

The Barbados Constitution



**FACTS AND
QUESTIONS**

Prof. Velma Newton, CBE, SCM.

REVISED TO THE REPUBLICAN STATUS 2021

**CONSTITUTION OF BARBADOS:
UPDATED TO 2021**

FACTS AND QUESTIONS

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PREFACE

The Barbados Constitution declares itself to be the Supreme Law of the land. That declaration is not in any way an indication that as a document, it is immutable and fixed. Constitutions are living documents that must allow for change over time to meet the changing needs of the society which it regulates. In the history of our Constitution, it has been amended 27 times. Some of those amendments were of tremendous national import and signaled a desire to change some fundamentals about how we govern ourselves as a nation. In this category would fall the recent amendments that were required for Barbados to transition away from the monarchical system of government to a republican form of government. Other amendments of the Constitution were not as far reaching but were nonetheless required to meet a particular need. In this category, one would perhaps place the amendment that prohibited the alteration of the terms and conditions of public officers to their disadvantage.

On two previous occasions, Barbados has addressed the matter of Constitutional reform. The first occasion was in 1978 when the Cox Commission was appointed, and then again in 1997, when the Forde Commission was established. Only a few of the reforms recommended by either Commission were ever enacted by our Parliament.

We have now severed our constitutional ties with the monarchy, and the time has come for us as a whole country, to reflect on our Supreme law and to examine it critically to see what elements we need to reject or reform; and what new concepts now require to be enshrined within its protective walls.

While we often speak about the Constitution, it is evident that much of it is not known or fully understood by the average Barbadian. As we begin the national dialogue, it is important that we ensure that the program of public education is put in place. The Forde Commission called upon the services of Mrs. Velma Newton, then the Law Librarian of the University of the West Indies Cave Hill Campus to prepare a booklet called *The Barbados Constitution: Facts and Questions*. 5,000 copies of that booklet were printed and were taken up so rapidly that a further 3,000 were printed and they too were rapidly taken up. It is a privilege for us to still have the intellectual depth of Professor Newton still available, and she has very kindly agreed to update her original publication to again play a role in the public education thrust.

I sincerely hope that Barbadians will all fully use this publication to become more informed about the inner workings of our Constitution and in the process, subject it to critical examination. This will no doubt be a catalyst for wide engagement and dialogue throughout the important consultative process in the months ahead.



Hon. Dale D. Marshall, K.C.
Attorney General and Minister of Legal Affairs
and Senior Minister (Governance Policy)
Barbados
September 28, 2022

THE NATIONAL PLEDGE

I pledge allegiance to my country Barbados
and to my flag,
To uphold and defend their honour,
And by my living to do credit
to my nation wherever I go.

The National Pledge was written by Mr. Lester Vaughan, a former teacher and Education Officer of Primary Schools. Mr. Vaughan was born in 1910 in the Parish of St. Andrew.

In 1973 the Government sponsored a competition for the composition of a national pledge which attracted 167 entrants. The choice of the National Pledge was announced on April 2, 1973 by the Hon. Erskine Sandiford, then Minister of Education, Youth Affairs, Community Development and Sport.

THE NATIONAL ANTHEM

In plenty and in time of need
When this fair land was young
Our brave forefathers sowed the seed
From which our pride is sprung
A pride that makes no wanton boast
Of what it has withstood
That binds our hearts from coast to coast
The pride of nationhood.

Chorus: We loyal sons and daughters all
Do hereby make it known
These fields and hills beyond recall
Are now our very own
We write our names on history's page
With expectation great,
Strict guardians of our heritage
Firm craftsmen of our fate.

The Lord has been the people's guide
For past three hundred years
With him still on the people's side
We have no doubts or fears.
Upward and onward we shall go
Inspired, exulting, free,
And greater will our nation grow
In strength and unity.

The music for the National Anthem was composed by Mr. C. Van Roland Edwards. Mr Edwards, who was partly blind at the time, was born in 1912 and died on April 22, 1985. The music of the National Anthem was re-arranged by then Inspector Price Cave of the Royal Barbados Police Band in 1967. The lyrics of the National Anthem were written by Mr. Irving Burgie who was born in Brooklyn, New York, U.S.A. of a Barbadian mother and American father. He was born in 1926.

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SECTION 1: HISTORICAL INTRODUCTION¹

In 1625 Barbados was claimed for King James I of England by John Powell, an English captain who landed on the island. Two years later, on February 17, 1627, a group of some eighty English settlers and sixteen African slaves landed at Jamestown (now Holetown). They were later joined by another group, who settled in Carlisle Bay.

In the seventeenth century, it was customary for the King to issue proprietary patents which gave the holders the right to govern overseas territories on his behalf. Accordingly, in 1627 Charles I, King James' successor, granted a proprietary patent for Barbados and the Lesser Antilles to the Earl of Carlisle which gave him authority to establish institutions and make laws for governing the island. Under the authority of the patent, the Earl established the office of Governor and a Legislative Council in 1627, and a House of Assembly in 1639.

The Earl of Carlisle's proprietorship continued until 1663 when it was abolished by Charles II and from then onward the Governor of Barbados was appointed directly by the English Sovereign. The form of government established between 1627 and 1639 comprising Governor, Legislative Council and House of Assembly was known as the "Old Representative System".

The "Old Representative System "

Under this system, the Governor derived his authority from the Crown through -

(a) **Letters Patent** - these set out the powers of the Governor who could veto legislation and dismiss and suspend all officers. However, the appointment of all public officers except the Treasurer, who, from 1710 was nominated by the House of Assembly and the officers of the Militia, was reserved by the Crown through the Secretary of State for the Colonies;

(b) **The Queen's Commission** – this contained instructions in relation to the Governor's duties and those of the Legislature and public officers;

(c) **Royal Instructions** – these supplemented the Letters Patent and Queen's Commission. They provided for the composition, summoning, proroguing and dissolution of the Legislative Council and House of Assembly and the rules to be followed in the enactment of laws. For instance, all Bills passed by the House of Assembly and Council required the Governor's signature before becoming law, but his signature was only valid for three months, pending Royal confirmation. With the consent of the Legislative Council, he could dissolve the House of Assembly and issue writs for new elections, and could suspend any member of Council, but had to justify his actions before the Crown.

¹ Hilary McD. Beckles. *A History of Barbados: from Amerindian Settlement to Caribbean Single Market*. 3rd. Ed.- U.K. Cambridge University Press, 2006 and Hume Wrong. *Government of the West Indies*. N.Y: Negro Universities Press, 1923.

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(d) **Statute** – legislation such as the *Executive Committee Act* of 1876 which created the Executive Council to advise the Governor and the *Executive Committee Act* of 1881 which set up the Executive Committee to be the principal instrument of government.

The Governor was also Chancellor of the Judiciary, and President of the local Court of Appeal and Court of Ordinary. In the latter role, he was the sole judge dealing with ecclesiastical matters, the probate of wills, granting of letters of administration and marriage licenses.

The Legislative Council was a nominated body, usually of nine members, appointed by the Crown on the Governor's recommendation. It was in effect the local House of Lords and its sources of authority were also Letters Patent, Royal Instructions and local statutes. The Council's legislative powers were gradually limited in favour of the House Assembly, but all legislation passed by the House of Assembly needed the majority approval of the Council before being submitted for the Governor's signature. The general picture of the Legislative Council under the "Old Representative System" is one of a conservative body dependent on the Governor and supporting him against the House of Assembly.

The Barbados House of Assembly, established in 1639, is the second oldest in the Western Hemisphere, that of Bermuda, with a commencement date of 1627 being the oldest. The House of Assembly was also provided for in the Letters Patent and Royal Instructions. It was an elected body initially comprising two representatives from each of the island's eleven parishes. In 1843 the number of seats of the House of Assembly was increased to 24 with the introduction of two seats for Bridgetown.

From 1652 the consent of the House of Assembly was necessary for the imposition of any taxes, and for the expenditure of any public money. By the late 1660s, its power in the financial sphere was well established. Increasingly, the House of Assembly became a forum for the voicing of creole aspirations and dissatisfaction with imperial policy.

Before August 6, 1660 when legislation was passed providing for annual sessions, the duration of a session of the House of Assembly was not fixed, and it was left to the Governor to call and dismiss it as he saw fit. Annual sessions were held from 1660 until 1901 when the life of the House of Assembly was extended to two years. A further extension was made in 1937 when the life of each session was increased to three years.

By 1937 a member of the House of Assembly was required to have an income of at least £200. To vote, the two main criteria were an annual income of £50 or ownership of freehold land of equivalent value. This sum was reduced to £30 per annum in 1944. In 1950 universal adult suffrage was introduced, and every citizen who was 21 years of age or older was given the right to vote. As a result, the electorate of Barbados rose from 30,000 to 96,000. The following year, the legislature passed an Act extending each session of the House of Assembly from three to five years.

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Modifications of the Old Representative System²

Barbados was one of the few colonies in which the "Old Representative System" was never abolished in favour of the Crown Colony system under which the Governor had no elected House of Assembly with which to contend and was a more powerful figure. The "Old Representative System" was modified in 1876 when an Executive Council to advise the Governor was established, and in 1881 when the policy making Executive Committee comprising the Executive Council and five members of the legislature was created. Further modifications occurred in 1946 when for the first time, under what is known as "the Bushe Experiment", the leader of the majority party in the House of Assembly was invited to nominate the members of the legislature to be appointed to the Executive Committee.

This move paved the way for the introduction of ministerial government on February 1, 1954 whereby ministerial responsibilities were assigned to members of the Executive Committee who were nominated by the leader of the majority party. The Hon. G.H. Adams, leader of the Barbados Labour Party which in 1954 had 16 of the 24 seats in the House of Assembly, became the island's first Premier.

It should be noted that under the ministerial system the Governor retained control of defence, security and external affairs. This situation changed in 1958 when the Executive Council was replaced in practice by the Cabinet with the introduction of full Cabinet Government and the Governor-in-Executive Committee delegated his duties under the Executive Committee Act to a Cabinet of ministers under the Premier. The Premier assumed responsibility for maintenance of law and order and internal security. The Executive Committee was formally abolished and its powers and functions transferred to the Cabinet in 1964.

The Legislative Council, an institution which had been in existence in Barbados since 1627, was also abolished and replaced by the Senate. By this time, internal self government had already been introduced in Barbados by Her Majesty's Letters Patent dated May 15, 1961. Barbados had become a member of the Federation of the West Indies in 1956. In 1962 when the withdrawal of Jamaica and Trinidad and Tobago led to its dissolution, for a time Barbados flirted with the idea of federating with the Leeward and Windward Islands in an arrangement which was referred to as "the Little Eight"* federation. Eventually, the government decided to follow Jamaica and Trinidad and Tobago and opted for independence alone rather than within any federal structure.

A draft Independence Constitution was prepared and accepted by both Houses of the Barbados legislature. In January 1966 the Barbados legislature passed a resolution requesting the Secretary of State for the Colonies to convene an early conference to discuss independence within the Commonwealth in 1966.

The Conference was held in London from June 20 to July 4. It was attended by representatives of the three political parties represented in the Barbados legislature - namely: the DLP (leader the Hon. E.W. Barrow), the BNP (leader Mr. E.D. Mottley) and the BLP

²Ibid.

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(leader Mr. F.E. Miller). At the Conference, all three parties agreed that Barbados should proceed to separate independence within the Commonwealth, but disagreed on matters relating to (a) the Senate, (b) the House of Assembly, (c) an elections commission, (d) constituencies, (e) emergency provisions, (f) compensation for deprivation of property, (g) a Court of Appeal, (h) citizenship, and (i) provision in the Constitution for the Public Service Commission to have consultations with the representatives of public employees such as the Civil Service Association.³ It should be noted that since 1966 the Constitution has been amended to implement two of the proposals of the opposition parties - the institution of a permanent Electoral and Boundaries Commission⁴ and a separate Court of Appeal.

Barbados was granted independence by an Act of the British Parliament - the *Barbados Independence Act*, 1966. The Constitution was an appendix to the *Barbados Independence Order* (Great Britain S.I. 1966, No. 1455) made under the authority of the Act.

Under the 1966 Constitution Barbados continued to be a monarchy (with the Queen as Head of State represented by a local Governor General) and a parliamentary system of government based on the Westminster Model. In twelve chapters, the Constitution contained the framework of government, providing, *inter alia*, for the Head of State; a Parliament in which legislative power is vested and which comprises a Governor General, Senate and House of Assembly; a Cabinet in which executive power was vested and which comprised the Prime Minister and other ministers of government; the judicature; public service; service commissions; the fundamental rights and freedoms to be guaranteed each citizen, citizenship and finance.

Proposals for Constitutional Reform

In its 1972 publication "Thinking Things Through" the Wooding Commission of Trinidad and Tobago justified the decision of the Government of that country to consider constitutional reform in the following terms:

"A democratic constitution is a body of basic rules by which the people of a country agree to govern themselves... But a Constitution should not be a strait-jacket. It is intended to operate in a world of movement and change. Its major purpose is so to distribute functions that the right of the people to govern themselves through the institutions which it sets up will not be disregarded."⁵

This thinking and local consideration may have influenced the governments of Barbados, Guyana and Trinidad and Tobago, countries that attained independence from Great Britain during the 1960s, to consider constitutional reform in the decade which followed.

³ See Appendix 1.

⁴ See .s. 41(A) inserted by 1981-24 and amended by 1989-16 and 2021-22.

⁵ See The T&T (Wooding) Constitution Commission Report, Jan. 22, 1974.

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Guyana was the first Commonwealth Caribbean country to become a republic. This happened on February 23, 1970 when Her Majesty the Queen of Great Britain, represented in Guyana by a Governor-General appointed by her and holding office during her pleasure, was replaced by a President elected by the National Assembly.

After being served by its first republican constitution for nearly a decade, on July 21, 1978 the National Assembly of Guyana constituted itself a Constituent Assembly for the purpose of preparing a new constitution. On February 13, 1980 the Bill for the Act to which the draft constitution was appended was passed by the National Assembly and on February 20, 1980 it received Presidential assent. Under this Constitution, the President became an executive rather than a ceremonial president with sweeping powers. This means that in Guyana the President is both Head of State and Head of Government.⁶ No other Commonwealth Caribbean country has an executive Head of State. In these countries executive authority is vested by the Constitutions in the Cabinet, presided over by the Prime Minister.⁷ In Guyana, the Prime Minister is merely the principal assistant of the President and Leader of Government Business in the National Assembly.⁸

Trinidad and Tobago was the second country in the region to make changes to its Independence Constitution. In part, the Eric Williams government blamed unrest in the country led by black power advocates on gaps in the 1962 Independence Constitution which the government had itself instituted, and in 1971 it established the Wooding Constitution Review Commission to make recommendations for revision of the Constitution. Both the Wooding Commission and a Joint Parliamentary Select Committee of the House of Representatives⁹ and the Senate appointed in 1975 recommended that the 1962 monarchical Constitution should be repealed and replaced by a republican Constitution.¹⁰

This was done by Act No. 4 of 1976 which provided for Trinidad and Tobago to become a republic under which the Head of State is a citizen of Trinidad and Tobago replacing Her Majesty the Queen of Great Britain who was represented locally by a Governor-General. Provision was made for the President to be elected by an Electoral College comprising all members of the Senate and the House of Representatives assembled together unicamerally under the chairpersonship of the Speaker of the House of Assembly.

Barbados

Amendments - 1974

In 1974, the Democratic Labour Party administration passed amendments to the 1966 Constitution. The amendments were made without a public commission of inquiry being established and both the process and the recommendations became the subject of considerable

⁶ See Francis Alexis. *Changing Caribbean Constitutions*. – Bridgetown, Barbados: Antilles Publishers, 1983, 280p. p. 80.

⁷ *Ibid.*, p. 82.

⁸ *Ibid.*, p. 87.

⁹ Trinidad and Tobago, *Constitution Commission Report*, 1974.

¹⁰ Trinidad and Tobago. House of Representatives. *Joint Select Committee*, 1975, pp.6, 8.

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debate. Some of the suggested amendments were for the purpose of “tidying up” provisions in the 1966 Constitution; others could be considered major. The suggested amendments which were later included in the Constitution by the Barbados *Constitution (Amendment) Act 1974-34* which came into effect on February 1, 1975 are reproduced in **Appendix 2**.

Suggested Amendments - 1979

The Barbados Labour Party (BLP) pledged during its 1976 election campaign that if it formed the next government it would not follow the example of the DLP, but would appoint a commission to review the Constitution. In keeping with this promise, in 1977 the Government of Barbados led by Prime Minister Tom Adams appointed a commission under section 2 of the *Commissions of Enquiry Act*, Cap. 112 to review the Constitution and to consider a system of national honours and a national table of precedence. That commission was chaired by Mr. Mencea Cox.

One of the matters to be considered as a part of the Constitution review was the feasibility of introducing a republican system of Government in Barbados. The Cox Commission wrote that several calls were made for it to recommend the replacement of the existing monarchical form of government in Barbados with a republican form of government, but it was satisfied that “the same forces which motivated the move towards independence have engendered a wish on the part of some citizens of Barbados for serious consideration of the merits of adopting a republican form of government”.¹¹

Even so, the Commission recommended retention of the existing monarchical form of Government and further, stated that no such change should be made unless the party in power submitted the proposal for change to the electorate at a general election and obtained a mandate for the change. Therefore, no action was taken on the matter at that time. A summary of the Cox Commission recommendations for amending the Constitution is given as **Appendix 3**.

Suggested Amendments - 1979-1997

It is of interest to consider the suggestions for changing the Constitution of Barbados during the next twenty years which were made in the political manifestos of political parties.

The BLP Manifesto Proposals

Since publication of the Cox Commission Report the Barbados Labour Party (BLP) has been the most frequent in its call for reform of the Constitution in its election manifestos.

In its **1981 Manifesto**, the BLP promised to seek to implement proposals relating to increasing the Opposition Party's seats in the Senate; recall of the Governor-General's senators; such other recommendations for which there was a consensus following a full debate in the new Parliament and establishment of an Immigration Appeals Tribunal to give non-

¹¹ See [gisbarbados.gov.bb/download/constitutional-review-reports/Constitution Review Commission Report 1979 \(Cox Report\)](http://gisbarbados.gov.bb/download/constitutional-review-reports/Constitution%20Review%20Commission%20Report%201979%20(Cox%20Report).).

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Barbadians who felt aggrieved by an administrative decision on immigration a right to an independent review.

And then, in its **1991 Manifesto** the BLP asserted that "After 25 years of Independence there is a need to review the working of the Constitution of Barbados to ensure that multiparty democracy can function effectively within its provisions and that fundamental rights are fully protected." An outline of some the problems identified in this 1991 Manifesto were:

- (1) *The Savings Law Clause* - the fact that a provision of the Constitution specifically saved all laws which were existing at the time the Constitution came into force, the effect of which was to give full protection to some laws which offend against the fundamental rights provisions of the Constitution and which for that reason could not be effectively legislated today;
- (2) *discriminatory provisions in the Constitution against women;*
- (3) *the lack of protection in the Constitution for the magistracy* despite its importance as part of the judiciary;
- (4) *the need for repatriation of the Constitution* and its enactment by the Parliament of Barbados;
- (5) the need for an update of the Cox Commission Report after full bipartisan consideration and after consultation with the people and the enactment of the resulting recommendations for the reform of the Constitution aimed at strengthening multi-party democracy; and
- (6) with bipartisan support, implementation of proposals for the *reform of the Senate* to improve its effectiveness and to increase Opposition representation in this Chamber.

