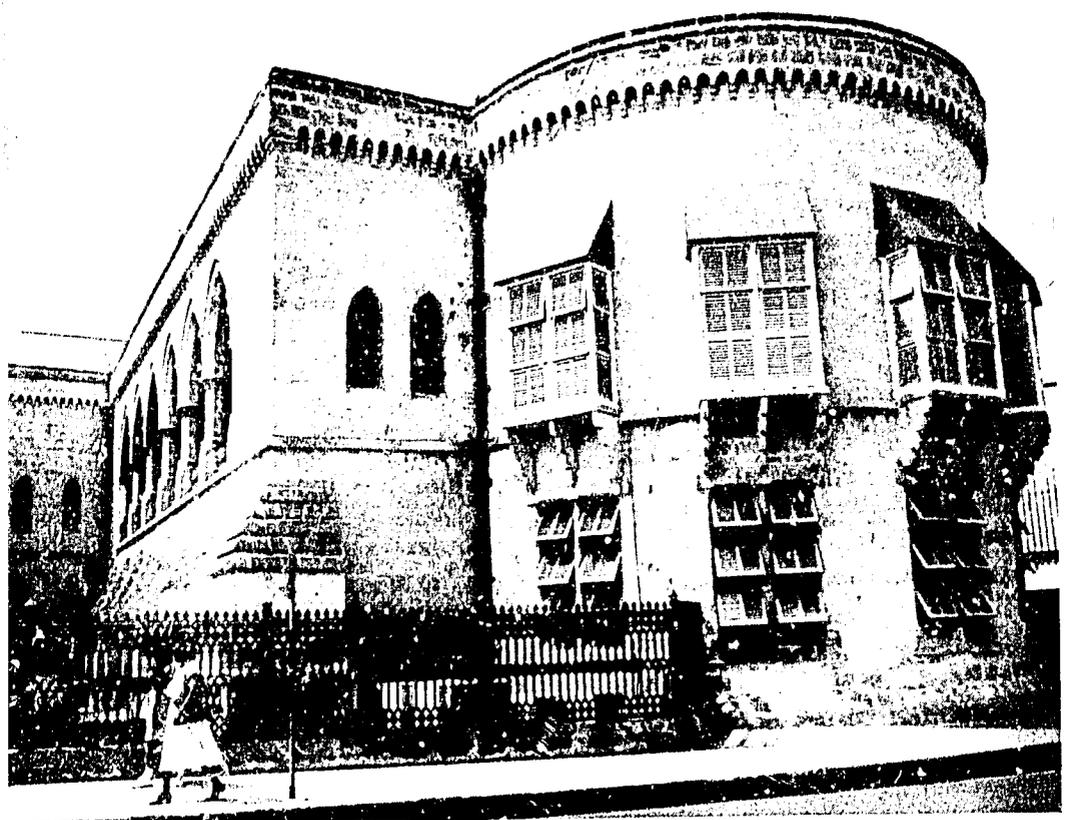


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# THE CONSTITUTION AND YOU BARBADOS

W. LeRoy Inniss



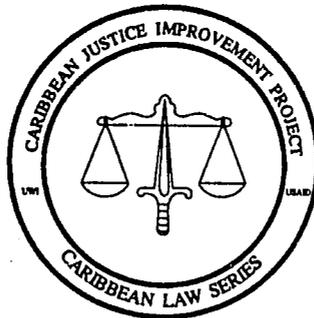
A UWI/USAID Caribbean Justice Improvement Project Publication

**Cover Photograph:**

*The House of Assembly, Parliament Buildings, Barbados.*

# THE CONSTITUTION AND YOU BARBADOS

W. LeRoy Inniss  
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**U.W.I./USAID Caribbean Justice Improvement Project, Barbados.**

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## FOREWORD

*This book is one of a series which is being published under the auspices of the Case Reports/Textbooks Fund of the UWI-USAID Caribbean Justice Improvement Project. The Project is the subject of a five year grant agreement entered into between the University of the West Indies and the United States Agency for International Development in August, 1986. It provides assistance in improving the administration of justice in the six OECS independent countries of the Eastern Caribbean, as primary beneficiary countries. Other countries called non-primary beneficiary countries are also able to participate in Case Reports/Textbooks Revolving Fund Activities.*

*The project paper which led to the establishment of the project recognised the need for the establishment of the project recognised the need for the establishment of facilities for law reporting, especially in the OECS states; and also sought to offer an incentive to provide teaching materials for the Faculty of Law and the Law Schools of the Council of Legal Education.*

*The fund is managed by a committee under the chairmanship of the Dean, Faculty of Law, and has among its members non-academic members of the legal community. The committee selects and approves materials for publication on the recommendation of chosen assessors, and encourages the compilation of Commonwealth Caribbean legal material from original sources.*

*Finally, I wish to thank Mr. Shaka Rodney of 'Caligraphic' for his inspired design of our logo.*

**Andrew D. Burgess**  
**Dean, Faculty of Law**  
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**Cave Hill Campus**  
**BARBADOS**

## PREFACE

*On the attainment of independence in 1966, Barbados received a written constitution which makes provision for citizenship and the organs of government, such as Parliament, the judiciary and the public service. In addition, it sets out the fundamental rights and freedoms of the citizen.*

*Since the constitution is written in technical language, many people have come to believe that it is of interest only to scholars, lawyers and judges. This is most certainly not so. Since the purpose of the constitution is to regulate the rights and responsibility of the state and of the individual citizen, it is the duty of each citizen to familiarise himself with this document. Knowledge of the constitution is the citizen's first defence against arbitrary or illegal state action.*

*This book is aimed therefore at the ordinary citizen. It is meant to provide a guide for the student and the layman by spelling out in non-technical terms the responsibilities and guarantees outlined in the constitution of Barbados. It is likely that civic groups, trade unions and other citizen's associations will also find it useful.*

*I wish to thank my daughter, Dianne, who read the manuscript and made valuable suggestions; the Caribbean Justice Improvement Project for its generous support in the publication of this book; and the Learning Resource Centre of the UWI, Cave Hill Campus for printing it.*

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# CHAPTER 1

## INTRODUCTION

Every country is governed by certain rules and regulations, which form the constitution of the country. Sometimes, they are unwritten but most often, especially in those countries which have recently become independent, the constitution is in written form. Barbados, like all the other independent Caribbean countries has a written constitution which became effective when the country attained independence.

Before independence, the Barbados constitution was contained in Orders of Council of the British Government. These Orders-in-Council were changed from time to time to give greater responsibility to the local inhabitants.

Barbados had its first form of representative Government in 1639 when the first parliament met. This Parliament was not representative of the entire population however, but of the land owners only. Various Constitutional changes gave greater power to all Barbadians to manage their own affairs.

In 1946, the "Bushe Experiment" was introduced where, for the first time, elected members were given the opportunity to sit on the Executive Committee - the body which was responsible for the important affairs of the country.

In 1950, every citizen 21 years of age or older was given the right to vote and this was followed in 1954 by Ministerial Government. As a result of this constitutional change, the elected members of Parliament gained control over the major decisions that affected the country. Further advancement came in 1958

when full cabinet government was achieved and this was followed by full internal Self Government in 1961.

This development placed all the affairs of Barbados except security and external affairs in the hands of the Cabinet of Barbados. The next logical step was for the country to obtain its independence from Great Britain. One question which had to be decided was whether Barbados should become independent on its own or as part of a Federation comprising other countries in the English Speaking Caribbean. In 1958, Barbados had joined with nine other Caribbean countries into a Federation of the West Indies. After four years, Jamaica pulled out of the Federation and was closely followed by Trinidad and Tobago. The Federation broke up and the Government opted to go into independence alone rather than attempt to enter into another federal form of government with the remaining countries.

The Barbados Government requested Britain to grant it full independence and, after constitutional discussions held in England between the governments of Barbados and the United Kingdom, the country was granted its independence and the constitution for independent Barbados was framed.

It was an act of the British Parliament - the Barbados Independence Act 1966 which provided for Barbados to become independent on 30th November 1966. The Constitution is the appendix to the Barbados Independence Order 1966 made in accordance with the powers granted under the Act.

