



POCKET GUIDE

Key Recommendations of
the Constitutional Reform
Commission



Constitutional
Reform
Commission

THE CRC POCKET GUIDE

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About the Commission



Constitutional
Reform
Commission

ABOUT THE COMMISSION

The Constitutional Reform Commission was established by the Government of Barbados to make recommendations for the enactment of a new Constitution of Barbados. The members of the Commission were sworn in by the Acting President, the Very Reverend Dr. Jeffrey Gibson on June 20, 2022.

The specific Terms of Reference of the Commission 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).

The Commission was 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 a written report of recommendations.

The Commission

The Commission was comprised of diverse representatives of civil society, political opinion, religious interests, labour, the legal profession and the youth. The Chairman of the Commission was Justice (Ret'd) Christopher Blackman, GCM, and at its first meeting, the Commission elected Senator Gregory Nicholls, attorney-at-law, as its Deputy Chairman.

The other members of the Commission were:

- Mr. Adriel Brathwaite, SC – Former Attorney General and Minister of Home Affairs
- The Most Honourable Kerryann Ifill, FB, SCM – Former President of the Senate
- Mr. Suleiman Bulbulia, STE, JP – Muslim Chaplain
- Senator Reverend Canon Dr. John Rogers – Rural Dean of St. John Rector at St. George Parish Church
- Ms. Mary-Anne Redman – President of the Barbados Secondary Teachers' Union
- Ms. Sade Jemmott – Attorney-at-Law and Consultant
- Mr. Christopher De Caires – Chartered Accountant and Former Chairman of the Barbados Private Sector Association
- Mr. Khaleel Kothdiwala – Youth Advocate

Professor Cynthia Barrow-Giles was appointed Secretary to the Commission and administrative support was provided by the Office of the Director General, Governance, led by Ms. Gail Atkins.

The Activities of the Commission

The Commission recognised at an early stage, that knowledge of the Constitution in Barbados was limited. This was addressed by providing a copy of the Barbados Constitution and other relevant publications on the Commission's web site (www.crcbarbados.com) and through an information hub on the popular media application, WhatsApp. Additionally, a booklet "The Barbados Constitution: Facts and Questions" prepared by Prof. Velma Newton, provided an explanation of the Constitution in simple language. Collectively, this information provided a baseline for subsequent engagement with the public and interested parties.

The Commission sought and received educational and capacity building support from a variety of local regional and international experts. These included Justice (Ret'd) Sherman Moore, Professor Tracy Robinson (UWI), Mr. Sumit Bisarya (International IDEA), Dr. W. Elliot Bulmer (International IDEA), and Professor Richard Albert (University of Texas). Commissioners also attended a two-day workshop on Constitutional Change in the Commonwealth Caribbean facilitated by International IDEA, the United Nations Development Programme and the University of the West Indies.

Meaningful engagement with the public of Barbados was considered to be a central element of the review by the Commission. The purpose of the Commission was shared

with the public through the daily newspapers as well as other media, and the public was invited to submit their ideas, comments and suggestions. A series of eight (8) programmes on Down to Brass Tacks on the Starcom Network, and Let's Talk About It on the CBC Network provided both information to the public and valuable feedback.

The Commission proceeded to engage the public in the following ways:

- **Public Hearings**

A series of public hearings were held at the St. Michael School, The Alexandra School, the Deighton Griffith Secondary School and Frederick Smith Secondary School. Several hundred people attended these meetings, which were live streamed with an audience of several hundred more.

- **Virtual Public Hearings**

Two (2) virtual public hearings were initiated using the Twitter platform with emphasis on the younger generation. These 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 (twenty-two (22) oral and forty-five (45) written) in addition to over two hundred (200) engagements via tweet.

- **Hearings in the Diaspora**

The Barbadian diaspora was also specifically facilitated in the wide public engagement. Commissioners travelled to London, Birmingham and Reading in the United Kingdom, as well as New York, Boston, and Atlanta in the United States and Toronto, Canada. The seven (7) meetings were well attended by a very engaging cross-section of the Barbadian diaspora.