The NDP Manifesto Proposals

The National Democratic Party (NDP) did not survive for very long in a system that had been dominated by two parties since Independence. However, in its 1994 Manifesto the NDP also drew attention to the need for constitutional reform. It promised to amend the Constitution to provide for:

- (1) *a Barbadian as Head of State;*
- (2) *reform the Senate;*
- (3) amendment of the *provisions relating to citizenship;*
- (4) *recall of Members of Parliament* who have manifestly lost the confidence and support of a significant majority of their constituents;
- (5) *repeal of the Savings Law Clause in the Constitution* so as to ensure that all "colonial" laws which infringe the fundamental human rights of Barbadians are deemed unconstitutional;
- (6) *appointment of a Contractor-General* who would be assigned statutory responsibility for the integrity and efficiency of systems pertaining to the award of government contracts; and

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(7) *restoration of full responsibility for appointments, promotions, transfers and discipline within the Civil Service to the Public Service Commission.*

Post 1997 Initiatives for Constitutional Reform

Very soon after the BLP formed the new government in 1994, the then Prime Minister the Right Hon. Owen Arthur announced that an advisory commission would be established to update the work done by the Cox Commission and take into account recommendations for constitutional reform made by members of the community. The commission was established under the *Commission of Enquiry Act* and its members were sworn in on October 29, 1996. The ten member body, which represented the political parties, the social partners and other voluntary organisations, was chaired by Hon. H. deB. Forde, Q.C., M.P.

The terms of reference of the Forde Commission were:

- to examine, consider and enquire into the Barbados Constitution and other related laws and matters;
- after due examination and study, to report in writing giving their opinions, making such recommendations, and providing for consideration any amendments, reforms and changes in the Constitution and related laws as are in the opinion of the Commissioners necessary and desirable for promoting the peace, order and good Government of Barbados and in particular for maintaining democratic institutions, and ensuring that parliamentary and multi-party democracy is given such constitutional protection as may be necessary and desirable;
- ensuring the elimination of gender discrimination in the Constitution;
- strengthening the accountability of parliamentary representatives to their respective constituents;
- encouraging a wider and deeper participation by the citizens of Barbados in the democratic processes of Government, both at the parliamentary and other levels;
- maintaining and strengthening the independence of the judiciary at all levels;
- strengthening the independence and impartiality of the Public Service, having particular regard to the need for efficient and responsive administration of government business;
- strengthening the fundamental and basic rights, liberties and freedoms of the individual and ensuring that there is no discrimination in the national life of the State;
- strengthening the relevant government machinery in order to ensure maximum transparency and strict accountability in the management of public funds, including appropriate sanctions for corruption;
- determining the necessity for retaining the monarchical system of government and making recommendations in respect of the executive form of government most suited to protect parliamentary democracy, the fundamental rights and freedoms of the citizens of Barbados and to achieve effective and efficient government so as to position Barbados to meet the challenges of the 21st century and beyond;

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- advising and making recommendations concerning the patriation of the Constitution so as to ensure that it draws its authority and validity from an Act of the Parliament of Barbados;
- advising and making recommendations concerning the appropriateness or otherwise of maintaining Barbados' links with the British Crown;
- advising and making recommendations concerning a structure for the executive authority of Barbados that is best suited to protect the independence and authority of Parliament and the fundamental rights and freedoms of its citizens;
- examining the composition and structure of the nation's parliamentary institutions, and to make recommendations concerning –
 - the retention or abolition of a second Chamber of the Legislature; methods and means of increasing the representativeness of Parliament, not excluding such changes in the manner of electing representatives as may lead to a more equitable distribution of seats among political parties on the basis of votes received at general elections;
 - preparation and inclusion in the written report, if the Commissioners so determine, of draft legislation to effect any amendments, reforms or changes to the Constitution.

The Forde Commission, which represented all political parties, the Social Partnership and members of Civil Society commenced its work in late November 1996. It held five general public hearings plus a special hearing for secondary school students and six public hearings on special topics which included Fundamental Rights; Right of Recall of a Member of Parliament, Parliament and the Executive, the Role and Powers of the Head of State and of the Ombudsman, Strengthening the Judiciary, Local Government and the Public Service. In addition, the Commission received several written submissions from representatives of the Church, trade unions and a number of organisations in Barbados. The Commission also held meetings with Barbadians in Montreal and Toronto in Canada, in Boston and New York in the USA and in Brixton and Birmingham in the United Kingdom.

A majority of the Barbadians who attended these consultations were in favour of replacing the monarchy with a parliamentary democracy which would have a Barbadian as Head of State. Some of the reasons given were as follows:

- as a matter of national pride the nation should have a native as Head of State – someone who knows our aspirations and has been a part of our historical journey;
- Barbados would still be a member of the Commonwealth of nations along with other former colonies which have the same historical antecedents and which are English speaking;
- Barbados should follow Trinidad and Tobago and have a President who is a local person;

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- a few persons went further and recommended not only removing the Queen as Head of State, but also renaming any institutions that began with the word “royal” or “Queen” and in particular, the renaming of the Queen Elizabeth Hospital;
- others said that they knew little about the Queen and if Barbados is independent, its citizens should not have to ask the Queen to approve who they should have as Head of State;
- for yet others, becoming a republic “with one of our own as Head of State” would complete the independence cycle.

At that time, 7 former British colonies were monarchies with their own local sovereigns, 30 were republics and Barbados was one of only 16 former British colonies still retaining the Queen as Head of State. On this basis, some respondents were of the view that the case had been made for adopting a republican status for Barbados.

The minority in favour of retaining the monarchy were Barbadians living in the diaspora and some local persons. Their arguments were as follows:

- the United Kingdom would no longer give assistance to Barbados if the Queen was removed as Head of State;
- the Monarchy had served the country well for the past 300 years;
- fewer British visitors would arrive in Barbados;
- republics were synonymous with political upheaval and financial disaster;
- the Queen loved Barbados and could use her influence to assist the country during a catastrophe;
- the British Crown was a part of our national fabric.

Based on the recommendation of the majority of Barbadians who appeared before it or sent in written reports, and on the comments made in the press, the Forde Commission made the following unanimous recommendation:

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

In other words, the existing relationship between the Head of State and the executive arm of Government would be unchanged. The Head of State would be a Barbadian elected as President to replace the Monarch. Executive power would remain in the hands of the Prime Minister and the Prime Minister’s Cabinet, and the country would continue to have a House of Assembly and a Senate. Thus,

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the existing relationship between the Head of State and the executive arm of government would be unchanged.

How would the President be elected?

The Forde Commission recommended that the President be elected by a College of Electors comprising members of both Houses of Parliament. The Speaker of the House would convene the Electoral College and would chair the meeting at which the President is elected. However, if the Prime Minister and the Leader of the Opposition agreed on a candidate, the Speaker would not hold a meeting of the Electoral College, but would declare that candidate duly elected without an election. To be elected president, a candidate would need the votes of not less than two-thirds of all members of the Electoral College.

The meaning of this recommendation is that Barbadians, through their elected representatives and persons in the Senate representing interest groups in the society would have a say on who is to be President. The Forde Commission also recommended that the President serve for 7 years. A summary of all the recommendations made by the Forde Commission is given in **Appendix 4**.

Post 1997 Proposals for Amendment of the Constitution

The BLP Government of the day committed itself to giving early attention to the Commission's recommendations, but was consistently of the view that the people should be fully consulted on so fundamental a change. In its 1999 manifesto, the BLP proposed that the findings of the Forde Commission and its recommendation that Barbados become a republic receive the early attention of the Government.¹² Accordingly, a Referendum Bill was introduced into Parliament and had its first reading in October 2000. Public commentary on the pros and cons of using the referendum method, and on the wording of the Bill itself was great enough to halt action and the Bill died on the Order Paper at the dissolution of Parliament in 2003.¹³

The BLP was steadfast in its purpose and its 2003 Manifesto again promised that "*We shall, in the next term, settle the key elements of our republican form of government and parliamentary reform, thence to proceed to a Constitution of our independent sovereign state that is a proclamation of the people and Parliament of Barbados and not that of the United Kingdom*"¹⁴. During the next several months a Working Committee chaired by the then Attorney General, the Hon. Mia Amor Motley drafted a revised constitution to give effect to those recommendations of the Forde Commission that had found acceptance with the Administration, chief among them the move to republican status.¹⁵

In February 2005 the Government of Barbados announced its intention to hold a referendum on the question of the country moving to republican status. The Bill passed both Houses of Parliament in October 2005. It stated that "Referendum Day" would be proclaimed by the Governor-General, and would be no more than 90 days and no less than 60 days from the date of proclamation, but did not set a date for the referendum. The Bill contained one question: "*Do you agree with the*

¹² O.R. Marshall. *The Case for the Republic of Barbados*". Unpublished Paper, May 2012, Part 1, p. 3.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

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recommendation of the Constitution Review Commission that Barbados should become a parliamentary republic with the Head of State of Barbados being a president who is a citizen of Barbados?” The Referendum Act, 2005-23 was passed, but no referendum was held. The reasons mentioned were three: first, it was felt that there was a need for effective public education to ensure that the project for the republic would be fully understood and accepted by Barbadians; secondly, controversial actions by the President of Trinidad and Tobago including his refusal to appoint certain Senators recommended by the Prime Minister led the Owen Arthur administration to pause, especially since the proposed model of the non-executive President being then considered by Barbados was substantially modelled on that of Trinidad and Tobago; and thirdly, within Government it was felt that the opportunity should be used in a holistic manner to modernize other elements of governance, in particular to settle the parameters of much-needed Parliamentary reform.¹⁶

In 2007, Deputy Prime Minister the Hon. Mia Mottley stated that “We feel that it is the right thing to do to have a Barbadian Head of State. We accept that there was a concern that the Government alone should not make that decision in this day and age and we are therefore committed to expressing our views to the public and having them pass judgment on it.”¹⁷ The plan was to hold the referendum on whether Barbados should become a republic by August 2008, near to the proposed date for general elections. However, it was reported on December 2, 2007 that the vote would be deferred to a later date.¹⁸ No further steps were taken by the BLP at the time.

Eight years later, on March 22, 2015, DLP Prime Minister Freundel Stuart announced that Barbados would move towards a republican form of government “in the near future”.¹⁹ George Pilgrim, General Secretary of the DLP announced that the move would coincide with the 50th anniversary of the country’s independence in 2016.²⁰ This did not happen.

In September 2020 the BLP government of Prime Minister The Hon. Mia Mottley announced in its Throne Speech that Barbados would become a republic by November 2021. In that speech, the Governor-General Dame Sandra Mason stated that “the time has come to fully leave our colonial past behind. Barbadians want a Barbadian Head of State.”²¹ On June 3, 2021 Barbadians at home and in the diaspora were invited to submit suggestions for the new constitution as the island prepared to assume republican status.²²

On July 27, 2021, the Day of National Significance in Barbados, Prime Minister Mottley announced that the Cabinet had decided that Barbados would become a parliamentary republic by November 30 and had accepted the recommendations of the Forde Commission on the subject.²³ The proposal was that the President would be elected by both Houses of Parliament for a four-year term. The President would have mostly ceremonial powers; real power would continue to be *de facto*

¹⁶Ibid, p. 4.

¹⁷ “Still a Voice” National Newspaper, November 26, 2007.

¹⁸ “Referendum on Republic to be bundled with election”. CBC Staff Writer, November 26, 2007

¹⁹ Reported in the Jamaica Observer, March 23, 2015.

²⁰ Reported in The Guardian, November 27, 2016.

²¹ <https://gisbarbadso.gov.bb/Throne> Speech delivered September 12, 2020.

²² Barbados Today, June 4, 2021.

²³ Barbados. Loopnews.com, July 2, 2021.

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vested in the Prime Minister and Cabinet, with amendments to the Constitution being made before November 30 to facilitate the swearing in of a new President on that day.

The President of the DLP and others called for a referendum, but the Constitution did not include this as a requirement for changing the Constitution, and on a previous occasion a Referendum Bill had died on its Order Paper.

Constitutional Changes Leading up to the Introduction of Republican Status

Between 1974 and 2018 when the Barbados Labour Party under the leadership of the Hon. Mia Mottley as Prime Minister formed the Government of Barbados the country's Constitution had been amended on 17 occasions. The amendments will be discussed under the relevant chapters of the Constitution in Section 2 of this report.

Barbados becomes a Republic

On September 20, 2021 the *Constitution (Amendment) (No. 2) Bill* was introduced to the Parliament of Barbados. The Bill passed the House of Assembly on September 28 (25-0) and the Senate on October 6, 2021. It received Royal Assent on the following day and thus came into force as an Act. The changes to the Constitution to provide for a Barbadian as Head of State were in accordance with some of the recommendations in the Forde Commission Report. The amendments were as follows:

- all references in the Laws of Barbados to Her Majesty the Queen, the Crown and the Sovereign shall be read and construed as referring to the State;
- all references to the Governor-General shall be read and construed as referring to the President of Barbados;
- all the powers of the Governor-General shall be read and construed as referring to the President of Barbados;
- election of the first President in a joint sitting of the Parliament of Barbados by October 14, 2021 by the joint nomination of the Prime Minister of Barbados and the Leader of the Opposition with the person elected to take office on 30th November 2021;
- following the end of the first President's term, future Presidents will be elected by either a joint nomination of the Prime Minister and Leader of the Opposition, or if there is no joint nomination, a vote of both houses of the Parliament of Barbados where a two-thirds majority is required;
- the President to serve a term of four years (the Forde Commission had recommended 7 years);
- all property held by the Crown to vest in the State;
- all the rights and privileges of the Governor-General to vest in the President.

On October 12, 2021 the incumbent Governor-General of Barbados Dame Sandra Mason was jointly nominated by the Prime Minister and Leader of the Opposition as the candidate for selection as the first President of Barbados and she was elected on October 20. She took up office on November

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30, 2021 in a ceremony attended by Charles, Prince of Wales and received a message of congratulations from Queen Elizabeth II.

2022 Constitution Reform Commission

On June 20, 2022, a Constitution Reform Commission was sworn in by the Acting President of Barbados Rev. Jeffrey Gibson to begin the process of drafting a new Constitution for the Republic of Barbados. The ten member commission is chaired by Justice Christopher Blackman (Retired), a former Court of Appeal judge and has been given fifteen months to complete its work. Meanwhile, the Office of the Chief Parliamentary Counsel produced the Barbados Constitution as updated to the end of 2021, which will be the document for discussion on the way forward.

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SECTION 2

THE CONSTITUTION OF BARBADOS (UPDATED TO 2021)

FACTS AND QUESTIONS

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THE PREAMBLE

The Preamble to a constitution is intended to recite the principles on which a nation is founded, mirror its historical development, express a sense of national identity and destiny and include aspirational, commemorative and exhortational elements. In the words of the Forde Commission, Preambles “are therefore essentially inspirational and exhortatory and provide a useful link between periods of history, mirroring the development of the nation”

The Constitution of Barbados is preceded by a Preamble which has not changed since it was published as the preliminary section of the 1966 Constitution which was the Schedule to the Barbados Independence Order, S.I. 1966 No. 1455 (U.K.). It states as follows:

CONSTITUTION OF BARBADOS

“Whereas the love of free institutions and of independence has always strongly characterized the inhabitants of Barbados:

And Whereas the Governor and the said inhabitants settled a Parliament in the year 1639:

And Whereas as early as 18th February, 1651 those inhabitants, in their determination to safeguard the freedom, safety and well-being of the Island, declared, through their Governor, Lords of the Council and member of the Assembly, their independence of the Commonwealth of England:

And Whereas the rights and privileges of the said inhabitants were confirmed by articles of agreement, commonly known as the Charter of Barbados, had made and concluded on 11th January, 1652 by and between the Commissioners of the Right Honourable the Lord Willoughby of Parham, Governor, of the one part, and the Commissioners on behalf of the Commonwealth of England, of the other part, in order to the rendition to the Commonwealth of England of the said Island of Barbados:

And Whereas with the broadening down of freedom the people of Barbados have ever since then not only successfully resisted any attempt to impugn or diminish those rights and privileges so confirmed, but have consistently enlarged and extended them:

Now, therefore, the people of Barbados

- (a) proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity of the human person, their unshakeable faith in fundamental human rights and freedoms and the position of the family in a society of free men and free institutions;
- (b) affirm their belief that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

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- (c) declare their intention to establish and maintain a society in which all persons may, to the full extent of their capacity, play a due part in the institutions of the national life;
- (d) resolve that the operation of the economic system shall promote the general welfare by the equitable distribution of the material resources of the community, by the human conditions under which all men shall labour and by the undeviating recognition of ability, integrity and merit;
- (e) desire that the following provisions shall have effect as the Constitution of Barbados- ”

The Forde Commission recommended that the Preamble be replaced with the following text:

“WE, THE SOVEREIGN PEOPLE OF BARBADOS,

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

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

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

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

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

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

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

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

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

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

Proclaim and promulgate the following provisions as the Constitution of Barbados.'

QUESTION

1. Should the existing Preamble be replaced by the one that recommended by the Forde Commission?

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CHAPTER 1

SUPREME LAW CLAUSE

Each English-speaking Caribbean country has a written constitution. The constitution is the document that explains the distribution of power between the various organs of government – legislature, executive and judiciary. It sets out the fundamental rights and freedoms of citizens and other persons within the country’s jurisdiction. It balances the rights of the individual against the democratic rights of the majority (Lord Millet in *Pinder v R* 61 WIR 13; [2003] 1 AC 620). It is the supreme law in Commonwealth Caribbean countries and all other laws must conform to it (*Collymore v AG* (1967) 12 WIR 5). The Barbados Constitution begins with a Supreme Law Clause which states as follows:

“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.”

The Forde Commission recommended retention of the Supreme Law Clause, but that it should be strengthened by expressly conferring on the courts the power to review legislation to ensure its conformity with the Constitution. However, this is dealt with in the Constitution under Chapter 3 “Protection of Fundamental Rights and Freedoms of the Individual”.

QUESTION

1. Should the Supreme Law Clause be changed in other respects?

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CHAPTER 2

CITIZENSHIP

The State is responsible for providing a citizen with certain social services, protection from internal disorder and crime and from external aggression. The citizen in turn must obey the laws of the State and pay taxes, is entitled to work without having to obtain a work permit and to travel on a passport issued by the State.

Before 1966 persons born in Barbados were citizens of the United Kingdom and Colonies. Non-Commonwealth citizens living in Barbados could also be granted citizenship of the United Kingdom and Colonies by naturalization if they fulfilled certain requirements. When Barbados became independent in 1966, Barbadians became citizens of the new Nation State of Barbados.

Since Independence, the rules governing the acquisition and loss of Barbadian citizenship are to be found in Chapter II of the Constitution and in the *Barbados Citizenship Act*, Cap. 186. Chapter II has been amended by Acts Nos. 34 of 1974; 52 of 1980 and 18 of 2000.

In accordance with the recommendation of the Cox Commission, section 3 was amended by Act 1974-34 to provide that any applicant for registration as a citizen of Barbados should be not less than 18 years old, instead of 21 as previously provided.