The Constitution is introduced by a Preamble which asserts that the love of free institutions and independence has always characterised Barbadians. It goes on to state that as early as 1651 Barbadians declared their independence of the Commonwealth of England; this is in reference to a declaration by the General Assembly of Barbados which objected to being bound to the British Parliament in these words:

*"Shall we be bound to the government and lordship of Parliament in which we have no representatives or persons chosen by us, for there to propound and consent to what might be needful to us, as also to oppose and dispute all what should intend to our disadvantage and harm? In truth, this would be a slavery far exceeding all that the English nation hath yet suffered."*

The Preamble continues by referring to the 1652 Charter of Barbados which was signed at Oistins confirming the rights and privileges of the inhabitants.

The Preamble then declares that the people of Barbados are a sovereign nation founded on principles that acknowledge the supremacy of God, the dignity of the human person, and faith in the fundamental human rights and freedoms. Finally, it affirms respect for moral and spiritual values.

The following is the Preamble to the Constitution:

*" Whereas the love of free institutions and of independence has always strongly characterised 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 these inhabitants, in their determination to safeguard the freedom, safety and well-being of the Island, declared, through their Governor, Lords of the Council and members 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 the 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 unshakable faith in fundamental human rights and freedoms, 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;*
- (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. "*

Chapter 1 of the Constitution states:

*" 1. 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."*

That means that the Constitution is the most important law and should any other law be in conflict with the Constitution, that law would be considered null and void and of no effect. Parliament is subject to the Constitution and can only pass laws in the manner provided by the Constitution itself.

The Courts have the power to examine any law passed to see if it is not in keeping with the constitution. In case it is found to be contrary to the constitution, the court declares it unconstitutional and thus of no effect. The Landlord and Tenant (Registration of Tenancies) Act 1977 contains a section which provides for a tenant to be repaid all the rents which he paid to the landlord if the landlord did not register the premises as is required by the Act. In 1983 the High Court held that this provision was contrary to the provisions of the Constitution which safeguarded the right to own private property since its

effect was to confiscate the landlord's property. This Section was therefore held to be null and void.

In another case brought in 1984 by the Attorney General and the Board of Management of the Lodge School against the Head Master of the Lodge School, the court held that a section of the Education Act 1981 was null and void. In order to ensure that the constitution is not changed to suit the whims and fancies of the political party in power at any particular time, the Constitution provides for a special procedure to be followed if it is considered necessary for any of its provisions to be changed.

No part of the constitution can be changed by an ordinary majority vote of Parliament. Some sections need the support of a majority of the members of each house (not just a majority of those present) while some others - the most important sections - can only be changed if a two-thirds majority of the members of the House of Assembly and the Senate vote for the change. Those sections which need this two-thirds majority are known as "specially entrenched clauses".

Even if a particular law which has the effect of altering the Constitution is supported by the necessary two-thirds majority vote, it must clearly state that the law will have the effect of altering the constitution.

Among the Clauses which need a two-thirds majority for their alteration are the sections dealing with amendments to the constitution, the sections on citizenship, protection of the fundamental rights and freedoms of the individual, the establishment of the post of Governor General and his functions.

Some other clauses which need this same majority for their amendment are those which deal with the establishment and qualification for membership of Parliament, the Electoral and Boundaries Commission, the appointment of judges and the protection of the salaries of the Governor General, Judges, the Director of Public Prosecutions, Auditor General and members of the Services Commissions.

Under section 49(3), however, any law altering the specially entrenched clauses of the Constitution to give effect to Barbados joining a Federation or other Union with any part of the Commonwealth, does not need a two-thirds majority.

The Constitution stipulates who are citizens of Barbados or who may become citizens. It protects the fundamental rights of the citizen; later we shall see in more detail some of the rights and freedoms which are protected under the constitution.

It is the Constitution too, which sets out the manner in which the country is governed, how the Governor General, the Prime Minister, Cabinet and Parliament function. Provision is also made for the functioning of the Law Courts. Another important function of the Constitution is that it makes provision for all money collected by the Government to be put into a fund called the "consolidated fund" and stipulates that those funds can only be spent in the manner voted by Parliament.

Some public officers have such an important function that special provision is made in the Constitution for their appointment and dismissal, as well as for the manner in which they are paid and how they function. This is one attempt to ensure that no undue influence is brought to bear on them in the exercise of their public functions. Among these officers are the Governor General, the Director of Public Prosecutions, the Judges of the Supreme Court and the Auditor General.

There is also provision in the Constitution for the establishment and the powers of the Public Service Commission, the Judicial and Legal Service Commission and the Police Service Commission.

## **CHAPTER 2**

### **CITIZENSHIP**

Before Barbados became independent, persons born in the island were citizens of the United Kingdom and Colonies. The children of such persons, even if they were born outside of Barbados would also become citizens of the United Kingdom and Colonies. There was also provision for non-Commonwealth citizens living in Barbados to be granted citizenship of the United Kingdom and Colonies by naturalization provided they fulfilled certain qualifications.

Since independence, the rules governing the acquisition and deprivation of Barbadian citizenship are found in the Constitution and the Barbados Citizenship Act. Citizenship may be acquired by birth, descent from a Barbadian father (or in the case of children born out of wedlock, a Barbadian mother), by registration or naturalization.

Section 2 of the Constitution provides that every person, who was on 29th November 1966 (that is, the day before Barbados became independent), a citizen of the United Kingdom and Colonies as a result of being born in Barbados, become a citizen of Barbados on 30th November 1966.

According to the Constitution, the following persons also became citizens of Barbados on 30th November 1966:

- (1) every citizen of the United Kingdom and Colonies who was born outside of Barbados to a Barbadian father who became a citizen on Barbados attaining independence, or who had died but would have become such a citizen had he lived;

- (2) any person who became a naturalized citizen of the United Kingdom & Colonies as a result of being naturalized in Barbados as a British subject before the independence of Barbados.

The wife or widow of any person who became a citizen in any of the ways mentioned above is also entitled to be registered as a citizen.

Any Commonwealth citizen who is not a citizen of Barbados but who had been ordinarily resident in Barbados continuously for seven or more years at any time before 30th November 1966 and who since that time had not been ordinarily resident outside Barbados continuously for seven or more years, is also entitled to be registered as a citizen. The wife or former wife of such a person is also entitled to be so registered.

An application for registration of children under 18 years other than a woman who is or has been married must be made by the parent and/or guardian.

The following provisions govern the acquisition of citizenship with respect to persons who were not declared citizens or who were not entitled to be registered as citizens at the time of independence:-

### **Citizenship by Birth**

Section 4 of the Constitution states:

*"Every person born in Barbados after 29th November 1966 shall become a Citizen of Barbados at the date of his birth."*

This Section excludes persons whose parents possess diplomatic immunity if neither is a citizen of Barbados. It also excludes persons whose fathers are enemy aliens if the birth occurs in a place under enemy occupation.

## **Citizenship by Descent**

According to Section 5 of the Constitution, children born outside of Barbados of a man who is a citizen of Barbados automatically become citizens at birth. The same is true for a child born out of wedlock if his or her mother is a citizen of Barbados.

## **Citizenship by Registration**

Section 6 of the Constitution makes provision for the wife of a Barbadian to be registered as a Barbadian citizen. There is no corresponding right for the husband of a Barbadian woman to be registered as a citizen by virtue of being married to a Barbadian. Many persons consider this as discrimination against women and argue that the Constitution should be amended to provide for equal rights for our women.

Other Commonwealth citizens who fulfill certain requirements may also apply for registration and, at the discretion of the Minister, may be registered as citizens.

## **Citizenship by Naturalization**

Non-Commonwealth citizens may apply to the Minister for naturalization provided they fulfill certain specific conditions. The Minister has the discretion to grant or refuse naturalization.

By Section 8 of the Constitution, any person who is a citizen of Barbados by virtue of the Constitution or any law of Barbados, automatically becomes a Commonwealth citizen.

