advice of the Leader of the Opposition after consultation with the Prime Minister.

9.35.2. The renewable five-year term of the members of the Electoral and Boundaries Commission should be retained.

Review of Constituency Boundaries

9.36. The fair delineation of constituency boundaries is of critical importance to a free and fair election process. The boundaries must be fixed according to objective criteria, taking account of natural boundaries, maintaining the balance of the population and other pertinent considerations. Because of the importance of the fair delineation of the boundaries and the self-interest of the political parties in the matter, the process must be conducted by an impartial institution such as the EBC.

9.37. Presently, section 41D of the Constitution provides that the EBC is required to prepare constituency boundary reports at five-year intervals. These reports are the product of the work of the EBC in investigating the existing constituency boundaries, and either recommending alterations to the existing boundaries in accordance with the rules set out in the Third Schedule to the Constitution, or recommending that no alterations are needed. This report is sent to the Minister responsible for electoral affairs, which is the Prime Minister.

9.38. Where the EBC recommends alterations to the boundaries:

9.38.1. The Minister must lay before Parliament a draft of an Electoral and Boundaries Commission (Review of Boundaries) Order which would give effect to the EBC's recommendations; and

9.38.2. Each House must approve the draft Order for it to be formally made, but if either House rejects the Order, then the Prime Minister may unilaterally amend the draft Order, thereby creating new alterations to the boundaries, and lay that revised draft Order before both Houses.

9.39. The Commission was not convinced that the role and involvement of the Minister responsible for electoral affairs was necessary in this process.

9.40. Firstly, the Commission felt that the EBC should send its boundaries report straight to Parliament, rather than via the Minister. This is not novel and is done for other reports of similarly independent institutions, such as the Auditor-General's report.

9.41. Secondly, the Commission did not agree that the Minister should be able to unilaterally amend the draft Order, and, with parliamentary approval, set boundaries on his own. This was particularly so where the Minister is the Prime Minister and therefore commands a majority in Parliament.

9.42. Indeed, the first report submitted by the EBC was in 1989. This report recommended alterations to the boundaries which would have resulted in an increase in the number of constituencies from 27 to 28. This report was supported by all members of the EBC, which of course included persons appointed by the leaders of both political parties (in their roles as Prime Minister and Leader of the Opposition). The draft Order reflecting the EBC's recommendation was laid but was rejected by the House of Assembly. The Minister then responsible for electoral affairs, in accordance with the Constitution, thereupon revised the draft Order setting different boundaries. The boundaries were ultimately not settled until some 10 months prior to the date when the general election was ultimately held in January 1991.

9.43. There is no suggestion whatever that the boundary changes ahead of the 1991 election, or the circumstances surrounding those changes, in any way affected the integrity of that election or of this country's democratic system.

9.44. But as a general point of principle, the Commission considers that it is unsatisfactory to empower the Minister for electoral affairs to essentially unilaterally rewrite the boundaries, without regard to the careful and considered recommendations of the EBC which would have taken into account the variety of factors, which by law and good reason, the EBC is required to consider. The Minister responsible for electoral affairs – the Prime Minister – has one of the greatest interests in the ultimate delimitation of the boundaries. The Commission agrees with the ancient maxim that a man should not be a judge in his own cause.

9.45. For these reasons, the Commission recommends that the power of the Minister to revise the order unilaterally be discontinued and instead, where either House rejects the Order, the EBC must revise the Order taking account of the sentiment of the House which rejected the Order, and the revised Order would then be laid again in both Houses. This approach ensures that Parliament still has an oversight role, and is able to reject the recommendations of the EBC, but it also protects the integrity of the process by ensuring that the EBC, through its professional process, retains the power to amend the Order.

Recommendations

9.46. The Commission recommends that:

9.46.1. The constituency boundaries reports, which the Electoral and Boundaries Commission are constitutionally mandated to produce at certain intervals, should be sent directly to Parliament, rather than to the Minister responsible for electoral matters.

9.46.2. A draft of the order for the revision of constituency boundaries should be prepared, and if necessary, amended by the Electoral and Boundaries Commission, rather than by the Minister responsible for electoral matters.

THE OFFICE OF THE AUDITOR-GENERAL

9.47. The matters relating to the specific functions of the Auditor-General in respect of auditing the accounts of government are addressed in Chapter 10.

9.48. The Commission considers the provisions relating to the appointment, removal and terms and conditions of service of the Auditor-General to be adequate and consequently recommends their retention.

9.49. Finally, it was represented to the Commission that the full and effective functioning of the office of the Auditor General could be impaired by the possibility of civil proceedings against the office, which would impede investigations. The Commission, of course, felt that the rule of law required that everyone, including the Office of the Auditor-General, be subject to the law. However, the Commission saw value in there being some indemnification against liability for the Auditor-General and his officers, in relation to official acts done in good faith. It is hoped that this would strike a balance between the rights of persons who feel aggrieved by the office of the Auditor-General and the need for the office to effectively and fearlessly carry out its functions.

9.50. However, the Commission does not believe this matter to require constitutional change and so recommends that Parliament consider conferring, by statute, indemnity along the lines set out above.

Recommendations

9.51. The Commission recommends that:

9.51.1. The constitutional provisions relating to the appointment, removal and terms of service of the Auditor General should be retained.

9.51.2. Government may consider conferring, by legislation, indemnity against liability for the Auditor General and his officers in relation to acts done in good faith in connection with the office's constitutional and legislative functions.

9.51.3. Parliament should be required to debate the annual report of the Auditor General within three (3) months of it being laid in Parliament.

9.51.4. The Public Accounts Committee should be elevated to a committee of Parliament established by the Constitution, rather than by ordinary Act of Parliament.

THE INTEGRITY COMMISSION

9.52. Parliament has, by the Integrity in Public Life Act, 2023-20, created a regime for promoting integrity among persons in public life and a framework for the prevention, detection, investigation and prosecution of acts of corruption. Additionally, the Act establishes the Integrity Commission for the purpose of administering this integrity regime.

9.53. The Integrity Commission is an institution of significance in safeguarding our democracy against the invidious effects of corruption and abuse of public office. For this reason, this Commission determined that it ought to be a commission established by the Constitution in order to confer it with the constitutional protections referred to earlier in this chapter.

9.54. The Integrity in Public Life Act already makes adequate and far-reaching provision for the Integrity Commission and the regulatory regime and so it is not proposed to include that level of detail in the Constitution. It is hoped that this Act will be shortly proclaimed.

Recommendations

9.55. The Commission recommends that:

9.55.1. The Integrity Commission should be established by the Constitution to secure its existence against easy repeal by a later Parliament.

9.55.2. Parliament should be required to enact legislation to further provide for the Integrity Commission (which has already been done by the provisions of the Integrity in Public Life Act, 2023-20).

THE OMBUDSMAN

9.56. Similar to the Integrity Commission, the Ombudsman is an office established by statute, under the Ombudsman Act, Cap.8A. The Ombudsman investigates instances of alleged administrative injustice and maladministration and is therefore a method of recourse for persons aggrieved by such instances.

9.57. The Commission proposes that this office be elevated to constitutional status, in recognition of its important function in safeguarding against unfair practices.

9.58. Additionally, the Commission recommends that in place of the existing mechanism of appointment, the Ombudsman be appointed on the advice of the Constitutional Offices Commission, and that the age of retirement be extended to sixty-seven (67) years old to bring it in line with the Director of Public Prosecutions and the Auditor General.

Recommendations

9.59. The Commission recommends that:

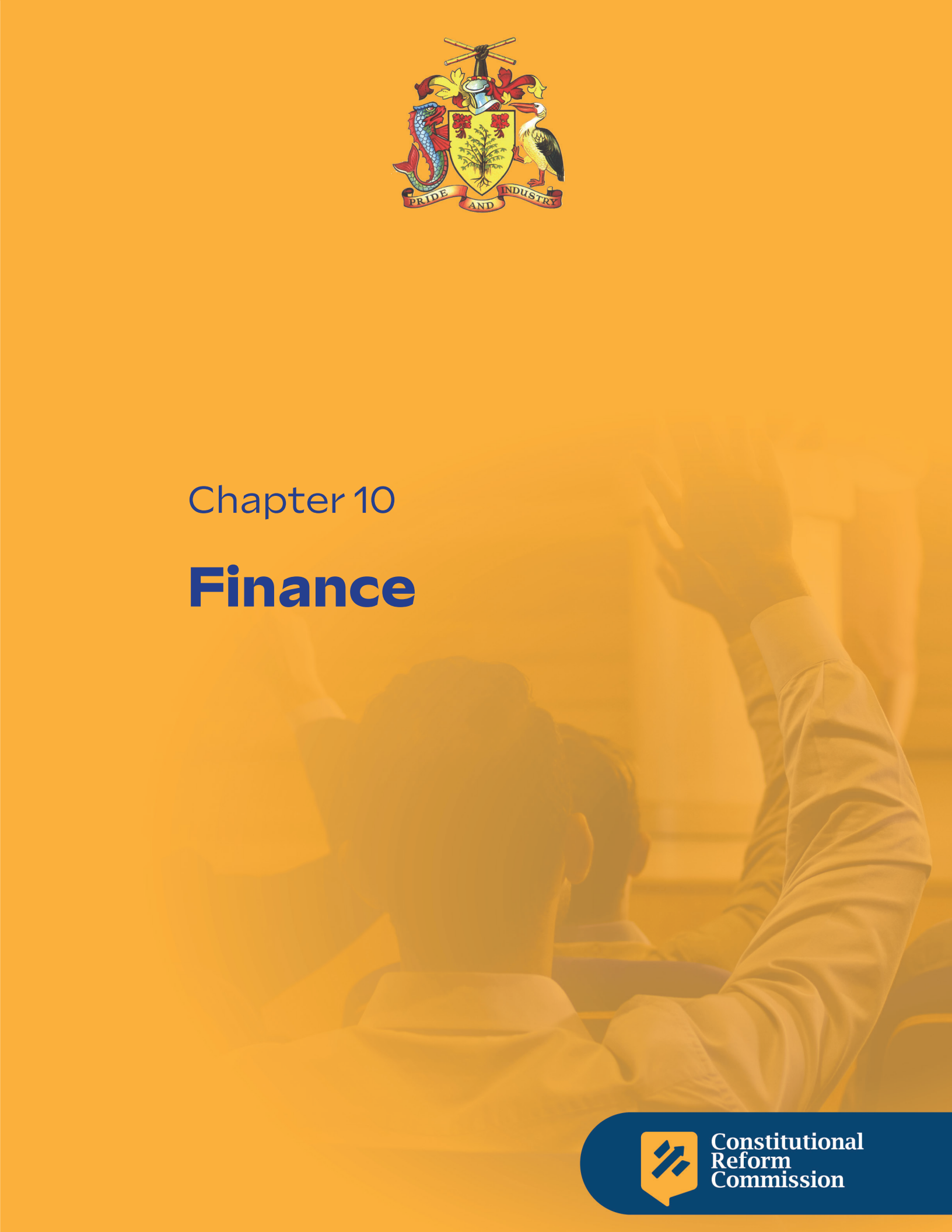
9.59.1. Constitutional provision should be made for the establishment of the office of the Ombudsman.

9.59.2. The Ombudsman should be appointed on the advice of the Constitutional Offices Commission and should serve until retirement at sixty-seven (67).

9.59.3. *Parliament should be required to enact legislation to further provide for the Integrity Commission (which has already been done by the provisions of the Ombudsman Act, Cap.8A).*

Chapter 10

Finance



Constitutional Reform Commission

INTRODUCTION

10.1. The rules and framework governing government finances are captured under Chapter IX of the Constitution of Barbados which provides for the consolidated fund, estimates, authorization of expenditure, meeting expenditure from the Consolidated Fund, public debt, remuneration of the President and certain officers, remuneration of public officers and soldiers, and the establishment of the office and the functions of the Auditor-General.

10.2. The Commission considered the current provisions together with submissions received from the public. These submissions primarily addressed the need to strengthen office of the Auditor-General and the financial accountability of the Government.

THE CONSOLIDATED FUND, ESTIMATES AND AUTHORISATION OF EXPENDITURE

10.3. The Commission recommends that the current provisions relating to the Consolidated Fund, the Estimates and the authorisation of government expenditure (currently sections 107-110 of the Constitution) be retained

PUBLIC DEBT

10.4. The management of public expenditure was identified to the Commission as an area of concern for good governance of the public purse. In particular, there were concerns that the public debt could be expanded for short term benefit, to the detriment of future generations.

10.5. The Commission considered restrictions being placed on Government related to balanced budgets, deficit limits and limits of borrowing. However, after consideration, it was opposed to changes that would serve to limit the government's ability to assume new debt, as the freedom to raise finance was a vital element in national development. The Commission was also of the view that subsidiary legislation contained adequate approval requirements which would serve as a check on unnecessary borrowing on the part of any administration. The Commission therefore did not support any changes to Section 111 of the Constitution.

Recommendations

10.6. The Commission recommends that:

10.6.1. The current constitutional provisions relating to the public debt be retained.

10.6.2. No constitutional provision is needed to restrict the borrowing capacity of a Government.

REMUNERATION OF PERSONS IN PUBLIC SERVICE

10.7. Section 112 of the current Constitution protects the salaries and emoluments of certain officeholders against diminution as a means of securing their independence. These officeholders include the President, Judges, the Director of Public Prosecutions and the members of the Service Commissions. The Commission recommends the retention of these provisions.

10.8. The Commission also recommends the retention of the provisions securing the salaries of public officers and soldiers from being altered to their disadvantage. This measure was enacted some years after the cut of public servants' pay in the 1990s and the Commission sees no reason to reverse this change.

Recommendation

10.9. The Commission recommends that the salaries and emoluments of certain officeholders, and of public officers and soldiers should continue to be constitutionally protected.

THE AUDITOR-GENERAL

10.10. The matters related to the appointment, tenure and independence of the Auditor-General have already been addressed in Chapter 9.

10.11. Regarding the functioning of the Office of the Auditor-General, the Commission received several submissions. In general, there was significant appreciation of the work conducted by that office, but there were concerns expressed over the lack of responsiveness from the Government on the recommendations made by the Auditor-General. There were also concerns expressed over the provision of resources for the office and ability to manage those resources independent of Government procedures.

10.12. The Commission also noted that concerns had been raised on the lack of meetings of the Public Accounts Committee (PAC), to whom the Auditor-General was required to deliver an annual report. There was wide agreement that the inability of the PAC to meet and discuss matters reduced the effectiveness of the Auditor-General. In this regard, it was noted that the PAC can be frustrated from performing its duties due to a lack of a quorum. It was suggested that a government could easily prevent matters from being discussed through its members not attending PAC meetings. Such a situation would, of course, be detrimental to public accountability and transparency of Government activities. Nonetheless, the Commission considered that the appropriate reporting for the Auditor-General continued to be to Parliament, though the PAC.

10.13. The Commission was also cognisant of the impact of under-resourcing on the Office of the Auditor-General but did not believe the amount could be specified in the Constitution and would require resource allocation by the Government.

10.14. The Commission suggests that there be a requirement that the report of the Auditor-General be presented to Parliament by the PAC within a period of three (3) months. The Commission further recommends that, given the nature of the work of the Auditor General, the office should be indemnified against liability once acting in good faith.

Recommendations

10.15. The Commission recommends that:

10.15.1. Government consider conferring, by legislation, indemnity against liability for the Auditor General and his officers in relation to acts done in good faith in connection with the office's constitutional and legislative functions.

10.15.2. Parliament should be required to debate the annual report of the Auditor General within three (3) months of it being laid in Parliament.

PUBLIC ACCOUNTS COMMITTEE

10.16. As aforementioned, the Public Accounts Committee plays an important role in completing the circle of financial accountability, due to its responsibility to consider the Auditor-General's annual report and investigate matters arising therefrom.

10.17. Therefore, the Commission recommends that the Public Accounts Committee be recognised in the new constitution, with further provision for its composition and operations to be made by Parliament.

Recommendation

10.18. The Commission recommends that the Public Accounts Committee be elevated to a committee of Parliament established by the Constitution, rather than by ordinary Act of Parliament, to protect against its disbandment.

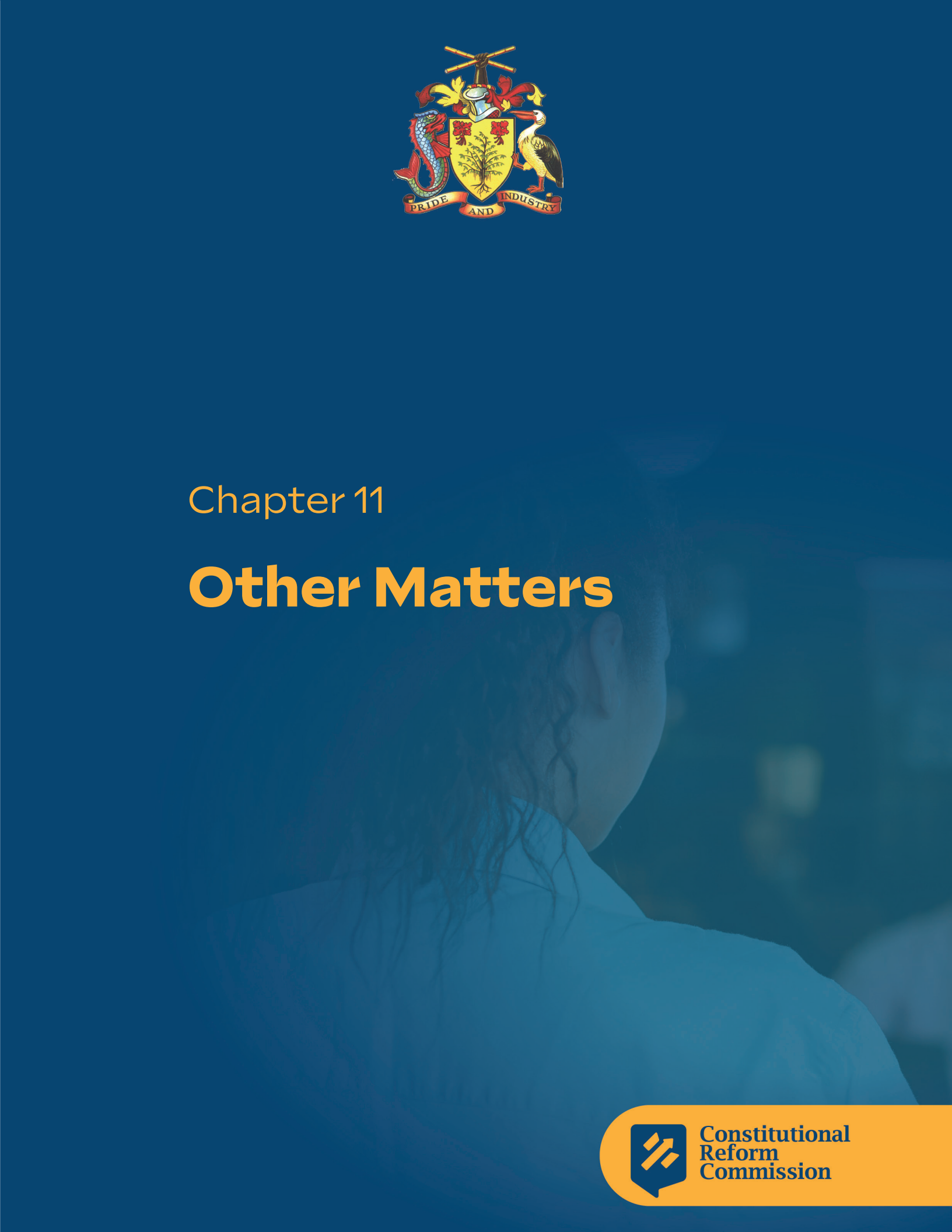
OTHER MATTERS

10.19. There were several submissions that addressed the issue of good governance which the Commission deliberated on but did not consider needed to be included in the Constitution.