Recommendations of the Forde Commission

Simplification of the language of Chapter II: that the language of Chapter II on citizenship be simplified so that its provisions are expressed in a more readily understandable form;

Removal of gender discrimination: that gender discrimination be removed from all citizenship provisions;

Continuation of citizenship for persons who are citizens before the Constitution if patriated: that provision be made for any citizen of Barbados to continue to be a citizen when the Constitution is patriated (that is, enacted by the Parliament of Barbados instead of continuing to be a Schedule to an Act of the UK Parliament); that applicants registered as citizens take an Oath of Allegiance to Barbados in the manner provided for in the Third Schedule to the *Barbados Citizenship Act*.

Citizenship by Birth: The Forde Commission also recommended that children born overseas to citizens of Barbados serving in a diplomatic or consular capacity be recognized as citizens of Barbados; that children born in Barbados be deemed citizens at birth where at least one parent is a citizen of Barbados, a permanent resident or an immigrant of Barbados or is registered under the *Immigration Act*; that a citizen under 5 years found in Barbados whose parents are not known be presumed to be a citizen of Barbados by birth; that a child under 18 adopted by a citizen of Barbados, on application, be registered as a citizen of Barbados.

Citizenship by Descent: The Commission recommended that children born of Barbadian males and females should be equally treated, subject to exceptions and qualifications in the

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Barbados *Citizenship Act* and that the Constitution be amended to make it clear that no child born outside Barbados be recognized as a citizen by descent unless at least one parent is a citizen of Barbados by birth and holds Barbadian citizenship at the time of the child's birth.

Citizenship by Marriage: The Commission recommended that the Constitution should give Parliament the power to make provision for granting citizenship, whether by registration or by naturalization or in any other way, to persons who did not become citizens under the other provisions of the Constitution, and also to prescribe exceptions and qualifications required in the interest of national security or public policy.

Recommendations of the Forde Commission Subsequently Adopted

Four of the recommendations made by the Forde Commission for reform of the citizenship provisions were adopted in Act No. 18 of 2008.

- firstly, section 3 of Chapter II was amended to require that a person seeking registration as a Barbadian citizen must take the oath of allegiance (before an officer of the Immigration Department);
- secondly, a section 4A was inserted to provide that a person born outside of Barbados to a Barbadian citizen who is in diplomatic service is to be a Barbadian citizen;
- thirdly, section 5 was amended to provide that a person born outside Barbados after Independence was entitled to be a citizen provided that at least one parent was a Barbadian citizen by birth. This partially rectified the gender imbalance which previously existed, arising from the fact that citizenship by descent could only be accessed through the father; and
- fourthly, Act 22 of 2021 amended s.4 of the *Citizenship Act* to provide that any citizen of Barbados continued to be a citizen when the Constitution was “patriated”; that is, when the Constitution was enacted by the Parliament of Barbados instead of being an appendix to the *Barbados Independence Order* (Gt. Brit. S.I. 1966, No. 1455) made under the authority of the *Barbados Independence Act*, a statute of the British Parliament.

Acquisition of Barbadian citizenship

As at the end of 2021 citizenship can be acquired in the following ways:

by birth in Barbados: (s.2(1) - this provision does not apply to a person whose father possesses diplomatic immunity and neither parent is a citizen of Barbados or if the person's father is an enemy alien;

by descent: s. 2(2) - for persons born before 30th November, 1966; and 5(1) and 5(2) for persons born after 30th November if at least one parent is a citizen of Barbados who was born in Barbados.

by ordinary residence in Barbados for ten years or such longer period as may be prescribed immediately preceding that person's application (s. 3A.(1);

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by marriage: a non-national married to a Barbadian is entitled to citizenship by marriage as long as that person meets the requirement of cohabitation for the prescribed period and the right to be registered as a citizen does not cease if the spouse who is a citizen dies before expiry of the prescribed period - (sections 3(1), 3(30), 3(a)(b) or (6))

The Constitution was amended in August 2000 by the *Constitution (Amendment) Act 2000-18* to provide under section 3A(1)(b) that a person who has been married to a citizen of Barbados and who has cohabited with that citizen for such period as may be prescribed immediately preceding that person's application could become a citizen. Previously section 6 of the Constitution only made provision for wives of Barbadian men to acquire citizenship, not husbands of Barbadian women.

by registration under the Barbados Citizenship Act, Cap. 186 –

Registration in accordance with section 4(3) (Commonwealth citizens);

Registration in accordance with section 5(1) – Minors)

By Naturalisation under the Barbados Citizenship Act - in accordance with section 7 and 2nd Schedule – Non.Commonwealth citizens

by naturalization in accordance with s. 7 and 2nd Schedule of the *Barbados Citizenship Act*.

by Parliamentary provision - Parliament can provide for the acquisition of citizenship by persons who cannot become citizens under the other provisions of the Constitution (see section 9(a) of the Constitution).

Loss of Citizenship - This may be done by renunciation or by a Minister in certain circumstances.

Renunciation of Citizenship

Renunciation of Barbados citizenship is provided for by section 7 of the Constitution. A citizen of Barbados who is 18 years old and who is or intends to become a citizen of another country may renounce his/her citizenship by registering a declaration of renunciation. The Constitution also provides, that such citizenship may be reclaimed if the person does not become a citizen of the other country within 6 months from the date of registration of the declaration. Persons seeking to reclaim citizenship may do so under section 4(3) of the *Citizenship Act*.

Deprivation by a Minister

A citizen by registration or naturalisation may be deprived of his/her citizenship by a Minister if:

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- (a) the Minister is satisfied that it was obtained by fraud, false representation or concealment of any material fact (section 9(1) of the *Barbados Citizenship Act*);
- (b) the citizen at any time after registration or naturalization was convicted of treason by a competent court in any part of the Commonwealth, or of a criminal offence punishable by death, or not less than 7 years imprisonment in any country, or within 5 years of registration was sentenced to not less than 12 months imprisonment in any country (section 9(2) of the *Barbados Citizenship Act*);
- (c) the citizen by speech or act shows disloyalty towards Barbados;
- (d) during any war in which Barbados is engaged the citizen unlawfully trades or associates with the enemy in a manner which, in the citizen's knowledge, assists that enemy in war; or
- (e) the citizen engages in activities within or outside Barbados which, in the opinion of the Minister, are prejudicial to safety or to the maintenance of law and public order in Barbados.

However, it should be noted that the Barbados Citizenship Act at section 9(3) provides that the Minister shall not deprive any person of citizenship under sections 9(1) and (2) of the Act if it appears to him that to do so would result in the person being stateless.

QUESTIONS

1. Should a child under 18 adopted by a citizen of Barbados be registered as a citizen, on application?
2. Should the deprivation of citizenship on any ground be subject to judicial review?
3. Should Barbados adopt a citizenship by investment programme similar to that of some other CARICOM countries?
4. Should special provision be made for CARICOM citizens along similar lines to what currently obtains for Commonwealth citizens?

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CHAPTER 3

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Important functions of a written Constitution are to state and define the basic rights and freedoms of citizens and the power of government and other citizens to violate those rights and freedoms. These rights and freedoms are usually contained in a section entitled a Bill of Rights. The Bill of Rights provisions of the Barbados Constitution are patterned on the Universal Declaration of Human Rights and the European Convention of Human Rights. They are contained in sections 11 to 24 of Chapter 3.

Section 11 states that every person in Barbados has the right (whatever that person's race, place of origin, political opinions, colour, creed or sex) but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following rights and freedoms:

- (a) life, liberty and security of the person;
- (b) protection for the privacy of home and other property from deprivation of property without compensation;
- (c) protection of the law, and
- (d) freedom of conscience, of expression, of assembly and association.

This is followed by an elaboration of the individual rights and freedoms, as follows:

- right to life (*this subsection (12(1) is altered to any extent necessary by the Anti-Terrorism Act, 2002-6 (Cap. 158)*);
- right to personal liberty (*as amended by 1974-34) and 2019-13) and altered to any extent necessary by the Forensic Procedures and DNA Identification Act, 225-3, Cap. 121B*)
- protection from slavery and forced labour;
- protection from inhuman treatment.
- protection from deprivation of property (*altered to any extent necessary by the Tenancies Freehold Purchase Act, 1980-53, Cap. 239B) and the Anti-Terrorism (Amendment) Act, 2019-34*);
- protection against arbitrary search or entry;
- provisions to secure protection of law - right to a fair hearing within a reasonable time by an independent and impartial court established by law (*this paragraph (s. 18(2)(a) is altered to the extent necessary by the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23*);
- protection of freedom of conscience;
- protection of freedom of expression;
- protection of freedom of assembly and association;
- protection of freedom of movement; (*1974-34*)

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- protection from discrimination on grounds of race, etc. (ie. race, place of origin, political opinions, colour or creed) (*see 2002-14*)
Subsection 23(1(a) shall not apply to any law which makes provision with respect to:
 - (a) persons who are not citizens of Barbados;
 - (b) adoption, marriage, divorce, devolution of property on death or other matters of personal law;
 - (c) where persons of any description mentioned may be subjected to any disability or restriction or may be accorded any privilege or advantage, which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justiciable;
 - (cc) the transfer between Barbados and other countries in accordance with international arrangements entered into by Barbados, of persons detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts or tribunals of their criminal jurisdiction;
 - (d) authorizing the taking during a period of public emergency of measures which are reasonably justiciable for the purpose of dealing with the situation that exists during that period of emergency; or
 - (e) for the imposition of taxation or appropriation of revenue by the Government or by any local government authority for local purposes.

Forde Commission Recommendations

The Forde Commission recommended that appropriate changes be made to the text so that the reformed Constitution would:

- be gender neutral;
- include the category of gender in the definition of “discriminatory”;
- entrench the right to vote in an election of members of the House of Assembly;
- enhance the profile of the institution of Ombudsman by giving it constitutional status and equating the conditions of service of the Ombudsman with those of a High Court judge;
- the special care which society owes to persons with various physical and/or mental disabilities should be dealt with in carefully crafted legislation rather than “in the broad sweep which constitutional provisions would entail”;
- a provision similar to a 1974 recommendation of the Trinidad and Tobago Constitution Review Commission that the costs of an unsuccessful claimant in proceedings for the enforcement of a right protected by the Constitution should be borne by the State where (a) the point of law raised in the proceedings is one of public importance, or it was reasonable to institute proceedings given the particular circumstances of the case.

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As will be shown below, the only recommendation of the Forde Commission in relation to the chapter on Protection of the Fundamental Rights and Freedoms of the Individual in the Constitution as at mid-2022 was that which advised not to include provisions for persons with disabilities, but to have special legislation drafted. As of August 2022 the Law Reform Commission of Barbados was working on such a Bill.

Amendments to Chapter II of the Constitution

The provisions of Chapter II in s. 12 for protection of the right to life except pursuant to a sentence of death and s. 15 for protection from inhuman treatment have been the most controversial in recent years.

In *Pratt v Morgan*, a November 1993 judgment of the Judicial Committee of the Privy Council, the court ruled that a period of more than five years' delay in carrying out a death sentence constituted cruel and inhuman punishment, was inconsistent with the right to protection against inhuman treatment and was therefore unconstitutional.

In Barbados, the *Constitution Amendment Act* No. 14 of 2002 was passed which amended s. 15 by inserting subsection 3 which provided that the imposition or execution of a death sentence and the lawful detention of a person on death row pending execution of the sentence in conditions that were practiced in Barbados at the time would not be inconsistent with the right to protection against inhuman treatment.

However, arising from the landmark decision of the CCJ in *Nervais and Severin v The Queen* [2018] CCJ 19 (AJ) which ruled that the mandatory imposition of the death penalty was inconsistent with various provisions of the Chapter on Fundamental Rights and was not saved by s. 26 of the Barbados Constitution, Parliament amended the Constitution to reflect the significant jurisprudential shift. The amendments were:

- the repeal and replacement of s. 15 to provide that the imposition of the mandatory death penalty was not inconsistent with the right to protection against inhuman treatment. The amended s. 15 provides, instead, that the imposition, execution or holding beforehand of a death sentence rather than a mandatory sentence, is not inconsistent with that right; and
- the repeal and replacement of s. 26 which provided for the existing law to continue in force, but with such modifications, adaptations, qualifications and exceptions as necessary to bring into conformity with ss. 12-23 (the fundamental rights provisions). this provision was repealed by Act No. 15 of 2019.

This is a developing area of the law, but the position in Barbados as at August 2022 is as stated above. The issue of whether long delays in the execution of a death sentence constitute cruel and inhuman punishment is yet to be addressed fully and this may be done in relation to consideration of the *Bail Act*, Cap. 122A.

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Indirect Amendments

Section 12(1) of the Constitution provides for the protection of the right to life, except pursuant to a sentence of death. The *Anti-Terrorism Act, 2002-6*, Cap. 158 provides for the meeting of Barbados' obligations under international law with respect to the suppression of terrorism. The Act sets a sentence of death on conviction of a terrorism offence causing death and therefore amends s.12(1) to the extent necessary to give effect thereto. As at mid-2022 no person has been charged under the Act.

Section 13 of the Constitution provides for the protection of the right to personal liberty. The *Forensic Procedures and DNA Identification Act, 2005-3* provides for matters related to DNA identification in the detection of crime. In particular, Part IV of the Act provides for forensic procedures to be undertaken upon the order of a Magistrate in the absence of consent from a person, in special circumstances. Section 13 of the Constitution is therefore amended to the extent necessary to give effect to Part IV of the Act, empowering authorised persons to take samples from suspects, in the absence of their consent, which might otherwise be deemed a violation of their personal liberty.

Section 13(3) of the Constitution requires a detained person to be brought before a court as soon as "reasonably practicable" and provides for such person to be bailed if they cannot be tried within a reasonable time. The *Bail (Amendment) Act, 2019-13* restricts bail for persons accused of certain serious offences. Therefore, it would tend to be inconsistent with s.13(3) had that subsection not been deemed altered to the extent necessary to give effect to the Act. In *Jones v. The Attorney General of Barbados* (judgment of Griffith, J. of May 28, 2021) the High Court declared the *Bail (Amendment) Act, 2019-13* unconstitutional for other reasons and that decision is now the subject of an appeal.

Section 16 of the Constitution provides for the right to protection from the deprivation of property. The *Anti-Terrorism (Amendment) Act, 2019-34* provides, *inter alia*, for the freezing of property and prohibition on the ability to own or control property in Barbados where a person, entity or state is designated a terrorist, terrorist entity or related state actor. It was thus necessary to expressly alter s.16 of the Constitution to the extent necessary to give effect to this Act, so that such orders would not be inconsistent with that section.

Section 18(2)(a) of the Constitution provides for a person to be presumed innocent until proven guilty. Section 6(3) of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23* provides for the property of a person charged with the offence of money laundering which cannot be proven to be derived from a legitimate source, to be presumed to be the proceeds of crime. Without the Act being passed in accordance with the provisions of s.49 of the Constitution in order to indirectly alter s.18(2)(a), it might otherwise have been held to be inconsistent with that provision as it could have the effect of presuming guilt.

Enforcement of Protection Provisions

When a person is of the opinion that his/her rights accorded by ss. 12 to 23 have been, or are likely to be violated or threatened, that person may apply to the High Court for relief subject to provisions made by Parliament with regard to the practice and procedure (section 24(1)). Also, if in any proceedings in a court subordinate to the High Court a question as to

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the contravention of any of the Bill of Rights provisions arises, the person presiding in the court must refer the question to the High Court unless, in his/her opinion, the raising of the question is merely frivolous or vexatious (section 24(3)). The High Court shall not exercise its powers unless satisfied that no other legal remedy is available. An amendment to section 24 was made in Act 10 of 2003 to provide that if an appeal arises from the High Court decision, the High Court shall dispose of the case in accordance with the decision of the Court of Appeal or the Caribbean Court of Justice if the case reaches these courts. (See 2003-10 and 2005-9).

Limitations on the Bill of Rights Provisions

The Public Interest Question

It is to be noted that section 11 states that the Bill of Rights provisions are subject to such limitations as will ensure that their enjoyment does not prejudice the rights and freedoms of others or the public interest. A person who alleges that any of the provisions of section 12 to 23 are being or are likely to be contravened in relation to that person, or to a person who is detained, may apply to the High Court for redress. Under section 24(1). The person may do so, even if another action with respect to the same matter is lawfully available.

Emergency Powers

The relevant provisions are contained in the Constitution at section 25 and also in the *Emergency Powers Act*, Cap. 161. According to section 25(1), a “period of public emergency” means any period during which Barbados is engaged in war or if the President has by proclamation declared that a state of public emergency exists (Act No. 22-2021) for a period normally of one month, but up to six months as determined by a resolution supported by the votes of a majority of all the members of the House of Assembly; or if a resolution has been made by each House of Parliament supported by the votes of not less than two-thirds of all members declaring that democratic institutions in Barbados are threatened by subversion. (See Act No. 2021-22, s. 30).

For an emergency proclamation to be valid it must state that the President is satisfied that a state of emergency has arisen because a state of war is close at hand, or there has been an earthquake, flood, fire, outbreak of infectious disease, etc. , or that some person has taken action to endanger public safety or deprive the community, or a substantial portion of it, of essential services.

According to the *Emergency Powers Act*, during a period of emergency Cabinet may make any orders which it considers in the public interest, including orders for the entering and searching of premises and the detention of persons. According to section 13(5) of the Constitution no law passed during a period of emergency which contains reasonable measures for dealing with the situation is to be held inconsistent with, or in contravention of the protection of right to personal liberty of the individual.

In any case, a detainee must be given a statement in writing containing the grounds for detention within five days and may request a review of the case. This review must take place within one month after the request is made and the detainee must be afforded an opportunity to instruct an attorney-at-law. The review must be by an independent and impartial tribunal

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presided over by a person from the legal profession appointed by the Chief Justice. The executive is not bound to accept the recommendations of the tribunal.

Saving of Existing Laws

Section 26 of the Constitution is commonly known as the "existing law clause". In the 1966 Constitution the existing law clause protected written pre-Independence law from being challenged on constitutional grounds. Repeal of s. 26 was recommended by both the 1979 Cox Commission and the 1997 Forde Commission. The Bar Association had noted when providing an opinion to the Forde Commission that when the provision was inserted in the Constitution it would have been anticipated that a thorough review of the laws would take place with a view to bringing them into conformity with the Constitution.

However, section 26 was amended by section 3 of Act 15 of 2019 which provided that any reference to altering an existing law includes references to repealing it and reenacting it with modifications or making different provisions *in lieu* thereof and to modifying it.

Therefore, in Barbados, an existing law is one:

- enacted before November 30, 1966 which has continued to be a part of the law of Barbados at all times since that day;
- which reenacted a law enacted or made before November 30, 1966 without alternation; or
- that altered a law enacted prior to November 30, 1966 and does not render that law inconsistent with sections 12 to 23 of the Constitution in a manner in which it was not previously so inconsistent.

Interpretation

Section 27(1) provides that in Chapter 3 "court" means any court of law with jurisdiction in Barbados except one established by a disciplinary law (that is, a law for a naval, military, air force, police, prison or fire service) and includes the Caribbean Court of Justice. Section 27(3) provides that nothing done by a person who is a member of a disciplined force of another under the law of that country, and who is lawfully present in Barbados, shall be held to be inconsistent with, or in contravention of any of the provisions of sections 12-23.