**Section 9 of the Constitution gives the power to Parliament to make provision for the acquisition of citizenship of Barbados by persons who can not become citizens under the existing provisions of the Constitution. This section also makes provision for the taking away of citizenship from any citizen other than those who are citizens by birth or descent.**

## CHAPTER 3

### PRINCIPAL ORGANS OF THE CONSTITUTION

#### THE EXECUTIVE

Section 35 of the Constitution states:

*"There shall be a Parliament of Barbados which shall consist of Her Majesty, a Senate and the House of Assembly."*

Section 63(1) of the Constitution states:

*"The Executive Authority of Barbados is vested in Her Majesty."*

The Queen is the Head of State of Barbados. The Queen of England is also the Queen of Barbados. The Constitution does not have to set out how a successor to the Queen is to be decided since the Barbados Constitution came into being as a result of an act of the British Parliament; thus any reference to "Her Majesty", refers to the Queen of England and includes her successors. Bills are assented to by the Governor General in her name, before they can become law.

It is the Queen who appoints the Governor General (on the advice of the Prime Minister). The Governor General, Judges, Director of Public Prosecutions, Ministers of Government all swear allegiance to Her Majesty.

The Queen does not take part, however, in the government of the country. The Constitution sets out how her authority is exercised. She is

represented in Barbados by the Governor General. In most cases, this authority is exercised on the advice of the Prime Minister or some other person or body. In some cases, the authority is exercised by officials subordinate to her.

Parliament also has the power to confer on persons or bodies other than the Governor General, authority to carry out certain functions.

## **The Prime Minister**

At the end of a General Election, the Governor General sends for the person whom he considers best able to secure the confidence of a majority of the members of the House of Assembly to appoint as Prime Minister. In practice, this is usually the leader of the party which has won the highest number of seats. If there is a close election in which no single party wins a clear majority or if the office of Prime Minister becomes vacant through death or because of infighting among the members of the party which is in power, there is greater difficulty in deciding who is to be Prime Minister.

The Governor of St. Vincent was faced with this difficulty in 1972 when the People's Political Party and the Saint Vincent Labour Party received an equal number of seats. Mr. J.F. Mitchell joined forces with the People's Political Party. He was appointed Premier and formed the government.

In a case where members of the government join with the opposition in passing a vote of no-confidence in the Prime Minister and he resigns, the Leader of the Opposition would most likely be requested to form a government and assume the position of Prime Minister.

In Barbados, two Prime Ministers have died in office and in each case the Deputy Prime Minister was appointed to succeed, but this must not be interpreted to mean that a Deputy Prime Minister is automatically "promoted". Before appointing him, the Governor General has to be satisfied that he is the

person who is most likely to command the confidence of a majority of members of the House of Assembly.

In deciding who is best able to command a majority of support in the House of Assembly, the Governor General may consult with such persons as he thinks fit. Once he has decided, no one can question whether or not he consulted the correct persons or made the correct appointment. If a majority of the members of Parliament object to his choice the only thing they can do is bring a resolution to revoke the appointment. In such an event, however, within three days of the passing of the resolution, the Prime Minister can either resign or advise the Governor General to dissolve Parliament.

The Constitution puts certain restrictions on the Governor General in his choice of a person to be Prime Minister. In the first place, he can only appoint a Prime Minister under the circumstances outlined in Section 66(1) and (2) of the Constitution. That section also sets out the circumstances under which the Prime Minister ceases to hold office.

Section 66 reads as follows:-

- "(1) The office of Prime Minister shall become vacant -*
- (a) if he ceases to be a member of the House of Assembly for any reason other than a dissolution of Parliament;*
  - (b) when, after an election of members of the House of Assembly following any dissolution of Parliament and before that House first meets thereafter, the Prime Minister is informed by the Governor General, acting in his discretion, that the Governor General is about to*

*re-appoint him as Prime Minister or appoint another person as Prime Minister; or*

*(c) if the Governor General revokes his appointment in accordance with the provisions of subsection (2).*

*(2) If the House of Assembly by a resolution which has received the affirmative vote of a majority of all the members thereof resolves that the appointment of the Prime Minister ought to be revoked and the Prime Minister does not within three days of the passing of the resolution either resign or advise the Governor General to dissolve Parliament, the Governor General shall, by instrument under the Public Seal, revoke the appointment of the Prime Minister."*

Secondly, the Governor General can only appoint someone who is a member of the House of Assembly. This is quite reasonable since it ensures that only a person who has been approved by the electorate can hold the highest political office.

Section 66(1b) of the Constitution is interesting. If a serving Prime Minister wins an election, invariably, he will be the Prime Minister once more. According to that section, however, his appointment comes to an end as soon as there is a new election; the Governor General then has to choose the person most likely to command the confidence of a majority in parliament - this person is usually the one who held office immediately before the election.

Section 66(2) gives great power to the Prime Minister and helps to protect him from dissatisfied party supporters who may consider revolting and seeking to have his appointment revoked. If a majority of Parliament supports

a resolution for the Governor General to revoke the Prime Minister's appointment, the Prime Minister may within 3 days of the passing of the resolution either resign or ask the Governor General to dissolve Parliament. This means there would have to be a new election. Some members of parliament might not wish to risk facing the electorate before the end of their term and thus might not support a resolution to have the Prime Minister's appointment revoked."

### **Acting Prime Minister**

Section 67 of the Constitution provides for the appointment of an acting Prime Minister if the Prime Minister is absent from the country or is unable to perform his functions through illness.

Normally, the Governor General has no power in deciding who is to act as Prime Minister; he must appoint the person named by the Prime Minister, unless it is not possible to obtain such advice because of the Prime Minister's absence or illness. In such a case, the Governor General acts in his own discretion.

One should note that while the Prime Minister sometimes names a member of the Cabinet as Deputy Prime Minister, there is no provision in the Constitution for this. There is, however, provision, in law for a special salary to be paid to the person designated Deputy Prime Minister.

### **Other Ministers**

After the Prime Minister is appointed, he selects a number of persons to be ministers. The Constitution provides that there must be at least five ministers who are selected from either the House of Assembly or the Senate. Usually, however, more than five ministers are appointed.

The selection of ministers and the responsibility given to each is in the sole discretion of the Prime Minister - He determines which area of government activity each minister is responsible for. The subject for which a minister is responsible is known as his portfolio.

Sometimes Ministers of State are appointed; these are ministers who assist other ministers with some areas of responsibility in their portfolio. Junior ministers, known as Parliamentary Secretaries, also assist some ministers.

A minister other than the Prime Minister holds office for as long as the Prime Minister chooses, since the Prime Minister can advise the Governor General to revoke a ministerial appointment at any time.

A minister also ceases to hold office if he is no longer a member of the House of which he was a member when he was selected or if he is not a member of Parliament at the first sitting of Parliament after a dissolution.

### **Acting Ministers**

The Governor General may also appoint an acting minister if a minister is either ill or away from the country. The appointment will be made on the advice of the Prime Minister.

When Parliament is dissolved, the Prime Minister and the other members of his cabinet continue to hold office until the day on which a new election is held.

## **Attorney General**

Section 72 of the Constitution makes provision for the appointment of one of the ministers to be made Attorney General. He is a member of the cabinet and may also be responsible for other matters.

Although the Constitution does not require the Attorney General to have any particular qualifications, an attorney-at-law is always appointed to the post because of the function that minister has to perform. The Attorney General is the principal legal adviser to the Government; his duties include giving the Director of Public Prosecutions instructions in cases involving piracy, trading in slaves, foreign enlistment, publications, interference with the peaceful relations of Barbados and foreign states, treason, sedition, official secrets, mutiny, unlawful and offences relating to any right or obligations of Barbados under international law.

This provision for the Director of Public Prosecutions to act on the instructions of the Attorney General in a limited number of cases was not in the original Independence Constitution, but was added in the Constitutional amendments of 1974.