10.20. One submission suggested that the adoption of the International Standard on Management (ISM) be included in the Constitution. The Commission acknowledged that ISM had its value but was not a constitutional matter and should be developed by the Government at an administrative level.

10.21. Another submission suggested the adoption of a constitutional provision for whistleblowing. However, the Commission noted that legislation, in the form of the Whistleblower Protection Act, 2021-29, already provided for such and did not believe it needed to be elevated to the Constitution. Similarly, the Commission noted that legislation, in the form of the Integrity in Public Life Act, provided for the declaration of assets of public officials and it was not necessary to include this in the Constitution, beyond the proposed provisions establishing the Integrity Commission.

10.22. A further submission suggested that the Constitution should establish the office and functions of Director of Internal Audit, with the same broad scope and authority as the Auditor-General. The Commission considers that the Public Finance Management Act, 2019-1, which created the Internal Audit Office, adequately covers the governance of that office, including oversight of the office by an Internal Audit Committee, which includes representatives from the Institute of Chartered Accountants of Barbados, trade unions and the private sector.



Chapter 11

Other Matters

Constitutional Reform Commission

INTRODUCTION

11.1. Over the course of its deliberations and arising out of the many submissions received, the Commission considered a great many matters of diverse nature, not all of which could be included in the foregoing chapters of this Report.

11.2. This chapter sets out the Commission's recommendations on the following sundry matters:

11.2.1. The supreme law clause;

11.2.2. Local government;

11.2.3. Defence and security;

11.2.4. The mechanism for altering the Constitution;

11.2.5. The enforcement of the Constitution;

11.2.6. Keeping the new constitution under periodic review;

11.2.7. People's initiatives; and

11.2.8. The inclusion of the Social Partnership in the Constitution.

SUPREME LAW CLAUSE

11.3. In Barbados, the fundamental principle which organises our legal system is that the Constitution is the supreme law. This principle limits the power of Parliament and requires that all laws passed be in conformity with the Constitution, and relatedly, it is the source of the power of the judiciary to strike down laws which are inconsistent therewith. This principle is given express recognition in section 2 of this Constitution, known as the supreme law clause.

Recommendation

11.4. The Commission recommends that the supreme law clause be retained.

LOCAL GOVERNMENT

11.5. The Commission took notice of the report of the Thorne Commission on Local Governance which recommended to Government the creation of a system of local government for Barbados. Government has not yet announced its intention with regard to the implementation of these recommendations.

11.6. The Commission did not ultimately believe that the system of local government needed to be established or provided for by the Constitution. Most of the countries of the Commonwealth Caribbean have a system of local government, some with quite advanced systems. In these jurisdictions, local government is provided for, quite effectively, by legislation. Therefore, the Commission recommends that if Government desires to proceed to establish a system of local government, that it considers doing so by statute.

DEFENCE AND SECURITY

11.7. The defence of Barbados is the responsibility of the Barbados Defence Force, comprising the armed forces of Barbados. The Defence Force was not established until 1979 and consequently is not mentioned in the Constitution, the latter having been settled in 1966. However, the President is recognised as the "Head of the armed forces" in section 28.

11.8. While the Commission considered including the Defence Force in the new constitution, this was ultimately deemed unnecessary. Instead, the Commission recommends that provision be made in the new constitution setting out the central principles of the defence and security policy of the state. These principles are set out in the recommendation contained in paragraph 11.10.

11.9. Finally, representations were made to the Commission that the system of military justice required focused investigation to determine its fitness for purpose and relevance to the Barbados Defence Force. This was considering that the Force was predominantly deployed in operations other than war and in providing aid to the civil power, while traditional military justice often focuses upon matters related to war and interfaces with hostile foreign actors. Consequently, the Commission recommends that Government examine the establishment of a task force to consider and make recommendations for the reform of the system of military justice.

Recommendations

11.10. The Commission recommends that the new constitution contain provision requiring the defence and security policy of the State to be aimed at:

11.10.1. defending national independence;

11.10.2. preserving the country's sovereignty and integrity; and

11.10.3. guaranteeing the normal functioning of institutions and the security of citizens against any armed aggression

ALTERATION OF THE CONSTITUTION

11.11. Though the Constitution is the supreme law, it is not immutable. Experience of the constitution in action will reveal the need to alter certain parts or make new provision to better reflect changing circumstances. The Commission considered it important to balance this need for flexibility with the imperative of protecting the constitutional fabric, particularly the unwritten but fundamental constitutional principles, from degradation by ostensibly formal means.

11.12. These two considerations were top of mind as the Commission deliberated upon changes to the present alteration formula set out in the Constitution.

11.13. Currently, some parts of the Constitution require a two-thirds majority vote in each House of Parliament to be altered. These include the supreme law clause, the amendment formula itself, the chapters on citizenship, fundamental rights, the judiciary, finance and certain provisions relating to the President, Parliament and the executive. For all other provisions, a Bill to alter those provisions must be passed a majority of all the members in each House.

11.14. The two-thirds majority requirement is clearly aimed at ensuring that constitutional alterations cannot be enacted with the support of the Government alone. While it is possible – and indeed has frequently happened – that Government controls a supermajority of the seats in the House of Assembly, the composition of the Senate is such that constitutional alterations require support from Senators outside the Government bench.

11.15. It was urged upon the Commission that provision should be made for a referendum to be required to alter certain parts of the Constitution, in particular those relating to the fundamental elements of our governance structure. It was also proposed that any such referendum could be simply "advisory" and thus non-binding. This view was motivated by the perspective that the People, as the ultimate source of sovereign power, should have a more effective say in changes to the fundamental structure of the state.

11.16. The majority disagreed with this view. It was felt that the requirement for referenda often had a stultifying effect on constitutional change, which was observable in other jurisdictions with such requirements, including in the Commonwealth Caribbean. It is perhaps unsurprising that the only countries which have thus far become republics after Independence are those without any referendum requirement for key constitutional changes.

11.17. The majority was not persuaded that formally designating the referendum as "advisory" would necessarily alleviate these concerns. In the first instance, were a Bill for constitutional alteration submitted for such a referendum and a majority voted against its enactment, it would be quite courageous of a Government to nevertheless go ahead and pursue the alterations. Secondly, if Government were to go ahead with enactment of a constitutional amendment defeated at the "advisory referendum" it would raise serious questions about the legitimacy of the amendment. In these circumstances, the majority wondered whether, in fact, an ostensibly non-binding referendum could in these ways assume practical bindingness.

11.18. Moreover, the majority was not convinced as to the genuine utility of referenda as expressions of popular sentiment on a particular issue. It may well be the case, and the Commission is aware of such instances elsewhere, that a referendum campaign becomes infused with issues unrelated to the specific proposed amendment so that the ultimate result might reflect a perspective on a panoply of issues beyond and outside the narrow confines of the proposed amendment.

11.19. Instead, the majority was satisfied that in our representative democracy, the People's Parliament should continue to be vested with the power to alter the Constitution, in accordance with the provisions thereof and subject to any further developments in constitutional jurisprudence relating to restrictions on the power of alteration.

11.20. Consequently, the majority recommends that the provisions presently requiring a two-thirds majority in each House continue to so require that threshold, which would be:

11.20.1. The supreme law clause;

11.20.2. The chapter on fundamental rights;

11.20.3. The provisions establishing the office of the President and vesting the executive authority of Barbados in the President;

11.20.4. The provisions establishing Parliament, its two Houses, the qualifications and disqualifications of its members, the power of Parliament to make law and relating to dissolution and prorogation;

11.20.5. The provisions relating to the Director of Public Prosecutions;

11.20.6. The chapter on the judicature;

11.20.7 The chapter on the public service;

11.20.8. The chapter on finance; and

11.20.9. The provisions on the alteration of the Constitution.

11.21. In addition, given the recommendations of the Commission to make provision for new matters in the Constitution, it is also proposed that the following provisions be subject to the two-thirds majority threshold:

11.21.1. The provisions relating to the Presidential Advisory Council and the Constitutional Offices Commission;

11.21.2. The proposed chapter on the institutions not subject to direction or control; and

11.21.3. The proposed chapter on the enforcement of the Constitution.

11.22. The Deputy Chairman expresses a dissenting opinion from the recommendations of the majority, which may be found in Appendix A.

Recommendations

11.23. The Commission recommends that the current process for the alteration of the Constitution be retained, requiring that the more deeply entrenched parts of the Constitution be amended only by a two-thirds majority vote in each House, while all other provisions be amendable by a majority vote in each House.

ENFORCEMENT OF THE CONSTITUTION

11.24. As stated earlier in this Chapter, the Constitution is the supreme law. Its supremacy is protected by virtue of its enforceability. At present, the right of the Supreme Court to secure compliance with the provisions of the Constitution, in constitutional applications before it, is derived implicitly from that supremacy clause.

11.25. Section 24 of the Constitution presently sets out expressly that a person who alleges that his or her fundamental rights have been, are being or are likely to be breached can apply to the High Court for relief. Although this is the only express enforcement/redress provision, and it relates only to the Bill of Rights, there is no doubt that a person with sufficient standing can apply to the High Court in relation to an alleged breach of any part of the Constitution.

11.26. The Commission agrees with the Cox and Forde Commissions that this right in relation to the whole Constitution should be expressed in the constitutional text.

11.27. Additionally, the Commission believes that scope of the redress clause should be expanded to expressly recognise applications by persons acting on behalf of another person, or a group or class of persons, or an association acting on behalf of its members.

Recommendations

11.28. The Commission recommends that:

11.28.1. Provision be made in the new constitution for any person alleging that a provision of the Constitution is being, has been or is likely to be contravened to be able to apply to the High Court for redress.

11.28.2. Provision be made authorising the following to be able to make applications for constitutional redress:

11.28.2.1. a person acting in the person's own interest;

11.28.2.2. a person acting on behalf of another person who cannot act in that other person's own name;

11.28.2.3. a person acting as a member of, or in the interest of, a group or class of persons; and

11.28.2.4. an association acting in the interest of its members.

PERIODIC REVIEW OF THE CONSTITUTION

11.29. The Constitution is a living document. As the fundamental law of the State, setting out the rights of individuals and regulating the relations of power, it must always be relevant to the People whose lives it governs. This requires a periodic consideration of its provisions in light of new developments.

11.30. To this point, this task has been undertaken in a fairly ad hoc manner. As noted above, Parliament has altered the Constitution on 24 occasions since Independence, often with a view to giving effect to a particular reform, for example, the accession to the jurisdiction of the CCJ in the early 2000's. The 1974 amendments stand out as an example of a constitutional amendment, touching several unrelated matters, which arose as a result of the experience of the Constitution in action for the 8 years preceding.

11.31. Beyond these parliamentary efforts, the matter of examining the Constitution holistically has been undertaken by two Constitution Review Commissions, chaired by Sir Mencea Cox and Sir Henry Forde. The appointment of these Commissions resulted as an initiative of the government of the day. These Commissions produced reports of their recommendations, elements of which were later implemented.

11.32. This Commission, interestingly named the Constitutional Reform Commission (differently to its predecessors), has been appointed in the aftermath of Barbados' republican transition with the mandate to make recommendations for a new constitution that would meet the circumstances of a 21st century Barbados.

11.33. The Commission believes that both constitutional review and reform are sufficiently important that some structure should be given to the process. Therefore, the Commission recommends that Government explore an appropriate mechanism to provide for the holistic review of the Constitution every ten (10) years.

Recommendation

11.34. The Commission recommends that Government explore establishing an institutional mechanism to review the new constitution every ten (10) years.

PEOPLE'S INITIATIVES

11.35. Representations were made to the Commission that the Constitution should provide for further mechanisms to promote "direct democracy". These included:

11.35.1. The ability of a group of citizens, above a defined minimum number, to petition Parliament to take up consideration of a law proposed by the petitioners; and

11.35.2. The ability of a group of citizens, above a defined minimum number, acting by petition, to force a matter to be put to the electorate by way of referendum.

11.36. The Commission examined these and other proposals, and thought, in principle, that mechanisms to enhance public participation in governance are worthy of further consideration. The Commission did not feel that the proposals made in this regard required constitutional provision and would be better provided for by legislation. Accordingly, the Commission suggests that Government seriously consider these proposals, in tandem with the local government initiative, with a view to devolving greater power to the People themselves.

Recommendation

11.37. The Commission makes no recommendation concerning provision in the new constitution for the ability of a group of citizens acting together to petition Parliament to introduce a law. Government may explore doing this by statute.

THE SOCIAL PARTNERSHIP

11.38. The Commission received a stakeholder submission recommending that the Social Partnership be constitutionalised. The Commission has no doubt that the Social Partnership stands as one of the most effective organisations in national life, as well as being an excellent representation of the collegial spirit of Barbadians, which enables the state, labour and capital to join together for the national good.

11.39. It is the Commission's understanding that the Social Partnership has always operated on the basis of Protocol Agreements governing its operation, which are renewed at intervals. These Protocols are always the product of negotiation between the three interests represented in the Partnership and reflect the still evolving nature of its existence.

11.40. The Commission considers that this consensual arrangement should continue to characterise the Social Partnership, which would inevitably be lost if provision were made for it in the Constitution, which by its nature is supposed to be seldomly amended. The operation of the Social Partnership relies upon a mutual sense of respect and commitment to fair dealing on the part of all parties. The Commission hopes that such a spirit will long endure naturally in Barbados, without the need for the intervention of the law.

Chapter 12

Summary of Recommendations

Constitutional Reform Commission

12.1. PREAMBLE TO THE CONSTITUTION

The Commission recommends that the Preamble to the Constitution of Barbados be replaced with the preamble proposed at paragraph 2.8 of this Report.

12.2. SUPREME LAW CLAUSE

The Commission recommends:

12.2.1. That the supreme law clause be retained.

12.2.2. That a general enforcement clause be included in the Constitution expressly permitting a person to apply to the High Court to seek redress for alleged contraventions of any provision of the Constitution.

12.3. CITIZENSHIP

General Matters

The Commission recommends that:

12.3.1. The Constitution should provide for the continuation of the citizenship of every person who is a citizen on the day that the new constitution enters into force.

12.3.2. The Constitution should continue to provide for three categories of citizenship: birth, descent and registration.

12.3.3. The citizenship regime under the Constitution should not discriminate on the basis of sex, class of citizenship, the marital status of one's parents or any other distinguishing characteristic.

12.3.4. The chapter on citizenship should feature gender-neutral language, in particular the use of the term "parent", rather than "father" or "mother" in recognition of the legal equality of both parents.

12.3.5. Parliament may consider amendments to the Barbados Citizenship Act, the Immigration Act and related subsidiary legislation consequential to the recommendations relating to citizenship.

Citizenship by Birth

The Commission recommends that:

12.3.6. Every person born in Barbados should continue to be entitled to citizenship as of right, subject to recommendation 12.3.7.

12.3.7. Notwithstanding recommendation 12.3.6, a person born in Barbados should not be entitled to citizenship by birth, where

a. at least one parent is a foreign diplomat accredited to Barbados, and neither parent is a Barbadian citizen; or

b. at least one parent is an enemy alien, and the birth occurs in a place then under occupation by the enemy.

12.3.8. Persons born outside of Barbados who, at the time of their birth, have at least one parent who is serving Barbados as a diplomat or in a similar capacity, should continue to be entitled to be citizens by birth.

Citizenship by Descent

The Commission recommends that:

12.3.9. The following groups of persons should be entitled to citizenship by descent:

a. A person who, at the time of their birth, has at least one parent who is a citizen of Barbados by birth or registration; and

b. A person who, at the time of their birth, has at least one grandparent who is a citizen of Barbados by birth or registration

12.3.10. Parliament may consider relaxing some of the requirements for citizenship by registration in the case of members of the Barbadian diaspora who do not qualify for citizenship by descent under recommendation 12.3.9.

Citizenship by Registration

The Commission recommends that:

12.3.11. Persons should continue to be entitled to registration as a citizen of Barbados, on the basis of residence in Barbados or marriage to a Barbadian citizen.

12.3.12. In respect of citizenship by registration on the basis of residence, the minimum period of residence should be prescribed by legislation rather than in the Constitution.

12.3.13. In respect of citizenship by marriage, there should be no minimum period of cohabitation prescribed in the Constitution, but Government may consider, by legislative and other measures, means to ensure that citizenship by marriage is not exploited.

12.3.14. The new constitution should provide for a child who is not a citizen of Barbados, but who is adopted by a person who is a Barbadian citizen (or in the case of a joint adoption, where one of the parties thereto is a Barbadian citizen) to be entitled to citizenship by registration from the date of the adoption order made under the provisions of the *Adoption Act, Cap. 212*.

12.3.15. The requirement to take an oath or affirmation should apply universally to all citizens by registration.

Dual and Multiple Citizenship

12.3.16. The Commission recommends that the new constitution should contain a provision expressly permitting a citizen of Barbados to also be a citizen of one or more other countries.

Loss of Citizenship

The Commission recommends that:

12.3.17. The existing constitutional provisions on the renunciation of citizenship should be retained.

12.3.18. The existing constitutional provisions on the deprivation of citizenship should be retained.

12.4. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

General Matters

The Commission recommends that:

12.4.1. The fundamental rights provisions should be expressed positively, in generous terms and subjected to general limitations in the public interest.

12.4.2. The Chapter on fundamental rights should no longer guarantee rights through extensive, negatively-framed and derogations-focused detailed sections. Instead, the fundamental rights should be guaranteed in a single provision, together with a general limitation clause. For a limited number of rights, in the interests of clarity, detailed sections should also supplement the general provisions.

12.4.3. The Constitution should guarantee and protect two categories of rights:

a. Rights subject to limitations which are reasonably justifiable in a free and democratic society (mainly civil and political rights); and

b. Rights imposing obligations on the State to progressively achieve their full realisation (mainly social and economic rights).

Rights subject to Reasonably Justifiable Limitations

12.4.4. The Constitution should guarantee the following rights to every person in Barbados without distinction on any basis:

a. Rights subject to limitations which are reasonably justifiable in a free and democratic society (mainly civil and political rights); and

b. Rights imposing obligations on the State to progressively achieve their full realisation (mainly social and economic rights).

c. the right to protection from inhuman or degrading punishment;

d. the right to privacy, which shall include

i. the right to protection against the search of one's person or property, or the entry by others on one's premises,

ii. the right to respect for and protection of one's private and family life;

e. the right to the use and enjoyment of his property;

f. the right to the protection of the law;

g. the right to equality before the law and the right to protection against discrimination;

h. the freedom of conscience, which shall include

i. the freedom of thought,

ii. the freedom of religion or belief and the freedom to change religion or belief, and

iii. the freedom, whether alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance;

i. the freedom of expression, which shall include

i. the freedom to hold opinions and to receive and communicate ideas and information without interference, and

ii. the freedom from interference with his correspondence or other means of communication;

j. the freedom of peaceful assembly and association, that is to say, the right to assemble freely and associate with other persons and in particular, the right to form and belong to political parties, trade unions, cooperative societies and other associations for the protection of the interests of the individual;

k. the freedom of movement;

l. the right to work;

m. the right to access information; and

n. the right to fair administrative action.