Provision for Amendment of the Bill of Rights

According to section 49, the chapter which contains the Bill of Rights can only be amended by an Act of Parliament which has been supported by a two-thirds majority of the members of both Houses of Parliament, and which states its intention to amend the Constitution. There is no provision for a referendum, as in Jamaica where the opposition Senators can insist on a referendum in which a three-fifths majority of the electorate would be required.

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QUESTIONS

1. Should the Bill of Rights Chapter contain a definition of “gender neutral” and be amended to provide that the Constitution should be gender neutral?
2. Should the provision against discrimination be amended to include discrimination on the ground of being male or female, age, race, place of origin, class, colour, religion, language, sexual orientation, disability and political opinions?
3. Should capital punishment, permitted by section 12(1) which states that "No persons 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" be abolished?
4. If capital punishment is to be retained, should the Constitution be amended to provide that delays in the execution of the death penalty of over 5 years do not amount to inhuman or degrading punishment or other treatment provided the State moved the appellant's case forward as rapidly as possible?
5. If (4) above is adopted, what should be the criteria for determining that “the State moved the appellant’s case forward as rapidly as possible”?
6. Should Chapter 3 be amended to provide the right of every child to such measures of protection as are required by the status of a minor or as part of the family, society and the state?
7. Should Chapter 3 be amended to provide the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage;
8. Should a responsible public or civic organisation or any person authorised by law be competent to initiate proceedings to challenge an infringement or threatened infringement of a right in the public interest even if that organisation or person's personal rights and freedoms are not directly affected?
9. Should the existing provisions which permit the Executive to disregard the recommendations of any tribunal established to review cases of detention during periods of public emergency be amended to compel conformity with such recommendations?
10. Should the existence of some alternative legal remedy cease to be a barrier to relief in cases brought under the Bill of Rights provisions?

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11. Should judicial review apply to the declaration of states of emergency and of public disaster and to action taken in restriction of the citizens rights during such periods?
12. Should the provision that preserves pre-Independence laws be removed altogether from the Constitution? A similar provision was deleted from the Jamaica Constitution in 1995.
13. Should the Constitution provide for the right of citizens to vote to elect Members of Parliament?
14. Should the existing provisions which permit the Executive to disregard the recommendations of any tribunal established to review cases of detention during periods of public emergency be amended to compel conformity with such recommendations?
15. Should a provision be included in Chapter 3 that the costs of an unsuccessful claimant in proceedings for the enforcement of a right protected by the Constitution be borne by the State where:
 - (a) the point of law raised in the proceedings is one of public importance; or
 - (b) it was reasonable to institute proceedings given the particular circumstances of the case?

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CHAPTER IV

THE HEAD OF STATE

Background

Throughout its colonial history Barbados acknowledged the person sitting on the British throne as its sovereign. When the Barbados Constitution was drafted, it was decided that the country would not become a Republic, and that the British sovereign would continue to be Head of State. In this regard, Barbados followed Jamaica and Trinidad and Tobago, which had obtained their independence in 1962.

Thus, the 1966 Constitution of Barbados retained the English sovereign as Head of State, (see section 63) with a local representative in the Governor-General, whose appointment and tenure was at the discretion of Her Majesty, but, in effect, by convention, was in the discretion of the Prime Minister on whose advice the Queen acted.

However, a Head of State should ideally be a focal point of national unity. It is for this reason that some former colonies, notably Dominica and Trinidad and Tobago, substituted a President, a national of high standing, for the Queen as Head of State when they undertook major constitutional reform exercises after Independence. The republican form of government can take two forms: one, as in the USA, where the President is directly elected by the population and holds office as both Head of State and Head of Government and is an active politician; the other is a parliamentary republican form of government in which the posts of Head of State and Head of Government are separate, and the Head of State is largely, but not exclusively ceremonial and derives its legitimacy from, and is accountable to parliament. In the parliamentary republic the executive authority is shared between the Head of State on the one hand and the Prime Minister and the Cabinet on the other.

Based on the fact that most Barbadians who made submissions to the Forde Constitution Review Commission in 1997/8 showed an overwhelming preference for the introduction of republicanism in Barbados, with a President replacing the Queen as Head of State, the Commission recommended that Barbados become a parliamentary republic with a President as Head of State who should be a citizen of Barbados by birth or descent. It also recommended that the President be not less than 40 years of age and should have resided in Barbados for at least 5 years prior to election. It also recommended that for the purpose of electing the President: (1) the Senate and House of Assembly should be constituted an Electoral College and should meet as a unicameral body for the purpose; (2) the Electoral College should be convened and presided over by the Speaker of the House of Assembly and (3) that ten Senators, the Speaker and fourteen other members of the House of Assembly should constitute a quorum of the Electoral College. The Forde Commission also recommended that the President hold office for 7 years.

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Replacement of the Governor-General by a President

The recommendation of the Forde Commission that Barbados become a parliamentary republic with a President as Head of State was made law by Act No. 22 of 2021.

Chapter IV, which previously provided for the office of Governor-General, was repealed and replaced and now provides for the Office of the President. The President is the Head of State and Head of the Armed forces and has such functions as assigned to him or her by the Constitution or any other law.

The Chapter sets out the qualifications and disqualifications, mechanism for election, term and tenure, conditions of office, procedure for removal, immunities, the manner of the exercise of the President's functions and related matters. As a result, ss. 28-34 were repealed and replaced by ss.28-34H.

Selection of a President

Following the recommendation of the Forde Commission Report, section 32(1) of the Constitution provides that whenever the office of President is vacant or the term of office is due to expire within not more than 90 days, the Prime Minister shall consult with the Leader of the Opposition with a view to making a joint nomination of a candidate. If a joint nomination is made to which the candidate has consented, the Speaker shall notify both Houses and at a joint meeting of both Houses, shall ask the members whether any member has an objection to the candidate being declared duly elected. If there is none, the Speaker shall declare the candidate duly elected without a vote. If there is an objection, the Speaker shall not declare the candidate elected, but shall suspend the joint meeting, the members of each House shall go back to their respective Houses. There, they vote again and if the candidate received not less than two-thirds of the votes cast in each House, the Speaker shall declare the candidate elected.

Removal of President from Office

The President may be removed from office for willful violation of the Constitution, misbehavior, and inability to discharge his/her function or conduct endangering the security of the State. A motion for removal is to be proposed in the House of Assembly, must give full particulars of the grounds on which the removal is proposed and must be signed by not less than one-third of the total membership of the House of Assembly. A tribunal of the Chief Justice and three other judges who have held high judicial office in a Commonwealth country other than Barbados must investigate the complaint and report on the facts to the House of Assembly. If a vote of no less than two-thirds of the membership of each House in a joint session supports removal after considering the report, they shall declare that the President be removed from office.

Provision for an Acting President

Pursuant to the passage of the *Governor General (Conditions of Service) (Amendment) Act 2021-16* and in order to give full effect thereto, Parliament passed the *Constitution*

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(Amendment) Act 2021-18 to provide for the performance of the functions of the President when the officeholder is on vacation leave, or may be unable to perform his or her functions. To this end, s.33 of the Constitution provides for the appointment of an Acting President when the substantive officeholder is on leave.

Functions and Powers of the President

Section 34(G)(1) provides that the President acts in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where any function is expressed to be exercisable in the President's discretion on the advice or recommendation of or after consultation with any person or authority.

Section 71 provides that the Prime Minister shall keep the President fully informed concerning the general conduct of the government and shall provide the President with such information as the President, acting in the President's discretion, may request with respect to any matter relating to the government of Barbados.

Section 58 of the Constitution (as amended by s. 26 of Act No. 22 of 2021) provides that a Bill shall not become law until the President has assented thereto and has signed it in token of such assent.

The Constitution provides for the President to act in the President's own discretion and on the advice and recommendation of a number of other parties. A list of the circumstances under which the President acts in his or her own discretion; after consultation with the Prime Minister; on the advice of the Prime Minister; on the advice of the Prime Minister after consultation with the Leader of the Opposition; on the advice of the Leader of the Opposition and on other parties is provided below. The list of circumstances under which the President acts on the advice of the Prime Minister is the longest, followed by those in which the President acts in his or her own discretion.

Acting in the President's own discretion

- s.36(1): appointment of seven Senators to represent "religious, economic or social interest or such other interests" as ought to be represented;
- s.61(2): dissolution of Parliament in circumstances where the office of Prime Minister is vacant and there is no reasonable chance of soon appointing a person as Prime Minister in accordance with s.65(1);
- s.65(1): appointment of the Prime Minister who, in the President's judgment, is the person best able to command the confidence of a majority of the House;
- s.66(2): revocation of appointment of Prime Minister after the successful passage of a no-confidence motion, if the Prime Minister does not within three days after that resign or advise the President to dissolve Parliament;
- s.67(1): authorise any other Minister to act as Prime Minister, where the Prime Minister is unable, whether from illness or being on vacation to perform the functions of the office of Prime Minister;

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- s.74(2): appointment of a Leader of the Opposition who, in the President's judgment is the person best able to command the confidence of the majority of the largest group in the House who do not support the Government. This power is exercised during any period between dissolution of Parliament and the day on which the next election of members of the House of Assembly is held;
- s.74(4): revocation of the appointment of the Leader of the Opposition, where that person is no longer able to command the support of a majority of members of the House of Assembly who do not support the Government or the support of the largest single group of members who are prepared to support one leader;
- s.75: all functions for which the Constitution provides that the President would ordinarily act on the advice of the Leader of the Opposition, during any period when no person is eligible to be appointed as Leader of the Opposition;
- s.77(1): summoning of the Privy Council.

Acting after consultation with the Prime Minister

- s.76(1): appointment of Privy Councilors;
- s.76(3): revocation of appointment of Privy Councilors.

Acting on advice/recommendation of the Prime Minister

- (s. 36(2): appointment of 12 Senators;
- s.39(1)(f): removal of Government Senators;
- s.61(1): proroguing Parliament;
- s.61(2): dissolving Parliament;
- s.61(5): recalling the dissolved Parliament in circumstances where an emergency requires;
- s.65(2): appointment of Ministers;
- s.66(3): revocation of appointment of Minister;
- s.67(1): appointment of acting Prime Minister, when it is possible to obtain the advice of the Prime Minister;
- s.68: appointment of temporary Minister when substantive officeholder is ill, absent from Barbados or on vacation leave;
- s.72(1): assignment of responsibility for the business of Government to Ministers;
- s.73(1): appointment of Parliamentary Secretaries;
- s.75: all functions for which the Constitution provides that he would ordinarily act on the advice of the Prime Minister, after consultation with the Leader of the Opposition, during any period when no person is eligible to be appointed as Leader of the Opposition;
- s.82: appointment of acting Chief Justice and acting Supreme Court judges;
- s.84(1A): extension of the tenure of the CJ or JA to 72 and of a High Court judge to 67;

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- s.84(5): appointment of a tribunal to investigate the matter of the removal of the Chief Justice;
- s.84(5): appointment of a tribunal to investigate the matter of the removal of any other judge (after consultation with the CJ);
- s.84(7) and (8): suspension of a judge who has been referred to a tribunal and revocation of that suspension;
- s.99(1)(b): transfer of permanent secretaries;
- s.100(1): appointment of principal representatives abroad.

Acting on the Advice of the Prime Minister after consultation with the Leader of the Opposition

- s.41A. (3) appointment of Chairman and two other members of the Electoral and Boundaries Commission;
- s. 81(1): appointment of Chief Justice and the other judges of the Supreme Court
- s.89(2): appointment of three members of the Judicial and Legal Service Commission;
- s.89A(1) and (5): appointment of members of the Teaching Service Commission and acting members (the Commission is not yet in force);
- s.90(1) appointment of Chairman and members of an administrative, General and Professional Service Commission;
- s.91(1) appointment of Chairman and members of the Protective Services Commission.

Acting on the advice of the Leader of the Opposition

- s.36(3): appointment of two Senators;
- s.39(1)(f): removal of Opposition Senators;
- s.41A(3): appointment of Deputy Chairman and one other member of EBC (after consultation with PM).

Acting on the advice of other persons

The Speaker

- s.74(5): appointment of the Leader of the Opposition where the level of support in the House is doubtful.

The Privy Council

- s.78(2): exercise of the prerogative of mercy;
- s.98(2): action in respect of disciplinary matters for which the right of appeal to the Privy Council has been invoked;
- s.104(5): action in respect of appeals of recommendations made by a Service Commission related to the grant or withholding of pension.

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The Caribbean Court of Justice

- s.84(4): removal of a judge;

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- s.84(5)(c): referrals to the CCJ in matters related to the removal of a Judge.

Judicial and Legal Services Commission

- s.93(1): appointment, removal discipline of judicial and legal officers (other than the DPP);
- s.101(1) and (3): appointment of DPP and acting DPP;
- s.101(4A): extension of tenure of DPP to 70 years.

Teaching Service Commission (not yet in place)

- s.93A(1): appointment, removal and discipline of teachers

Administrative, General and Professional Service Commission (AGPSC)

- s.94(1): appointment, removal, discipline of public officers within the jurisdiction of the AGPSC;
- s.95(1): delegation of the powers of the President in respect of s.94(1), other than removal, to the AGPSC or a public officer;
- s.102(1) and (2): appointment of Auditor-General (after AGPSC has consulted the PM) and acting Auditor-General.

Protective Services Commission

- s.96(1): appointment, removal discipline of members of the Protective Services, within the jurisdiction of the PSC;
- s.97(1): delegation of the powers of the President in respect of s.94(1), other than removal, to the PSC or a police officer not beneath the rank of Superintendent.

The Service Commissions Generally

- s.99(1)(a): appointment of permanent secretaries and officers of related grade, and including chief and deputy chief technical officers and heads and deputy heads of departments (after the relevant Commission has consulted the PM);
- s.104(1): grant awards under pension law to which the person is not by law entitled to as of right and the withholding, reduction or suspension of award of pension payable under such law (other than persons holding or who held the office of Judge, DPP or Auditor-General).

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Special Circumstances

The Constitution does not provide for the manner in which the following powers are exercised. They are subject to certain unwritten conventions:

- s.58(3): the President shall signify that the President assents or withholds assent to a Bill properly passed;
- s.60(2): the President shall appoint the time and place for each Session of Parliament to commence.

QUESTIONS

1. Should the President of Barbados be elected by the people directly or should the current system be retained whereby the President is elected by the people's representatives in Parliament?
2. The Constitution sets out the functions of the President and the circumstances under which they are exercised. Some functions are exercised in the President's own discretion; others on the advice or after consultation with the Prime Minister, others after consultation with both the Prime Minister and the Leader of the Opposition, and yet others after consultation with other functionaries. Should the President be given less authority to act in his/her own discretion since the President is not, like the Prime Minister, the person who, with the rest of the Cabinet, runs the country?
3. Should the Office of President continue to be primarily ceremonial or should Barbados adopt an executive presidency such as in the USA or Guyana where the Head of State is a politician and is therefore also head of government?
4. Should the President continue to serve for a four-year term with the possibility of one renewal, for 3 years or for 7 years as recommended by the Forde Commission?

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CHAPTER V

PARLIAMENT

PART 1

Composition of Parliament

Under the Constitution, Parliament is the organ of Government which makes laws for “the peace, order and good government” of the country (section 48(1)). While the Constitution is supreme and as such prevails over Acts of Parliament which are inconsistent therewith, Parliament may, by an Act of Parliament passed by both Houses, alter any of its provisions, provided the procedures for so doing laid down in the Constitution are followed (section 49(1)). Parliament may also determine the privileges, immunities and powers of the Senate and the House of Assembly. (Section 48).

Section 35 of the Constitution provides for a Parliament comprising the President, a Senate and a House of Assembly (Act No. 22-2021). The President does not sit in Parliament, but as Head of State, affixes the Public Seal to instruments appointing Senators and members of the House of Assembly, assents to Bills after which they become law and summonses, prorogues and dissolves the Houses of Parliament.

The Forde Commission recommended retention of a Parliament comprising the President, Senate and House of Assembly and this recommendation was followed in the Constitution as revised up to mid-2022.

THE SENATE

The Senate is provided for in section 36(1) of the Constitution. The function of the Senate known as the “Upper House” has been said to provide “checks and balances” to control possible excesses or hasty legislation on the part of the elected representatives and to offer the opportunity to re-debate and correct errors made in the Lower House. Also, the provision for appointment of independent senators ought to provide opportunities for public service by representatives of various groups and interests which the President considers ought to be represented in Parliament.

Arguments have been made for the introduction in Barbados of a unicameral system of Government, with one “House” consisting of elected and nominated members and no separate Senate.

What are the advantages of a unicameral system? It has been argued that:

- it reduces costs even if the same number of legislators remain the same (that is 21 persons chosen to represent interests in the society and 30 elected members, totaling 51 persons) but, the number of those who are chosen could be fewer;

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- that it is more democratic; and
- that it leads to more efficient lawmaking as the legislative process is simpler and there is no possibility of gridlock between two chambers.

Those in favour of the retention of a two-chamber legislature argue that:

- it provides the opportunity to re-debate and correct errors and to introduce Bills in both chamber;
- since the Senators are selected to represent interests in society, they often bring expertise and experience to bear on debates that may not be as common in the Lower House.

The main weaknesses of a unicameral system have been described as:

- a potential lack of restraint on the majority, particularly noticeable in parliamentary systems where the leaders of the parliamentary majority, notably the Prime Minister and members of the Cabinet dominate the Lower House. This argument may be of relevance in Barbados;
- the risk that important sectors of society may not be adequately represented in one Chamber, but this should only be the case if the number of nominated members is drastically reduced from the present number of 21.

The Forde Commission recommended that:

- the number of Senators remain at **21**;
- that **12** be appointed by the President acting in accordance with the advice of the Prime Minister;
- that **4** be appointed by the President acting on the advice of the Leader of the Opposition;
- that **2** be appointed by the President to represent members of any political party represented in the House of Assembly who do not support the Prime Minister or the Leader of the Opposition after consultation with the leader of that political party or where there is more than one party, the leaders of those parties. The Forde Commission had recommended that if there are no such political parties, the 2 Senators should be appointed by the President acting in the President's discretion after consultation with the leader of any political party supported in the election by the votes of at least 10% of all those who voted in the election, and by such other persons as the President considers ought to be consulted; and
- that **3** Senators be appointed by the President, acting in the President's discretion, after consultation with such persons as the President considers ought to be consulted to represent interest in the society.

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In section 36 of the Constitution as amended between 2020 and 2021 the recommendation of the Forde Commission that the number of Senators remain at 21 and that 12 be appointed by the President on the advice of the Prime Minister has been adopted. However, instead of 4 being appointed by the President acting on the advice of the Leader of the Opposition, only 2 have been provided for and instead of 2 being allocated to other political parties and 3 being appointed by the President in the President's discretion, 7 are to be appointed by the President acting in the President's discretion to represent interests in the society.

The Senate is presided over by a President, who must neither be a Minister nor a Parliamentary Secretary and who shall be elected by the Senate when it first meets after any dissolution of Parliament and before it proceeds to the dispatch of any other business. Also, whenever the office of President and Deputy President become vacant for any reason other than a dissolution of Parliament, the Senate shall elect persons to fill these offices, doing so, in the case of the President, not later than the second sitting after the vacancy arises, and in the case of the Deputy President, as soon as convenient.