## **The Cabinet**

The Cabinet is the body having overall responsibility for the management of the country. Section 64 of the Constitution states:

*"(1) There shall be a Cabinet for Barbados which shall consist of the Prime Minister and not less than five other Ministers appointed in accordance with the provisions of section 65."*

It is the Cabinet that is responsible for the general administration of the government. All major decisions affecting the country are made by the Cabinet. The members of the body have collective responsibility for their decisions. Section 64(2) of the Constitution states:

*"The Cabinet shall be the principal instrument of policy and shall be charged with the general direction and control of the government of Barbados and shall be collectively responsible therefor to Parliament."*

If a Minister does not agree with the policy of the Cabinet, the normal thing for him to do is to resign; he ought not to stay in the Cabinet and claim that he was opposed to certain government decisions.

### **The Governor General**

Section 28 of the Constitution provides as follows:-

*"There shall be a Governor General of Barbados who shall be appointed by Her Majesty and shall hold office during her Majesty's pleasure and who shall be Her Majesty's representative in Barbados."*

Although it is not stated in the Constitution, Her Majesty appoints as Governor General, the person recommended by the Prime Minister. He is not appointed for any fixed period, but serves during Her Majesty's pleasure. In actual practice, this is as long as the Prime Minister desires.

The Constitution provides for the appointment of an acting Governor General should the Governor General be absent from the island, or if for any other reason, he is unable to perform his functions. In such a case, the duties are performed by:

- (1) any one named by Her Majesty;
- (2) the Chief Justice, if no such person is named;
- (3) the President of the Senate if the Chief Justice is out of the island or the post is vacant or if for any other reason the Chief Justice is unable to act.

The Governor General also has power under Section 30 of the Constitution to appoint on the advice of the Prime Minister a Deputy to carry out specific functions if she is absent from Barbados or is ill for a short period. A person so appointed must carry out the instructions of the Governor General.

### **Functions of the Governor General**

The Governor General is her Majesty's representative in Barbados. Before any enactment of Parliament becomes law he must assent to it.

The Governor General is responsible for keeping the Public Seal which is affixed to important state documents. Among the documents which require the public seal are the instruments appointing the Prime Minister and other Ministers, members of the Senate and House of Assembly, the Chief Justice and High Court Judges.

The majority of the Governor General's functions are ceremonial such as conferring honours and receiving ambassadors. Section 71 of the Constitution states that the Prime Minister shall keep the Governor General fully informed concerning the general conduct of the Government of Barbados and shall furnish the Governor General with any information he may request with respect to any particular matter relating to the Government of Barbados. As a result of his consultation with the Prime Minister the Governor General is able to keep abreast of Government activity and although he cannot force the Government to change

any of its policies, he may exercise some influence or express any caution he may think necessary.

The real power of government is, however, in the hands of the Prime Minister and his cabinet. As a rule, therefore, the Governor General exercises his functions on the advice of the Prime Minister, the cabinet and, in some specified cases, the Leader of the Opposition. There are some matters in which he acts after consultation with some person or authority while there are a few instances in which he acts in his own discretion.

The Constitution provides specifically that the Governor General must act on the advice or recommendation of the Prime Minister in the following cases:

- (a) On appointing and removing ministers of government;
- (b) On the appointment of 12 members of the Senate;
- (c) In dissolving parliament;
- (d) In appointing the Chief Justice and High Court judges;
- (e) On appointing a deputy to the Governor General;
- (f) On the appointment and removal of principal foreign service officers;
- (g) On the transfer of permanent secretaries;
- (h) On appointing a tribunal to enquire into whether or not the question of removing the Chief Justice from office should be referred to the Privy Council.

The Governor General acts on the recommendation of the Service Commissions after the Commissions have consulted with the Prime Minister in the appointment of Permanent Secretaries, the Director of Public Prosecutions, the Auditor General, the Solicitor General, Heads and Deputy Heads of government departments.

In some instances when the Governor General acts on the advice of the Prime Minister, he does so after the Prime Minister has consulted with the Leader of the Opposition. These cases include:

- (a) the appointment of the Chief Justice and High Court judges;
- (b) the appointment of:
  - (i) the Chairman and two other members of the Electoral and Boundaries Commission;
  - (ii) three members of the Judicial and Legal Service Commission;
  - (iii) the Public Service Commission;
  - (iv) the Police Service Commission.
- (c) the appointment and dismissal of the Ombudsman.

The Governor General acts on the advice of the Leader of the Opposition in:

- (a) appointing 2 members of the Senate;

- (b) appointing the deputy chairman and 1 member of the Electoral Commission (after the Leader of the Opposition has consulted with the Prime Minister)

In making appointments to the Privy Council the Governor General acts after consultation with the Prime Minister. It is generally accepted that in such a case, the Governor General does not have to act in accordance with the Prime Minister's advice or recommendation. There was a case in Jamaica where a Prime Minister complained because the Governor General, in making appointments to the Privy Council under the powers of the Constitution similar to the Barbados provisions, refused to appoint persons recommended by him.

Some other occasions on which the Governor General acts on the advice of others are as follows:-

- (1) on making appointments to the Civil Service or Legal Service or Police Force, he acts on the advice of the Civil Service Commission, Judicial and Legal Service Commission and Police Service Commission respectively;
- (2) if he is in doubt as to whether or not any one enjoys the support of a majority of the opposition members he acts on the advice of the Speaker of the House of Assembly in appointing a leader of the opposition;
- (3) he acts on the advice of the Chief Justice in cases where a tribunal is to be set up to enquire whether the question of removal of a judge should be referred to Her Majesty's Privy Council; and when it is necessary to set up a tribunal under section 105 of the Constitution for the removal of certain persons from office.

- (4) when he is exercising the prerogative of mercy, that is, granting a pardon or reduction of sentence to a convicted person, he must act on the advice of the Privy Council.

One of the most important functions which the Governor General performs in his own discretion is the selection of a person to be Prime Minister. As we mentioned earlier, this is not often difficult since it is usually the head of the ruling party.

Sometimes, however, there may be no clear choice as in the case where a Prime Minister dies in office and there may be more than one person who could claim to be able to control the support of a majority of members of Parliament or where no single party has a majority in parliament.

The Governor General may consult whomsoever he wishes but the final choice is his and cannot be challenged in any court.

The Governor General acts in his own discretion in exercising his power to remove a Prime Minister if a majority of the House of Assembly votes for such removal. He may also act in his own discretion to dissolve parliament if the office of Prime Minister becomes vacant and he considers that it is unlikely that a person who can command the support of the majority of members of the House of Assembly can be appointed in a reasonable period of time.

If it becomes necessary to appoint an acting Prime Minister and it is impossible to obtain the Prime Minister's advice either through illness or absence, the Governor General may appoint a member of the House of Assembly, acting in his own discretion.

He also acts in his own discretion in revoking the appointment of the Leader of the Opposition if he is of the opinion that the Leader of the opposition no longer commands the support of the majority of the opposition.

The Governor General also acts in his own discretion in appointing seven members of the Senate. He may also select his personal staff from a list supplied by the Public Service Commission.

Where the Governor General is directed to exercise his powers on the recommendation of a person or body he must follow the direction of that person or body; but before carrying out the function he may refer the matter once again to the person or body for reconsideration.

In those cases where he exercises his power after consultation with any person or body, he is not bound to act in accordance with the advice of that person or body.

The Constitution provides that the courts cannot enquire into whether or not the Governor General has acted in accordance with the advice of anyone or in consultation with or on the recommendation of anyone. It is very unlikely, however, that the Governor General would act contrary to the provisions of the Constitution. For one thing, he may be removed by Her Majesty if the Prime Minister so requests.

When the Governor General is directed to exercise his functions on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, the Prime Minister consults with the Leader of the Opposition and then forwards his recommendation to the Governor General who informs the Leader of the Opposition of the recommendation. If he agrees, the Governor General acts in accordance with the recommendation. If he does not agree, the Governor General informs the Prime Minister and refers the recommendation back to him. The Prime Minister then advises the Governor General who acts as he has been advised.