- **Dedicated Hotline**

The Commission established a hotline through which persons could leave their comments and even request a call back. The submissions from the hotline were actively monitored, and in total, twenty-nine (29) were received.

- **Stakeholder Consultations**

In recognition of the importance of civil society actors in the constitution-making process, the Commission wrote to thirty-five (35) organisations 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.

The Commission also conducted a robust series of engagements with stakeholders. Thirty-one (31) such meetings were 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.

The Commission was structured into four (4) committees to cover: i) Education & Research; ii) Public Education & Engagement; iii) Stakeholder & Institutional Engagement; and iv) Management. Two additional committees were created towards the end of the project to execute the important tasks of writing the final report and reviewing the draft bill for consistency with the Commission's recommendations. Excluding the meetings of these committees, the full Commission met on approximately eighty (80) occasions.

The Commission is grateful to the many persons who lent their support and expertise to the Commission thereby enabling it to adequately exercise its nationally significant functions. The Commission also takes this opportunity to thank all the persons and organisations that made submissions to the Commission across the various modalities.



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.

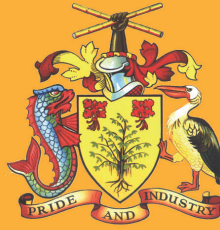
The Commission determined that express provision should be made for this in the new constitution, enabling a person to seek redress for breaches of the Constitution including person's acting in their own interest, or on behalf of another, or as a member of a group or class of persons, or an association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



Summary of Recommendations



Constitutional
Reform
Commission

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 the Report of the Constitutional Reform Commission.

2. SUPREME LAW CLAUSE

The Commission recommends:

- 2.1. That the supreme law clause be retained.
- 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.

3. CITIZENSHIP

General Matters

The Commission recommends that:

- 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.

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

- 3.6. Every person born in Barbados should continue to be entitled to citizenship as of right, subject to paragraph 3.7.

- 3.7. Notwithstanding paragraph 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.
- 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:

- 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.
- 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 paragraph 3.9.

Citizenship by Registration

The Commission recommends that:

- 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.
- 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.

- 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.
- 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*.
- 3.15. The requirement to take an oath or affirmation should apply universally to all citizens by registration.

Dual and Multiple Citizenship

- 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:

- 3.17. The existing constitutional provisions on the renunciation of citizenship should be retained.
- 3.18. The existing constitutional provisions on the deprivation of citizenship should be retained.

4. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

General Matters

The Commission recommends that:

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

- 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.
- 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

- 4.4. The Constitution should guarantee the following rights to every person in Barbados without distinction on any basis:
- a. 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;
 - b. the freedom from slavery and forced labour;
 - 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 one's property, or the entry by others on one's premises, and

- ii. the right to respect for and protection of one's private and family life;
- c. the right to the use and enjoyment of his property;
- d. the right to the protection of the law;
- e. the right to equality before the law and the right to protection against discrimination;
- f. 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.

- 4.5. The rights listed in paragraph 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.
- 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

- 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:

- 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:

- 4.9. The new constitution should protect the right of every person to the opportunity to gain a living by work which they freely choose or accept.
- 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.

- 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:

- 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.
- 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

- 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:

- 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.
- 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

- 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:

- 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.
- 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:

- 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

- 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.
- 4.22. Every person should have the right to establish and maintain, at their 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.
- 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:

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.

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

- 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

- 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:

- 4.28. A Human Rights Commission should be established for Barbados.
- 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.

5. THE PRESIDENT

General Matters

The Commission recommends that:

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

- 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:

- 5.5. Any adult citizen of Barbados should be eligible to serve as President, subject to paragraph 12.5.6.
- 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:

- 5.7. The term of office for the President should be increased to seven (7) years.

- 5.8. The President should be able to seek re-election.

Conditions of Office

The Commission recommends that:

- 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.
- 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

- 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:

- 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.
- 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 the officeholder 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.

6. PARLIAMENT

Structure of Parliament

- 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:

- 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.
- 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:

- 6.4. The Senate should continue to be an appointed chamber consisting of twenty-one (21) members.
- 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”).

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:

- 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.
- 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:

- 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.
- 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.