Qualification for membership of the Senate

One of the amendments made by Act 1974-34 was that the qualifications for membership of the Senate would be Barbadian instead of Commonwealth citizenship, or ordinary residence in Barbados for the twelve months immediately preceding the appointment to the Senate. This amendment was brought into force on February 1, 1975. Another amendment, the *Barbados Constitution (Amendment) Act* of 1992 further amended the disqualifications for membership of the Senate by substituting "any" for "felony or of any other" so that a persons convicted of any criminal offence involving dishonesty would be disqualified from membership of the Senate and recommended that the qualifying age for the Senate be 25. The amendment of section 28 of the Constitution effected by Act number 2021-30 provided that the qualifying age be 21 years and upwards.

Disqualifications for membership of the Senate

According to section 38 of the Constitution, no person shall be appointed a Senator who is a member of the House of Assembly, who holds, or is acting in the office of Judge, Director of Public Prosecutions or Auditor General; has been convicted of a criminal offence within 10 years prior and has not appealed against the conviction, his or her appeal has not been allowed and he or she has not received a free pardon in respect of the offence.

Other disqualifications are: if the person is under sentence of death by a Commonwealth court or is serving a sentence of imprisonment of 6 months (and in this regard, if one of two sentences are to be served consecutively, and one exceeds six months, they are to be regarded as one sentence); has been adjudged insane under a law in force in Barbados or has been declared a bankrupt and has not been discharged, or has been convicted or reported guilty of corrupt or illegal practices at elections; membership of any armed force, the police force and holding or acting in an office prescribed by Parliament.

Tenure of Seats of Senators

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Under section 39(1) of the Constitution the seat of a Senator becomes vacant:

- on the next dissolution of Parliament after being appointed; or if the Senator:
 - with his/her consent, is nominated to the House of Assembly;
 - ceases to be a citizen of Barbados;
 - is absent from Barbados for a period exceeding 40 days at any time when the Senate is sitting, without the leave of the President of the Senate;
 - was appointed on the advice of the Prime Minister or the Leader of the Opposition and the President of the Senate, his/her seat becomes vacant any time the President, acting on the advice of the Prime Minister or the Leader of the Opposition, whichever of the two recommended the Senator's appointment, declares the Senator's seat vacant.
- has been convicted of an offence involving dishonesty, is under sentence of death or imprisonment, is adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of a corrupt or illegal practice at elections and can appeal against the decision, the Senator shall cease to perform his/her functions as a Senator but shall not vacate the seat and can be given up to 150 days leave by the President without the approval, by resolution, of the Senate. If on the determination of the appeal process the circumstances continue to exist and no further appeal is open to the Senator, the Senator shall forthwith vacate his/her seat;
- section 47(1) empowers the President to fill a vacancy in the Senate if a member vacates his/her seat for a reason other than dissolution of Parliament.

THE HOUSE OF ASSEMBLY

Election of Members

According to s. 41(1) the House of Assembly shall consist of 30 members or such greater number of members as Parliament may prescribe (amended by Act No. 22 of 2021, s. 23). The size and membership depends on provisions of the *Representation of the People Act*, Cap 12 which was amended in 1980 (1980-71) to increase membership from 24 to 27. A further increase occurred in 1990 when by section 3 of the *Electoral and Boundaries Commission (Review of Boundaries) Order* it moved to 28. Act 22 of 2021 provided that the House of Assembly shall consist of 30 members or such greater number of members as Parliament may prescribe.

The election of members of the House of Assembly is conducted under the direction and supervision of the Electoral and Boundaries Commission comprising a Chairman, Deputy Chairman and three other members which has been provided for by sections 41A-E of the Constitution. The Chairman and two other members of the Commission shall be appointed by the President, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, and the deputy Chairman and one other member shall be appointed by the President, acting on the recommendation of the Leader of the Opposition after

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consultation with the Prime Minister. A person shall not be qualified to hold office as a member of the Commission if that person is a Minister, a Parliamentary Secretary, a member of, or candidate for election to the House of Assembly, a Senator or a public officer.

The Commission reviews the number and boundaries of the constituencies into which Barbados is divided. The electorate is to be divided as far as practicable into constituencies of equal size, but in no case is a constituency to be more than 110 per cent nor less than 90% of the total number of persons entitled to vote in Barbados, divided by the total number of constituencies. (See Third Schedule to the Constitution entitled Constituency Boundaries) inserted by s. 30 of 2021-22).

The Commission directs and supervises the registration of voters and conducts the elections in every constituency and in the exercise of its functions under this section, the Commission shall not be subject to the direction or control of any person or authority.

Each constituency elects one representative, and the person with the highest number of votes is declared the winner. Thus, if there are several candidates, the winner may not get as many as half the votes cast. This system of election is called the first-past-the-post system.

Under the *Representation of the People Act*, section 7(1)(a) a resident Barbadian citizen of eighteen (18) years or over who registers in accordance with the Act is entitled to vote. Each person has one vote and may vote in one constituency only.

Section 42 of the Constitution was amended by Act No. 16 of 1989 to state that any law providing for the election of members of the House of Assembly must contain provisions designed "as far as practicable" to ensure that any person qualified to vote at an election of members to the House of Assembly has a reasonable opportunity of voting, and that no person votes if or where he/she is not entitled.

Qualifications and Disqualifications for Membership

Under sections 43, any citizen of Barbados who is twenty-one (21) years of age or older and is resident in Barbados is qualified to be elected to the House of Assembly unless he is disqualified.

The main disqualifications (under section 44) are: holding or acting in the office of judge, Director of Public Prosecutions or the Auditor-General, being under sentence of death imposed by a court in any part of the Commonwealth or serving a sentence of imprisonment exceeding six months or such a sentence of imprisonment the execution of which has been suspended; insanity or unsoundness of mind, bankruptcy, disqualification for membership of the House of Assembly by reason of having been convicted or reported guilty of any corrupt or illegal practice at elections, having been convicted for making a false declaration of qualification for elections and membership of the Civil Service, the armed forces or the police.

Vacating a Seat in the House of Assembly

By section 45 a member of the House of Assembly holds his/her seat until Parliament is dissolved; he/she resigns; is absent from sittings of Parliament for such time and in such circumstances as provided by the Standing Orders of the House of Assembly or the laws of Barbados, ceases to be a citizen of Barbados; contravenes the provision requiring him/her to

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take the oath of allegiance or any provision requiring a declaration of qualification for election before taking part in the proceedings of the House of Assembly; is expelled from the House under the requirements of an enactment relating to the House and the Standing Orders of the House; is convicted of any criminal offence involving dishonesty, declared bankrupt or convicted or reported guilty of a corrupt or illegal practice at elections or is convicted of making a false declaration of qualification. In any of the circumstances above, a member of the House of Assembly shall forthwith cease to perform functions as a member.

Section 45(2)(a) provides that if a member of the House of Assembly becomes disqualified for membership due to any of the events listed in the paragraph above, he/she must cease to function as a member immediately, and has up to 30 days to vacate his/her seat. The Speaker may extend this period for up to 150 days without the approval of the House of Assembly to give the member an opportunity to appeal.

By section 47(2), if a member vacates his/her seat other than on the dissolution of Parliament, within 90 days the Governor-General shall issue a writ for a by-election to be held to fill the vacancy.

The question whether any person has been validly appointed a member of the House of Assembly, or whether or not a person has vacated his/her seat shall be determined by the High Court whose decision shall be final (*Election Offences and Controversies Act, Cap. 3*).

PART 2

Powers and Procedures of Parliament

Functions and Powers of Parliament

Power to Make Laws

The Constitution (at section 48(1)), gives Parliament power to make law for the "peace, order and good government of Barbados." The section specifically provides that Parliament may pass laws to determine the rights, privileges, immunities and powers of the Senate and House of Assembly and section 50(1) gives each House of Parliament the power to make standing orders to regulate its own procedure. The rules relating to the establishment of committees, the conduct of debates and the behaviour of members are set out in the Standing Orders, which are the rules which regulate procedure in Parliament. In fact, the only legal restriction on the law making power of Parliament is that it must conform with the Constitution.

Quorum of the Senate

For the purpose of voting, a quorum of the Senate consists of 8 Senators and the person presiding who may be the President or Deputy President of the Senate. Except as provided in the Constitution, all questions proposed for decision in the Senate shall be determined by a majority of the votes of members present and voting (s. 53).

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Introduction of Bills, etc.

Proposals for new laws, or the amendment of existing laws are presented to Parliament in the form of Bills. According to section 54 (1), any Bill except a Money Bill may be introduced in either House of Parliament. In practice, most Bills are introduced in the House of Assembly and Money Bills are introduced by Ministers only. A Money Bill is one which proposes, or reduces any tax, or requires the expenditure of public funds. The Speaker or Deputy Speaker signs a certificate declaring whether or not a Bill is a Money Bill.

The powers of the Senate are limited. Its function is to review Bills which have been passed by the House of Assembly, approve or propose amendments to such Bills other than Money Bills, initiate Bills other than Money Bills and debate matters of public interest. A Senator may submit questions to be answered by Ministers and speak on matters of public concern.

Restriction on Powers of Senate as to Money Bills

The Senate may delay Bills, but cannot do so indefinitely. It can only delay passage of Money Bills for one month. If after that period a Bill is not passed without amendment by the Senate, the Bill shall, unless the House of Assembly otherwise resolves, be presented to the president for his assent, notwithstanding that the Senate has not consented to the Bill - s. 55(1).

The interval between passage of a Bill by the House of Assembly and its approval by the Senate can prove useful in that during that time debates can take place and new points of view expressed which may lead to the improvement and sometimes withdrawal of a Bill.

Assent to Bills

Section 58(1) provides that a Bill shall not become law until the President has assented thereto and signs it in token of such assent. Normally, a Bill is to be presented to the President for assent only if it has been passed by both Houses either without amendment, or with such amendments as agreed by both Houses.

Amending the Constitution

One important consideration when the terms of constitutions are being negotiated is that no one party or group should be able to change important provisions easily. It is for this reason that complicated amendment procedures are established in some constitutions. These include:

- (a) **a simple majority of all members who happen to be present and voting at a meeting. This is known as the ordinary procedure;**
- (b) **special majorities which are set out from (b)(i) to (b)(iii):**
 - (i) **an absolute majority which is the majority of all members of the House;**
 - (ii) **a two-thirds majority of all members of the House;**

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sections changed but not others, and out of an abundance of caution, vote for retention of the **status quo**. In the words of the late O.R. Marshall writing in 2012: “To put the Constitution clause by clause to the electorate would be to usurp the role of their representatives in Parliament. And to ask the broader question whether they support the general principles underlying the Constitution would be unnecessary. They have lived under the principles for close on 46 years without any serious demand for fundamental changes. It is true that a referendum is sometimes used when a country has undergone a revolution and a new system of government is being introduced, although those circumstances are certainly not applicable to Barbados. But even then, it is more usual to elect a constituent assembly and empower it to draw up and enact a constitution. In some of those cases, but not all, the Constitution is then put to a referendum.”²⁴

Procedures for Amending the Constitution of Barbados

Section 49 of the Constitution of Barbados provides that Parliament may use two methods to alter the Constitution and according to section 49(6), in each case no Act of Parliament shall be construed as altering the Constitution unless it is stated in the Act that this is its purpose.

The first method (s. 49(2)) requires the votes of a two-thirds majority of all members of both Houses:

1. Requirement for two-thirds majority to alter the Constitution

(1) **if at the final voting the change is supported by the votes of not less than two-thirds of all members of both Houses.** This applies to Bills to alter:

- Chapter 2 (citizenship);
- Chapter III (Protection of Fundamental Rights and Freedoms of the Individual);
- Chapter IV
 - (s. 28 – provision for the Office of President and Head of State
 - (s. 34(g) – exercise of the President’s functions;
 - (ss. 35-39) qualification and disqualifications for membership of the Senate and tenure of seats of Senators;
 - (ss. 41, 41A and 41E) membership of the House of Assembly, the Electoral and Boundaries Commission;
 - (s. 42) electoral law;
 - (s. 48) power of Parliament to make laws;
 - (s. 60(2) appointment of Senators
 - (s. 61) prorogation and dissolution of Parliament;
 - (s. 62) general elections and appointment of Senators;

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(s. 63) executive powers;
(ss. 76 to 79 (the Privy Council and Office and functions of the DPP (except for the provision for the DPP to take oaths of allegiance and for due execution of his office as set out in the *First Schedule* to the Constitution);
Chapters VII (other than s. 83 which provides that a judge shall not start the duties of the judge's office until the judge has taken and subscribed the oath of allegiance and the judicial oath in the form set out in the *First Schedule* to the Constitution); Chapter VIII and Chapter IX and any provisions in Chapter X applicable to the sections listed above.

(2) if at the final voting in either House the alteration of sections not listed above is supported by the votes of a majority of all members of both House of Parliament

- the sections to which this provision apply are those which do not fall under section 49(2) and Bills which include references to their repeal, with or without reenactment or making different provisions *in lieu* thereof); to modifying their provisions; suspending their operation or terminating their suspension.

PART 3

Summoning, Proroguing and Dissolving Parliament

Sections 60(1) provides that the President appoints the time and place for each session of Parliament, but no more than 6 months must elapse between the end of one session and the sitting of the next. The life of Parliament is normally 5 years, but if Barbados is at war, Parliament may extend its life for 12 months at a time, up to two years. (s. 61(4) and (5).

The President, acting on the advice of the Prime Minister, may dissolve Parliament by proclamation at any time. However, section 61(2) provides that if the Office of the Prime Minister is vacant, and the Governor-General cannot within a reasonable time find in the House of Assembly a person to appoint to the Office who has the support of the majority of the members of Parliament, the President must dissolve Parliament.

By section 61(5), if an emergency arises after Parliament is dissolved, but before the next general elections, the Governor-General (on the advice of the Prime Minister) may summon both Houses of the former Parliament. This Parliament would be considered dissolved on the date of the next election.

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Parliamentary Privilege

Section 4 of the *Parliament (Privileges, Immunities and Powers) Act*, 1964 (Cap. 9) provides that Members of Parliament are immune from civil and criminal proceedings in respect of words spoken in Parliament or contained in reports to Parliament. This means that they cannot be sued for statements made in Parliament which are defamatory of anyone, however false or malicious the statements may be. Members are also protected from arrest for civil debts during sessions of Parliament.

QUESTIONS

The Senate

1. Should the two Houses of Parliament be retained or should there be one chamber comprising elected and nominated members with the number of nominated members reduced?
2. Is the system for appointment of independent Senators resulting in Senators who represent community interests working?
3. If it is considered desirable to retain the Senate, should the interests in the community which should be represented in the Senate be listed in the Constitution?
4. Should there be a limit on the number of terms Senators who are nominated on the basis that they represent interests in the community serve?
5. Should there be a limit on the number of Ministers or Parliamentary Secretaries who can be drawn from the Senate?
6. What should be the age qualification for membership of the Senate?
7. Should there be provision in the Constitution for money bills to be introduced in the Senate under special circumstances?
8. If so, what should those special circumstances be?
9. Should the seat of a Senator become vacant also by submission of a letter of resignation to the President?

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House of Assembly

1. What should be the age qualification for membership of the House of Assembly?
2. Should a Bill for the amendment of the Constitution be considered by both Houses in a joint sitting?
3. The constitutions of some countries provide for a referendum if some sections are to be altered. The referenda process has not been a success in the region because most persons vote no to the question being asked. It is for this reason that countries with referenda provisions in their constitutions have been unable to adopt the Caribbean Court of Justice as their final court. Also, holding a referendum is as expensive as a General Election, and since often, most of the changes made to a Constitution are not major, and do not affect persons' rights, should the Constitution include a provision for a referendum to be held to alter its provisions?
4. Should Parliamentarians be protected by absolute privilege if they make false and malicious statements in Parliament about others?
6. Should the Constitution provide a mechanism for the voices of persons who did not vote for the ruling party in General Elections to be heard in the absence of a Leader of the Opposition in Parliament?

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CHAPTER VI

EXECUTIVE POWERS

Cabinet System vs. Presidential System

Prior to 2021, Barbados was a constitutional monarchy with a local Governor-General representing the Sovereign who was Queen Elizabeth II of the United Kingdom and XXX of the Commonwealth of Nations of which Barbados was and still is, a member. The Governor-General's role was largely ceremonial. In November 2021 the Queen was replaced by the former Governor-General as Head of State and section 63(1) of the Barbados Constitution now provides that "The executive authority of Barbados is vested in the President." What does this mean?

Barbados has become a parliamentary republic, that is, a republic that operates under a parliamentary system of government in which there is a clear differentiation between the head of government (the Prime Minister) and the Head of State (the President) with the President having been given reserve powers to use at the President's discretion or on the advice of others in order to act as a non-partisan referee of the political process and ensure that the nation's constitution is upheld.

Thus, section 63(2) provides that "Subject to the provisions of this Constitution, the executive authority of Barbados may be exercised by the President either directly or through officers subordinate to him" and section 63(3) states that "nothing in the section (section 63) shall prevent Parliament from conferring functions on persons or authorities other than the President." The President of Barbados is not like the President of the USA elected by the entire country as both Head of State and Head of Government but as Head of State, indirectly, through the elected representatives of the people in the House of Assembly and elected and nominated persons who sit in the Senate.

The Cabinet

The Cabinet is the principal instrument of policy and is responsible for the general direction and control of the government and is collectively responsible to Parliament. Section 64(1) provides for a Cabinet comprising the Prime Minister and not less than five other Ministers. The Prime Minister is to be appointed by the President, who, acting in his or her discretion, appoints the member of the House of Assembly who, in the President's judgment, is best able to command the confidence of a majority of the members of that House. The President appoints other Ministers, acting on the advice of the Prime Minister, from among the members of the two Houses of Parliament.

By section 70 the Prime Minister presides at Cabinet meetings, and in his/her absence any other Minister whom he appoints.

The Prime Minister recommends to the President the appointment of Ministers and the Parliamentary Secretaries who assist them in the discharge of their functions. One of the Ministers must be called the Attorney-General, and shall be the principal legal adviser to the

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Government (section 72(1)). Ministers and Parliamentary Secretaries may be chosen from both Houses of Parliament.

By section 71, the Prime Minister “shall keep the Prime Minister fully informed concerning the general conduct of the government of Barbados and shall furnish the President with such information as the President, acting in his discretion, may request with respect to any particular matter relating to the government of Barbados.”

Vacancy in the Office of Prime Minister and Other Ministers

The Office of Prime Minister becomes vacant in three circumstances: if the Prime Minister ceases to be a member of the House of Assembly for any reason other than a dissolution of Parliament; when the President informs the Prime Minister that the President will reappoint him/her, or another person as Prime Minister following an election; and if a majority of the House of Assembly votes for the revocation of the Prime Minister's appointment. In the latter circumstance, if the Prime Minister does not resign or advise the President to dissolve Parliament within three days, the President must revoke the Prime Minister's appointment (section 66(2)).

With regard to other Ministers, their offices become vacant: when a Prime Minister is appointed or reappointed; if their appointments are revoked by the President acting on the Prime Minister's advice; if they cease to be members of the House of Assembly for any reason other than dissolution of Parliament, or if they are not members of either House of Parliament at the first sitting after a dissolution (section 66(3)).

Absence of the Prime Minister

Section 67(1) gives the President the authority to appoint a member of the House of Assembly to perform the Prime Minister's functions if the Prime Minister is ill or absent or on vacation leave, and the President can appoint temporary ministers (section 68 (1)).