Section 32 (6) of the provision provides as follows:

*"Where the Governor-General is directed to exercise any function on the recommendations of the Prime Minister after consultation with the Leader of the Opposition, the following steps shall be taken -*

- (a) the Prime Minister shall first consult the Leader of the Opposition and thereafter tender his recommendation to the Governor-General;*
- (b) the Governor-General shall then inform the Leader of the Opposition of that recommendation and if the Leader of the Opposition concurs therein the Governor-General shall act in accordance with the recommendation;*
- (c) if the Leader of the Opposition does not concur in the recommendation the Governor General shall so inform the Prime Minister and refer the recommendation back to him;*
- (d) the Prime Minister shall then advise the Governor-General and the Governor-General shall act in accordance with that advice."*

### **Prerogative of Mercy**

Section 76 of the Constitution makes provision for the existence of the Privy Council. This body must not be confused with Her Majesty's Privy Council in England. It comprises persons appointed by the Governor General after consultation with the Prime Minister.

The Privy Council is summoned by the Governor General at his discretion. The principal function of this body is to advise the Governor General whether or not he should pardon or reduce the sentence or fine imposed on any person convicted in the law courts. When the Governor General carries out this function, he is said to be exercising the Prerogative of Mercy.

The chief matter relating to sentencing which is dealt with by the Privy Council is the question of the imposition of the death penalty. If a person is sentenced to death, the Governor General receives a report of the trial judge and any other information she requires to be put before the Privy Council. Acting on the recommendation of the Privy Council, he then decides whether or not to substitute a different sentence.

If, however, the Governor General is of the opinion that the matter is too urgent for him to obtain the recommendation of the Privy Council, he may act in his own discretion. A possible circumstance in which this urgent action may be necessary is if a person is due for execution and shortly before the prescribed date, it becomes desirable for the execution not to be carried out.

## **THE LEGISLATURE**

### **The Composition of Parliament**

Barbados has a bicameral legislature; that is, there are two Houses of Parliament. The Lower House which is elected comprises 28 members, each of whom represents one of the 28 constituencies into which the island is divided.

### **House of Assembly**

Section 41 of the Constitution provides that the House of Assembly shall consist of 24 members or such greater number of members as Parliament may

prescribe. The "Representation of the People Act" has prescribed that the present number of members is to be 28.

According to the Constitution the electorate is to be divided as far as practicable into equal constituencies but in no case should a constituency be more than 110 % or less than 90% of the total electorate divided by the number of constituencies.

Any citizen of Barbados who is 21 years of age or older may be elected to Parliament unless he is disqualified. The principal disqualifications are as follows:-

- (a) any one who by his own act is under allegiance to a foreign state;
- (b) the holder of the office of Judge, Director of Public Prosecutions or Auditor General;
- (c) any one who is sentenced to death or to imprisonment exceeding six months;
- (d) any one who is insane or of unsound mind;
- (e) a bankrupt;
- (f) a person convicted of any corrupt or illegal practice at elections;
- (g) a person convicted for making a false declaration of qualification for elections; or
- (h) members of the Civil Service, the armed forces, or the police force of Barbados.

A member of the House of Assembly holds his seat until any of the following occurs:-

- (a) Parliament is dissolved;
- (b) he resigns;
- (c) he 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;
- (d) he ceases to be a citizen of Barbados;
- (e) he refuses to take the oath of allegiance;
- (f) he becomes disqualified for election;
- (g) he is expelled from the House.

Section 45(2) of the Constitution provides that if a member is convicted of a criminal offence involving dishonesty, is under sentence of death or imprisonment, is adjudged of unsound mind, is declared bankrupt or is convicted of corrupt or illegal practice at elections or for making a false declaration of qualification, he must immediately cease to function as a member of the House but does not have to vacate his seat for a period of 30 days.

The Speaker may extend this period from time to time to give the member the opportunity to appeal. The Speaker cannot give him extensions of more than 150 days, however, without the approval of the House of Assembly.

If a person vacates his seat in the House of Assembly other than on the dissolution of Parliament, the Governor General shall within 90 days of the vacancy issue a writ for a by-election to be held.

Section 46(2) of the Constitution provides that any question concerning the validity of the election of a member of the House of Assembly, or whether or not a member has vacated his seat shall be determined by such authority or authorities as may be prescribed by any law in force in Barbados.

## **The Senate**

The Senate consists of 21 members made up as follows:-

- (a) Twelve members appointed by the Governor General on the advice of the Prime Minister;
- (b) Two members appointed by the Governor General on the advice of the Leader of the Opposition;
- (c) Seven members appointed by the Governor General acting in his own discretion to represent religious, social, economic or such other interests as the Governor General may consider ought to be represented.

In order to be eligible for appointment to the Senate, a person must be 21 years or older, and ordinarily resident in Barbados for the immediately preceding 12 months.

A person is disqualified from being a Senator if:-

- (a) he is a member of the House of Assembly;

- (b) by his own act owes allegiance to a foreign state;
- (c) holds the office of judge, director of public prosecutions or auditor general or within 10 years immediately preceding the proposed date of appointment to the Senate, is convicted of felony (serious offence) or an offence involving dishonesty.

The following persons are also disqualified from being appointed as Senators:-

- (a) persons convicted to die or serving a sentence in excess of six months;
- (b) insane persons or those of unsound mind;
- (c) bankrupt persons;
- (d) those who are disqualified for membership of the House of Assembly, for corrupt or illegal practices at elections.
- (e) members of the Civil Service, armed forces or police force.

A Senator vacates his seat on the next dissolution of Parliament after he has been appointed. A Senator's seat also becomes vacant if he is absent from Barbados for more than 40 days during the sitting of the Senate without leave of the President or if, with his consent, he is nominated to the House of Assembly or ceases to be a citizen of Barbados.

In the case of a Senator appointed on the advice of the Prime Minister, his seat becomes vacant any time the Governor General acting on the advice of the Prime Minister declares it vacant. Similarly, the seat of a Senator appointed on the advice of the Leader of the Opposition, becomes vacant if the Governor General on the advice of the Leader of the Opposition declares it vacant. The real

effect of this provision is that the Prime Minister can have those Senators whose appointment he recommended removed at will and the Leader of the Opposition, likewise, can have those whose appointment he recommended terminated any time he so desires.

The Senate is presided over by the President of the Senate and in his absence by the Deputy President.

Any question concerning the validity of the appointment of a Senator is determined by the High Court whose decision is final.

### **The Leader of the Opposition**

The Constitution recognises the office of Leader of the Opposition and confers certain powers upon him. We have already noted some of his constitutional functions.

The Leader of the Opposition is appointed under the provisions of Section 74(2) which states as follows:-

*"(2) Whenever the Governor-General has occasion to appoint a Leader of the Opposition he shall appoint the member of the House of Assembly who, in his judgment, is best able to command the support of a majority of those members who do not support the Government, or if there is no such person, the member of that House who, in his judgment, commands the support of the largest single group of such members who are prepared to support one leader:*

*Provided that this subsection shall have effect in relation to any period between the dissolution of Parliament and the day on*

*which the next election of members of the House of Assembly is held as if Parliament had not been dissolved."*

In appointing the Leader of the Opposition the Governor General acts in his own discretion.

If the Leader of the Opposition loses the support of the majority of members of the House of Assembly who do not support the Government, he loses his position as Leader of the Opposition. In 1989, four members of the ruling Democratic Labour Party resigned from that party and formed a new party, the National Democratic Party (NDP). The leader of the NDP was appointed Leader of the Opposition to replace the incumbent whose Barbados Labour Party had only three members in Parliament.

In case the Governor General becomes doubtful as to who commands the support of those who do not support the government in Parliament, he acts in accordance with the advice of the Speaker of the House of Assembly.

## **Legislation and Procedure of Parliament**

Section 48(1) of the Constitution states as follows:-

*"Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Barbados."*

Section 48(1) mentions specifically that Parliament may pass laws to determine the rights, privileges, immunities and powers of the House of Assembly and the Senate.

Section 48(3) forbids any summons or other court document in a civil manner from being served within the precincts of Parliament.

Section 50 empowers each House of Parliament to make Standing Orders to regulate its own procedure.

In case any person who is not entitled to be in Parliament takes part in its proceedings, this will not make the proceedings invalid.