12.4.5. The rights listed in recommendation 12.4.4 should be subject to limitations that are reasonably justifiable in a free and democratic society, being limitations designed to ensure that the exercise and enjoyment of those rights do not prejudice the equal rights and freedoms of others, the public interest, the welfare, safety and security of Barbados and the well-being of the community.

12.4.6. Detailed sections should be included guaranteeing the right to life, right to personal liberty, protection from the deprivation of property, protection of the law, protection of the freedom of movement, protection from discrimination, right to work, right to fair administrative action, right to access information, and right to vote and stand for election.

Right to Life

12.4.7. The Commission makes no recommendation on the retention of the imposition of capital punishment as an exception to the right to life. Parliament and future generations of Barbadians may evaluate the relevance of capital punishment in the Barbadian criminal justice system.

Protection from Discrimination

The Commission recommends that:

12.4.8. A person should be entitled to protection from discrimination on the basis of race, ethnic or social origin, political opinions, conscience and belief, colour, creed, age, sex, gender, class, culture, marital status, sexual orientation, pregnancy, disability, dress and health status.

Right to Work

The Commission recommends that:

12.4.9. The new constitution should protect the right of every person to the opportunity to gain a living by work which he freely chooses or accepts.

12.4.10. The new constitution should protect the right of every worker to just and favourable conditions of work, including the right to equal pay for equal work, the right to just and favourable remuneration ensuring an existence worthy of human dignity, and protection against unemployment.

12.4.11. The new constitution should protect the right of workers and employers to form and join trade unions or employers' organisations, as the case may be, for the purpose of protecting their interests, including the right to take collective action to defend those interests, subject to limitations that are reasonably required in the interests of defence, public safety, public order, public morality or public health.

Right to Fair Administrative Action

The Commission recommends that:

12.4.12. The right to fair administrative action should be elevated to constitutional status, which should include a general right to administrative action that is lawful, rational and procedurally fair, as well as a right to reasons for administrative decisions.

12.4.13. The right to fair administrative action should be subject to limitations which promote good and efficient administration and protect the public interest, in particular, public health, public safety and national security.

Right to Access Information

12.4.14. The Commission recommends that the new constitution should protect the right of every person to access information held by the state, subject to limitations that are reasonably required in the interests of public health, public order, defence and national security.

Right to Vote and Stand for Election

The Commission recommends that:

12.4.15. The new constitution should protect the right of every citizen of Barbados who is over the age of eighteen (18) years old to the following:

a. The right to be registered as an elector for the purposes of elections of members to the House of Assembly, subject to any qualifications set out under the Representation of the People Act, Cap.12;

b. The right of persons so registered to vote in elections of members to the House of Assembly; and

c. The right of persons so registered to stand for, and if elected, hold public office.

12.4.16. The right to vote and stand for election should be subject to such limitations as are reasonably required for the purposes of promoting election integrity and the conduct of free and fair elections.

Application of Fundamental Rights to Private Persons

12.4.17. The Commission recommends that the rights subject to reasonably justifiable limitations should bind, and be enforceable against, private persons to the extent that they may be applicable, given the nature of the right and the nature of the duties imposed by the right.

Rights subject to Progressive Realisation

The Commission recommends that:

12.4.18. The new constitution should provide that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the following rights:

a. The right to have access to education;

b. The right to have access to adequate food of acceptable quality and clean and safe water;

c. The right to have access to health care service;

d. The right to have access to adequate housing; and

e. The right to a safe and healthy environment.

12.4.19. When the State asserts that it does not have the resources to implement the right, the court should consider the following:

a. the State must show that the resources are not available;

b. in allocating resources, the State must give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and

c. the court may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

Right to Access Education

The Commission recommends that:

12.4.20. The new constitution should protect the following rights related to education:

a. The right to free early childhood, primary and secondary education;

b. The right to further education;

c. The right to access educational services for persons who were unable to complete their secondary education; and

d. The right to access tertiary education

12.4.21. Every parent or guardian of a child should be entitled to have the child educated in a private educational institution at the parent or guardian's expense.

12.4.22. Every person should have the right to establish and maintain, at his/her own expense, a private school, provided that such a school does not have discriminatory admissions policies, is registered with the state, and maintains standards that are not inferior to standards at comparable public schools.

12.4.23. The State should be permitted to require public and private schools to include in their curriculum subjects relating to health, civic education and issues of national interest.

Right to a Safe and Healthy Environment

The Commission recommends that:

12.4.24. The new constitution should protect the right of every person to a safe environment that is not harmful to health or well-being and that is protected, for the benefit of present and future generations, through reasonable legislative and other measures:

a. from pollution and ecological degradation;

b. that promote conservation; and

c. that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

12.4.25. The right to a safe and healthy environment should be subject to limitations that are reasonably justifiable in the public interest and for the purpose of promoting the economic and social well-being of the community.

Rights of Persons with Disabilities

12.4.26. The Commission recommends that the new constitution should protect the right of persons with disabilities to the following:

a. The right to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

b. The right to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

c. The right to reasonable access to all places, public transport and information;

d. The right to use Sign language, Braille or other appropriate means of communication; and

e. The right to access materials and devices to overcome constraints arising from the person's disability.

Emergency Provisions

12.4.27. The Commission recommends that the current constitutional provisions related to periods of public emergency should be retained

Human Rights Commission

The Commission recommends that:

12.4.28. A Human Rights Commission should be established for Barbados.

12.4.29. The Human Rights Commission should be charged, among other things, with the responsibility to:

a. promote respect for human rights and develop a culture of human rights;

b. monitor, investigate and report on the observance of human rights in all spheres of life;

c. receive and investigate complaints of alleged human rights abuses and take steps to secure redress; and

d. act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.

12.5. THE PRESIDENT

General Matters

The Commission recommends that:

12.5.1. The President should continue to be the Head of State of Barbados and the head of the armed forces.

12.5.2. Barbados should continue to be a parliamentary republic, with the effective management of the day-to-day affairs of the Government vested in the Cabinet.

12.5.3. The office of President should continue to be an apolitical, non-partisan office and a unifying figure for the nation.

Election of the President

12.5.4. The Commission recommends that the present system for the election of the President by Parliament should be retained.

Qualifications and Disqualifications

The Commission recommends that:

12.5.5. Any adult citizen of Barbados should be eligible to serve as President, subject to recommendation 12.5.6.

12.5.6. A person should not be eligible to be elected President if he or she is a member of the House of Assembly or Senate, or was a member of either House within the preceding year, or is disqualified under the Constitution from being elected as a Member of Parliament.

Term of Office

The Commission recommends that:

12.5.7. The term of office for the President should be increased to seven (7) years.

12.5.8. The President should be able to seek re-election.

Conditions of Office

The Commission recommends that:

12.5.9. The present constitutional provisions pertaining to the conditions of office, the personal staff to the President and the immunities of the President should be retained.

12.5.10. Government should examine ways to augment the resources available to the office of the President to better facilitate the exercise of that office's functions.

Removal of the President

12.5.11. The Commission recommends that the present provisions relating to the removal from office of the President should be retained.

Provisions for an Acting President

The Commission recommends that:

12.5.12. Whenever there is a vacancy in the office of the President, or the sitting President is unable to perform the functions of the office or is on leave, then the Prime Minister, after consulting the Leader of the Opposition, shall designate a person to serve as Acting President.

12.5.13. When no person has been designated by the Prime Minister to serve as Acting President, then the President of the Senate shall act as President. However, if he is unable to serve, then the Speaker shall assume the office of Acting President; and if the Speaker is unavailable, then the Deputy President of the Senate shall act as President.

12.6. PARLIAMENT

Structure of Parliament

12.6.1. The Commission recommends that the Parliament of Barbados should continue to be bicameral and consist of the Senate and the House of Assembly.

The Senate

Constitutional Position of the Senate

The Commission recommends that:

12.6.2. The Senate should continue to be the Upper House of Parliament, primarily designed to exercise a reviewing function of the enactments passed by the democratically elected members of the House of Assembly.

12.6.3. The current provisions enabling a law, other than a constitutional amendment, to be enacted even if the measure is defeated in the Senate should be retained, given the constitutional position between the two houses with the House of Assembly being the elected chamber.

Composition of the Senate

The Commission recommends that:

12.6.4. The Senate should continue to be an appointed chamber consisting of twenty-one (21) members.

12.6.5. The composition of the Senate should be altered to increase the number of Opposition Senators. The new composition should be as follows:

a. Twelve (12) Senators appointed on the advice of the Prime Minister ("Government Senators");

b. Four (4) Senators appointed on the advice of the Leader of the Opposition ("Opposition Senators"); and

c. Five (5) Senators appointed in the President's own discretion ("Independent Senators").

12.6.6. In making the appointments to the Senate, a gender quota should be observed as follows:

a. There should be six (6) Government Senators of either sex;

b. There should be two (2) Opposition Senators of either sex; and

c. There should be no less than two (2) Independent Senators of either sex.

House of Assembly

The Commission recommends that:

12.6.7. The House of Assembly should continue to have a minimum of 30 members, subject to any further changes to the boundaries of constituencies, which may result in an increase in the number of Members of Parliament.

12.6.8. The members of the House of Assembly should continue to be elected by the first-past-the-post system.

Eligibility Requirements

The Commission recommends that:

12.6.9. The minimum qualifying age for election to the House of Assembly, and appointment to the Senate, should be lowered to eighteen (18) years.

12.6.10. A person convicted of a criminal offence, by a court of competent jurisdiction in Barbados or in any part of the Commonwealth, within the preceding ten (10) years, should be disqualified from appointment to the Senate or election to the House of Assembly.

12.6.11. The other qualifications and disqualifications for membership of the House of Assembly and the Senate should be retained.

Parliamentary Term

The Commission recommends that:

12.6.12. The maximum life of a Parliament should continue to be five (5) years.

12.6.13. The ability to dissolve Parliament before the elapse of five (5) years should continue to vest in the President, acting on the advice of the Prime Minister.

12.6.14. The power to prorogue Parliament should continue to vest in the President, acting on the advice of the Prime Minister.

Recall of Members of Parliament

12.6.15. The Commission does not recommend the introduction of any mechanism for the recall of individual Members of Parliament, nor does the Commission recommend the removal of a Member of Parliament where that Member of Parliament defects from the political party of which they were a member when they were elected ("crosses the floor").

12.6.16. The ability to dissolve Parliament before the elapse of five (5) years should continue to vest in the President, acting on the advice of the Prime Minister.

12.6.17. The power to prorogue Parliament should continue to vest in the President, acting on the advice of the Prime Minister.

Power of Assent

The Commission recommends that:

12.6.18. The inherited monarchical power of the Head of State to assent to or withhold assent from Bills passed by Parliament should be discontinued.

12.6.19. In order for a Bill to become law as an Act of Parliament, once passed by both Houses of Parliament (or in certain cases, only the House of Assembly) in accordance with the Constitution and other law, a Bill must be certified by the Speaker as having been validly passed, and thereafter published in the Official Gazette.

Attendance of Ministers in Either House

12.6.20. The Commission recommends that no constitutional provision need be made to permit a Minister to attend a sitting of the House of which he is not a member. Instead, Parliament may explore the desirability of such a course of action and provide for it in the Standing Orders of both Houses.

Political Parties

12.6.21. The Commission recommends that the Constitution require Parliament to enact laws to regulate the existence, operation and financing of political parties, as well as the financing and spending of candidates for election to the House of Assembly.

12.7. EXECUTIVE POWERS

Cabinet

The Commission recommends that:

12.7.1. The current constitutional provisions relating to the Cabinet be retained, including the provisions for the appointment and removal of the Prime Minister and other Ministers.

12.7.2. No term limit should be imposed on the office of Prime Minister.

12.7.3. No numerical limit on the number of Ministers should be fixed in the Constitution.

12.7.4. The office of Deputy Prime Minister should not be provided for in the Constitution but should continue to be at the discretion of the Prime Minister.

12.7.5. The Prime Minister should be required to prepare a Code of Conduct for Ministers and Parliamentary Secretaries, which shall be binding on the Ministers and Parliamentary Secretaries. The Code of Conduct should be laid before both Houses.

12.7.6. The Integrity Commission should be empowered to investigate and report on alleged breaches of the aforementioned Code of Conduct.

Leader of the Opposition

The Commission recommends that:

12.7.7. The current constitutional provisions relating to the appointment and tenure of the Leader of the Opposition should be retained.

12.7.8. Where there is no Leader of the Opposition, whenever the Constitution or any law requires the Leader of the Opposition to tender advice or be consulted, that advice shall be tendered by, or consultation had with, a person designated in writing by the political party gaining the highest number of votes in the previous election but not forming the government.

Presidential Advisory Council

The Commission recommends that:

12.7.9. The Privy Council should be succeeded by a Presidential Advisory Council.

12.7.10. The Presidential Advisory Council should consist of no less than seven (7) persons appointed by the President, after consultation with the Prime Minister.

12.7.11. The Presidential Advisory Council should be charged with providing advice to the President on any matter referred to it by the President. For the avoidance of doubt, the President is not required to seek the advice of the Council on any matter, nor is the President bound to accept any advice given.

12.7.12. A member of the Presidential Advisory Council should serve for a renewable term of seven years.

12.7.13. Notwithstanding the preceding recommendation, whenever a new President assumes office, the members of the Presidential Advisory Council shall cease to be members unless the new President grants leave for the member to complete his term of office.

Powers of Pardon, Clemency etc

12.7.14. The current constitutional provisions relating to the exercise of the prerogative of mercy should be retained, provided that it be referred to as the power of pardon, clemency etc.

Director of Public Prosecutions

12.7.15. The Commission recommends that the current constitutional provisions concerning the Director of Public Prosecutions should be retained.

Constitutional Offices Commission

The Commission recommends that:

12.7.16. A Constitutional Offices Commission should be established.

12.7.17. The Constitutional Offices Commission should be charged with making recommendations to the President on the appointment of key officeholders under the Constitution, including:

a. Twelve (12) Senators appointed on the advice of the Prime Minister ("Government Senators");

b. Four (4) Senators appointed on the advice of the Leader of the Opposition ("Opposition Senators"); and

c. Five (5) Senators appointed in the President's own discretion ("Independent Senators").

d. The members of the Human Rights Commission;

e. The members of the Public Service Appeal Board; and

f. The Ombudsman.

12.7.18. The Constitutional Offices Commission should consist of:

a. The Prime Minister;

b. The Attorney-General;

c. The Leader of the Opposition;

d. Two (2) members appointed on the advice of the Prime Minister;

e. One (1) member appointed on the advice of the Leader of the Opposition; and

f. One (1) member appointed in the President's own discretion.

12.7.19. An appointed member of the Constitutional Offices Commission should serve for a renewable term of five (5) years, provided that where a new Prime Minister, Leader of the Opposition or President assumes office, the members appointed by the previous officeholder shall cease to hold office.

12.7.20. Where there is no Leader of the Opposition, the seat reserved for the Leader of the Opposition on the Constitutional Offices Commission should be held by the person designated as the representative of the opposition political party gaining the highest number of votes in the previous election but not forming the government (in accordance with paragraph 12.7.8).

12.8. THE JUDICATURE

Structure of the Judicature

12.8.1. The Commission recommends that the present hierarchy of the courts be retained, with the Caribbean Court of Justice at the apex, followed by the Supreme Court, comprising the Court of Appeal and High Court, and finally, the courts of summary jurisdiction known as the Magistrates' Courts.

The Caribbean Court of Justice

12.8.2. The Commission recommends that the current constitutional provisions relating to the Caribbean Court of Justice be retained.

The Structure of the Supreme Court

The Commission recommends that:

12.8.3. The Supreme Court should continue to consist of the Court of Appeal and High Court.

12.8.4. The Chief Justice should continue to be the overall head of the judiciary and sit in the Court of Appeal as President of that Court, together with the Justices of Appeal, of such number as Parliament may, by law, determine.

12.8.5. The High Court should consist of a President of the High Court, as that court's administrative head, together with the other Judges of the High Court, of such number as Parliament may, by law, determine.

12.8.6. The Supreme Court of Judicature Act, Cap.117A should be amended to align its provisions with these recommendations.

Appointment of Judges

The Commission recommends that:

12.8.7. The Chief Justice should be appointed by the President, on the advice of the Constitutional Offices Commission.

12.8.8. The President of the High Court should be appointed by the President from among the Judges of the High Court, on the advice of the Judicial and Legal Service Commission.

12.8.9. The Justices of Appeal and the Judges of the High Court should be appointed by the President, on the advice of the Judicial and Legal Service Commission.

12.8.10. The process for judicial appointments should be set out in the Supreme Court of Judicature Act.

Tenure of Judges

The Commission recommends that:

12.8.11. The Chief Justice should serve for a non-renewable term of seven (7) years, or until the age of retirement set out below, whichever is the earlier. Where the Chief Justice has completed his term, but has not yet reached the age of retirement, he may continue to sit as Justice of Appeal.

12.8.12. The President of the High Court should serve for a non-renewable term of five years, after which the holder of that office may revert to sitting as a senior Judge of the High Court.

12.8.13. The age of retirement for Justices of Appeal and Judges of the High Court should be standardised and set at seventy-two (72) years old.

12.8.14. The discretionary power of the President, acting on the advice of the Prime Minister, to extend a Judge's tenure for two (2) years beyond the retirement age should be discontinued.

Discipline of Judges

The Commission recommends that:

12.8.15. The grounds for triggering a disciplinary proceeding against a judge should be:

a. Inability to discharge the functions of the office;

b. Misbehaviour;

c. Excessive or inordinate delay in the delivery of a judgement; or

d. Persistent delay of six months or more in the delivery of judgements.

12.8.16. The new constitution should make better provision for judicial discipline, in particular provision for disciplinary measures short of dismissal, such as the issuance of a formal warning or reprimand or a suspension.

12.8.17. The procedure for judicial discipline should be as follows:

a. Any person may file a complaint with the Judicial and Legal Services Commission alleging that any of the disciplinary grounds has arisen in relation to a Judge;

b. Upon receipt of a complaint, the Judicial and Legal Services Commission shall enquire into the matter and:

i. If the Commission determines that the complaint has merit and a sanction less than removal should be imposed, the Commission may impose that sanction,

ii. If the Commission determines that the complaint has merit and a prima facie case supporting the removal of the Judge has been made out, the Commission shall advise the President that the question of removing the Judge should be referred to the Caribbean Court of Justice ("CCJ"), or

iii. If the Commission determines that no action needs to be taken, it shall inform the complainant and the Judge in question; and

c. Where the question of removal has been referred to the CCJ, the CCJ may determine whether the Judge in question should be removed, a lesser sanction should be imposed or that no action should be taken.

12.8.18. A person dissatisfied with a decision of the Judicial and Legal Services Commission in relation to the above may apply for the judicial review of that decision.

Judicial Independence

The Commission recommends that:

12.8.19. The current constitutional provisions protecting the security of tenure and salary and emoluments of the Judiciary should be retained.

Court Services Department

The Commission recommends that:

12.8.20. Government may consider efforts to strengthen the administrative and financial independence of the Judiciary, through the creation of an autonomous Court Services Department, through legislation modelled on the Court Services Act, 2023-59 of the Laws of the Bahamas.

12.8.21. The Court Services Department should not be under the control and supervision of a Minister, but rather under the leadership of the Chief Justice as Head of the Judiciary, and managed by a Chief Executive Officer, akin to a Permanent Secretary for the Department.