Leader of the Opposition

The President appoints as Leader of the Opposition the person who, in the judgment of the President, is best able to command the support of a majority of those members of the House who do not support the Government (section 74(2)). If there is no such person the President appoints the member of the House who, in his/her judgment, has the support of the largest single group of the opposition members who are prepared to support one leader.

The office of Leader of the Opposition becomes vacant: if the incumbent ceases to be a member of the House of Assembly for a reason other than dissolution of Parliament; if his/her appointment is revoked by the President on the ground that he/she is no longer able to command the support of a majority of the members of the House who do not support the Government; or if the President informs the Leader of the Opposition that he/she is about to appoint someone else prior to the first meeting of the House of Assembly after an election (section 74(3)).

When the position of Leader of the Opposition is vacant and the Constitution requires the Governor-General to act on the advice of the person in that position, or on the advice of the

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Prime Minister after the Prime Minister has consulted with the Leader of the Opposition, in the first case the Governor-General acts in his/her own discretion and in the second on the recommendation of the Prime Minister.

Privy Council

Provision for the Privy Council is made in section 76. The Privy Council shall consist of such persons as the President, after consultation with the Prime Minister may appoint under the Public Seal. The President shall, as far as practicable, attend and preside over all meetings of the Privy Council.

A Privy Councilor may serve for 15 years or a shorter period as specified in the instrument by which the Privy Councilor was appointed, on becoming 75 years old or if the appointment is revoked by the President acting after consultation with the Prime Minister.

Prerogative of Mercy

Section 78(1) provides that the President may, in the name of the State and on the State's behalf grant a pardon, a respite from execution of any punishment imposed for an offence; substitute a less severe form of punishment than that imposed or remit the whole or part of any punishment imposed on a person for an offence, a penalty or forfeiture otherwise due to the State on account of such an offence. In the exercise of these or other powers conferred on the President to remit any penalty or forfeiture due to any person other than the State, the President shall act in accordance with the advice of the Privy Council.

Section 78(5) and (6) provide that a person has a right to submit directly or through a legal or other representative, written representations in relation to the exercise by the President or the Privy Council of their functions, and may in circumstances determined by the President or the Privy Council, be granted an oral hearing directly or through a legal or other representative.

QUESTIONS

1. Should the Privy Council be renamed "Council of State" or "Presidential Council" as recommended by the Forde Commission?
2. Should there be a procedure for the President to ascertain majority opinion in the House of Assembly on occasions when the Prime Minister requests an early dissolution of Parliament?
3. By what majority should a vote of no confidence in the Prime Minister be carried and what should be the consequences of a vote of no confidence?
4. Should there be a maximum limit placed on the size of the Cabinet?
5. Should elected members constitute the majority in the composition of Cabinet?

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5. Since some persons do not have the personality to win a seat in Parliament, but can add competency to a Government, should there be provision in the Constitution for a limited number of such persons to be made Ministers? This happens in the presidential system of Government.
6. Should there be provision in the Constitution for a Deputy Prime Minister?
7. Should the Constitution provide a limit of no more than three terms for a Prime Minister to serve?
8. Should there be provision for a Deputy Prime Minister in the Constitution?
9. There is currently no provision in the Constitution for the appointment of “Senior Minister”. Should there be such a provision in the Constitution, and if so, what should be the criteria for such an appointment?
10. The Forde Commission recommended that a Parliamentary Integrity Commission be established to receive declarations of assets, liabilities and income of Members of Parliament with powers, if necessary to investigate any declaration and perform such other duties as may be prescribed by Parliament. Do you agree?
11. Should the Constitution provide that General Elections be called at the end of five years instead of when the Prime Minister determines that circumstances are right?
12. Could this not be a fetter on the right of the Head of Government to determine when the people should give a political party (could be any political party) a new mandate to govern in the best interest of the country?

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CHAPTER VII

THE JUDICATURE

PART 1

The Caribbean Court of Justice and the Supreme Court

The judicature or court system of Barbados comprises:

- the Caribbean Court of Justice (CCJ) at the apex. The CCJ, established on February 14, 2002 when the *Agreement Establishing the Caribbean Court of Justice* was signed at Bridgetown on February 14, 2002, replaced the Judicial Committee of the Privy Council as the country's highest court in 2005;
- the Supreme Court which is one rung lower and which comprises (a) the Court of Appeal and (b) the High Court, with the Court of Appeal being the second highest court in the country and the High Court in third place.
- These courts have been established by the Constitution and the following laws: the *Caribbean Court of Justice Act*, Cap. 117 and the *Supreme Court of Judicature Act*, Cap. 117A.

The Magistrates' Courts are below the High Court, and are not provided for in the Constitution, but in the *Magistrates Jurisdiction and Procedure Act*, Cap. 116.

The Caribbean Court of Justice (CCJ)

Section 79D of the Constitution provides for the jurisdiction of the CCJ, which shall have exclusive and compulsory jurisdiction in: disputes between Contracting Parties to the Agreement; disputes between any Contracting Parties to the Agreement and the Community; referrals from national courts or tribunals of Contracting Parties to the Agreement and applications by persons in accordance with the *Caribbean Court of Justice Act*, Cap. 117.

Sections 79E through to 79G provide for the appointment of judges to the CCJ and their tenure. The President of the Court shall be appointed by the qualified majority vote of 3/4s of the Contracting Parties to the Agreement on the recommendation of Regional Judicial and Legal Services Commission established under the Agreement and judges shall be appointed by the majority vote of all members of the Commission.

Judges hold office for a term of 7 years or until they become 72 or if they resign or retire before then, but under special circumstances the Regional Judicial and Legal Services Commission may extend the tenure of judges to the age of 75.

A judge of the CCJ may only be removed from office for inability to perform the functions of the office, whether arising from illness or any other cause or for misbehavior, and shall not be so removed except in accordance with such provisions as are "prescribed by law"

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(2003-10). Resignation or retirement are also to be in accordance with provisions prescribed by law.

The Supreme Court

Section 80 of the Constitution provides that the High Court and Court of Appeal comprise the Supreme Court. The judges of the Supreme Court are the Chief Justice and such number of Court of Appeal and High Court judges as are prescribed by Parliament.

According to section 81, which was amended by s. 30 of Act 22 of 2021, the Chief Justice and other judges of the Supreme Court are to be appointed by the President on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

Act No. 2021-22 (at s.30) also provided for the appointment of acting judges when the holder of such an office is unable to perform the functions of the office. In these cases, the President acts on the recommendation of the Prime Minister. And, a person may be appointed to act as Chief Justice or other judge even though the person had attained the age at which the holder is required by s. 84(1) to vacate office, which in the case of a Judge of the High Court other than the Chief Justice is 65 years and in the case of the Chief Justice and a Justice of Appeal is 70 years old.

According to section 84(2), a judge may be removed from office for (a) for inability to discharge the functions of his/her office; (b) for misbehavior, and (c) delay of more than six months in delivering judgments. The removal is to be done by the President if the President referred the matter to the CCJ and that Court advised him or her that the judge ought to be removed from office on the grounds of inability, misbehavior or delay.

If the Prime Minister, in the case of the Chief Justice or after consultation with the Chief Justice in the case of another judge advises the President that the question of removal of a Judge from office on the grounds specified above ought to be investigated, then, after consultation with the Chief Justice, the President must appoint a tribunal to investigate the matter and the tribunal shall advise the President whether the matter should be referred to the CCJ and if the tribunal so advises, the President shall request that the question be referred.

If the President has referred the matter of removal of the judge to a tribunal, the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or of the Chief Justice after the Chief Justice has consulted with the Prime Minister in the case of any other judge, may suspend the judge from performing the functions of his or her office. The suspension may be revoked by the President on the advice of the Prime Minister or Chief justice, or if the CCJ advises the President that the Judge ought not to be removed from office.

(a)The Court of Appeal

Section 85(1) provides that the Court of Appeal shall be constituted by not less than three judges sitting together. A judge shall not sit as a Court of Appeal Judge on the hearing of an appeal from a decision given by a court of which he/she was sitting as a member, or against a conviction or sentence if he/she was the judge by or before whom the appellant was convicted.

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Appeals relating to Fundamental Rights and Freedoms

An appeal shall lie **as of right** to the Court of Appeal from final decisions of the High Court given in exercise of its jurisdiction under section 24 which relates to the enforcement of fundamental rights and freedoms. And, an appeal shall lie as of right to the CCJ from any decision given by the Court of Appeal in such a case.

Appeals to the CCJ in other cases

According to s.88(1), Parliament may provide for an appeal to lie from decisions of the Court of Appeal or any other court in exercise of jurisdiction conferred by any law enacted in pursuance of section 86(1) which may make provision for implementing arrangements between the Government of Barbados and Governments of other parts of the Commonwealth.

Also, the CCJ has the right to grant special leave to appeal from the decisions referred to above and a decision of the CCJ is final and shall not be the subject of any appeal or enquiry in any tribunal or other court.

Magistrates Courts and Tribunals

Magistrates Courts which operate in 11 magisterial districts in Barbados are not provided for in the Constitution. The various special tribunals such as the Income Tax Appeal Board, the Land Valuation Board, the Public Utilities Board and various tribunals established under the National Insurance Scheme are also not provided for in the Constitution.

QUESTIONS

1. Should the Constitution provide for annual reviews of the performance of all judges by the Judicial and Legal Services Commission to determine whether or not they are discharging their functions?
3. Should provision be made in the Constitution for magistrates' qualifications, salary and other terms of service?

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CHAPTER VIII

THE PUBLIC SERVICE

Part 1: The Service Commissions

Since June 1986 the public service has been headed by a Minister of the Public Service. The day-to-day work of government is carried on mainly by ministries and departments which are staffed by public servants, usually under the direction of Permanent Secretaries. According to section 117(1) of the Constitution (the Interpretation Section) the term "public service" means "subject to the provisions of subsection (7), the service of the State in a civil capacity".

Prior to this definition being amended by s. 29 of Act No. 22 of 2021 the term was said not to include the office of Governor General (now President) the Prime Minister or other Minister, Parliamentary Secretary, Leader of the Opposition, President of the Senate, Deputy President of the Senate or other member of the Senate, Speaker, Deputy Speaker or other member of the House of Assembly or member of the Privy Council). The term "public service" was also said not to refer to the office of a member of the Judicial and Legal Service Commission, the Administrative General and Professional Service Commission, the Teaching Service Commission or the Protective Services Commission; the office of a member of any board, committee or similar body, the office of a judge or an office which is not established under the *Public Service Act, 2007-1, Cap. 29*.

One of the assignments of the Forde Commission was to consider how the independence and impartiality of the Public Service, having regard in particular to the need for efficient and responsive administration of government business could be achieved. It considered whether separate service commissions should be established; whether the commissions should have full time chairpersons and secretariats; whether section 89A of the Constitution relating to the Teaching Service Commission should be brought into force and whether the method of appointment to services commissions should be changed and the process of consultation before they recommended appointments widened.

The Forde Commission supported the view of the Cox Commission that a separate Judicial and Legal Service Commission "was in character with the desired independence of the Judicature"; was convinced that the Police, Prison and Fire Services had common interests and should be represented by one commission; heard representations on the subject of a Teaching Service Commission for which provision had been made in the 1974 constitutional amendments, but noted that the Commission had not been established. With regard to this commission, the Forde Commission Report noted that the size of the teaching service establishment and the complexities of its various specialist functions merited the direction, attention and expertise which could be provided by a separate supervisory commission.

It recommended:

- (1) amendment of the Constitution to strengthen the position of the **Judicial and Legal Service Commission** which had been provided for in Act No. 34 of 1974. The

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amendments made by Act No. 16 of 2019 in relation to s.89 of the Constitution are as follows: **The Judicial and Legal Services Commission** chaired by the Chief Justice, the Chair of the Administrative, General and Professional Service Commission or some other member of that commission and 3 other “appointed” members. These appointed members are to be appointed by the President, on the recommendation of the Prime Minister after consultation with the Leader of the Opposition from among persons who are or were judges of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court with jurisdiction in appeals from such a court. If the President is satisfied that there is no such person, the President may appoint a person who had been such a judge who is entitled to practice in Barbados as an attorney-at-law for not less than 10 years, but is not in active practice as an attorney-at-law. No member of the Houses of Parliament or public officer qualifies for appointment. The office of an appointment expires after three years unless an earlier time is specified in the person’s instrument of appointment or the person becomes a member of either House of Parliament or Chairman of the Administrative, General and Professional Service Commission.

With regard to removal from office, the officer may be removed only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour. The matter must have been referred to a tribunal and the tribunal must have advised the President that the officer ought to be removed from office. (See s. 105).

- (2) **establishment of the Teaching Service Commission which had been recommended in 1974** - Provision for this Commission was made by adding s. 89A to the Constitution by s. 30 of Act No. 22-2021. The current provision is that the commission shall consist of a Chairman and not less than three nor more than five other members. The members are appointed in the same manner as the Judicial and Legal Service Commission; no one who is a member of either House of Parliament or a public officer is qualified to be appointed and the procedure for removal of a member of this commission is the same as for the removal of a member of the Judicial and Legal Service Commission (see s. 105). As at mid- 2022 the Commission had not yet been established.
- (3) **establishment of an Administrative, General and Professional Service Commission** – According to s. 90(1) this Commission shall consist of a Chairman and not less than four or more than eight other members. The members are to be appointed in the same manner as the Judicial and Legal Service Commission. No one who is a member of either House of Parliament or a public officer is qualified to be appointed and the procedure for removal of a member of this commission is

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the same as for the removal of a member of the Judicial and Legal Service Commission (see s. 105)

and

- (4) **establishment of a Protective Services Commission** with responsibility for the appointment, removal, organisation and discipline of the then Royal Barbados Police Force, the Barbados Fire Service and the Prisons Service consisting of a Chairman and not less than two nor more than eight other members appointed in the same manner as the other commissions, for three years.

The above recommendations made by the Forde Commission for the establishment of service commissions were included in the Constitution at sections 89 to 92 by Acts Nos. 16 of 2019 and 22 of 2021.

PART 2

Appointment, removal and discipline of Public Officers

Under Part 2 of Chapter VIII, sections 93-96 provide for the appointment by the President of certain public officers on the advice of the heads of the Service Commissions the appointments of which were recommended in the section above. The officers are: judicial and legal officers; the Director, Finance and Planning; Permanent Secretaries; the Chief Training Officer; the Commissioner of Police; teachers; and members of the Protective Services (the Police Service, the Prison Service, the Fire Service, the Customs Service, the Immigration Service and the Security Guard Service).

The President appoints persons as Ambassadors, High Commissioners or other principal representative of Barbados in any other country or those accredited to any international organisation acting on the advice of the Prime Minister.

Appointments on Transfer

The power to make appointments on transfer with regard to officers whose work requires them to reside outside of the country vest in the Prime Minister under section 100A, a section that was inserted into the Constitution as a part of the 1974 amendments (1974-34).

Appointment of the Permanent Secretaries and certain other Public Officers

Permanent Secretaries

Both the Cox and Forde Commissions held that the boundaries separating the roles of a Minister and a Permanent Secretary ought to be defined. The Forde Commission recommended that s. 72(1) read as follow: “Where any Minister has been assigned

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responsibility for any department of government, the Minister shall exercise general direction and control over that department, and subject to such direction and control, the department shall be managed by a Permanent Secretary whose office shall be a public office.“ This recommendation was not followed in the amendment to the section made by Act No. 22 of 2021.

Section 99(1) which provides for the appointment of permanent secretaries and certain other public officers does not define “permanent secretary” but provides that the power to make appointments to the office vests in the President, acting on the recommendation of the appropriate Service Commission, after that Commission has consulted the Prime Minister.

Establishment of Office and Functions of the Director of Public Prosecutions (DPP)

The Director of Public Prosecutions is the public officer responsible for controlling criminal prosecutions. The office is an important one, established by the Constitution at section 79(1). The DPP is appointed by the President acting on the recommendation of the Judicial and Legal Services Commission (section 101(1)).

To be appointed to the post, the DPP must have had the qualifications required for appointment as a judge, that is, at least ten (10) years’ experience as an attorney-at-law (section 101(2)). The DPP shall vacate office on reaching 67 years, but the President, acting on the recommendation of the Judicial and Legal Service Commission, may permit the DPP to remain in office until the age of 72. This provision was inserted by Act No. 16-2019. The post of the DPP is protected in the same manner as that of a judge in that the DPP can only be removed from office for inability to discharge his/her functions or for misbehavior.

According to section 112(4), the DPP is one of the office holders whose salary is a charge on the Consolidated Fund and this salary and other terms of employment cannot be altered to the disadvantage of the DPP after the DPP has accepted the position (section 112). The question of the DPP’s removal must be referred to a tribunal established by the Governor-General.

Section s. 79(2) states that subject to section 79A, the DPP shall have the power, where the DPP thinks it desirable, to institute and undertake criminal proceedings against any person before a court of law other than a court-martial for any offence against the law of Barbados; to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; to discontinue any such criminal proceedings at any stage before judgment is given at any stage before judgment is delivered. Section 79A provides for the right of the Attorney-General to give the DPP general or special directions in relation to the offences of piracy, trading or otherwise dealing in slaves, sedition and a number of others listed in section 79A(2)(a) and (b). This section was introduced into the Constitution as one of the recommendations made in 1974. The Cox Commission had recommended its repeal so that the functions of the DPP would be completely free from control. The Forde Commission recommended a compromise, which was that the DPP should consult the Attorney-General before exercising the relevant powers.

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PART 3

Pensions

Section 103 provides for the grant and payment of pension to an officer, the officer's widow, children, dependants or personal representatives.

Section 104 (inserted by Act 22 of 2021) vests the power to withhold, reduce or suspend any award payable under any law in the President on the recommendation of the appropriate service commission. Section 105(5) provides that where the recommendation is that an award should be withheld, reduced in amount or suspended, the President must inform the person concerned or the person's personal representatives and if either one makes the request, the President shall refer the case to the Privy Council. The President shall act in accordance with the advice of the Privy Council.

Section 104(3) provides that the appropriate Service Commission shall not recommend to the President that any award for which a person who holds or has held office of a judge, Director of Public Prosecutions or Auditor-General is eligible shall not be granted, withheld, reduced in amount or suspended on the ground that the person had been guilty of misbehaviour unless the person has been removed from office by reason of that misbehaviour. Section 104(3) is altered to any extent necessary by the *Expatriate Pensions Act, 1980-20*.

Institutions Not Provided for in the Constitution

The Ombudsman

The Ombudsman is an important public official whose position is not provided for in the Constitution. The Cox Constitution Review Commission recommended the creation of the position in its 1979 report, and an Act for the purpose was passed in 1980 (1980-68) (Cap. 8A). The office was not established until 1987. The Ombudsman is appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, and with the approval of Parliament. The Ombudsman cannot be a member of either House of Parliament, and cannot engage in any other occupation.

The main function of the Ombudsman is to investigate complaints from the public, in writing, of allegations of improper, unreasonable or inadequate conduct on the part of government officials. In carrying out his/her duties, the Ombudsman acts in his/her own judgment. The Forde Commission recommended strengthening the position of the Ombudsman but nothing was done in this regard. Even though his/her office is not provided for in the Constitution, the *Ombudsman Act* provides that the Ombudsman can only be removed from office in accordance with section 105 of the Constitution, i.e. for inability to discharge the functions of his/her office or for misbehaviour.