- 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:

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

- 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”).

Power of Assent

The Commission recommends that:

- 6.16. The inherited monarchical power of the Head of State to assent to or withhold assent from Bills passed by Parliament should be discontinued.
- 6.17. 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

- 6.18. 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

- 6.19. 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.

7. EXECUTIVE POWERS

Cabinet

The Commission recommends that:

- 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.
- 7.2. No term limit should be imposed on the office of Prime Minister.
- 7.3. No numerical limit on the number of Ministers should be fixed in the Constitution.

- 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.
- 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.
- 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:

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

- 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:

- 7.9. The Privy Council should be succeeded by a Presidential Advisory Council.
- 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.
- 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.

- 7.12. A member of the Presidential Advisory Council should serve for a renewable term of seven years.
- 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 their term of office.

Powers of Pardon, Clemency etc

- 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

- 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:

- 7.16. A Constitutional Offices Commission should be established.
- 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. The Chief Justice
 - b. The Chairman and Deputy Chairman of the Electoral and Boundaries Commission
 - c. The members of the Service Commissions
 - d. The members of the Human Rights Commission;
 - e. The members of the Public Service Appeal Board; and
 - f. The Ombudsman.

- 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 by in the President's own discretion.
- 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.

- 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 7.8).

8. THE JUDICATURE

Structure of the Judicature

- 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

- 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:

- 8.3. The Supreme Court should continue to consist of the Court of Appeal and High Court.
- 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.
- 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.
- 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:

- 8.7. The Chief Justice should be appointed by the President, on the advice of the Constitutional Offices Commission.
- 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.
- 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.
- 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:

- 8.11. Where the Chief Justice completes the term of office, but has not yet reached the age of retirement, the officeholder may continue to sit as a Justice of Appeal.

- 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.
- 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.
- 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:

- 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.
- 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.
- 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.

- 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:

- 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:

- 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.
- 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.
- 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.

- 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.
- 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.

- 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:

- 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.

9. THE PUBLIC SERVICE

The Service Commissions

The Commission recommends that:

- 9.1. The Judicial and Legal Service Commission, the Administrative, General and Professional Service Commission and the Protective Services Commission should be retained.
- 9.2. The Teaching Service Commission should be urgently operationalised.

- 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
- 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.
- 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

9.5. The Judicial and Legal Service Commission should consist of:

9.5.1. A Chairman, appointed on the advice of the Constitutional Offices Commission;

9.5.2. The Chief Justice;

9.5.3. The President of the High Court;

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;

9.5.5. An attorney-at-law of at least 10 years' call, appointed on the advice of the Barbados Bar Association;

- 9.5.6. An attorney-at-law no longer in active practice, appointed on the advice of the Constitutional Offices Commission; and
- 9.5.7. Two (2) lay members, appointed on the advice of the Constitutional Offices Commission.
- 9.6. The Chairman of the Judicial and Legal Services Commission should serve for a non-renewable term of six (6) years.
- 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:

- 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.

- 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:

- 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.
- 9.11. The ability of the Service Commissions to delegate its powers of appointment and discipline in respect of certain offices should be retained.
- 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:

- 9.13. Appeals to the Privy Council (or its successor) in relation to public service disciplinary matters should be discontinued.
- 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.
- 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.
- 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:

- 9.17. The other provisions of the current constitution relating to the public service, in particular concerning pensions, should be retained.
- 9.18. The new constitution should set out the values and principles of the public service, reflecting a Service that:
 - 9.18.1. maintains the high standards of professionalism, ethics, impartiality and integrity;
 - 9.18.2. ensures transparent, efficient, economic and effective use of public resources;
 - 9.18.3. is committed to appointment and promotion on the basis of merit and impartiality;
 - 9.18.4. provides frank, honest, impartial, comprehensive, accurate and timely advice to the Government;

- 9.18.5. faithfully and earnestly implements the policies and programmes of the Government;
- 9.18.6. provides and delivers services fairly, effectively, impartially, responsively and courteously to the public;
- 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;
- 9.18.8. establishes conditions conducive to the good health, welfare and safety of its officers while at work;

- 9.18.9. is a development-oriented and career-based service characterised by good human-resource management practices to maximise employee potential;
- 9.18.10. adheres to the Constitution and other laws of Barbados and upholds the rule of law; and
- 9.18.11. promotes accountability for public administration.