12.8.22. The Department should be charged with the management of the operations, property and resources of the Supreme Court and the Magistrates' Courts. It should be able to recruit staff and set terms and conditions, separate from the main Public Service.

12.8.23. For the purposes of accountability, the management and operations of the Department should be overseen by a governing body known as the Court Services Council.

12.8.24. The Court Services Council should consist of:

a. The Chief Justice, who shall be the Chairman;

b. The President of the High Court;

c. The Chief Magistrate;

d. The Registrar of the Supreme Court, who shall be the secretary;

e. An attorney-at-law of not less than ten (10) years' call, appointed on the advice of the Barbados Bar Association;

f. A person holding qualifications in accounting or finance as may be prescribed, appointed by the Chief Justice; and

g. A person appointed on the advice of the Constitutional Offices Commission.

12.8.25. The appointed members of the Council should hold office for a term of four years which may be renewed.

The Judicial and Legal Service Commission

The Commission recommends that:

12.8.26. In addition to its functions relating to legal officers in the Public Service, the Judicial and Legal Service Commission should also be charged with:

a. recommending appointments to the offices of Justices of Appeal, Judges of the High Court and Magistrates;

b. advertising judicial vacancies, conducting interviews and performing such other functions connected with the aforementioned function;

c. establishing and monitoring performance, conduct and other standards for the Judiciary;

d. preserving and maintaining the integrity of the judiciary; and

e. exercising disciplinary functions in relation to the Judiciary in accordance with the provisions set out in the Constitution.

1.9. THE PUBLIC SERVICE

The Service Commissions

The Commission recommends that:

12.9.1. The Judicial and Legal Service Commission, the Administrative, General and Professional Service Commission and the Protective Services Commission should be retained.

12.9.2. The Teaching Service Commission should be urgently operationalised.

12.9.3. The composition of the Administrative, General and Professional Service Commission, the Protective Services Commission and the Teaching Service Commission should be retained, except that the Chairman and members of those Service Commissions should be appointed by the President on the advice of the Constitutional Offices Commission; and

12.9.3.1. In the case of one (1) member of each of the Commissions, that member should be appointed on the advice of the Constitutional Offices Commission ("COC") after it has consulted with such bodies as the COC determines represent the interest of labour.

12.9.4. The Chairmen and members of the Service Commissions should continue to serve for a term of three (3) years and be eligible for reappointment.

Judicial and Legal Service Commission

12.9.5. The Judicial and Legal Service Commission should consist of:

12.9.5.1. A Chairman, appointed on the advice of the Constitutional Offices Commission;

12.9.5.2. The Chief Justice;

12.9.5.3. The President of the High Court;

12.9.5.4. Two (2) persons who have held office as judges of a court of unlimited jurisdiction in any part of the Commonwealth, appointed on the advice of the Constitutional Offices Commission;

12.9.5.5. An attorney-at-law of at least 10 years' call, appointed on the advice of the Barbados Bar Association;

12.9.5.6. An attorney-at-law no longer in active practice, appointed on the advice of the Constitutional Offices Commission; and

12.9.5.7. Two (2) lay members, appointed on the advice of the Constitutional Offices Commission.

12.9.6. The Chairman of the Judicial and Legal Services Commission should serve for a non-renewable term of six (6) years.

12.9.7. The other appointed members of the Judicial and Legal Services Commission should serve for a four-year term.

Functioning of Service Commissions

The Commission recommends that:

12.9.8. Government should explore mechanisms to better ensure the adequate resourcing and capacity of the Service Commissions to improve efficiency and better facilitate the conduct of human resource matters in the Public Service, for example, by providing each Service Commission with a dedicated secretariat.

12.9.9. The constitutional ouster clause for decisions of the Service Commissions should be repealed.

Appointment, Discipline and Removal of Public Officers

The Commission recommends that:

12.9.10. The current system in which the appointment, removal and discipline of public officers is generally exercised on the advice of Service Commissions should be retained.

12.9.11. The ability of the Service Commissions to delegate its powers of appointment and discipline in respect of certain offices should be retained.

12.9.12. The current mechanism for the appointment of certain public officers, being officers holding the most senior offices in the Service as well as persons holding office as senior diplomats abroad, should be retained.

Public Service Appeals

The Commission recommends that:

12.9.13. Appeals to the Privy Council (or its successor) in relation to public service disciplinary matters should be discontinued.

12.9.14. The Public Service Appeal Board should be urgently operationalised as the forum for the hearing of appeals from recommendations of the Service Commissions.

12.9.15. In relation to the Public Service Appeal Board, the membership of the Board be increased to enable more than one panel to hear appeals concurrently.

12.9.16. The other existing provisions relating to the Public Service Appeal Board should be retained, provided that its members should be appointed on the advice of the Constitutional Offices Commission.

Other Matters

The Commission recommends that:

12.9.17. The other provisions of the current constitution relating to the public service, in particular concerning pensions, should be retained.

12.9.18. The new constitution should set out the values and principles of the public service, reflecting a Service that:

12.9.18.1. maintains the high standards of professionalism, ethics, impartiality and integrity;

12.9.18.2. ensures transparent, efficient, economic and effective use of public resources;

12.9.18.3. is committed to appointment and promotion on the basis of merit and impartiality;

12.9.18.4. provides frank, honest, impartial, comprehensive, accurate and timely advice to the Government;

12.9.18.5. faithfully and earnestly implements the policies and programmes of the Government;

12.9.18.6. provides and delivers services fairly, effectively, impartially, responsively and courteously to the public;

12.9.18.7. provides a workplace that promotes the fair treatment of its officers and establishes relations that value communication, consultation and co-operation with officers on matters affecting their workplace;

12.9.18.8. establishes conditions conducive to the good health, welfare and safety of its officers while at work;

12.9.18.9. is a development-oriented and career-based service characterised by good human-resource management practices to maximise employee potential;

12.9.18.10. adheres to the Constitution and other laws of Barbados and upholds the rule of law; and

12.9.18.11. promotes accountability for public administration.

12.10. INDEPENDENT REGULATORY AND OVERSIGHT INSTITUTIONS

General Matters

The Commission recommends that:

12.10.1. The new constitution should make provision for the protection of the independence and autonomy of certain regulatory and oversight institutions, in particular the Human Rights Commission, the Electoral and Boundaries Commission, the office of the Auditor-General, the office of the Ombudsman and the Integrity Commission.

12.10.2. In particular, the new constitution should provide that, in relation to these institutions –

12.10.2.1. They shall not be subject to the direction or control of any other person or authority, and that no Minister shall be assigned responsibility for their business of administration;

12.10.2.2. They be provided with adequate facilities and resources for the efficient discharge of their functions and responsibilities;

12.10.2.3. Parliament shall prescribe the offices constituting these institutions and the salaries and allowances of the holders of those offices;

12.10.2.4. The principal body of each institution shall be charged with making appointments to the offices prescribed for their institution after consultation with the relevant Service Commission, and each institution shall be responsible for the discipline of its officers;

12.10.2.5. The Public Service Appeal Board should have the jurisdiction to hear appeals against disciplinary penalties imposed upon employees of these institutions;

12.10.2.6. The salaries and allowances of the staff, and the other expenses, should be charged on the Consolidated Fund;

12.10.2.7. Other than the office of the Auditor-General, the accounts of the institutions be audited and reported on annually by the Auditor-General; and

12.10.2.8. They shall be required to provide an annual report to Parliament on the administration and operations of the institutions, and those reports shall be examined by a joint select committee of Parliament appointed for that purpose.

Electoral and Boundaries Commission

The Commission recommends that:

12.10.3. The Electoral and Boundaries Commission should consist of:

12.10.3.1. The Chairman and Deputy Chairman, appointed on the advice of the Constitutional Offices Commission;

12.10.3.2. Two (2) members appointed on the advice of the Prime Minister after consultation with the Leader of the Opposition; and

12.10.3.3. One (1) member appointed on the advice of the Leader of the Opposition after consultation with the Prime Minister.

12.10.4. The renewable five-year term of the members of the Electoral and Boundaries Commission should be retained.

12.10.5. The independence and autonomy of the Electoral and Boundaries Commission should continue to be protected constitutionally, while at the administrative level, the Electoral and Boundaries Commission should have greater control over its ability to recruit human resources.

Review of Constituency Boundaries

The Commission recommends that:

12.10.6. The constituency boundaries reports, which the Electoral and Boundaries Commission are constitutionally mandated to produce at certain intervals, should be sent directly to Parliament, rather than to the Minister responsible for electoral matters.

12.10.7. A draft of the order for the revision of constituency boundaries should be prepared, and if necessary, amended by the Commission, rather than by the Minister responsible for electoral matters.

The Auditor General

The Commission recommends that:

12.10.8. The constitutional provisions relating to the appointment, removal and terms of service of the Auditor General should be retained.

12.10.9. Government consider conferring, by legislation, indemnity against liability for the Auditor General and his officers in relation to acts done in good faith in connection with the office's constitutional and legislative functions.

12.10.10. Parliament should be required to debate the annual report of the Auditor General within three months of it being laid in Parliament.

12.10.11. The Public Accounts Committee should be elevated to a committee of Parliament established by the Constitution, rather than by ordinary Act of Parliament, to protect against its disbandment.

Integrity Commission

The Commission recommends that:

12.10.12. The Integrity Commission should be established by the Constitution to secure its existence against easy repeal by a later Parliament.

12.10.13. Parliament should be required to enact legislation to further provide for the Integrity Commission (which has already been done by the provisions of the Integrity in Public Life Act, 2023-20).

The Ombudsman

The Commission recommends that:

12.10.14. Constitutional provision should be made for the establishment of the office of the Ombudsman.

12.10.15. The Ombudsman should be appointed on the advice of the Constitutional Offices Commission and should serve until retirement at 67.

12.10.16. Parliament should be required to enact legislation to further provide for the Integrity Commission (which has already been done by the provisions of the Ombudsman Act, Cap.8A).

12.11. DEFENCE AND SECURITY

12.11.1. The Commission recommends that the new constitution contain provision requiring the defence and security policy of the State to be aimed at:

a. defending national independence;

b. preserving the country's sovereignty and integrity; and

c. guaranteeing the normal functioning of institutions and the security of citizens against any armed aggression.

12.12. FINANCE

The Commission recommends that:

12.12.1. The current constitutional provisions relating to the Consolidated Fund, the Estimates, the manner of authorising and meeting government expenditure and the public debt should be retained.

12.12.2. The salaries and emoluments of public officers and soldiers should continue to be constitutionally protected against reduction.

12.12.3. No constitutional provision is needed to restrict the borrowing capacity of a Government.

12.13. ALTERATIONS TO THE CONSTITUTION

The Commission recommends that:

12.13.1. The current process for the alteration of the Constitution be retained, requiring that the more deeply entrenched parts of the Constitution be amended only by a two-thirds majority vote in each House, while all other provisions be amendable by a majority vote in each House. In particular, the provisions requiring a two-thirds majority for amendment would be:

12.13.1.1. The supreme law clause;

12.13.1.2. The chapter on fundamental rights;

12.13.1.3. The provisions establishing the office of the President and vesting the executive authority of Barbados in the President;

12.13.1.4. The provisions establishing Parliament, its two Houses, the qualifications and disqualifications of its members, the power of Parliament to make law and relating to dissolution and prorogation;

12.13.1.5. The provisions relating to the Presidential Advisory Council, the Constitutional Offices Commission and the Director of Public Prosecutions;

12.13.1.6. The chapter on the judicature;

12.13.1.7. The chapter on the institutions not subject to direction or control;

12.13.1.8. The chapter on the public service;

12.13.1.9. The chapter on finance;

12.13.1.10. The chapter on the alteration of the Constitution; and

12.13.1.11. The proposed chapter on the enforcement of the Constitution.

12.14. ENFORCEMENT OF THE CONSTITUTION

The Commission recommends that:

12.14.1. Provision be made in the new constitution for any person alleging that a provision of the Constitution is being, has been or is likely to be contravened to be able to apply to the High Court for redress.

12.14.2. Provision be made authorising the following to be able to make applications for constitutional redress:

12.14.2.1. a person acting in the person's own interest;

12.14.2.2. a person acting on behalf of another person who cannot act in that other person's own name;

12.14.2.3. a person acting as a member of, or in the interest of, a group or class of persons; and

12.14.2.4. an association acting in the interest of its members.

12.15. OTHER MATTERS

Directive Principles of State Policy and Fundamental Responsibilities

12.15.1. The Commission does not recommend the inclusion of non-justiciable principles of state policy, or an unenforceable statement of the responsibilities of citizens.

Local Government

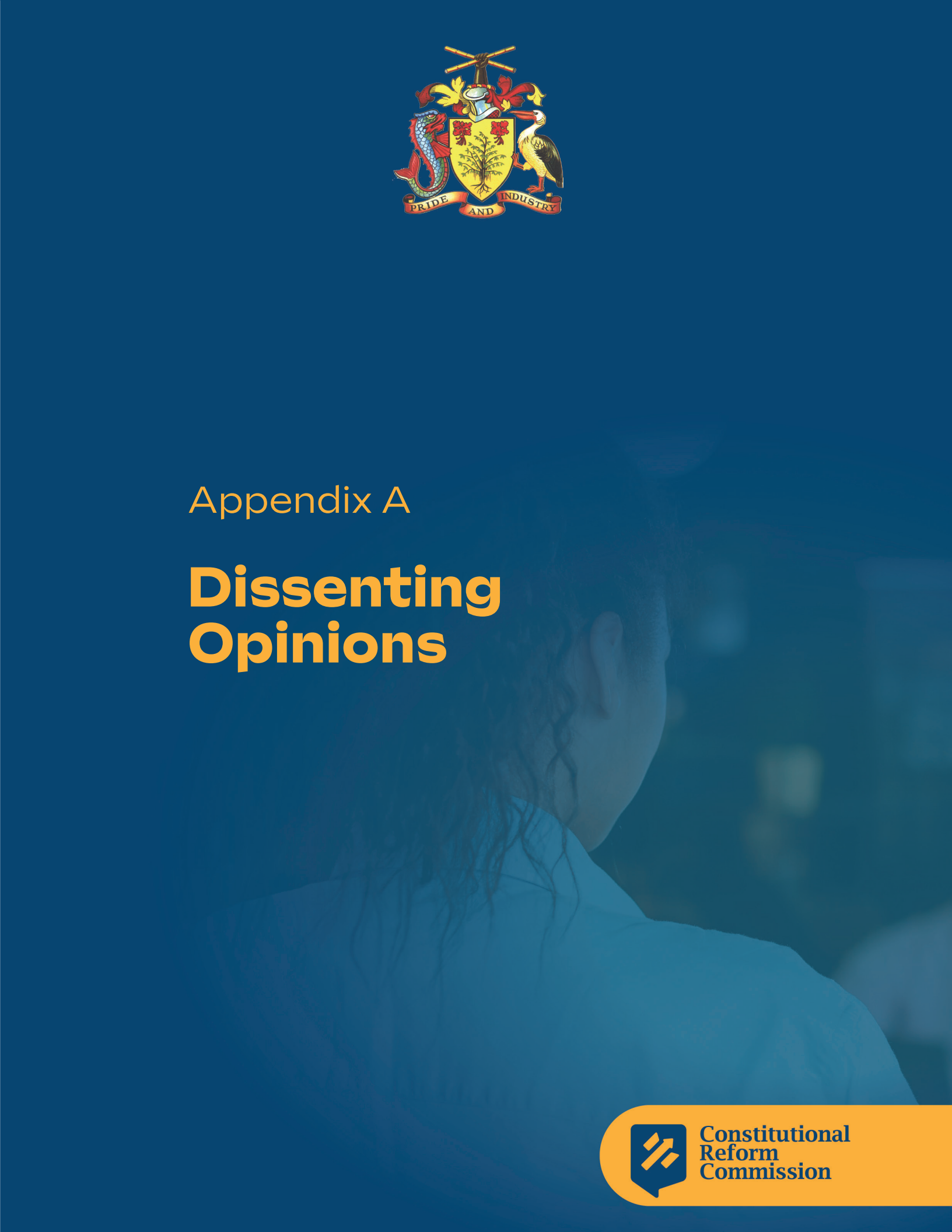
12.15.2. The Commission makes no recommendation concerning the establishment of a system of local government in the new constitution. Other jurisdictions in the Caribbean with such systems have established them by statute and a similar mechanism may be used in Barbados.

People's Initiatives

12.15.3. The Commission makes no recommendation concerning provision in the new constitution for the ability of a group of citizens acting together to petition Parliament to introduce a law. If desirable, Government may explore doing this by statute.

Keeping the Constitution under Review

12.15.4. The Commission recommends that Government explore establishing an institutional mechanism to review the new constitution every ten (10) years.



Appendix A

Dissenting Opinions

Constitutional Reform Commission

PART 1

Dissenting Opinion of the Chairman

Dual Citizenship

Section 11 of the Constitution provides for multiple citizenships for Barbados in the following manner:

A citizen may, whilst being a citizen, become a citizen or national of one or more other countries.

The majority of the Constitution Reform Commission accepts the provisions of section 11 as shown above. However, I consider this provision should be qualified or modified, for the reasons set out below.

Prior to this provision, neither the Constitution of Barbados nor other relevant immigration laws explicitly recognized dual or multiple citizenship. To the extent that there was any recognition of dual citizenship, a note was made in the Barbados Passport stating 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"*** See paragraph 6.22 of the 1998 Constitution Review Commission.

I am of the opinion that a limited number of Barbadians, possibly less than 100 persons, described by an eminent and distinguished Barbadian as persons who hold **positions of trust** shall not qualify to be appointed as a holder of any office specified in the Constitution or by an Act of Parliament if he holds the citizenship of any other country in addition to his citizenship of Barbados. The **positions of trust** are as follows:

(a) The President

(b) Members of Parliament

(c) Members of the Defence Force in the rank of Commander or its equivalent, and above

(d) Members of the Barbados Police Service in the rank of Assistant Commissioner and above

(e) The Superintendent of Prisons

(f) The Chief Immigration Officer

(g) The Comptroller of Customs

(h) The Governor of the Central Bank of Barbados

(i) Ambassadors or High Commissioners

(j) The Secretary to the Cabinet

I further recommend that the foregoing citizenship requirement be determined, if obtained by birth or descent or if born outside Barbados after 29 November 1966 if either parent, at the date of his/her birth was a citizen of Barbados and had been born in Barbados (see sections 4, 4A and 5 of the Constitution).

In the Dissent which follows on the office of the President, in relation to the issue of dual nationality or citizenship, the concern illustrated there is equally relevant in so far as membership of Parliament is concerned. Just under 5 years ago, a Guyanese Member of Parliament with dual citizenship in Canada voted against his party on a no confidence vote and then promptly left the country for Canada where he had citizenship. It was not a case of seeking asylum; he entered Canada as of right as a citizen. In my view, if you have held or hold a position of trust, or intend to seek such a position, then there should not be a luxury of a bolt hole when matters, to which you may have contributed, go awry.

Article 8 of the Constitution of Ghana is instructive on the foregoing.

The President

The office of the Presidency of Barbados is provided for in Chapter IV, section 28, 29 and 30 of the Constitution, with section 32 providing the details for the election of the President. Overall, I consider the structure of the provisions almost perfunctory without regard to detail and content, and/or the place of such details.

Section 28 of the Constitution provides as follows:

(1) There shall be a President who shall be the Head of State.