Normally, the President of the Senate, or in his absence, the Deputy President presides over all meetings of that body. In the absence of both, the Senate elects one of its members other than a minister or parliamentary secretary to preside.

A quorum of the Senate is 8 members in addition to the presiding officer. If at any time, there is no quorum, the presiding officer allows such time as is allowed in the Standing Orders for a quorum to be formed and if there is still none, the meeting is adjourned.

The presiding officer of the Senate votes only if there is an equal number of persons voting for and against the particular matter before the Senate.

Normally, in order for any bill to become law, it must be passed by the House of Assembly and the Senate and receive the assent of the Governor General. As we shall see later, there are some circumstances under which a bill may be sent to the Governor General for his assent without being passed by the Senate.

Section 58(3) provides that when a bill is sent to the Governor General for his assent, "he shall signify that he assents or that he withholds his assent." While the Constitution gives the Governor General power to refuse to assent to a bill, it is a convention that he would not normally refuse to assent to a bill which has been sent to him in accordance with the provisions of the Constitution.

In case he did, one would expect that he would either resign or he would be removed from office. There is the case of a Governor in another Caribbean country who refused to give his assent to a bill and was eventually removed from office.

A bill other than a money bill may be introduced in either the House of Assembly or the Senate. A money bill is one which proposes or reduces any tax or requires the expenditure of any public funds. Only a Minister of Government can introduce a money bill in the House of Assembly.

The Senate cannot amend a money bill but it may delay the passing of it for a month. After that period, the bill may be sent to the Governor General for her assent without the consent of the Senate.

The Speaker or Deputy Speaker of the House of Assembly signs a certificate declaring which bill is a money bill. As long as the Speaker or Deputy Speaker certifies that a bill is a money bill, whether or not it is one, cannot be questioned in any court.

The Senate can delay a bill other than a money bill for a period of seven months. If the bill is passed by the House of Assembly in two successive sessions and sent to the Senate and rejected on each occasion, after it has been rejected for the second time, it may be presented to the Governor General for her assent.

No bill which seeks to alter the Constitution can be passed in this manner.

### **Summoning Prorogation and Dissolution**

The Governor General acting on the advice of the Prime Minister appoints the time and place for each session of Parliament to be held, but no

more than six months can elapse between the end of one session and the first sitting of the next session.

When Parliament is adjourned, it is said to be prorogued. When the life of a particular parliament comes to an end, it is said to be dissolved.

A session begins with the first sitting of the House after it has been dissolved or prorogued and lasts until it has been again prorogued or dissolved. This provision is aimed at preventing the Cabinet from governing without reference to Parliament.

The life of Parliament is normally five years but the Governor General may dissolve Parliament any time she cannot find in the House of Assembly, a person who has the support of a majority of the members of Parliament, or if the Prime Minister requests her to do so. In the event that Barbados is at war, Parliament can extend its life for not more than 12 months at a time, and for not more than two years in all.

If some emergency should arise after Parliament is dissolved, but before the next general election, 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.

### **Electoral and Boundaries Commission: Delineation of Constituencies**

Section 41A of the Constitution deals with the Electoral and Boundaries Commission, which was established in Barbados in 1981.

The Governor General acting on the advice of the Prime Minister, after consultation with the Leader of the Opposition, appoints the Chairman and two members of the Commission. He appoints the Deputy Chairman and one

member acting on the advice of the Leader of the Opposition after consultation with the Prime Minister.

No minister of government, parliamentary secretary, member of parliament, political candidates or public servant is qualified to be a member of the Commission.

Members of the Commission are usually appointed for five years. This period may be shorter if less than five years is specified in his instrument of appointment. A member may lose his position if after becoming a member of the Commission, he becomes a minister of government, parliamentary secretary, member of parliament or candidate for election or a public servant.

The Governor General may appoint a temporary member if a regular member is not able to perform his duties.

The Commission is given the responsibility by Section 41C(1) to supervise the registration of voters, the conduct of elections and any other matter necessary for the carrying out of these functions.

No person or authority can direct the Commission on how to carry out its functions.

According to Section 4D of the Constitution the Commission must review the number and boundaries of the constituencies and report to the Minister either the number of constituencies into which it considers the country should be divided or that it considers there should be no change in the number of constituencies.

The Commission must submit its report at the following times:-

The first report not less than one year nor more than five years after its appointment.

Subsequent reports - not less than two or more than five years after appointment.

Not more than two months after the report has been submitted, the Minister has to lay before Parliament, a draft of an order by the Governor General for putting the recommendations into effect.

If Parliament approves the draft, it is presented to the Governor General and comes into force for the next dissolution of Parliament and remains in force until changed by another order.

Section 42(3) gives the Commission power to regulate the amount of time a political party may use for political broadcasting between the time the notice for election is posted and the time the results are declared.

Any one operating a broadcasting station may require that the text of any political broadcast be submitted to the Commission not more than three days before the broadcast is scheduled. The Commission may amend the text. No operator of a broadcast station can refuse to publish a text which was approved by the Commission. There can be no criminal or civil liability attached to a broadcasting station as a result of broadcasting any text approved by the Commission.

## **THE JUDICIARY**

### **Composition of the Higher Judiciary**

The Constitution makes provision for the Superior Courts but nowhere is there any mention of Magistrates Courts; these are regulated by and function under specific statutes, the chief of which is the Magistrates Jurisdiction and Procedure Act, Cap. 116.

Section 80 of the Constitution provides for the establishment of the Supreme Court consisting of a High Court and Court of Appeal.

The judges of the Supreme Court are the Chief Justice and High Court judges. They are appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. In order to be appointed as a judge one must be an attorney-at-law for at least 10 years. Parliament prescribes the number of High Court judges. At present there are four.

Judges hold office until they are age sixty-five, but may be permitted by the Governor General acting on the advice of the Prime Minister to remain in office until age 67. Even after reaching either age, the judge may remain for the purpose of giving judgments in cases which were commenced before he had reached the age of retirement.

If the office of Chief Justice is vacant, or the Chief Justice is acting as Governor General, or for some other reason cannot perform his duties, the Governor General on the advice of the Prime Minister may appoint someone to act as Chief Justice.

The Governor General, acting on the advice of the Prime Minister, may also appoint an acting judge if there is a vacancy or if a judge is acting as Chief Justice or is for some other reason unable to perform his duties. If the Chief Justice informs the Governor General that the state of business in the Supreme Court so requires, the Governor General may on the advice of the Prime Minister appoint someone qualified to be a judge, to act as one.

Once a judge has been appointed, he is not under the control of any person. Apart from leaving office as a result of reaching the necessary age limit or resigning voluntarily from his position, it is almost impossible to remove a judge from office. A judge can only be removed from office for inability to

perform his function or for misbehaviour. Section 84 of the Constitution provides for the removal of judges. The procedure is as follows:-

If the Prime Minister advises the Governor General that the question of removing the Chief Justice should be investigated or if the Chief Justice after consultation with the Prime Minister advises the Governor General that the question of removing a judge should be investigated, the Governor General must appoint a Tribunal comprising a chairman and at least two other members. The members of the Tribunal are selected by the Governor General; in the case of the Chief Justice, on the advice of the Prime Minister and in the case of a judge, on the advice of the Chief Justice. They are selected from any persons who have been judges in a Commonwealth court.

After the Tribunal enquires into the matter, it must report to the Governor General whether or not she should request the matter to be referred to Her Majesty's Judicial Committee of the Privy Council. If the Tribunal so advises, the request is made.

When the matter has been referred to the Privy Council, the judge may be suspended. No judge in Barbados has ever been removed from office for inability or misbehaviour.

The judges are further protected in their office by the provisions of the Constitution that their office cannot be abolished while they are holding it. Their salary is not voted by Parliament annually, but is charged to the Government's central funds - the Consolidated Fund. The salary of judges cannot be reduced while they are in office, but it may be observed, however, that there is no provision in the Constitution that it must be increased.

The above provisions are all designed to prevent the judges from being influenced by any person or body and thus retain their impartiality.

These provisions are very important since the independence of the judiciary is one of the foundations of our democratic way of life. Judges are also prevented from being elected to Parliament.