The latest Annual Report of the Ombudsman seen is for 2019. That report showed that complaints brought forward from 2012 were 362. Between 2012 and 2019 some 334 new complaints were added, totaling 696 complaints to be handled between 2012 and 2019. Of these, 68 were outside the jurisdiction of the Ombudsman, leaving 628. Of this lot, only 13

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were solved between 2012 and 2019. The complaints were made against the Prison, Police, School Meals Service, Barbados Revenue Authority, Immigration and National Insurance Departments. No explanation for the low resolution rate was given in the report.²⁵

Local Government

The Constitution makes no provision for local government. For many years prior to 1959 the administrative organ at the parochial level was the Vestry. In each of the eleven parishes there was a vestry comprising sixteen elected members who were resident property owners. The chairman was usually the Rector of the parish, or in St. Michael, the Dean of the Cathedral. The Vestries levied taxes on local landowners and used the funds mainly to repair roads and churches in the parish. In 1959 the eleven Vestries were replaced by three Local Government Councils which functioned from then until 1969. The factors which led to the abolition of local government in Barbados (including the need to eliminate exceedingly high overhead charges for administration) and reasons why it should not be revived were dealt with by the Cox Commission in its 1979 report at page 50. The Commission suggested that wider participation by citizens in the democratic processes of Government could be achieved "in the context of a considerable degree of operational decentralization" but failed to say how this would be achieved. The Forde Commission recommended that local government not be reintroduced in Barbados.²⁶

However, in 2009 Parliament under a DLP administration passed a *Constituency Councils Act* which provided for a 15 member body of local representatives within each of the 30 constituencies in Barbados whose purpose was to deliver social services to constituents and "effectively and efficiently assist in the management of resources assigned for the development of each constituency within a framework of good governance."²⁷

The Councils were to receive directions with respect to policy and general procedures from the Minister. The Constituency Councils commenced with 6 being launched in July 2009 and 24 were added, 12 in March 2010 and another 12 in March 2011. Some six years later, in 2015, the *Constituency Councils Act* was amended to provide at s.2. that the Permanent Secretary meant the Permanent Secretary, Ministry of Social Care, Constituency Empowerment and Community Development and that if the Councils were offering monetary or in kind donations they were to seek the permission of the Permanent Secretary. The Amendment Act also provided that 11 persons should constitute a quorum and that members would be paid a sum approved by the Ministry for attending meetings.²⁸

On June 6, 2018, soon after General Election, the Minister of People Empowerment and Elder Affairs caused correspondence to be sent to the Chairs and other members of

²⁵ <https://www.barbadosparliament.com/Annual> Report – The Ombudsman of Barbados, 2019.

²⁶ See Report of the Constitution Commission, 1998, p. 54.

²⁷ Constituency Councils Act, No. 9 of 2009.

²⁸ Constituency Councils Act (Amendment) Act, No. 4 of 2015.

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Constituency Councils to place their appointments at the disposal of the new administration with immediate effect.²⁹

People's Assemblies

On July 10, 2019 the BLP administration under the leadership of Hon. Mia Amor Mottley launched the Thorne Commission on Local Government to empower and enfranchise the people and create platforms for participation in national affairs that would deepen democracy. The Commission started its consultations in November 2019 and recommended the establishment of a system of Peoples' Assemblies comprising a pool of some 630 assemblymen/women who would be used to establish several public customer service committees to scrutinize the service delivery to those agencies that provide critical services to the Barbadian public.³⁰ By 2022 no movement to establish Peoples' Assemblies was heard of.

QUESTIONS

1. Should the provision for the Attorney General to give directions to the DPP in certain matters be removed?
2. Should the duties of Permanent Secretaries be defined in the Constitution?
3. Should the term "public servant" be clearly defined in the Constitution?
4. Should provision be made for the position of Contractor-General in the Constitution? In Jamaica, the *Contractor General Act* (1983-15) established a Contractor-General Commission consisting of one or more persons to monitor the award and implementation of government contracts with a view to ensuring that these contracts are awarded impartially and on merit and that the circumstances of the award do not involve impropriety or illegality. Senators and Members of the House of Representatives are not eligible for appointment as Contractors-General.
5. Should the method of appointment of the members of the Administrative, General and Public Services Commission be changed, and if so, how? Also, should the list of members include representatives of professional, philanthropic, economic and social groups?
6. Should the Administrative, General and Public Services Commission have responsibility for recommending the appointment of diplomats?

²⁹ <https://www.barbadosadvocate.com>. June 9, 2018.

³⁰ <https://gis.barbados.gov.bb>. Summary of proposals for Peoples' Assemblies, May 25, 2022.

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7. Should the powers of the Administrative, General and Public Services Commission be expanded to cover statutory bodies and other agencies of Government?
8. Should the Teaching Service Commission be established as recommended by the Forde Commission?
9. Is it necessary to have a local government system in Barbados? If so, what form should it take?
10. Given its history, is the office of Ombudsman needed in Barbados? If so, should provision for it to continue be in a separate Act where it can be repealed by a majority of Parliament, or should it be provided for in the Constitution as an entrenched provision?

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CHAPTER IX

FINANCE

Section 107 provides for a Consolidated Fund into which all revenues of the government of Barbados shall be credited. Before the end of each financial year the Minister of Finance is to have estimates of revenue and expenditure prepared for the public service for the following year, and must introduce into the House of Assembly an Appropriation Bill which contains an estimate of expenditure from the Consolidated Fund for that year. The Auditor-General is also responsible for preparing requests for supplementary estimates if the amounts voted for a department are exhausted before the end of a financial year.

In each financial year the Minister of Finance shall introduce into the House of Assembly an Appropriation Bill containing the estimated aggregate sums proposed to be spent other than statutory expenditure during the financial year.

Section 110 provides that no sum shall be charged to the Consolidation Fund except on the authority on the Minister responsible for Finance or some person authorised by the Minister in writing.

Section 112 makes provision for the salaries of the Governor-General, judges, the Attorney-General, the DPP and members of the Service Commissions to be paid directly from the Consolidated Fund. Other laws can provide for other sums to be paid directly from the Fund, and the expenditure incurred as a result is known as statutory expenditure. It is not voted annually by Parliament, but is paid directly from the Consolidated Fund.

Public Debt

Section 111 provides that the public debt, which includes the interest, costs, charges and expenses associated with that debt are all to be charged on the Consolidated Fund.

Audit of Public Accounts

The Auditor-General

Sections 102 and 113 provide for an Auditor-General, who is appointed by the Governor-General acting on the recommendation of the Administrative, General and Professional Service Commission after the Commission has consulted with the Prime Minister. *The Forde Commission had recommended that the Leader of the Opposition also be consulted*). In the exercise of his/her functions the Auditor-General is not subject to the direction or control of any other person or authority.

Like the DPP, the Auditor-General can only be removed from office through inability to function or misconduct, and the same provisions have been made for protecting his/her salary and other terms of service, and for ensuring his/her independence. His/her removal must be recommended by a tribunal established under section 105 of the Constitution by the Governor-General on the advice of the Prime Minister. At least once a year, the Auditor-General, with his staff, shall be entitled to have access to all books, records, returns and reports of the Supreme Court, the Senate, the House of Assembly, Cabinet, the Privy Council, the Judicial

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and Legal Services Commission and other commissions established under the Constitution and government-controlled entities and statutory authorities. The Auditor General may on his own initiative carry out examinations into the financial management of these entities, including the manner in which they use their resources in discharging their functions.

It is the Auditor-General's duty to ensure that no money is issued from the Consolidated Fund except for purposes approved by Parliament and to audit the accounts of Government departments and designated public authorities, statutory boards and statutory bodies. The Auditor-General is responsible for examining the public accounts to find out whether they are true and accurate, whether the accounting rules have been followed and all expenditure properly made. He/she reports to the Speaker or Deputy Speaker of the House of Assembly on the accounts of the Cabinet Office and all government departments at least once a year and the Public Accounts Committee of Parliament examines the reports. The Committee may question and report to the House on the conduct of any department, and whether or not explanations given are satisfactory. The duties and powers of the Auditor-General are detailed in the *Financial Administration and Audit Act*, Cap. 5. which provides that in the exercise of the functions of his/her office, the Auditor General shall not be subject to the direction or control of any other person or authority. Provision for the Auditor General to audit the accounts of other public authorities which administer public funds is made in other laws.

The Public Accounts Committee (PAC)

Over the years there have been many complaints by Auditors-General of the failure of accounting officers to comply with the provisions of the *Financial Administration and Audit Act* which controls the expenditure of government funds and provides safeguards against misappropriation and corruption. The Public Accounts Committee is a creature of the Standing Orders of the House of Assembly. It is chaired by the Leader of the Opposition, but in the absence of an Opposition in Parliament, the committee may not be appointed. No members of the Senate sit on this Committee.

Both the Cox and the Forde Commissions recommended that the PAC should be given constitutional status and adequate resources, while expanding its membership to include members of the Senate. The Forde Commission was satisfied that there should be stricter parliamentary surveillance of state enterprises public authorities, statutory boards and statutory bodies and that the Committee system of Parliament should be used for this purpose. It endorsed the recommendation of the Cox Committee that the prior approval of Parliament be obtained in respect of the proposed purchase by the Government or by a statutory board or body of property of a value above such sum as may be determined by Parliament from time to time. In fact, it adopted the recommendation in relation to all property.

QUESTIONS

1. Is there a need for a public report outlining actions taken by Government agencies on issues/ recommendations arising from the Report of the Auditor General?

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2. Should officers who fail to respond to request for information by the Office of the Auditor General be subject to disciplinary procedures?
3. In light of the complaints by the Auditor General of large amount of vacancies in his office should the Office be allowed to directly recruit its own staff?
4. Is the Public Accounts Committee ever likely to function effectively if its Chair continues to be the Leader of the Opposition?
5. Should provisions for the Public Accounts Committee (PAC) be amended to stipulate that an independent Senator whose qualifications are provided for in the Constitution head the PAC so that it can function even if Parliament becomes a unicameral body and even if there is no Leader of the Opposition?
6. If a legal action arises from a Report of the Auditor General made to the PAC should his reports not be covered by the privileges and immunities of Parliament?

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APPENDIX 1

SUMMARY OF POINTS OF DISAGREEMENT 1966 BETWEEN THE GOVERNMENT AND OPPOSITION ON PROVISIONS OF THE DRAFT BARBADOS CONSTITUTION [1]

POINTS OF DISAGREEMENT

(a) The Senate

The Opposition parties considered that the Senate should be so composed that the Government would be unable to secure an amendment of an entrenched provision of the Constitution without the support of at least part of the Opposition. They also proposed that a Senator nominated by the Governor-General to represent a special interest should be obliged to vacate his/her seat if he accepted the whip of a political party. The view of the Government of Barbados was that to accept the opposition proposal for the composition of the Senate might mean that opposition Senators would exert an influence on important issues out of proportion to the representation of the Opposition in the House of Assembly and this was not acceptable to the Government. In the absence of agreement, the Chairman ruled that since the provisions of the draft constitution reflected the position under the existing Constitution, they should remain, and pointed out that it was open to any Government after independence to amend the relevant provisions if they so wished. Both opposition Parties asked that their objection to the draft on this point should be recorded.

(b) The House of Assembly

The Opposition parties proposed that the provisions for qualifications and disqualifications for membership of the Assembly should, like the provisions for qualifications and disqualifications for membership of the Senate, be included in the Constitution and entrenched. They also considered that provisions as to the qualifications and disqualifications for electors should be set out in the Constitution and entrenched. The Government delegation pointed out that these were matters which by long tradition had been regulated by laws of the Barbados Legislature; they considered that this position should be retained, but nevertheless were willing to agree that qualifications and disqualifications for membership of the House of Assembly should be prescribed by the Constitution but not be entrenched- "The Chairman ruled that since there were precedents from other Constitutions to support both the Government and the Opposition views and since the Government's proposal conformed with the existing arrangements the Government's view should prevail, The Opposition Parties asked for their dissent to be recorded.

(c) Elections Commission

The Opposition parties considered that the Constitution should provide for an independent and impartial commission charged with the duty of supervising the registration of electors and the conduct of elections. The Government view was that the existing method of conducting elections in Barbados was satisfactory and that in the circumstances there was no need to include in the Constitution provision for an elections commission. The Chairman ruled that since no agreement was possible, no provision should be made in the Constitution on this point. Both Opposition Parties asked that their dissent should be recorded.

The Opposition parties were strongly of the view that the Constitution should provide that each constituency should return one member. The Government referred to the recent making of an Order, the effect of which was to divide Barbados into twenty-four constituencies. It was the Government's

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intention to bring this Order into effect when practicable, although other legislation, was necessary before single member representation could be achieved. It was, moreover, the Government's view that constituency arrangements were essentially a matter for the House of Assembly and should therefore not be dealt with in the Constitution.

It was also proposed by the Opposition parties that the Constitution should establish a permanent boundaries commission to keep constituency boundaries under review. The B.N.P. considered that such a Boundaries commission should be a Standing Committee of the House of Assembly but that such a Committee should be written into the Constitution. The Government were unable to agree but accepted in principle that constituency boundaries should be kept under review by a Standing Committee of the House of Assembly. They considered that the Assembly itself should be left to set up this Committee and that the Committee should not therefore be established by the Constitution. It was the intention of the Government to take the appropriate steps with a view to securing the establishment of such a Standing Committee of the House of Assembly under the chairmanship of the Speaker to which the House would be free to co-opt members from outside.

In the absence of general agreement and in the light of the Government's statement of intention, the Chairman ruled that no provision should be included in the Constitution on either of the foregoing points. The Opposition parties asked that their dissent should be recorded.

(d) Emergency Provisions

The Opposition parties referred to the provision in Chapter III of the draft Constitution defining a period of public emergency as including a period during which there is in force a resolution passed by a two-thirds majority of each House declaring that democratic institutions are threatened by subversion. They proposed an alternative draft of the relevant section designed to avoid the use of the word "subversion". The Chairman considered that there was no difference of substance between the draft Constitution and the alternative draft and accordingly ruled that the original draft should stand. The Opposition parties registered their objection.

(e) Compensation for Deprivation of Property

The Barbados National Party proposed that the Constitution should expressly require the prompt payment of adequate and fair compensation for any property compulsorily acquired under the law instead of providing that the principles on which and manner in which compensation should be determined and given should be prescribed by law. Having heard the arguments of the parties, the Chairman ruled that the draft provision, for which there was precedent, should stand. The Conference noted the strong objections of the Barbados National Party.

(f) Court of Appeal

The Barbados Labour Party considered that puisne judges should not sit as judges of the Court of Appeal which should consist of the Chief Justice and Justices of Appeal who did not sit at first instance. The other delegations accepted that from the resources available it might not be practicable to constitute a Court of Appeal in this way for Barbados alone and accordingly it was ruled that the draft provision on the composition of the Court of Appeal should remain. The Barbados Labour Party expressed their strong objection.

(g) Citizenship

It was accepted by the Conference, with the Barbados Labour Party registering their disagreement, that the right of a Commonwealth citizen with the specified residence qualification or the wife of such

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person to be registered as a citizen of Barbados should be subject to such exceptions or qualifications as might be prescribed by law in the interests of national security or public policy.

(h) Representation of the Civil Service Association on the Public Service Commission

The Conference discussed whether one member of the Public Service Commission should continue, as at present, to be chosen from a panel of names submitted by the Civil Service Association. It was pointed out that the Civil Service Association was not now the sole organ representing Civil Servants, and that it would not be appropriate to make specific reference in the Constitution to consultation with the Civil Service Association or other representative bodies. The Government considered that in practice there would continue to be consultation with such representatives of public employees as might be appropriate and practicable, while the Opposition Parties desired that the Constitution make provision for such consultation.

NOTES

[1] Barbados Constitution Commission. Report. 1966

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APPENDIX 2

1974 AMENDMENTS TO THE BARBADOS CONSTITUTION

- S. 3(4) if person applying for citizenship by Registration is under 18 years old, and has been or is married, the application shall be made on that person's behalf by a parent or guardian. The age was formerly under 21 years.
- ss.13, 22, 27, 37 - attorney-at-law substituted for "barrister or solicitor;"
- ss.38(1)(d)(iii) and 39(3) - disqualifications for membership of the Senate includes not having received a free pardon in respect of any offence; conviction of a criminal offence and has not appealed against the conviction, or has appealed against the conviction and the appeal has not been allowed;
- s.43 qualification for membership of the House of Assembly –being a citizen of Barbados instead of "Commonwealth Citizen";
- s. 45 (d) and (g) – vacation of seat as member of the House of Assembly – if expelled from the House in accordance with any enactment ...
- s. 79A – provision for the attorney-General to give general or special directions to the DPP as to the exercise of the powers conferred on the DPP by s. 79
- s. 81 – provision for the Chief Justice and other Judges (instead of "Puisne Judges" to be appointed by the Governor-General on the recommendation of the Prime Minister instead of the Judicial and Legal Service Commission;
- s. 82 – Governor-General, acting on the recommendation of the Prime Minister to appoint acting judges;
- s. 89A – establishment of a Teaching Service Commission by the Governor-General on the recommendation of the Prime Minister after consultation with the leader of the Opposition;
- s. 93A – power to appoint and remove teachers vesting in the Governor-General acting in accordance with the advice of the Teaching Service Commission;
- ss. 94, 95, 96 and 97- words "the teaching Service Commission" to be inserted immediately after the words "Judicial and Legal Service Commission" wherever they appear in subsection 2 of the sections;
- s. 99(2) and (3) – repeal of these subsections and replacement of them with a list of offices (Solicitor-General, Director, Finance and Planning, Secretary to the Cabinet, Permanent Secretary, Commissioner of Police, etc. followed by the names of the Service Commissions under which the offices fall;
- s. 100 - delegation of powers under s. 94 (s. 95 (2));
- s. 100A - Insertion of a new section providing that the power to make appointments on transfer to the offices to which the section applies shall vest in the Prime Minister. The offices are in the Ministry of External Affairs
- s. 104(4) – provides information on the appropriate Service Commission to which awards to former public officers to be paid;
- s. 112, 113 and 117 – inserting the words "Teaching Service Commission" immediately after "Judicial and legal Service Commission."

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APPENDIX 3

COX CONSTITUTION REVIEW COMMISSION REPORT 1979

SUMMARY OF RECOMMENDATIONS

Section(s) Affected	PART 1	Ref. to para(s) in report
-	The Constitution should be repatriated	3
1	The Supreme Court should be empowered to decide on the constitutionality of legislation on application by any whether or not he has a relevant interest	5
2-10	There should be equal rights for men and women in the matter of acquiring citizenship, including citizenship by descent.	
6	When a divorced person becomes a Barbadian citizen after the date of the divorce, the spouse of that person prior to the divorce should not be entitled to Barbadian citizenship by virtue of the original marriage.	
11	The insertion of certain words to improve the protection of fundamental rights and freedoms of individual.	
16(2)(b)(ii)	Section 16(2)(b)(ii), relating to deprivation of property, should be amended to reduce the age of 21 years to 18 years so as to be consistent with the age mentioned in section 13(1)(f) with regard to the right to personal liberty.	
24(2)	The proviso to section 24(2) should be deleted so as to allow the High Court to exercise its powers under the section notwithstanding that means of redress might have been available under any other law.	