(2) The President shall be Head of the armed forces.

(3) The President shall have such functions as are assigned to him by this Constitution or any other law.

Section 29 provides that a person is qualified for election as President if he is a citizen of Barbados by birth of descent.

Section 30 specifies the disqualifications from being elected as President if he:

(a) is a member of the House of Assembly or Senate;

(b) was a member of the House of Assembly or Senate within the period of 12 months immediately preceding the date of his nomination; or

(c) is disqualified to be elected as a member of the House of Assembly by virtue of section 44 or any law made under subsection (2) of that section.

The most cursory consideration of the foregoing provisions makes it clear that there are no objective criteria, other than citizenship by **birth or descent** for a person to be nominated for election as President. However, even that minimalist requirement has been removed by a majority decision of the Commission so as to provide that a citizen by **registration** could be nominated for election as President.

I am of the firm opinion that the highest office in the country should not be accessible to those who migrate here, and who by means and favours, are able to gain the ear and attention of those who control the political levers of the country. In the fullness of time the offspring of such migrants who are born in Barbados, may well qualify for nomination, but otherwise an unequivocal no to the proposal that a citizen by registration be a qualifying option.

I recommend that the citizenship requirement be as follows: Citizenship by **birth or descent** or if born outside Barbados after 29 November 1966 if either parent, at the date of his/her birth was a citizen of Barbados and had been born in Barbados.(See sections 4, 4A and 5 of the Constitution). The Constitution should explicitly bar **dual** citizenship for the President. This is the universal position across the countries of the Commonwealth, and the events in the South American country of **Peru** where a former President had a relationship with another country, is an object lesson for guidance.

I further recommend that there be a minimum age requirement of 40 years: the Commonwealth of Dominica and Ghana provides that the age be 40; Trinidad and Tobago 35, Singapore 45.

As in the case of the Commonwealth of Dominica and Trinidad and Tobago, I recommend that the nominee for President should have been ordinarily resident in Barbados for 5 7 10 years immediately preceding nomination Provided however if the nominee held an overseas office in the service of Barbados, or is employed with any intergovernmental organization or institution of the Commonwealth Caribbean or any international organization or institution of which Barbados is a member and lives outside Barbados because he is required to do so, such absence shall not be a bar.

I do not support the provisions in section 30. Membership of either House of Parliament should not be a bar to being nominated to be President of Barbados. As in the case in Trinidad and Tobago, if a member of either House is elected the seat thereupon becomes vacant. The relevant disqualifications implied for section 30 (c) should be enumerated individually rather than in the manner used.

I support the recommendation that the term of office of the President be 7 years; however, I do not support a renewal of the term.

The Acting President

The current provision in section 41 is not acceptable. There should not be a need for a consultation between the Prime Minister and the Leader of the Opposition. It smacks of monarchical rule. When the office of President is vacant for any reason, it should devolve on an office holder under the Constitution, i.e. the Chairman of the Presidential Advisory Council, failing him, the President of the Senate or failing him, the Ombudsman.

The Proposed Office of President of the High Court

The size of the Barbadian judiciary, including Magistrates, Masters and Judges of the High Court, and the Court of Appeal is less than **35**. This number does not merit the creation of a position of **President of the High Court** as recommended at 7.32.3 and 7.52 to 7.54 of the Report. When viewed against the size of the judiciary in Kenya (see Table 3.1) where there are nearly **400 judges and magistrates**, and that of England and Wales, where at April 2020 there were **3,174 judges** in post, the absurdity of the recommendation in relation to Barbados, becomes apparent.

Moreover, I do not think it appropriate that **administrative** issues should be enshrined in the Constitution.

The more appropriate comparator for Barbados is the Supreme Court of Trinidad and Tobago. The High Court of Trinidad and Tobago is made up of the Chief Justice and between 6 and 36 High Court judges while the Court of Appeal is made up of the Chief Justice and 12 Justices of Appeal. There is a department of court administration in the judiciary headed by the Court Executive Administrator. The CEA answers to the Chief Justice, and the creation of such a position is all that is required to improve the structure of the Barbadian courts, but the post does not merit inclusion in the Constitution.

Consequentially, it is my view that the current provisions in the Supreme Court of Judicature Act Cap 117A in relation to the Office of Chief Justice be retained, and a reference to the proposed office of **President of the High Court** under the Constitution, be disregarded.

Appointment of Judges

The late Sir Maurice King, Q.C a former Attorney General of Barbados and a member of the 1998 Forde Commission, in a dissenting opinion on the topic of the **Appointment of Judges** noted that

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.

I have given careful consideration to the views of the other Commissioners as detailed at paragraphs 7.44 to 7.49 of the Report but I have not been persuaded that the appointment of the Chief Justice should be on the advice of a proposed Constitutional Offices Commission, rather than by the Prime Minister on the recommendation of the Judicial Appointments Committee (JAC) which has since its creation in 2019, been responsible for all judicial appointments to the Supreme Court of Barbados, including the appointment of the **two** most recently appointed Chief Justices.

For much the same reason I am not persuaded that there is any merit in reverting to a pre-1974 judicial method of appointment for Justices of Appeal or Judges of the High Court, recommended in 1998 but ignored, to be revived almost 25 years later with no cogent reasons. As former Commissioner King said in 1998,

the integrity and independence of the judiciary is secured NOT by the method of appointment but by other provisions of the constitution ... the best guarantee of judicial independence is the character, integrity and independence of spirit of those appointed."

Term of Office of the Chief Justice

I am in agreement with a common retirement age for all judicial officers, and that there be no provision for an extension of age. However, I am unable to support a term appointment for the Chief Justice with the concomitant proposal, that on completion of the term but under retirement age, the former CJ continues to sit as a Justice of Appeal. While such notions may have currency in large jurisdictions (with the attendant office space to recognize these happenings) I do not think that they are tenable in a jurisdiction the size of Barbados.

Constitutional Offices Commission

The purported purpose of the COC is to moderate the powers of the Prime Minister in relation to the appointment of certain constitutional office holders.

The origin of this constitutional provision is found in the 1997 Constitution of the Commonwealth country of Fiji, an archipelago country in the South Pacific of about 930,000 persons, on more than 300 islands, 110 of which are permanently inhabited. While more than half of the population is of Melanesian or Polynesian origin, nearly 40% are people of Indian origin, the descendants of indentured labourers brought to work in the sugar industry.

Fiji has had a somewhat turbulent constitutional and political history. Its'1966 Constitution was altered in 1990, revised in 1997 and abrogated in 2009. There were 2 military coups in 1987 and yet another in 2006. The establishment of the Constitutional Offices Commission in Fiji in 1997 should accordingly be seen in the context of their peculiar history.

In my view, given the realities of the size of Barbados and its population, there is no justification for a COC structure for Barbados. It would create another layer of bureaucracy in decision making, with consequential delays in the making of critical appointments. Accordingly, I dissent from the recommendation for the creation of the Constitutional Offices Commission in the new Barbados constitution.

It is of interest to note that Commissioner Maurice King, Q.C (as he then was) in his Dissenting Views to the Constitution Review Commission Report of 1998, while observing that "it has been argued that the Constitution places too much power in the hands of a prime minister" agreed only with the limitation on the powers of a prime minister on the successful passage of a no confidence resolution, but not otherwise. We should be guided by his approach.

PART 2

Dissenting Opinion of the Deputy Chairman

I am encouraged to write this dissenting opinion in the hope that the national conversation on the reform of the republican constitution will aim to make changes or corrections to the existing constitution that our collective experience reveals is required by justice or the general good, in order to strengthen the political values to which we the sovereign people, have committed ourselves.

I began this journey with a view that distinguishes the process of constitutional review from that of constitutional reform. So with the latter in mind, I have sought to deconstruct the independence constitution and to examine its benefits, contradictions and nuances, without seeking to radically transform the character of the constitution and the political society. The Commission has reconstructed a republican constitution that is fit for our purpose and that will serve future generations of Barbadians to secure their democracy. Not all of our deliberations have aligned and I now submit my alternative opinions on the content of the proposed constitution.

The President

The retention of the office of the President of Barbados in the new republican constitution is an anachronism. A titular Head of State who is required to act upon the advice of other constitutional officers and whose duties remain purely ceremonial, represents a continuation of the role of the British Monarch's representative. This retention can hardly be justified in an independent democratic State, particularly one where the government derives its legitimacy from the consent of the governed.

While the office of President and before it, the office of Governor-General, have both been held by persons of the finest quality and substance and who have exemplified grace, dignity and compassion in the discharge of their duties, the rationale for its retention and the pomp and pageantry associated with the office

[1]Caribbean Constitutional Reform: Rethinking West Indian Polity by Professor Simeon McIntosh

lacks democratic legitimacy in the sense that it is not connected with or derived from the sovereign will of the people. It does not, in any way, accord with our shared conception of justice or governance or democracy that requires the office to be placed at the apex of the political system. It beggars questions as to its relevance and symbolism of who we are as a people.

The precise nature and scope of the prerogative or reserved powers enjoyed by the British Monarch had always been doubtful given that these powers had been attenuated with the advent of a written constitution. The measures designed to hold-over this office in the current constitution have been prescribed in a formalistic way but these provisions stand out as lacking in genuine substance. Moreover, the office of President, as is presently established, cannot be rationally explained or justified within the framework of a democratic parliamentary republic. The roles and functions mimic those created for the representative of the British Monarch who has since ceased to be our Head of State.

The Commission has gone further to recommend that the law-making role of the President should be excised from the constitution and if this is accepted, the President will no longer be a constituent part of the Parliament of Barbados. Thus the role of the President in giving or refusing the assent to the legislation passed by both Houses of Parliament will no longer exist. This recommendation is more than symbolic in that it resolves the democratic conundrum and removes the possibility of a non-elected Head of State delaying or vetoing Bills duly passed by the democratically elected legislature without having to give a reason therefor, in circumstances where such actions are immune from judicial review.

It is my view, therefore, that our democracy would be greatly enhanced with the office of an Executive President who is elected directly by the people of Barbados as both the Head of State and the Head of Government. The fact that Barbadians do not directly participate in the election of the Head of their own Government is an unfortunate democratic deficit that can only be explained by our inability to imagine suitable democratic forms and institutions beyond the Westminster system. The new republican constitution ought to reflect a conscious and deliberate effort to resolve this deficit that will give the Barbadian electorate the opportunity to participate directly in the election of their Head of Government and thus constitute the State.

This proposed change to the office of an Executive President represents a genuine attempt at deconstructing Westminster, removing the anachronisms and absurdities within the British conventions that are unsuited to our conditions. It resonates with the building up of a true republican form of government that is reflective of the collective will of the people. It would also bring an end to the absurd political mimicry of observing the long-established British custom of the unelected Head of State being formally required to ask the leader of the successful party in the general elections to form a government in their name.

It is my view that an Executive President, having been elected by the people of Barbados, would enjoy the legitimate right to form the government in the name of the people of Barbados. There can be no purer form of representative democracy in a parliamentary republic than the change from a titular and ceremonial Head of State to the office of Executive President. The Commission has agreed to maintain the status quo in the absence of wider public debate and consensus, but the maintaining of the status quo requires me to dissent from the rest of the Commission in the recommendations pertaining to the President.

I would therefore recommend that the election of an Executive President of Barbados should take place during the period of general elections in Barbados, where voters may choose from among the candidates who have been nominated by their respective political parties to stand for the office as National Members of Parliament. The President, when elected, would sit in the House of Assembly as a parliamentarian and be entrusted with the duty to constitute the executive government in the form of the Cabinet. The Executive President and the Parliament would be accountable to the sovereign people of Barbados for the exercise of republican government.

The Parliament

The use of the terms "Upper House" and "Lower House" is a holdover of the British Westminster parliamentary system of the Lords and Commons. It cannot be gainsaid that the historical circumstances that have led to this distinction in the British Parliament have no place in an autochonous process of constitutional design or in the language or nomenclature of the new republican constitution. The distinction becomes even more incongruous with the principles underlying a

parliamentary democracy where the unelected House of the Senate is designated higher in precedence to House of Assembly that has been elected by the people.

It is my view that the Parliament of Barbados should continue to be a bicameral parliament constituted by a House of Assembly and a House of Senate. The House of Assembly should be made up of Members of Parliament elected from the various constituencies determined from time to time along with ten (10) national parliamentarians who are also elected directly by the people to stand as National Members of Parliament. The election to the House of Assembly should continue on the First Past the Post basis. The person who is elected as the Executive President of Barbados must be elected from among those standing as a National Member of Parliament in the general elections as an expression of the democratic will of the people in the direct choice of the Head of State and the Head of Government. The political party which wins the most seats (both constituencies and national members of parliament) will form the government and the National Member of Parliament with the most votes in that party will be the Executive President.

The Senate

It is also my view that the Senate should be constituted by no less than twenty-five (25) members who are elected on the basis of a party-list system on a proportional representative basis in the general elections. This gives broad representation to the expressed will of the people. Provision should also be made for five (5) independent senators who are selected from representatives of non-governmental organisations (NGOs) and civil society with the sole criteria that they are persons who are not affiliated to any political party. The appointment of independent senators should then be made by the Constitutional Offices Commission.

The Cabinet

The Executive President should be permitted to appoint members of the Cabinet who have not been elected to Parliament but who have been ratified by a resolution passed in both Houses of Parliament provided that the number of

persons so appointed and ratified do not number more than one-third (1/3) of the total members appointed to the Cabinet. Those members of Cabinet who are not elected to parliament would be accountable to parliament through the collective responsibility of the Executive President. The standing orders of the parliament should also make provision for these Cabinet appointees to appear in parliament when requested to do so. The parliament should formally retain the right to determine whether it has confidence in the appointed members of Cabinet and should be able to vote on any such resolution as may be required.

A Fixed Parliamentary Term

It is also my view that there should be a fixed parliamentary term of five years where general elections are held on a specific date for elections at the end of every parliamentary term. Provision should be made for emergencies where elections cannot be held. The provision for fixed election periods brings certainty to the political process and would negate any unfair advantage to be gained by a snap election or remove the prospect of the undemocratic holding over beyond the five (5) year parliamentary term.

The Dissolution Power

The power of the Prime Minister to trigger the dissolution of Parliament has long been the practice at Westminster and has uncritically found its way into the independence constitution. In Westminster, this power is counter-balanced by the presence of a strong parliamentary opposition, a system of parliamentary whips and more importantly, by a government back-bench which serves as a vital check on the dominance of the executive in the legislature. These counter-balances are absent given the small size of our elected Assembly. Further, while the power to dissolve parliament is exercised within the purview of certain conventions at Westminster, the codification of these conventions into the constitution has caused them to lose their "intrinsic evolutionary character by the ossification which is inherent in codification in a Constitution".

[2]See "Floreat the Westminster Model? A Commonwealth Caribbean Perspective" by Professor Ralph Carnegie (1996) 6(1) Caribbean Law Review 1.

When conventions become hard law, constitutional crises will occur which cannot be answered by references to the text of the constitution. An example of how this codification of constitutional conventions has proven to be problematic occurred in 1994 when the Prime Minister lost the confidence of the House but did not resign because the constitutional provision to effect the revocation of the appointment of the Prime Minister required a specific threshold number of votes to be met, which was not obtained. In that instance, the constitution did not provide an answer to the problem created when the Prime Minister did not immediately resign from office.

In our current constitution, the Prime Minister can use the power to dissolve the House to deter or delay votes of confidence, or to nullify them even after they have succeeded. This power is akin to the Prime Minister being able to play the part of Sampson and drag the temple down with him. The power to dissolve Parliament serves as a check on the ability of the legislature to hold the government to account.

It is my view, therefore, that the power to dissolve the House at will ought to be excised from the constitution. In a democratic parliamentary republic, it cannot be the case that the judgment of one political actor can determine when the life of the entire Parliament should come to an end. Of course there is always the need for flexibility in any system of government and it is my considered view that provision should be made by way of legislation for Parliament to determine whether the term should be brought to an end prior to the expiration of the five (5) year cycle. In that case, the new cycle would begin from the day of the first sitting of Parliament until expiration or a resolution is passed in both Houses to bring that cycle to an end.

Gender Balance in the House of Assembly

The wide gender disparity in the composition of the Parliament ought not to go unaddressed in the process of constitutional reform. There ought to be a more robust attempt to redress the imbalance between men and women in Parliament by the imposition of gender quotas on all political parties participating in general elections in Barbados. This can be administered by way of appropriate legislation which makes provisions for fines on political parties and the abatement of the parliamentary subvention.

Therefore, I propose that the constitution should make provision for the parliament to pass legislation to provide for the Electoral and Boundaries Commission to seek to achieve and maintain gender equity in the composition of the House of Assembly and in the House of the Senate by the regulation of political parties in this specific regard.

Alteration of the Constitution

It is understood that constitutional rules generally set the "rules of the game in a society but the amendment rules establish the rules for changing the rules. They are the gatekeepers to a constitution. However, the current manner and form requirements provided for the alteration of the Constitution are the lowest thresholds for constitutional change in the entire Commonwealth Caribbean. These require only a two-thirds (2/3) legislative majority to alter the constitution.

While the level of entrenchment of the provisions of the constitution are not as deep as in other countries, it has not been the case that there has been a run on the constitution by parliament. Assuredly, any attempt to alter the constitution that effectively derogates from the protections guaranteed by the Fundamental Rights and Freedoms ("FRFs") in the Constitution can be brought before the courts for redress, even prior to the passage of a Bill in parliament. The courts have not been loath to strike down legislation that has been found to be inconsistent with the constitution, including legislation that is intended to alter the constitution. Parliament has not retaliated by passing legislation to abrogate the rulings of unconstitutionality by the courts and in this respect, fidelity to the principle of the rule of law has been a hallmark of our constitutional experience.

It is, however, incumbent on the legislative arm of government to carefully consider the extent to which proposed changes to the constitution are designed to enhance the process of democracy and to avoid the advent of constitutional-backsliding through the abrogation of the constitution and its basic structure. It is not proposed that parts of the constitution should be placed beyond the power of alteration by the democratically elected legislature. Alteration and even periodic

[3]See: "Constitutional Amendments: Making, Breaking and Changing Constitutions" by Professor Richard Albert.

reviews are necessary to ensure that the arrangements between the government and the governed are effective and adaptable to the needs of people, thus ensuring that the system of liberal democracy survives well into the future.

It is my view that the current minimal threshold requirements in the constitution are insufficient and inadequate to protect FRFs from future denouement by a government that is motivated on the basis of majority mandate to reduce protections for the minority or to prevent despotic changes to the structure of government that are intended to negate the democracy. In a world that has become increasingly polarized, care must be taken to guard the constitution against constitutional changes that are disguised as amendments but are in fact intended to disrupt the basic structure of the constitution and redistribute powers.

It is an accepted constitutional canon that the protection of FRFs are by their very nature counter-majoritarian in that they do not depend on the contentions of majority views for their legitimacy or existence in a liberal democracy. They speak to equal basic rights and liberties of citizens that legislative majorities are to respect. FRFs are so valuable to one's intrinsic worth as a human being that changes which derogate from them ought to be put beyond the purview of a parliamentary majority who may be tempted to change their nature and character in pursuit of popular legislative objectives that serve to denude them of their value and effect especially for those in the minority.