### **Jurisdiction in Constitutional Questions**

The courts have the power to review any law passed by Parliament to ensure that the law is in keeping with the provisions of the Constitution.

The Constitution does not specifically state that the courts can review Acts of Parliament, but this power is implied. For example, there are instances in which the Constitution excludes the court from enquiring into matters; thus it may be implied that generally the courts may enquire into all other matters not so excluded. Some of the matters on which the court cannot enquire are as follows:

- (a) where the Governor General is directed to exercise his function after consulting or on the advice of some person, the court cannot enquire whether he has so consulted;
- (b) the Court cannot enquire whether or not the Privy Council has validly performed any function vested in it by the Constitution;
- (c) when the Speaker or Deputy Speaker certifies that a bill is a money bill, that is conclusive and no Court has any power to enquire into it.

Except in cases of violation of the fundamental rights of the citizen as discussed later, the Constitution does not provide any remedy where there is any infringement of its provisions; thus, if the courts declare that a section of an Act is unconstitutional it does not follow that the person who obtains the declaration

will receive damages. If it is shown, however, that some fundamental right or freedom of the citizen has been violated, the Courts may award damages.

The High Court has jurisdiction to hear and determine any application made by a person alleging that any of his constitutional rights have been infringed.

Any court subordinate to the High Court may also refer to the High Court for its determination, any question of possible contravention of any of the provisions contained in Chapter III (*Protection of Fundamental Rights and Freedoms of the Individual*) of the Constitution.

Where a case has been referred by an inferior court to the High Court, the High Court must give its decision upon the question referred and the court from which it came must then dispose of the matter in accordance with the decision of the High Court. If there is an appeal against the decision of the High Court, then the court which referred the matter will act in accordance with the decision of the Court of Appeal or the Privy Council if the matter was referred to that body.

The rules of the Supreme Court set out the manner in which application to the High Court for redress in constitutional matters may be started. They are commenced by an originating motion which is supported by an affidavit or by a writ which claims a declaration, asks for an injunction or any other appropriate order.

Notice of the motion and a copy of the affidavit must be served on the Attorney General and any other person that the court may direct. The Attorney General is entitled to appear and take part in the proceedings of any case which is referred to the High Court by an inferior court. In case it is a criminal matter, the Director of Public Prosecutions is entitled to appear and be heard.

## **APPEALS**

### **Court of Appeal**

Section 85(1) of the Constitution provides for the establishment of a Court of Appeal. This Court consists of three High Court judges but a judge cannot form part of the court if he was involved in the case which is being heard on appeal.

In 1981, Parliament passed the Supreme Court of Judicature Act which makes provision for a separate Court of Appeal comprising the Chief Justice as President and two other judges. To qualify as a Judge of the Court of Appeal one must have been a judge or an attorney-at-law of 15 years experience.

Under the Act, a High Court Judge can act as a Judge of the Court of Appeal if the Chief Justice requests him to do so. The above provisions have not yet come into force.

Section 86 of the Constitution makes it possible for Barbados to share a Court of Appeal with any other Commonwealth country; thus if the Government of Barbados decided to join a Caribbean Court of Appeal, there would be no need to alter the Constitution to provide for this.

Before Independence, Barbadians could appeal to the Privy Council against a decision of the local Court of Appeal. The Constitution reserves the right of the citizen to appeal from the Court of Appeal to her Majesty in Council (the Privy Council).

The decision in a case which goes to the Privy Council is set out in the form of advice to Her Majesty; in actual fact, it is the decision of a final Court of Appeal and is binding on the parties.

Unless prevented by an Act of Parliament, the citizen has a right of appeal to the Court of Appeal against any decision of the High Court. There is a right of appeal on matters relating to the fundamental rights and freedoms that are protected under the Constitution. There is also the right to appeal to the Judicial Committee of the Privy Council in England, against the decision of the Court of Appeal on those matters.

Parliament may also pass laws to provide for appeals to the Privy Council in other matters, either as of right or by leave of the Court of Appeal. In any event, Her Majesty may grant special leave to appeal to the Privy Council.

The jurisdiction of the Privy Council originates from the fact that Her Majesty the Queen has jurisdiction over all her subjects. This jurisdiction, however, may be removed by an amendment to the Constitution.

The Committee of the Council which hears appeals, comprises the Lord Chancellor (the Presiding Officer of the House of Lords), Privy Councillors who hold or have held high judicial office, Judges of the English Court of Appeal, known as Lords of Appeal in Ordinary and such judges or retired judges of Superior Courts of the Commonwealth, as the Queen may appoint. Sir William Douglas, a former Chief Justice of Barbados has sat on the Judicial Committee of the Privy Council.

## CHAPTER 4

### OTHER ORGANS OF GOVERNMENT

#### Public Service Commission

The Constitution makes provision for the establishment and composition of the Public Service Commission. Section 90 provides as follows:-

- "(1) There shall be a Public Service Commission for Barbados which shall consist of a Chairman and not less than three nor more than five other members, who shall be appointed by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.*
- (2) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of either House or a public officer.*
- (3) Subject to the provisions of subsection (4), the office of a member of the Public Service Commission shall become vacant -*

  - (a) at the expiration of three years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;*

*(b) if he becomes a member of either House or a public officer."*

The fact that members of the Commission are appointed for a fixed period is designed to protect them from any political pressure in the exercise of their duty. Their salary, like that of the judges is charged on the Consolidated Fund.

There are certain limits to the power of the Public Service Commission. As we have already noted, the Commission does not have the final choice as to whom the Governor General appoints to her personal staff but must send her a list from which she may choose. Permanent Secretaries, heads and deputy heads of Government departments can only be appointed with the consent of the Prime Minister and the Prime Minister has the power to transfer permanent secretaries from one Ministry to another. The Prime Minister also consents to the appointment of ambassadors, High Commissioners and other principal foreign service representatives.

There are separate commissions which deal with the appointment of members of the Police Force and legal officers.

No member of the Public Service Commission can within a year of being a member of the Commission be appointed to any post, the appointment to which is made by the Governor General on the advice of the Public Service Commission.

### **The Police Service Commission**

The Police Service Commission is established by Section 96 of the Constitution. It is similar to the Public Service Commission, but deals with the appointment, promotion and discipline of members of the police force.

**Its members have the same protection as members of the Public Service Commission.**

### **The Teaching Service Commission**

Section 89A of the Constitution was added at the time of the Constitutional Amendments in 1974. It makes provision for a Teaching Service Commission to deal with the appointment, promotion and discipline of members of the teaching profession, but up to the present time, this Section of the Act has not been brought into force. Teachers' appointments, promotions and discipline are dealt with by the Public Service Commission.

### **The Judicial and Legal Service Commission**

Magistrates and other members of the Public Service (other than the Director of Public Prosecutions) who are required to have a legal qualification are appointed by the Governor General on the advice of the Judicial and Legal Service Commission. This is an independent body set up under Section 89 of the Constitution. This body also disciplines such officers.

It consists of the Chief Justice as chairman, the chairman of the Public Service Commission or another member of the Commission nominated to represent him and three other members referred to as "appointed members". These members of the Commission are appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

Members must be or have been judges of Commonwealth courts which have unlimited civil and criminal jurisdiction or judges of a Court which has jurisdiction in appeals from such Courts. If, however, no such person who is

suitable is available, the Governor General may appoint an attorney-at-law who has at least 10 years experience but is no longer in practice.

No member of the Judicial and Legal Service Commission can be appointed to a post, the appointment to which is made on the recommendation of, or in accordance with, the advice of the Judicial and Legal Service Commission until one year after he was last a member of the Commission.

Members of the Commissions can only be removed from office through inability to function or for misbehaviour. Before this can be done a tribunal must be set up by the Governor General and the tribunal must report that the member ought to be removed.

The tribunal will only be set up if the Prime Minister advises the Governor General that the question of removing the member ought to be investigated. The Governor General then sets up a Committee comprising a chairman and at least two other members on the advice of the Chief Justice from among judges or former judges of a Commonwealth country, or an attorney-at-law of Barbados who was practising for at least 10 years. After the tribunal has met, it makes its recommendations to the Governor General.