10. INDEPENDENT REGULATORY AND OVERSIGHT INSTITUTIONS

General Matters

The Commission recommends that:

- 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.

- 10.2. In particular, the new constitution should provide that, in relation to these institutions –
- 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;
 - 10.2.2. They be provided with adequate facilities and resources for the efficient discharge of their functions and responsibilities;
 - 10.2.3. Parliament shall prescribe the offices constituting these institutions and the salaries and allowances of the holders of those offices;

- 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;
- 10.2.5. The Public Service Appeal Board should have the jurisdiction to hear appeals against disciplinary penalties imposed upon employees of these institutions;
- 10.2.6. The salaries and allowances of the staff, and the other expenses, should be charged on the Consolidated Fund;
- 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

- 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:

- 10.3. The Electoral and Boundaries Commission should consist of:
- 10.3.1. The Chairman and Deputy Chairman, appointed on the advice of the Constitutional Offices Commission;
 - 10.3.2. Two (2) members appointed on the advice of the Prime Minister after consultation with the Leader of the Opposition; and

- 10.3.3. One (1) member appointed on the advice of the Leader of the Opposition after consultation with the Prime Minister.
- 10.4. The renewable five-year term of the members of the Electoral and Boundaries Commission should be retained.
- 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:

- 10.6. The constituency boundaries reports, which the Electoral and Boundaries Commission is constitutionally mandated to produce at certain intervals, should be sent directly to Parliament, rather than to the Minister responsible for electoral matters.

- 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:

- 10.8. The constitutional provisions relating to the appointment, removal and terms of service of the Auditor General should be retained.
- 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.
- 10.10. Parliament should be required to debate the annual report of the Auditor General within three months of it being laid in Parliament.

- 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:

- 10.12. The Integrity Commission should be established by the Constitution to secure its existence against easy repeal by a later Parliament.
- 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:

- 10.14. Constitutional provision should be made for the establishment of the office of the Ombudsman.
- 10.15. The Ombudsman should be appointed on the advice of the Constitutional Offices Commission and should serve until retirement at 67.
- 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).

11. DEFENCE AND SECURITY

- 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. FINANCE

The Commission recommends that:

- 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.
- 12.2. The salaries and emoluments of public officers and soldiers should continue to be constitutionally protected against reduction.
- 12.3. No constitutional provision is needed to restrict the borrowing capacity of a Government.

13. ALTERATIONS TO THE CONSTITUTION

The Commission recommends that:

- 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:
 - 13.1.1. The supreme law clause;
 - 13.1.2. The chapter on fundamental rights;
 - 13.1.3. The provisions establishing the office of the President and vesting the executive authority of Barbados in the President;

- 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;
- 13.1.5. The provisions relating to the Presidential Advisory Council, the Constitutional Offices Commission and the Director of Public Prosecutions;
- 13.1.6. The chapter on the judicature;
- 13.1.7. The chapter on the institutions not subject to direction or control;
- 13.1.8. The chapter on the public service;
- 13.1.9. The chapter on finance;
- 13.1.10. The chapter on the alteration of the Constitution; and

- 13.1.11. The proposed chapter on the enforcement of the Constitution.

14. ENFORCEMENT OF THE CONSTITUTION

The Commission recommends that:

- 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.
- 14.2. Provision be made authorising the following to be able to make applications for constitutional redress:
 - 14.2.1. a person acting in the person's own interest;
 - 14.2.2. a person acting on behalf of another person who cannot act in that other person's own name;
 - 14.2.3. a person acting as a member of, or in the interest of, a group or class of persons; and

- .14.2.4. an association acting in the interest of its members.

15. OTHER MATTERS

Directive Principles of State Policy and Fundamental Responsibilities

- 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

- 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

- 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

- 15.4. The Commission recommends that Government explore establishing an institutional mechanism to review the new constitution every ten (10) years.



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.



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Constitutional
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Commission