It is my view that a whenever a Bill is presented to Parliament that proposes to alter any provision in the Chapter on FRFs, it should first be sent to a joint select Committee of Parliament for consideration and certification that the proposed alterations are proportionate and that they do not derogate from the basic structure of the Constitution. Any such Bill should be thoroughly scrutinised in parliament to ensure that it is directed at a proper purpose which is sufficiently important to warrant overriding FRFs. It should also be provided that any Bill of this nature should not be passed in all of its stages unless there is a 90-day period between the first reading and third reading of the Bill. The process of delay has served as an effective check on executive overreach in a parliament with a smaller number of members in opposition and on the back bench. It would mean that an alteration of the constitution in respect of FRFs would only be achieved after a period of reflection by lawmakers and where possible, some consideration of the views of the wider public.

In respect of a Bill proposing to alter the structure of government and the political process, the powers of the legislature, executive and the judiciary, it is my view that no Bill should be passed in Parliament unless it is first sent to a joint select Committee of Parliament for consideration, and further, that there is an elapse of a 90-day period between the first reading and third reading of the Bill and the holding of a consultative non-binding referendum. These requirements would ensure that any proposed changes to the structure of government and the political process would benefit from the widest public consultation and engagement.

The rationale for these requirements is that a constituent government only holds power by the consent of the governed, and therefore, any changes to the structure of the government and political system would only be implemented when the views of the public are thoroughly considered. The referendum requirement is proposed to be non-binding and advisory. A government may yet decide to test the political waters and opt to proceed even in the face of a majority no-vote and government then will have to defend its decision to move ahead, but in the end, the people will have the final say.

I readily acknowledge that these proposals for the alteration of the constitution as they relate particularly to FRFs and the structure of the government and the political system are fundamentally different from those that are contained in the current constitution. The motivation for proposing deeper levels of entrenchment of these provisions in the constitution lies in the need to avoid constitutional manipulation on the basis of an electoral majority simpliciter and for the building up and maintenance of a strong deliberative democratic culture where the consent of the governed is courted and given due consideration in any attempt to alter the constitution in these two important respects.

The current system excludes the views of the wider public from the process of constitutional alteration and assumes that only the legislature should be engaged. This process owes its origins to the process for changing the constitution at Westminster where the sovereign parliament has the only say and the final say. This process of constitutional alteration is an area where there is a democratic deficit and it is most unsuited to a country with a written constitution that is sovereign and supreme and that requires the legislature to conform to its principles and basic structure.

Therefore, any changes to the constitution, particularly as it relates to the FRFs and the structure of the government and the political process, ought to be attained only after the most careful process of deliberation by the legislature and by a genuine consultation with the people.

Conclusion

This dissenting opinion is not intended to cast any doubts on or to detract from the efficacy or substance contained in the recommendations of the Commission. I whole-heartedly support the recommendations of the Commission subject to the reservations contained in this dissenting opinion. The Commission has produced the most progressive and insightful draft constitution since independence and should be proud of this important work. I appreciate that the process of constitutional reform is not an easy task and many views must contend in any healthy deliberative democracy.

My aim in this dissenting opinion is to bring awareness to some of the alternate perspectives which have been proposed and discussed in our deliberations. Indeed, I have been encouraged by other commissioners to write this opinion moreso as an alternate view, to stimulate the discussions on constitutional reform that would occur in the future. In fine, it is my fervent hope that Barbadians will take the opportunity to read and absorb the Report of the Commission and the Draft Bill and robustly engage in the tremendous privilege of constitutional-making.

PART 3

Dissenting Opinion of Commissioners Sade Jemmott and Khaleel Kothdiwala

We are proud to associate ourselves with the body of work which has been produced by the Commission since its appointment in June 2022. It is our shared view that the Commission, operating on a relatively short timeline and with limited resources, has executed its mandate creditably, producing a thorough, incisive and comprehensive report of recommendations. Further the Commission has had the privilege of overseeing the drafting of a new Constitution which effectively captures the spirit of the present republican moment, anchored in the best traditions of our legal, political and social past with eyes intentionally fixed on enduring the vicissitudes of the future.

In the execution of this complex task, though, it is understandable that consensus may not be attainable on all matters. In this context, and after careful consideration, we must dissent from certain of the recommendations made by our colleagues in the majority, which we set out hereunder. Though we dissent from these recommendations, we have no doubt that our colleagues in the majority have arrived at those recommendations in earnest good faith. Nevertheless, the said recommendations are, in our shared view, unsupportable for reasons that follow.

The recommendations from which we dissent are –

- The possibility of re-election for the President;
- The requirement for the reappointment of a Prime Minister; and
- Certain aspects of the requirement for a Code of Conduct for Ministers.

Re-election of the President

The majority of the Commission has recommended that the President should be able to seek re-election. We do not agree. As seen in paragraph 4.55 of the Report, the Commission agreed to increase the President's term to seven (7) years, deliberately choosing this length because it represented the average tenure

of the Governors-General. A term of seven (7) years is a fairly considerable time and even a single renewal would mean that the person would remain in office for almost a decade and a half, which in our view would be undesirable.

Commissioner Kothdiwala, in general, is opposed to the idea of term limits for officers of the executive or legislature; while Commissioner Jemmott prefers to be guided by the specific circumstances and nature of the specific office to be considered. However, we agree that in the case of the office of the President in a republican Barbados, a term limit is advisable having regard to the unique and significant role discharged by that office as a symbol of national unity and patriotism. The mechanism chosen to elect a President seeks to secure cross-party agreement between the Prime Minister and Leader of the Opposition. Therefore, to win re-election a President would have to retain the confidence and favour, as it were, of these persons. Indeed, it would be quite possible (and has in fact occurred elsewhere) that a President, who wished to serve another term, might be denied re-election.

Such a situation would create an undesirable and entirely avoidable awkwardness, which is potentially embarrassing for a;; parties concerned. It would, therefore, be most unfortunate for a President to have to end their career in public service under such circumstances.

A President of Barbados should not have to approach their relationship with the other officeholders with a view to a possible re-election. In my view, it is not consistent with our demands on the President to be a non-partisan, unifying symbol of unity, for the majority to also subject the office to the discretion of the Prime Minister and Leader of the Opposition in this way.

For these reasons, we are of the view that a President should serve a single seven-year term and be permitted to retire with dignity, of course with every entitlement befitting a former holder of that highest office.

Re-appointment of a Prime Minister

Regrettably, our colleagues in the majority did not share our view that the present requirement for an incumbent Prime Minister to be re-appointed after an election (where his party has won re-election) should be discontinued.

This requirement obtains under section 66(1)(b) of the Constitution and is at odds with the relevant constitutional convention. By way of illustration, in the United Kingdom, when there is a change in Prime Minister, the incoming premier will have an audience with the King, where he is invited to form a government by the King. Upon appointment, the Prime Minister remains in office until he resigns, which would happen if his party lost a general election. Therefore, there is no "re-appointment" of the Prime Minister where a general election is held, and the Prime Minister's party is re-elected.

The challenge with the re-appointment requirement was laid bare in Trinidad and Tobago in the aftermath of the election of 2001 which returned a hung Parliament. Both political parties won an even number of seats. However, the President of Trinidad and Tobago was required under the Constitution, soon after a general election, to appoint, or re-appoint, a person as Prime Minister. The then President took advice, including from Vernon Bogdanor, the British constitutional scholar. In Bogdanor's advice, later published in the Trinidadian press, he explained to the President that the Trinidad Constitution (which in this respect is similar to Barbados) did not completely mirror the convention, and so he could not recommend a definite course of action based on historical precedent in jurisdictions observing that convention. He nevertheless suggested, by analogy to the convention, that the President ought to take the least interruptive course of action and re-appoint the incumbent Prime Minister. The President ultimately did not, instead inviting the then Leader of the Opposition to form a government. This was, of course, a matter of considerable controversy, in which the office of the President was embroiled – a situation we hope never to encounter in Barbados

As can be seen from the Trinidadian experience, the President was placed in an impossible situation. The Constitution required him to take a positive action, which would have inevitably invited the ire of the other side, whatever decision was taken. As the Commission rightly notes in its report, the President ought to be a symbol of national unity, untainted by public controversy and polarizing sentiment.

Given that Barbados currently has an even number of seats in the House of Assembly, it stands to reason that measures should be taken to safeguard against the crisis which enveloped Trinidad in 2001. While the Commission has dealt with the matter of requiring an odd number of seats in the Report at paragraph 5.51, this matter of re-appointment also deserves attention.

Removing the requirement for re-appointment would mean that a Prime Minister would continue in office until he resigns, is defeated in a no-confidence motion or the President is about to appoint another person as a result of a general election.

For completeness, we acknowledge that this would have a consequential effect upon the tenure of office of the other Ministers. Presently, the office of a Minister becomes vacant upon the re-appointment of the Prime Minister, among other circumstances. This has the effect of creating a blank slate for the person continuing as Prime Minister to reconstitute their Cabinet as they sees fit. Indeed, it has often been the case in our history that a Prime Minister in a new term will make changes to their ministerial team. If the requirement for re-appointment is removed, this would mean that Ministers who won re-election to the House of Assembly would similarly continue in office without interruption.

However, this matter is not an insurmountable barrier to our position on prime ministerial re-appointment. It might simply require the development of a convention that Ministers who win re-election to the House nevertheless resign their office as Ministers, or in the alternative, the continuing Prime Minister can advise the President to revoke their appointments. Thereupon, the Prime Minister is free to reconstitute their Administration as they sees fit.

In sum, in the aftermath of a general election, the President would only be required to act where it is clear that another person commands the majority support in Parliament. This avoids the need to drag the presidency into a contentious issue.

Code of Conduct for Ministers

The Commission has recommended that there should be a Code of Conduct for Ministers and Parliamentary Secretaries. This is a position with which we are in full agreement. However, the final matters on which we feel compelled to dissent relate to the aspects of that recommendation where the Code of Conduct (a) must be approved by Parliament; and (b) has been characterised by our colleagues as being "binding".

We do not support the recommendation that the Code of Conduct be submitted for the approval of both Houses of Parliament for a few reasons. Chief

among which is our perspective that the organization of Government, and the identification of the standards expected of Ministers, is properly a matter for the Prime Minister as Head of Government. With this in mind, it is difficult to justify the need for the Senate, for example, to signal its concurrence with the terms of such a Code. Therefore, while we agree that each Prime Minister should be required to prepare a Code of Conduct for their Ministers that should be laid in both Houses for the information of members, we do not believe that approval should be a requirement. Nonetheless, we concur that Parliament should be empowered to investigate alleged breaches of the Code of Conduct, and we have no challenge with the view that the Integrity Commission should also have a role in investigating alleged breaches. Our fundamental position being that the Code of Conduct is desirable but should be a standard set by the Prime Minister for their Administration and thus ought not to be subject to procedures which unduly fetter the essential discretion of the Head of Government.

Similarly, as it relates to the binding nature of the Code of Conduct, our objection centers on the consequences of an identified breach, specifically, what is intended by the characterisation of the Code of Conduct as binding. It is our view that to be effectually binding, a Code would need to have some degree of enforceability.

Thus, the Commission's recommendation in this regard, could suggest that if the Integrity Commission finds that a Minister breached the Code, and Parliament, considering the report, finds that that Minister should be dismissed, then the Minister would, on that basis, cease to be a Minister. However, in our system of government, Ministers receive their appointment from the Head of State, on the advice of the Prime Minister. That appointment can only be determined on the advice of the Prime Minister. Therefore, even if it is found that a Minister breached this Code, it would be for the Prime Minister to determine what should be done regarding that Minister based on the circumstances. In essence, it would be a matter of political judgement for the Prime Minister in any case.

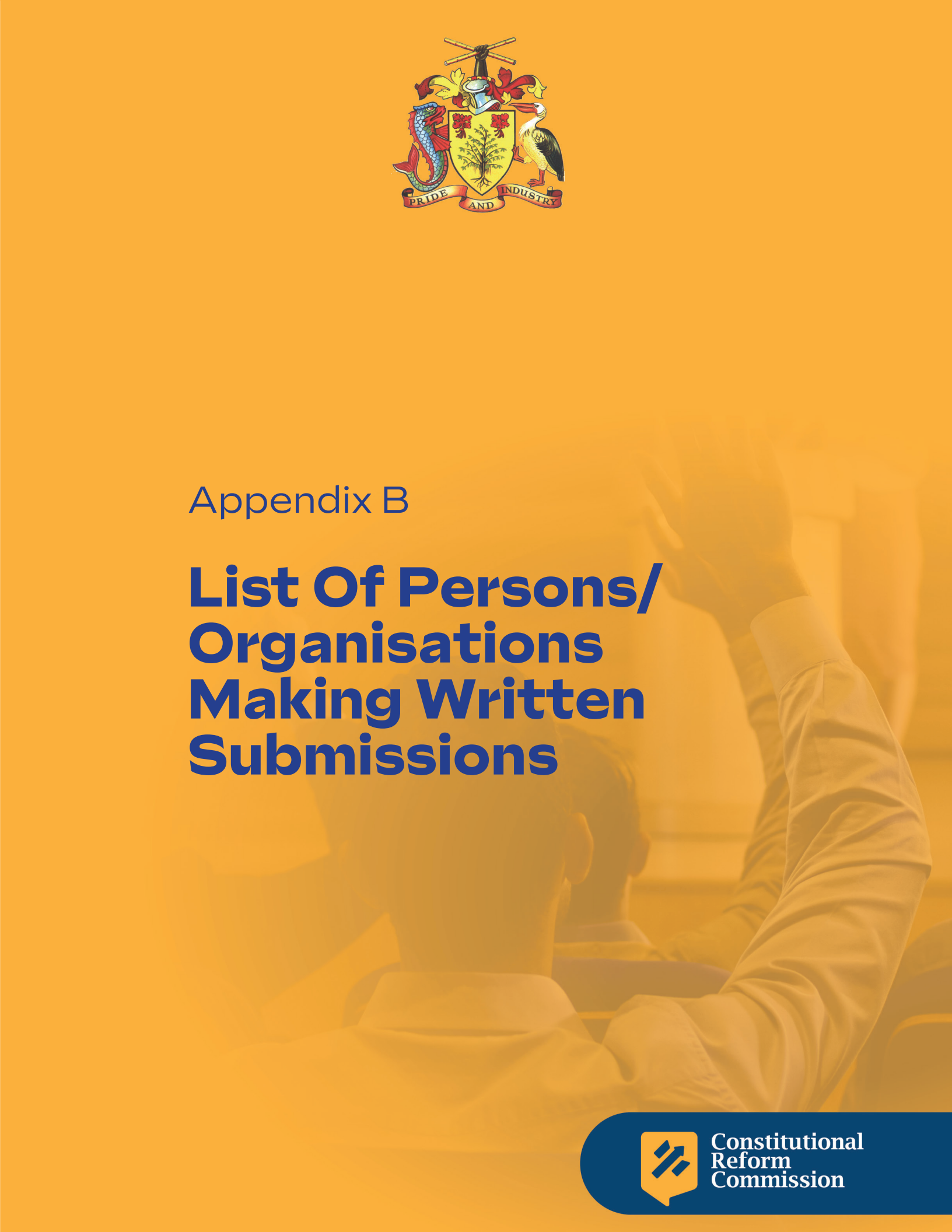
A Prime Minister, exercising his political judgement, might choose to retain the Minister. In such a case, it is open to the House of Assembly to consider whether it maintains confidence in the Prime Minister. In circumstances where they do not, it is open to them to prevail upon the President to dismiss the Prime Minister and thus their government by way of a motion of no-confidence.

This is because, in our system, Ministers are individually responsible to Parliament for their Ministries, but it is the Prime Minister, as head of the Cabinet, who is ultimately responsible to Parliament for the Administration as a whole, by virtue of the fact that the existence of the Administration depends upon Parliament's confidence in the Prime Minister. It is, therefore, inconsistent with our system of government to create a mechanism which constrains the Prime Minister's control over the composition of their Cabinet.

Ultimately, any sanction on an offending Minister or Parliamentary Secretary should be imposed at the discretion of the Prime Minister. If, in the face of an adverse Integrity Commission report, a Prime Minister chooses to do nothing or acts inadequately, the consequences will be for them to bear. To the extent that the Code could not be "enforced" by Parliament or the Integrity Commission, and any possible sanction is solely within the discretion of the Prime Minister who may choose to take no notice of the apparent breach at all, the characterisation of the Code as "binding" is questionable. We therefore do not agree with this characterisation and dissent accordingly.

Appendix B

List Of Persons/ Organisations Making Written Submissions



Constitutional Reform Commission

Abdullah, Amani

Atherley, Algeron

Batson, Randy

Beale, John

Beckles, David

Belle, Hon Justice Francis

Berry, Michael

Best, Ayodele

Best, Chelsea

Blackman, Ryan E.

Blades, Connor

Brathwaite, Chelston W.D.

Brathwaite, Cinque

Brathwaite, David

Brathwaite, Terry

Brooks, Charles

Browne, Chesterfield St. C.

Browne, Michael W.

Bryan, Anthony and Maureen

Bryan, Shaundelle

Bynoe, Gerrick (“Fonsie the Gamer”)

Bynoe, Peter

Cadogan, Joseph

Callender, Trevon

Carrington, Prof. C.M. Sean

Carrington, David

Cave, Daria Michelle

Chandler-Prescod, Akeem

Clarke, Deborah P.

Clarke, Lillie A.

Clarke, Zahra

Cutting, Terry T.

Daniel, Nicholas

Davis, E. Jerome

De Peiza, Verla

Depradine, Colin

Drakes, Dr. Randolph

Edwards, Art

Edwards, Arthur Jr.

Edwards, J. Michele

Evelyn, Dr. Veronica

Farnum-Badley, William Lee

Flower, Cindy

Forde, Sandra

Fran, Ama

Gamble, Cyprian

Garnes, Vic

Gill, Maureen

Goodridge, Chelsea

Graham, Lorian

Grant, Ja-Rad

Grazettes, Joyce

Greaves, Eglah

Greaves, Neville

Greenidge, Morris

Griffith, Edwin

Griffith, Michael DeV.

Griffith-Richards, Marva E.

Harrison, Sonia

Harewood, Matthew

Hinds, Kristina G.

Howell, Nicole

Holder, George W.

Holder, Hartley

Hoyte, Paul

Hunte, Aaron

Ifill, Lee

Inniss, Althia

Isaacs, Canon Wayne

Jacobs, Dr. Carol

King, Dyland

Knight, Yemi

Larrier, Buddy

Lashley, Stephen A.

LaTouche, Cyprian

Laurie, Peter

Lawrence, Christopher

Layne, Joshua

Layne, Kevin

Lewis, Samuel

Lochan, Raphael

Lowe, Herman (“Ras Bongo Spear”)

Lythcott, Marva

Mapp, Adrian

Marshall, Jalisa

Moore, Cheryl-Lynn

Mottley, Sir Elliott

Nash, Richrd C.

Nolan, Clifford

Norville, Ashlee

Osborne, Philip

Outram, Anthony

Parris, Dr. O'Neall E.

Payne, Ashlin B.

Penfold, Kim

Phillips, Grenville

Pile, Laurie D. (on behalf of Emtage, Martin G.; Daniel, Derek G. and Joseph, Raymond)

Proverbs-Estwick, Carvaene

Pullido, Ann

Ramdeen, Raisa

Ramsay, Ark

Reid, Neesha

Roach, Colin

Rock, Jarod

Rose, Lee R.