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26	Section 26, providing for the saving of existing law, should be repealed.	
	The State Action criterion should be clearly expressed to apply generally in the fundamental rights provisions but should be broadly construed.	
	The monarchical system of government should be retained.	
	Any change in form of government should be subject to submission first to the electorate at a general election.	
28	The office of Governor-General should be held by only a citizen of Barbados.	
29(1)(b)	The functions of Acting Governor-General should not be performed by the Chief Justice.	
29(1)	Persons disqualified by s. 44(1)(b) from membership of the House of Assembly also should be debarred from appointment as Acting Governor-General.	
32(6), 75	Provision should be made for circumstances where the Leader of the Opposition is not available for consultation.	
35, 36(1)	The Senate should be retained and continue to have 21 nominated members.	
36(3), 36(4)	Composition of the Senate should be changed.	
37	Retention of the qualifying age for membership of the Senate as 21 years.	
39	The seat of a Senator should become vacant also by the submission by that Senator of a letter of resignation.	
39	The Governor-General should be empowered to revoke the appointment of anyone of his	

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	appointees to the Senate at any time.	
41	Membership of the House of Assembly should be increased from 24 to 30.	
41(2)	Section 41(2) should be amended by the substitution of the words "by this Constitution" for the words "by any law in force in Barbados" at the end of subsection.	
42	Provision should be made in the Constitution for the electorate to be given the right to vote.	
	There should be freedom of formation of political parties.	
	There should be an independent Boundaries and Electoral Commission.	
42	Control of political election broadcasts should be the responsibility of the Boundaries and Electoral Commission.	
44(1)(c)	Revocation of the provision for disqualification from membership of the House of Assembly because of past conviction of a felony or of any other criminal offence involving dishonesty.	
45(1)(B)	Resignation by a member of the House of Assembly may be done by writing to the Speaker and the seat should become vacant from the date of such resignation.	
	Members of the Houses of Parliament should not be permitted to participate in contracts with the Government.	
49(2), 58	Method of amending the Constitution.	
49(2)	Increase in the entrenched provisions.	

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54-57	Expansion of the functions of the Senate in relation to Money measures.	
61(4)	Extension of the life of Parliament when there is a period of public emergency.	
65(2)	Provision for the appointment of a Deputy Prime Minister and for an Attorney-General.	
66	Provision for the Prime Minister to resign office without ceasing to be a member of the House of Assembly.	
67(1), 68	Provision for Acting Prime Minister and other Ministers in certain circumstances.	
67(3)	Consultation to be done by the Governor-General with the Acting Prime Minister or the Deputy Prime Minister if the substantive Prime Minister is unavailable.	
72	Clarification of the provisions for assignment of responsibilities to Ministers.	
74(5)	Governor-General should be required to act after consultation with, rather than on the advice of, the Speaker in the appointment of the Leader of the Opposition in certain circumstances.	
78(1)d	The provisions for the remission of punishment or any penalty or forfeiture due to the Crown should be expanded to refer to "all penal forfeitures."	
79(a)	Repeal of section 79A so as to have the functions of the DPP completely free from control.	
80	The jurisdiction of the Supreme Court should be clarified.	
81	The appointment of (Puisne) Judges should fall to the Judicial and Legal Service Commission.	

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89(2)	An attorney-at-law in private practice should be eligible, under certain conditions, for appointment to the Judicial and Legal Service Commission.	
89A	The provision for a separate Teaching Service Commission should be repealed.	
93(a)	Safeguarding the retention of magistrates and legal officers under the purview of Judicial and Legal Service Commission.	
95(1)	Delegation of the Governor General's powers relating to appointments and discipline should be expanded.	
99(2)	Appointment to posts of chief or deputy chief professional or technical officer and of head or deputy head of a department should be made without consultation with the Minister.	
99(3)	A definition of "Permanent Secretary" should be provided.	
100(3)	The post of Consul-General should be included among those of principal representatives abroad who are appointed or removed from office on the advice of the Prime Minister.	
100A	There should be consistency in the provisions for transfer of officers from the "Home" service to the "Foreign" service and vice versa.	
107-110	Prior approval of Parliament should be required for the purchase of real property by the Government or statutory boards.	
107-110	Reports on all acquisitions of real property and on particulars of contracts for services entered into by the Government, or statutory boards should be	

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	required to De laid before Parliament at regular intervals.	
112	Remuneration of the staff of the Boundaries and Electoral Commission should be protected against alteration to their disadvantage.	
115(2)	Resignation from certain offices should be permitted to take effect from a future date rather than be restricted to the date of receipt of the letter of resignation.	
117	A new definition of "public officer" should be provide.	
	PART 2	
1	The former Local Government system should not be revived.	
2	Regional centres and district or community councils should be developed.	
3	The staff of all statutory boards should fall under the Statutory Boards Service Commission.	
4	A local Official Secrets Act should be enacted.	
5	Tribunals relating to the right to personal liberty and to freedom of movement should be established as standing tribunals.	

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APPENDIX 4

THE FORDE CONSTITUTION REVIEW COMMISSION REPORT 1998

SUMMARY OF RECOMMENDATIONS

CITIZENSHIP

The Commission recommends that:-

- (a) the Constitution be amended to recognise as citizens by birth the children born overseas to citizens of Barbados while serving in a diplomatic or consular capacity;
- (b) children born in Barbados should be deemed citizens at birth only where at least one parent is a citizen of Barbados, a permanent resident, an immigrant of Barbados or is registered under the Immigration Act by the provision enacted in a 1996 enactment;
- (c) a child aged not more than five years found in Barbados, whose parents are not known, shall be presumed to be a citizen of Barbados by birth;
- (d) a child under the age of 18 years, neither of whose parents is a citizen of Barbados, who is adopted by a citizen of Barbados shall, on application, be registered as a citizen of Barbados;
- (e) consequential amendments be made to other legislation to give full effect to the amended constitutional provisions;
- (f) children born of Barbadian males and females should be equally treated subject to such exceptions and qualifications as may be prescribed in the Barbados Citizenship Act;
- (g) the Constitution should be amended to make it absolutely clear that no child born outside Barbados may be recognised as a citizen by descent unless at least one parent is a citizen of Barbados by birth and holds Barbadian citizenship at the time of the child's birth;
- (h) the present policy of recognizing dual and multiple citizenship should be retained;
- (i) the Constitution or related laws should make further provision prescribing the exceptions and qualifications to the grant of citizenship by virtue of marriage. This would prevent persons who would be considered prohibited persons in accordance with the First Schedule of the Immigration Act, Cap. 190, from being granted citizenship automatically;
- (j) persons should not be deprived of citizenship without due process of law. The Commission recommends that the applicable law be amended to reflect this fundamental principle;
- (k) existing legislation which provides for review of the cases of applicants who are denied citizenship or permanent resident or immigrant status under the appropriate laws should be strengthened. The Review Board should be obligated to report annually to the Minister. Reports should be laid in

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Parliament. This would achieve transparency and avoid opportunities for corruption, since Parliament would be in a position to monitor the system and debate the reports.

THE BILL OF RIGHTS

The Commission recommended:-

- (a) Simplification of the language of the Chapter, in order to make its meaning more accessible to non-specialists. For increased clarity of the text of the Chapter, the Commission proposes that the rights and freedoms protected should be presented in a clear and distinct manner; so too the exceptions and modifications which are necessary and appropriate in a free and democratic society.
- (b) The category of gender should be included in the definition of "discriminatory" in the revised Constitution.
- (c) That the special care which society undoubtedly owes to persons with various physical and/or mental disabilities be dealt with by way of carefully crafted legislation — as is, to some extent, already the case — rather than in the broad sweep of constitutional provisions.
- (d) Inclusion in the revised Constitution of declaratory language similar to that of the International Covenant on Economic, Social and Cultural Rights to meet concerns expressed by many who appeared before the Commission.
- (e) That the right of every citizen to vote in an election of members of the House of Assembly and the right of every citizen to be qualified for membership therein be entrenched in the Constitution as fundamental rights, subject only to such exceptions and considerations as may be reasonable in a democratic society and as may be prescribed by law.
- (f) That the emergency provisions in Chapter HI of the Constitution should be included in a separate chapter.
- (g) Deletion of section 15(2) which authorises the retention of certain punishments or treatments that were lawful before Independence.
- (h) By a majority, deletion of section 26 which saves existing law and derogates from the supremacy of the Constitution.

PRIVATE ACTIONS VIOLATING FUNDAMENTAL RIGHTS

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

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THE HEAD OF STATE: ELECTION AND REMOVAL

The Commission recommends that:—

- (a) The Head of State of Barbados should be a President, elected by an Electoral College constituted by the Senate and the House of Assembly meeting as a single body for the purpose of such an election.
- (b) The system of government should be that of a parliamentary democracy with substantive executive authority exercised by a Cabinet headed by a Prime Minister.
- (c) The President should be a citizen of Barbados by birth or descent not less than 40 years of age and should have been resident in Barbados continuously for at least 5 years prior to election.
- (d) The President should hold no other office of emolument or profit, whether in the public service or otherwise.
- (e) The President should hold office for a fixed term of seven years.
- (f) The salary and allowances of the President and the other terms of service should not be altered to the disadvantage of the President after assumption of office.
- (g) The person holding the office of Governor-General at the commencement of the reformed Constitution should hold office of President under the new Constitution until a President is elected under the provisions of the new Constitution.
- (h) The Electoral College shall be convened by the Speaker of the House of Assembly who shall preside as chairman over the proceedings of the Electoral College and shall have an original vote.
- (i) Ten Senators, the Speaker, and fourteen other members of the House of Assembly shall constitute a quorum of the Electoral College.
- (j) Whenever the office of the President is vacant, or within not more than 90 days nor less than 60 days before the term of office of the President will expire, the Prime Minister shall consult with the Leader of the Opposition with a view to their joint nomination of a suitable candidate for election as President.
- (k) If the Prime Minister and the Leader of the Opposition submit to the Speaker in writing a joint nomination of a candidate for election as President, being a nomination to which the candidate has consented, the Speaker shall inform the Electoral College of the nomination and declare the candidate duly elected without a vote of the Electoral College for the election.
- (l) If the Electoral College has been informed of the nomination of only one candidate the Speaker shall declare that candidate to have been duly elected without a vote of the Electoral College for the election.

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- (m) If the Prime Minister and the Leader of the Opposition are unable to agree a joint nomination of a candidate for election as President, the Prime Minister shall notify the Speaker to that effect and the Speaker shall inform the Electoral College accordingly.
- (n) The Prime Minister or the Leader of the Opposition or any ten members of the House of Assembly, may, during the period expiring fourteen days after the day on which the Electoral College has been so informed, submit to the Speaker in writing a nomination of a candidate for election as President and the Speaker shall at the first meeting of the House after the expiration of that period and before the House proceeds to any other business inform the House of the nominations received to which the candidates named have consented.
- (o) No candidate shall be elected President unless the person has secured the votes in secret ballot of not less than two-thirds of all members of the Electoral College.
- (p) Whenever the question of the election of the President from among two or more candidates is put to a vote, voting shall be by secret ballot, or in such manner as not to disclose the vote of any member of the Electoral College.
- (q) The President may be removed from office if the President -
 - (i) wilfully violates any provision of the Constitution;
 - (ii) behaves in such a way as to bring the office into discredit, ridicule or contempt;
 - (iii) behaves in a way that endangers the security of the State;
 - (iv) because of physical or mental or other incapacity, is unable to perform the functions of the office.
- (r) The President should be removed from office if -
 - (i) a motion is proposed in the House of Assembly that the removal of the President from office should be investigated by a tribunal;
 - (ii) the motion states with full particulars the grounds on which the removal from office is proposed, and is signed by not less than one-third of all members of the House of Assembly;
 - (iii) the motion for removal from office is approved by the vote of not less than two-thirds of all the members of the Senate and the House of Assembly assembled together;
 - (iv) a tribunal consisting of the Chief Justice and four other judges appointed by the Chief Justice (being as far as practicable the most senior judges of the Supreme Court of Judicature) investigates the complaint and reports on the facts to the Speaker;
 - (v) the Senate and the House of Assembly assembled together on the summons of the Speaker consider the report and by resolution supported by the votes of not less than two-thirds of all members of the Senate and the House of Assembly assembled together, declare that the President be removed from office,
- (s) Where the office of President is vacant or the President is incapable of performing the functions of President by reason of absence from Barbados, or for any other reason, those functions should be performed by:-

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

THE SENATE

The Commission recommends:—

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

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

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

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

- (i) twelve Senators shall be appointed by the President, acting in accordance with the advice of the Prime Minister;
- (ii) six Senators shall be appointed by the President, acting in the President's discretion after consultation with (a) the leader of any political party which was supported in the election by

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

PARLIAMENTARY COMMITTEE SYSTEM

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

THE ELECTORAL SYSTEM

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

INTEGRITY COMMISSION

The Commission recommends that a Parliamentary Integrity Commission should be established. The duty of the Commission would be to receive declarations of assets, liabilities and income of Members of Parliament with powers if necessary to investigate any declaration and generally to perform such other duties as may be prescribed by Parliament.

PEOPLE'S INITIATIVES

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

ELECTION DISPUTES

The Commission recommends that:

- (a) There should be a right of appeal to the Court of Appeal on all questions of disputed membership of the Senate, and that section 39 of the Election Offences and Controversies Act Cap. 3, should

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be amended to provide that the Election Court should be constituted by any three judges of the Court of Appeal, whose decision shall be fatal

- (b) In relation to section 46(2) of the Constitution, Parliament should by law prescribe the authority or authorities responsible for determining certain questions concerning the membership of the House of Assembly, in particular whether any person has vacated a seat or is required by section 45 (2) (a) to cease to function as a member.

THE EXECUTIVE

The Commission recommends that:-

- (a) The executive authority of Barbados shall be vested in the President who shall be Commander-in-Chief of the armed forces.
- (b) Section 66(2) of the Constitution should be amended to remove the power of the Prime Minister to advise the President to dissolve Parliament when the House of Assembly has by a majority of all its members resolved that the appointment of the Prime Minister be revoked.
- (c) If, within seven days of a resolution to revoke the appointment of the Prime Minister, the President is unable to find anyone who can command the support of a majority of members of the House of Assembly, the President should be empowered to dissolve Parliament.
- (d) Section 74(5) should be amended to provide that when the President is doubtful whether a person commands the support of a majority of those members of the House of Assembly who do not support the Government, the President should act in his own discretion, after consulting with the Speaker, in determining the question.

THE PRIVY COUNCIL

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

DIRECTOR OF PUBLIC PROSECUTIONS

The Commission recommends:-

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

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THE JUDICATURE

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

- (a) That the Chief Justice be appointed by the Head of State on the joint recommendation of the Prime Minister and the Leader of the Opposition after the latter have consulted with the Judicial and Legal Service Commission. If no joint recommendation is tendered the Head of State shall, in his own deliberate judgement, appoint a person from among those considered by the Prime Minister and the Leader of the Opposition.
- (b) That the other judges of the Supreme Court be appointed by the Head of State acting on the recommendation of the Judicial and Legal Service Commission after that Commission has consulted with the Prime Minister and the Leader of the Opposition.
- (c) That in appointing the members of the Judicial and Legal Service Commission (other than the Chief Justice and the Chairman of the Public Service Commission or nominee) the Head of State should act after consultation with the Prime Minister and the Leader of the Opposition, where, presently, the Governor-General is required to act in accordance with the recommendation of the Prime Minister after the latter has consulted the Leader of the Opposition
- (d) That the retirement age for all judges of the Supreme Court, with the exception of the Chief Justice, should be fixed at 72.
- (e) That the Head of State may, after consultation with the Prime Minister, the Leader of the Opposition, and the Judicial and Legal Service Commission, authorise the Chief Justice to continue in office until he has attained the age of 75 years.
- (f) That the procedure for the removal of the Chief Justice should be initiated by referral to the Head of State by the Judicial and Legal Service Commission after consultation with the Prime Minister and the Leader of the Opposition; in the case of a judge the procedure should be initiated by referral to the Head of State by that Commission after consultation with the Prime Minister and the Chief Justice.
- (g) That the Magistracy should be recognised in the Constitution as part of the judicial system of Barbados and that Government should, as a matter of urgency, undertake a detailed study of the status of the institution covering terms and conditions of service of magistrates, the appropriateness of establishing a career magistracy, the role of the Chief Magistrate in relation to the administration of the magistracy, and the scope of constitutional protection which should be afforded to its officers.

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THE PUBLIC SERVICE

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

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

FINANCE

The Commission recommends:

- (a) that the Public Accounts Committee should be given greater constitutional importance by specifically providing for its establishment in the Constitution. Its membership should consist of

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not less than six nor more than ten members. The Chairman of the Public Accounts Committee should be a member of the Opposition in the House of Assembly, if any, and if willing to act. The Chairman and other members may comprise an equal number of members of the House of Assembly and the Senate as the House of Assembly may determine. Where no member of the Opposition in the House of Assembly is willing to act as Chairman of the Public Accounts Committee, a member of the Opposition in the Senate should be appointed, and where no member of the Opposition in the Senate is willing so to act, one of the Senators appointed by the President in his discretion should be appointed Chairman;

- (b) that the Public Accounts Committee should consider and report to the House of Assembly on the examination of accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure of Barbados; such other accounts as the Committee may think fit or such other accounts as the House of Assembly may direct the Committee to examine; the audited accounts, balance sheets and other financial statements of such enterprises as are owned or controlled by or on behalf of the State and as may be prescribed by Parliament; such other accounts as may stand referred to the Committee by any other law; and the report of the Auditor-General on the accounts mentioned;
- (c) that the Public Accounts Committee should be required to meet at such times as may be specified by law or by the Standing Orders of the House of Assembly and should report to Parliament at least once in every year and within six months of the presentation of the Auditor-General's Report to Parliament on the annual appropriation account;
- (d) that both the Prime Minister and the Leader of the Opposition be consulted in connection with the appointment of the Auditor-General and that the Auditor-General be appointed by the President on the recommendation of the Public Service Commission;
- (e) delegation of authority to the Auditor-General to select staff for the office of the Auditor-General;
- (f) provision for the Auditor-General to submit a special report to Parliament when the amount voted in the Approved Estimates for the functioning of the Auditor-General's Office during a financial year is insufficient for the discharge of the functions of the Office. The special report should be referred to the Public Accounts Committee for its evaluation and to enable the Committee to make recommendations to Parliament for the provision of adequate resources. The Auditor-General should also be authorised and given the necessary resources to employ auditors from the private sector to assist with audits within the purview of the Office of Auditor-General;
- (g) amendment of section 113(2) to permit the Auditor-General to undertake comprehensive audits in order to provide an objective and constructive assessment of the extent to which financial, human and physical resources are managed with due regard to economy, efficiency and effectiveness. The audit should be an examination of both financial and management controls, including information systems and reporting;
- (h) that the Auditor-General should be empowered to carry out audits of the accounts, balance sheets and other financial statements of all state enterprises owned or controlled by the State;

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- (i) early completion and enactment of an updated and modern Financial Administration and Audit Act which would pay due regard to the independence necessary for the improvement in the performance of the functions of the Auditor-General, permit the Auditor-General to play a greater role in the appointment, transfer and retention of the staff of the Audit Office, and would also strengthen the Auditor-General's relationship with Parliament to enable Parliament to be the real watchdog of the public purse;
- (j) Provision for votes on account of annual appropriations and for an emergency draw-down by the Minister responsible for Finance from the Consolidated Fund”

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2022