Richard, Adriel

Riley, Cheryl

Russell, Olivia

Sealy, Qaasen Ricardo

Simmons, Sir David

Simpson, Andrew

Smith, Deighton

Smith, Eric

Smith, Dr. Olivia

Sobers, Dominik

Springer, Norma

St. John, Leslie

Terrelonge, Richard

Thompson, Peter

Tocel, Johnash

Walcott, Kim and Dawn

Ward, Ezekiel

Wayne, Abi G.

Webster, Greg

Webster, Peter

Weekes, Dave and Marcia

Whitehall, Hawthorne

Whitehall, Khemal

Whittaker, Charles

Wickham, Peter

Wood, Andrea

Worrell, Roger

Yearwood, Benjamin O. . and E. Mary
Yearwood, Mary

Anonymous 1

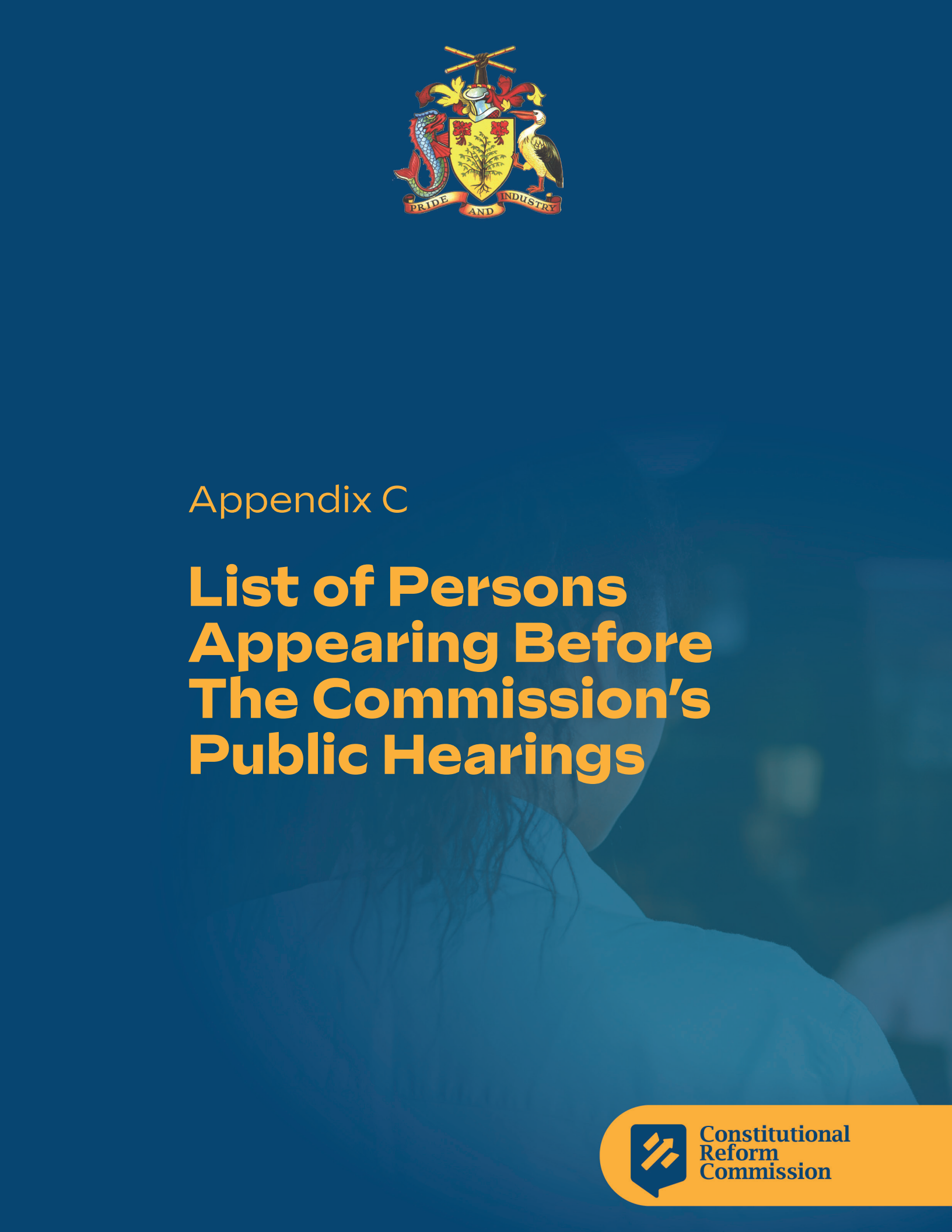
Anonymous 2

Anonymous 3

Anonymous 4

Sebastian

Madeline



Appendix C

List of Persons Appearing Before The Commission's Public Hearings

Constitutional Reform Commission

PUBLIC HEARINGS IN BARBADOS

(i) 1st Public Hearing

Date: October 16, 2022

Location: The St. Michael School

Baldeo, Maxi

Brathwaite

Bruce, Devaron

Gibson, Kurtly

Jones, Jabari

Larrier, Rev. Buddy

Reid, George Lincoln Jr.

Weekes, Keith Adolphus

Worrell, Roger

*Lui (no last name given)

(ii) 2nd Public Hearing

Date: October 30, 2022

Location: The Alexandra School

Bovell, Shamar

De Peiza, Verla

Edwards, Michele

Husbands, Harry

Jemmott, Nikeh

Jones, Jabari

Lascaris, Luke

Leacock, Joan

Nicholson, Eurlene

Roberts, David

Turney, Roy

(iii) 3rd Public Hearing

Date: November 6, 2022

Location: The Deighton Griffith Secondary School

Barrow, Isadora

Brathwaite, Nia

Clarke, Angela

Corbin, Fred

Edwards, Michele

Evelyn, Veronica

Holder, Maureen

Jones, Jabari

Lascaris, Luke

Marshall, Trevor

Massiah, Paul

Mathurin, Ryan

Nicholls, Ferdinand

Niles, Lisa

Rapley, Michael

St. John, Karl

Weekes, Dave

(iv) Special Public Hearing on the Preamble to the Constitution

Date: November 24, 2022

Location: The Fredrick Smith Secondary School

Brathwaite, David

Brathwaite, Nia

Corbin, Rosalene

Daniel, Nicholas

Evelyn, Veronica

Gill, Raven

Heron, Taitu

Hunte, Troy

Jones, Jabari

Inniss, Hutson

Mohammed, Ruann

Myers, Lancelot

Neal, Kerry

Rambarran, Nastassia

Wilson, Tyrique

PUBLIC HEARINGS IN THE DIASPORA

(i) 1st Diaspora Meeting

Date: March 11, 2023

Location: Birmingham, United Kingdom

Alleyne, Richard

Greenidge, Maxwell

Harris, Robert Mortimer

King, Brenda

Lorde, Nathan

Maxwell, Sherry

Sealy, Athelston "Tony"

Smith, Ken

Yearwood, Jennifer

*Ajason (no surname was given)

*Steve (no surname was given)

** one individual declined to give her name

(ii) 2nd Diaspora Meeting

Date: March 13, 2023

Location: Reading, United Kingdom

Burnett, Carol

Pierre, Burnett

Connell, Anderson

Connell, Jennifer

Franklin, George

Hamilton, Maxine

Harewood, Rodney

Hinds, Ezra

Morris, Rev. Charles

Oliver, O'Neil

Smith, Gilmour "Gilly"

Springer, Anderson

Whittaker, Anita

(iii) 3rd Diaspora Meeting

Date: March 14, 2023

Location: London, United Kingdom

Austin, Hal

Brathwaite, Vanessa

Cadbury, Maria

Connell, Anderson

Forde, Deighton

Goring, Beverly

Leacock, Anthony

Mallett, The Rt. Rev. Rosemarie

Nelson, Augustina

Phoenix, Paul

Prime, Joy

Roach, Tyrone

Walrond, Julia

*an unnamed representative of the African Caribbean Diaspora Talks also presented

(iv) 4th Diaspora Meeting

Date: May 20, 2023

Location: New York, United States

Alleyne, Rev. Eddy

Bryan, Jocelyn

Clarke, Sonia

Harewood, Benjamin

Harewood, Mary

Holder, Trudy

Jones, Ludwick

Lavine, Dale

Mapp, Adrian

Medford, Jalisa

Parris, Dr. O'Neall Parris

Pilgrim, Daniel

Wilkinson, Cecily

Parris, Dr. O'Neall Parris

Pilgrim, Daniel

Wilkinson, Cecily

(v) 5th Diaspora Meeting

Date: May 23, 2023

Location: Boston, United States

Bowman, Catherine

Forde, Cynthia

Downes, Timothy

Grant, James

Harris, Chris

James, James

Keith, Jessica

Layne, Heather

Louis, Clyde

Massiah, Alfred

Massiah, Norma

Niles, Ronaldo

(vi) 6th Diaspora Meeting

Date: May 24, 2023

Location: Toronto, Canda

Bancroft, Glyne

Clarke, Brian

Lacointe, Dr. Darius

Mason, Ken

Richards, Carlos

Taylor, Rashid

Thompson, Carl

Walcott, Dawn

*2 persons declined to give their names

** an unnamed representative of the Grace Morris Foundation also presented

(vii) 7th Diaspora Meeting

Date: May 27, 2023

Location: Atlanta, United States

Arthur, Fr. Richard

Bryan, Peter

Callendar, Shamara

Charles, Lester

Cutting, David

Durant, Frank

Hope, Donna

Jones, George

Lynch, Ambassador Noel

Nelson, Robert

Rice, David

Sealy, Rosalind

*Janice (no surname given)

Appendix D

List Of Organisations Specifically Invited To Make Submissions

Constitutional Reform Commission

Political Parties

The Alliance Party for Progress

The Barbados Labour Party

The Democratic Labour Party

Solutions Barbados

Religious Organisations

The Barbados Christian Council

The Barbados Evangelical Association

The East Caribbean Conference of Seventh Day Adventists

The Hindu Association of Barbados

The Ichirouganaim Council for the Advancement of Rastafari

The National Spiritual Assembly of the Bahá'ís of Barbados

The Pentecostal Assemblies of the West Indies

The Sindhi Association of Barbados

Trade Unions, Professional Associations and Employers' Associations

The Barbados Association of Medical Practitioners

The Barbados Bar Association

The Barbados Chamber of Commerce and Industry

The Barbados Employers' Confederation

The Barbados Hotel and Tourism Association

The Barbados International Business Association

The Barbados Private Sector Association

The Barbados Secondary Teachers' Union

The Barbados Union of Teachers

The Barbados Workers' Union

The Congress of Trade Unions and Staff Associations of Barbados

The Institute of Chartered Accountants of Barbados

The National Union of Public Workers

The Unity Workers Union

Other Organisations

The African Heritage Foundation

The Barbados Association of Retired Persons

The Barbados Council of the Disabled

The Barbados National Organisation of the Disabled

The Barbados Youth Development Council

The Clement Payne Movement

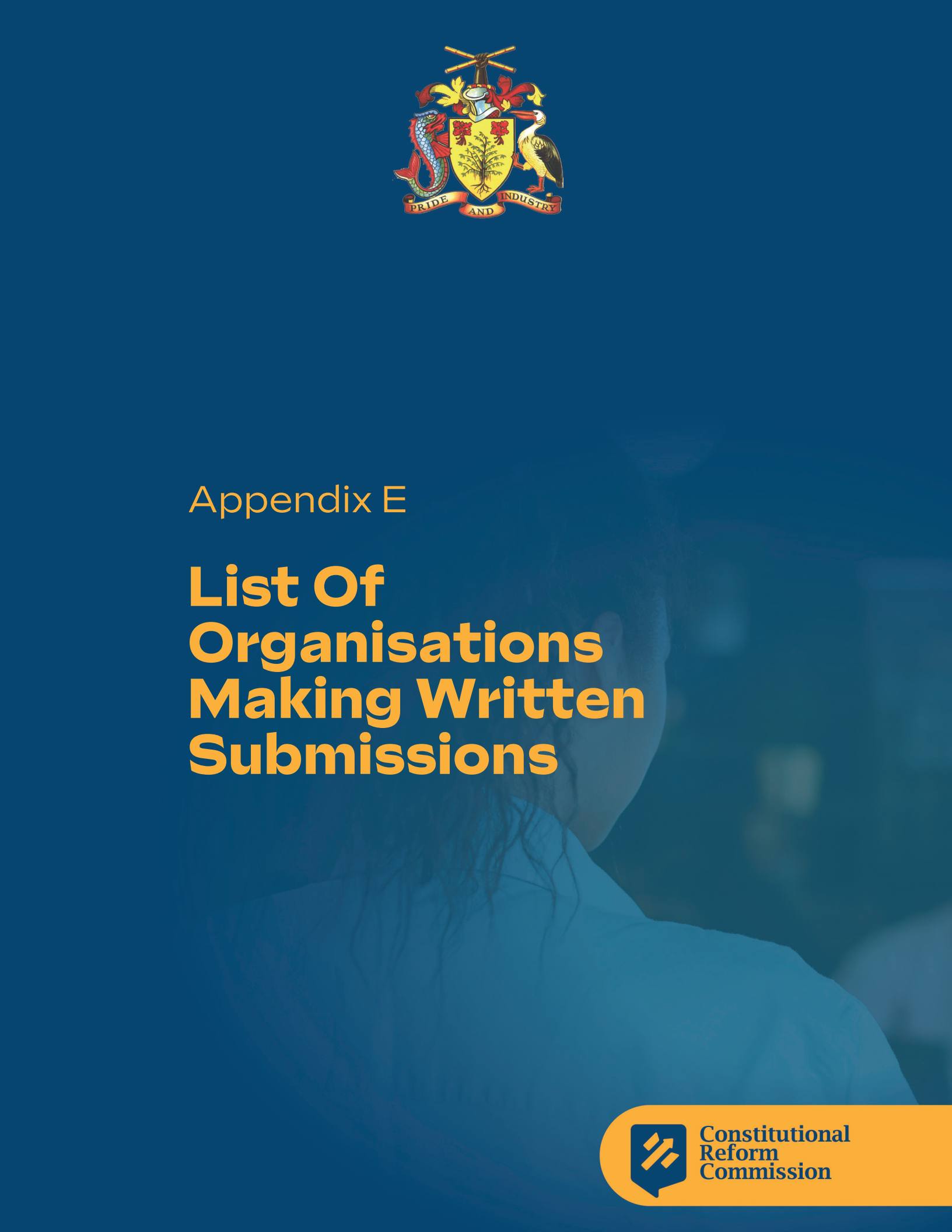
The Men's Educational Support Associations

The National Organisation of Women

The University of the West Indies

Appendix E

List Of Organisations Making Written Submissions



Constitutional Reform Commission

State Institutions

The Administrative, General and Professional Service Commission, the Judicial and Legal Service Commission and the Protective Services Commission (joint submission)

The Barbados Defence Force

The Barbados Police Service

The Ministry of Environment and National Beautification

The National Transformation Initiative

The Office of the Auditor-General

Organisations and Associations

The Alliance Party for Progress

AnchorBridge Environmental

The Barbados Council for the Disabled

The Barbados Evangelical Association

The Barbados – Gays, Lesbians and All-Sexuals against Discrimination

The Barbados Labour Party

The Barbados Secondary Teachers' Union

The Barbados Union of Teachers

Butterfly Trans Barbados

The Congress of Trade Unions and Staff Associations of Barbados

The Democratic Labour Party

Equals Barbados

Family Faith Freedom Barbados with Watch Out Barbados

The Heart and Stroke Foundation of Barbados, the Healthy Caribbean Coalition, UWI Law and Health Research Unit, and O'Neill's Global Health Institute

Heavenly Culture, World Peace, and Restoration of Light

Humanists Barbados

The Institute of Chartered Accountants of Barbados

The Integrity Group of Barbados

Movement of Pan-Africanists, Socialists and Rastafarians/The Clement Payne Movement

The National Spiritual Assembly of the Bahá'ís of Barbados

Solutions Barbados

Women and Development Unit, University of the West Indies

Appendix F

List of Private Hearings

Constitutional Reform Commission

DATES	INDIVIDUALS/GROUP
August 31, 2022	The Most Honourable Dame Sandra Mason, FB, GCMG, DA President of Barbados
September 21, 2022	Sir Lloyd Erskine Sandiford, KA Former Prime Minister of Barbados
October 14, 2022	Commissioner Richard Boyce Representatives, Barbados Police Service
October 17, 2022	Commodore Errington Shurland Representatives, Barbados Defence Force
November 15, 2022	Sir Patterson Cheltenham, KA Former Chief Justice of Barbados Members of the Judiciary
November 28, 2022	Representatives, Anglican Synod
January 11, 2023	Executive and Members, Democratic Labour Party
January 19, 2023	Barbados Association of Retired Persons
January 24, 2023	Women and Development Unit, University of the West Indies
January 31, 2023	Barbados Bar Association
February 9, 2023	Equals Barbados, Representatives of LGBTQ+ Community
February 16, 2023	Executive and Members, Barbados Labour Party
February 21, 2023	Mr. Didier Trebucq, UN Resident Coordinator for Barbados and the Eastern Caribbean Ms. Limy Eltayeb, Resident Representative, UNDP

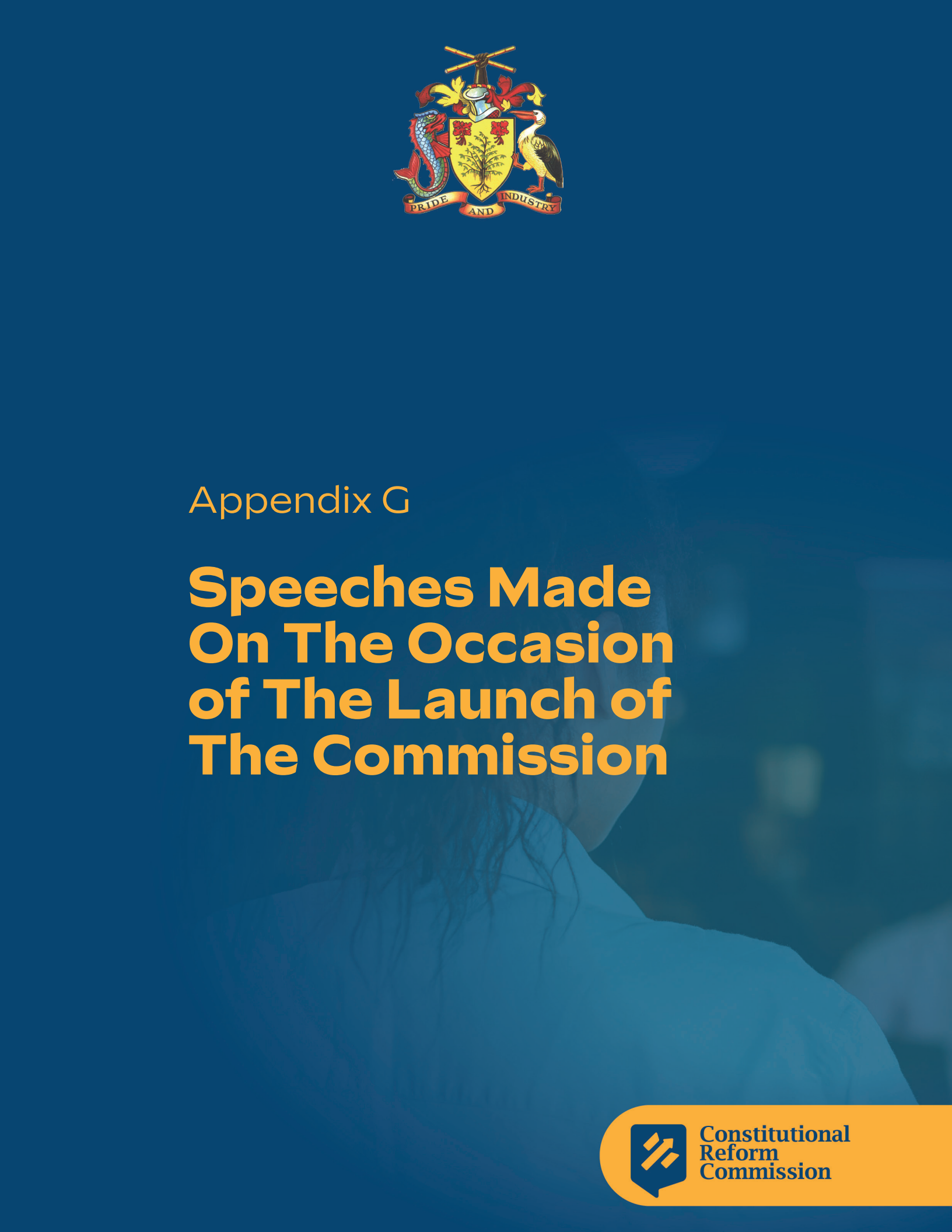
DATES	INDIVIDUALS/GROUP
	Ms. Tonni Brodber, UN Women Representative Ms. Juana Sotomayor, Human Rights Advisor in Office of the UN Resident Coordinator
March 22, 2023	Members, Rotary Club of Barbados South
March 30, 2023	Representatives, Congress of Trade Unions and Staff Associations of Barbados
April 14, 2023	Members, The Senate
April 20, 2023	Ms. Toni Moore, General Secretary, Barbados Workers' Union Representatives, Barbados Workers' Union Representatives, Movement of Pan-Africanists
April 24, 2023	Representatives, Barbados Secondary Teachers' Union
April 26, 2023	Mr. Philip Osborne Mr. Martin Cox Mr. Ruall Harris Dr. Peter Laurie Mr. Selwyn Smith Ms. Sonja Welch, Group of Retired Permanent Secretaries
April 27, 2023	Dr. Grenville Phillips, CBE, JP Mr. Leigh Trotman, Auditor General Coordinators, Petition calling for recognition of parental rights
May 2, 2023	Ms. Maisha Hutton, Representative, Heart and Stroke Foundation of Barbados Ms. Najla King, Director of Maritime Affairs, Ministry of the Environment and National Beautification

DATES	INDIVIDUALS/GROUP
May 4, 2023	Sir David Simmons, KA, BCH Former Chief Justice of Barbados Representatives, Solutions Barbados
May 8, 2023	Representatives, Integrity Group of Barbados
May 10, 2023	Committee of Permanent Secretaries, Government of Barbados
July 13, 2023	Parliamentary Reform Commission
August 30, 2023	Members, The House of Assembly
March 19, 2024	Leslie Haynes, SC Chairman, Electoral and Boundaries Commission Representatives, Electoral and Boundaries Commission
May 17, 2024	The Honourable Ralph Thorne, SC , MP Leader of the Opposition Representatives, Parliamentary Opposition

DATES	INDIVIDUALS/GROUP
April 3, 2024	The Honourable Mia Mottley, SC, MP Prime Minister of Barbados Members, Cabinet of Barbados
June 14, 2024	The Most Honourable Dame Sandra Mason, FB, GCMG, DA President of Barbados

Appendix G

Speeches Made On The Occasion of The Launch of The Commission



Constitutional Reform Commission

PART 1

Remarks by the Hon. Dale Marshall S.C., M.P, Attorney General and Minister of Legal Affairs at the Official Launch of the Constitutional Reform Commission, Friday, June 24, 2022 at 10:00 a.m. in the Frangipani Room, Lloyd Erskine Sandiford Centre

Acting Prime Minister Bradshaw,

Senior Minister Duguid and other members of Cabinet,

Director General Atkins and other members of the public service,

Mr. Chairman and your members,

Justice Sherman Moore,

Ladies and Gentlemen.

Just a few days ago, the Members and the Secretary of the Constitution Reform Commission took their oaths of office. Today's official launch of that Commission represents the first steps in a journey that we, as a country, last embarked on near 30 years ago.

Our Constitution defines and protects citizens' rights; it limits and balances government powers in relation to individuals and institutions, and it is therefore the standard against which all other laws are measured.

Indeed, in its opening clause, the Constitution establishes itself as that standard by declaring it to be the Supreme law of the land. And that clause states:

> "This Constitution is the supreme law of Barbados and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail, and the other law, shall, to the extent of the inconsistency, be void."

No one can doubt the importance of taking a periodic hard look at that document against which, whatever we do, is measured. In fact, within a decade of the coming into force of our Constitution in 1966, it was apparent to the government that we needed to subject that document to significant public scrutiny. Constitutions are a living document and must be both strong enough to withstand the buffeting of the winds of change, while at the same time being adaptable, and adjusting and changing when circumstances require.

Neither legal thinking nor societies have stood still over the years, and we must ensure that our Supreme Law takes into account, where appropriate, the developments in the law and our changing societal norms. Consider for example the progression from the legality of capital punishment, which was mandatory, to the current position seen in the decisions of the CCJ in the case of Nervais, which ruled that the mandatory death penalty in Barbados was unconstitutional. Consider also the emerging trend in the approach of regional Courts in respect of LGBTQI rights and the constitutional protection of those rights.

And in the last 56 years, our Parliament has amended our Constitution 23 times. Some by way of direct amendments, and others by way of indirect amendment. Some of those amendments have been far-reaching, such as the establishment of the Caribbean Court of Justice (the "CCJ")as our final Court of Appeal and the removal of the Queen as the Head of State and replacing her with a Barbadian President. Others have been of less impact, though of equal importance.

The first national review of the Barbados Constitution was conducted by the Cox Commission, appointed in 1977, and which submitted its report in 1979. And that Commission was appointed to "review the Constitution, and to consider a system of National Honours and a National Table of Precedence". That Commission was chaired by Mencea A. Cox (as he then was). The Cox Commission made several recommendations on many of the clauses of that Constitution but more along the lines of consideration of important areas in which the Constitution might be changed by amendment only. That Commission made many important recommendations, including the establishment of the independent Electoral and Boundaries Commission, which was ultimately acted on by Parliament by way of constitutional amendment in 1981.

In 1996, another Commission to Review the Constitution of Barbados was established. That Commission was chaired by Hon. Henry deB. Forde, QC, MP as he then was, and it included nine (9) other eminent Barbadians. That Commission submitted its Report to His Excellency Sir Clifford Husbands, Governor General, in December of 1998.

As with the Cox Commission, the Forde Commission made recommendations on parts of the Constitution, which could be changed by amendment. And included among those significant recommendations was the move towards a republican system of government with a Barbadian as Head of State, something that it took us 23 years before we could take that bold step.

The Bajan experience with our Constitution demonstrates the three established bases for Constitutional Reform, these being: the requirements of constitutional modernization; the lessons of governance gained from experience in governing; and the need to deepen our democratic processes.

In recent days, the Government has been criticized for taking too long to get on with the process of Constitution Reform. Let me remind those commentators that the course of constitutional reform, properly done, is not something to be hastened and raced along. It is a lengthy and complex, and costly, process and the consultative process that the Commission will take charge of is no small undertaking. In fact, the Forde Commission met 112 times in its life of 26 months.

We have been methodical in our work in getting this process off the ground, and in making sure that the best possible arrangements for this Commission are put in place. There simply can be no false steps. We have had to consider carefully such things as the manner in which the Commission will be operating; how will it be able to capture the interest of the Barbadian public; how will we carry out the process of educating the Barbadian public on the various issues that are to be considered; how will we utilize the new platforms of communication in order to reach every possible Barbadian.

Our Prime Minister is on record as saying that we will be requiring the deepest possible consultation across every community and sector of Barbados and on every element of our Constitution, and that is exactly what will be done. But this is not the Barbados of the 1970s or the 1990s. What worked in those days will hardly capture the interest of the millennial Bajan, and in large measure, it is the voice of the millennial Barbadian that will perhaps need to be most heard, since this will be THEIR constitution. I doubt that they will come out to town hall meeting in the night as I did while following the Forde Commission meetings; I doubt that they will be looking to the print media for their information. Equally too, some of the new rights that are emerging for the Commission's consideration will take on a special significance for the younger Barbadians: rights that are beginning to coalesce around such concepts as the right to digital security and the right to one's own digital data, as well as the right of equality of access to digital and computing spaces.

We must also find the means to fully engage the Barbadian diaspora in this process, whose interest in and commitment to Barbados has never flagged over the years and cannot be doubted.

This Commission will no doubt be invited by contributors to revisit ground that has already been covered by the Cox and Forde Commissions. That is not a bad thing. I expect engagement on all of the issues that have gripped the imagination of constitutional theorists, political scientists and political practitioners - such as the relevance in today's world of the first-past-the-post system; proportional representation; term limits and fixed election dates; the consideration of the separation of powers doctrine is timely; the nature of the public service; the role of the public servant in politics; citizenship rights and so many more.

Mr. Chairman your Commission is not merely a "review" commission. It is a Commission tasked with the reform of the Constitution, arguably a much wider scope of enquiry. It is established as an advisory commission under the Commissions of Inquiry Act, and has the solemn task of working with all of Barbados to craft a new constitution for our nation. The Commission will not be starting with a blank slate, since a document was prepared some decades ago. But even that draft has been overtaken by time, legal thinking and recent court decisions. We also have many constitutions across the world from which we can draw, to extract those things that are relevant to us. I wish to underscore the point, Mr. Chairman, that everything is open for discussion. Yes, there are some elements such as the Bill of Rights that are an essential part of any constitution, but what those rights look like, whether they should be expanded, limited, or adjusted, all are open for discussion. There are to be no sacred cows in this process.

Out of this consultation, I expect that a draft Constitution will be delivered to the country. And in that regard, the drafting services of Mr. Justice Sherman Moore, a former Chief Parliamentary Counsel, has been made available to the Commission.

I am honored as the Attorney General to have a small role to play in this process of constitution reform and getting it to this point, but the heavy lifting now begins. I have absolute confidence in the Commission as it is constituted, and I am sure that the product will reflect their varied experiences and solid intellect. But it will be tough going.

Mr. Chairman, my friends tell me that when I find a work of literature that I enjoy, I find a way to weave it into every speech. It is true.

And so I end with the words of Hylton Vaughan's poem: **To the Unborn Leader**

You who may come a hundred years
After our troubled bones are dust,
Farseeing statesman, born to lead,
And worthiest of the people's trust.

Turn these few pages in that hour
When by dark doubts you are assailed
Of what it boots to shape their power –
Read what we won and where we failed.

And barb the word with wisdom fit,
And build, O build, where we but dream:
Expose, undo, repair, extend,
As you, O master, best may deem.
But whatsoe'er of ours you keep,
Whatever fades or disappears,
Above all else we send you this-
The flaming faith of these first years.

PART 2

Remarks by the Hon. Mr. Justice (rtd) Christopher Blackman, GCM, Chairman of the Commission at the Official Launch of the Constitutional Reform Commission, Friday, June 24, 2022 at 10:00 a.m. in the Frangipani Room, Lloyd Erskine Sandiford Centre

Acting Prime Minister

Mr. Chief Justice

Mr. Attorney

Fellow Commissioners of the Constitutional Reform Commission

Distinguished Ladies and Gentlemen

Members of the Media

We are honoured that you have joined us this morning for the launch of the Commission. Mr. Attorney, we are aware of your responsibility within the Cabinet of our Republic for issues of governance and I give you the assurance that the Commissioners will pay equal attention to your words of encouragement as well as to those of caution, as we undertake the functions for which we subscribed to the oaths of office on Monday last.

As you yourself referred to it, the Barbados Constitution, which came into force in November 1966, had its most significant alteration and amendment in October of 2021 when it was amended to give effect to the determination and decision that Barbados should be a Sovereign, Democratic and Parliamentary Republic with a native born person serving as the Head of State.

During both the public debates across the country in their various fora, and the debates in Parliament on the constitutional change to a republican system of government, the Government emphasized its commitment to engage in an extensive consultation with the Barbadian public on a new Constitution.

Pursuant to that commitment, this Commission has been appointed as an advisory Commission by His Excellency the Acting President under the provisions of section 3 (1) of the Commissions of Inquiry Act, Cap. 112 of the Laws of Barbados, which states the President may, whenever it is deemed expedient in the public interest, appoint one or more Commissioners to be a commission of inquiry as an advisory commission connected with the good Government of Barbados.

In that regard, we have been appointed to:

- Examine, consider and enquire into the Barbados Constitution and all other related laws and matters with a view to the development and enactment of a new Constitution for Barbados;
- After due enquiry, examination and study, to report in writing giving opinions, making such recommendations and providing for consideration a draft Constitution of and for Barbados as in the opinion of the Commissioners is necessary and desirable to meet the circumstances of a 21st century Barbados, and that would promote the peace, order and good governance of Barbados; and
- Consider all other relevant matters which in their own discretion, are relevant to the above aims and objective.
- In the discharge of its duty as a Commission of Inquiry, the Commission is mandated:
- To have the broadest possible consultation with Barbadians at home or abroad and in the diaspora, by such manner and procedure as it deems reasonable and appropriate;
- Generally to increase public interest in the subject of Constitutional Reform by means of meetings, media programmes, engagement both face to face and virtual, materials whether digital or otherwise;
- Prepare and distribute such material, memoranda and other relevant information, which would deepen public knowledge in the Constitution and in the draft Constitution being prepared; and
- Prepare and submit its written report within 18 months from the date of the appointment of the Commission.

The work of the Commission is being facilitated with a working draft document prepared by the Hon. Sherman Moore, CHB, a retired Justice of Appeal, as legal draftsman to the Commission. Prior to his judicial appointment in 1997, Mr. Justice Moore was Chief Parliamentary Counsel and we are indeed fortunate to have available to us, the skills and experience that Mr. Justice Moore brings to this assignment. We are obliged to you, Sir.

Fellow Commissioners, Ladies and Gentlemen, the assignment and appointment of Ms. Gail Atkins, Director General, Governance to this Commission as its most senior executive officer is of considerable importance in that such an appointment conveys the undoubted assurance that the work of the Commission will be taken seriously and that the necessary support will be provided for it to be effective.

Immediately following this Official Launch, the Commission will have its first formal working session to elect a Deputy Chairman and to put in place a number of administrative arrangements to enable the Commission to be fully operational. I have deliberately said first formal working session, because in actuality a great deal has been happening behind the scenes for some time now.

On a personal note, I would observe that it has been heartening and encouraging to read letters and other articles in the press from concerned members of the public on issues such as methods of voting, the effect and impact of treaties entered into on the constitutional rights of Barbadians and the place of the Charter of Barbados in our Constitution before this formal launch. I wish to stress that the Commission warmly welcomes any constructive suggestions to strengthen and advance the exercise upon which we are embarked, both as to the manner of engagement and the processes to be used. In the very near future, details will be given as to where comments and suggestions may be e-mailed or delivered.

Significant institutions such as the Office of the President, the Office of the Prime Minister, the judiciary, the media, trade unions, business organisations, the religious community including the Rastafarian Community, political parties, professional and charitable organisations and other NGOs will be afforded an opportunity to meet privately with the Commission. A similar courtesy would be afforded to any group that requests such a meeting.

The Commission will pursue consultations with the Commissions on Parliamentary Reform and that on Local Governance to determine the impact and implications of the work of those Commissions on the matters we are required to consider.

Fellow Commissioners, Ladies and Gentlemen, this Commission was preceded by the Cox Commission of 1978 and the Forde Commission of 1998, both of which laid the foundations for the good government and governance of Barbados which we have enjoyed for the past 55 years.

Those Commissions have helped to build the Constitutional structure of Barbados which has led us to this place. It is now envisaged that this Commission will be required to take a more transformational approach to ensure that our Supreme Law takes into account, where appropriate, developments in the law and societal norms, for the next century and beyond.

Fortuitously, as I was preparing these remarks, Mr. Justice Adrian Saunders, the President of the Caribbean Court of Justice, in a speech delivered in Georgetown, Guyana to mark the Guyana Bar Association's 50th Anniversary, made some observations that I considered valuable and relevant to the issues which we are obliged to consider. He observed that Guyana has the most advanced Constitution in the Anglophone Caribbean, the only one of its kind that takes care to set out in clear and express terms the fundamental principles and bases undergirding the political, economic and social order.

Mr. Justice Saunders also observed that Guyana is the only CARICOM country to expressly pay regard to international instruments to which that country has acceded, and the recognition of what has been referred to, as second-generation human rights. He also stated that Guyana is the only country that has gone out of its way to pay specific and due regard to the aspirations of its young people and to the status of women.

I am honoured to say to you that, as a result of a reach out by the distinguished Secretary of the Commission, Professor Cynthia Barrow-Giles to the Minister of Home Affairs of Guyana, the Hon. Brindley Benn, copies of the Guyana Constitution have been provided to assist the Commission in its work. I urge all Commissioners to diligently examine and consider this very valuable reference document to see what we may adopt to enhance the draft Constitution we now have to consider.

Fellow Commissioners, the remarks made by the esteemed President of the CCJ are very timely. In addition to the consideration of the Guyanese Constitution, we would also do well to look at the Belize Constitution which has some interesting provisions that empowers the Senate to have oversight of bodies such as the Ombudsman, the Electoral and Boundaries Commission, and the recommendation process for independent Senators, and the Constitutions of other Commonwealth countries such as The Bahamas, the Commonwealth of Dominica, Malta and the wider world with a parliamentary republican system.

Acting Prime Minister, Chief Justice, Mr. Attorney, Fellow Commissioners, Ladies and Gentlemen, the task which we are about to embark on is one of the most consequential in our long history.

Fashioning a new constitution for the 21st century and beyond, should fill us with both excitement and trepidation. We may have only one chance to get it right. Generations to come will judge us on how adequately we rose to the occasion. I say 'we' advisedly because this is not a task entrusted only to the few. All Bajans shoulder that responsibility.

A Constitution reflects the hopes and dreams of a nation. It tells the rest of the world who we are, what we believe, and what we aspire to be. It calls for bold and innovative thinking at the same time as sober and cautious reflection. The Canadian constitutional scholar Richard Albert in a paper published more than a decade ago, noted that:

A constitution is a window into the soul of the citizenry, a mirror in which citizens should see themselves and their aspirations reflected, precisely because it is citizens themselves who should give continuing shape and content to their constitutional text.

It is therefore with both humility and a sense of the historic nature of this occasion that I trust that the final product of our deliberations, the Constitution of Barbados, might earn the approval and respect of future historians, serve as the template of choice for those who follow us in becoming a parliamentary republic, and be the mirror in which the Citizens of Barbados should see themselves and their aspirations reflected.

The Commissioners at the launch of the Commission on June 24, 2022:

Back row, L to R: Suleiman Bulbulia STE JP, Senator The Reverend Canon Dr John Rogers, Khaleel Kothdiwala, Adriel Brathwaite, Senator Gregory Nicholls and Christopher de Caires

Front row, L to R: The Most Honourable Kerryann Ifill FB SCM, Mary-Anne Redman, The Honourable Mr. Justice (rtd) Christopher Blackman GCM, Chairman, Sade Jemmott and Professor Cynthia Barrow-Giles, Secretary.

Shaping our future **together**

Constitutional
Reform
Commission