During the period that the matter is being considered by the tribunal, the Governor General may suspend the member.

### **The Director of Public Prosecutions**

An important feature of our Constitution is that it provides for a system of prosecution free from political bias or interference.

The Director of Public Prosecutions is a public officer responsible for controlling criminal prosecutions. Acting in his own discretion he decides

whether or not criminal action should be taken against a person or whether such action, if commenced should be discontinued.

The power of the Director of Public Prosecutions is restricted only in the few areas mentioned earlier, in which he has to carry out the instructions of the Attorney General.

Some statutes specifically provide that the consent of the Director of Public Prosecutions is necessary before prosecution for an offence created by that particular statute may be commenced. One such offence is the crime of incest.

To be appointed to the post of Director of Public Prosecutions, one must have the qualification required for appointment as a judge, that is, at least ten years experience as an attorney-at-law.

The Director of Public Prosecutions is appointed by the Governor General acting on the recommendation of the Judicial and Legal Service Commission:

Because of the importance of his position, the post of the Director of Public Prosecutions is protected in the same manner as that of Judges and the provisions relating to his salary are similar. Like them, his salary cannot be reduced while he holds the office.

The Director of Public Prosecutions can only be removed from office for inability to function or misconduct. Before he can be removed, a tribunal must be appointed by the Governor General if the Judicial and Legal Service Commission advises the Governor General that the question of removing him ought to be investigated.

This tribunal is established by Section 105 of the Constitution for the purpose of investigating the removal of persons whose offices are entrenched in the Constitution.

### **The Auditor General**

Section 113 of the Constitution makes provision for the appointment of the Auditor General. He is appointed by the Governor General acting on the recommendation of the Public Service Commission after it has consulted with the Prime Minister.

The Auditor General is responsible for the auditing of the accounts of all government departments at least once per year. Other laws may make provision for the Auditor General to audit the accounts of other public authorities or bodies which administer public funds.

The Auditor General can only be removed from office through inability to function or misconduct. Before he can be removed, a tribunal established under Section 105 of the Constitution has to be set up by the Governor General, if the Prime Minister or the Public Service Commission advises the Governor General that the question of removing him ought to be investigated.

## **The Ombudsman**

All officers who play an important role in the administration of the Government are not provided for in the Constitution. One such officer is the Ombudsman.

At the time of Independence, Barbados did not have an Ombudsman. The Act creating the post of Ombudsman and setting out his functions was passed in 1980 and came into force in 1981.

The main function of the Ombudsman is to investigate and report upon any allegations of improper, unreasonable or inadequate conduct on the part of government officials. In carrying out his duties, he acts in his own independent judgment.

The Ombudsman cannot be a member of either House of Parliament, nor can he engage in any other occupation. He is appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. Before he is appointed, however, the proposal for his appointment must be submitted to Parliament for approval.

Any complaints made to the Ombudsman must be in writing. Normally, the Ombudsman is not empowered to investigate any case where the person complaining has other legal means of redress.

The Ombudsman has power to request any Minister or officer of a government department or any other person to supply information which he considers necessary, and this must be supplied unless the Attorney General states that such information might

- (a) prejudice the security, defence or international relations of Barbados or the investigation or detection of offences; or

(b) involve the disclosure of cabinet discussions.

After investigating a matter the Ombudsman must report the results of his investigation to the person who made the complaint and where he finds that any injustice has been done, he recommends what remedy or compensation there ought to be. Each year, the Ombudsman submits a report to Parliament.

Although the office of Ombudsman is not entrenched in the Constitution, the Ombudsman Act provides that the Ombudsman can only be removed from office in accordance with section 105 of the Constitution. This means that he can be removed from office only for inability to discharge the functions of his office or for misbehaviour.

Before this is done, the Prime Minister acting after consulting with the Leader of the Opposition must advise the Governor General that the question of removing him from office ought to be investigated.

The Governor General would then set up a tribunal as provided by section 105 of the Constitution to advise her whether or not the Ombudsman should be removed.

## CHAPTER 5

### THE FUNDAMENTAL RIGHTS AND FREEDOMS

Most Commonwealth constitutions contain provisions guaranteeing the basic human rights of the citizen. Barbados is no exception. The human rights provisions in the Barbados Constitution are basically the same as outlined in the United Nations Declaration of Human Rights. The human rights provisions are found in Chapter three of the Constitution.

#### Protection of the Right to Life

Section 12 reads as follows:

*"(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Barbados of which he has been convicted."*

This section sets out the circumstances under which a person may be lawfully deprived of his life, that is, if he is convicted by a court to be executed. In Barbados, the only crimes for which a person can be executed are murder and high treason, but the constitution does not prevent Parliament from making other offences capital offences.

The common law position is enshrined in Section 12(2) of the constitution which states:

*"(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -*

- (a) for the defence of any person from violence or for the defence of property;*
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- (c) in order lawfully to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war. "*

### **Protection of the Right to Personal Liberty**

It is one of the fundamental rights of the citizen not to be imprisoned or detained except under lawful authority.

Section 13 of the Constitution safeguards the right of the individual while making provision for a person's liberty to be curtailed under certain circumstances.

Some of the circumstances under which a person may be deprived of his liability are as follows:

- (a) if he is charges with a criminal offence and he is unfit to plead to the charge**

- (b) if he is sentenced to imprisonment by a competent court or if the police reasonably suspects that he has committed a crime or is about to commit a crime
- (c) in order to prevent the spread of infectious or contagious diseases
- (d) if he is of unsound mind, addicted to drugs or alcohol or is a vagrant
- (f) If he has entered the country unlawfully or if he is being expelled from the country.

Any person who is arrested or detained must be informed of the reason for his detention and must be permitted at his own expense to retain an attorney-at-law of his choice.

A person who is arrested or detained either for the purpose of bringing him before the court or on suspicion that he has committed a crime must be brought before the court as soon as it is practicable. If he is not tried within a reasonable time he must be released without condition or on such conditions as may be necessary to ensure his attendance for trial.

### **Protection from Slavery and Forced Labour**

Section 14 makes it unlawful for the practice of slavery or other forms of forced labour in Barbados, except :-

- (a) any labour required as a result of the sentence or order of a court;

- (b) in the case of a person lawfully detained such form of forced labour that may be necessary in the interest of hygiene or for the maintenance of the place where detained.
- (c) any labour required by a member of a disciplined force or
- (d) labour required during a period that Barbados is at war or there is some disaster such as hurricane, earthquake, flood or fire in which case, the citizen may be forced to render such service as may be necessary to deal with the situation.

### **Protection from Inhuman Treatment**

Section 15(1) states as follows:

*"No person shall be subjected to torture or to inhuman or degrading punishment or other treatment."*

In the Trinidad case, *Abbott vs The Attorney General of Trinidad and Tobago*, the Court held that delay in carrying out the death penalty is not cruel and inhuman punishment.

However, in another Trinidadian case, *Re Andy Thomas and Kirkland Paul* for redress in pursuance of Section 14 of the Constitution of Trinidad and Tobago which is similar to our Section 15, the Courts held that the Plaintiffs' rights were violated. The plaintiffs were condemned to death and awaited execution for some ten years. They claimed that their constitutional rights were being infringed when warrants for their execution were read to them at 4 p.m. on the afternoon before they were to be executed. The Court held that considering all the circumstances surrounding their detention and the attempted execution, their treatment was inhuman and their constitutional rights were infringed.

## **Protection From Deprivation of Property**

Section 16 of the Constitution protects the right of persons to own private property and to deal with it as they think fit. The Constitution goes on to state, however, that this provision does not prevent property from being taken from the citizen in any of the following circumstances:

- (a) to satisfy any tax or other lawful money imposed by Government;
- (b) fines or forfeiture for any breach of law;
- (c) if the property is leased, mortgaged or otherwise dealt with in a similar manner;
- (d) in cases where the property is seized to satisfy a judgment or order of the court;
- (e) if the property is dangerous to the health of human beings, animals or plants;
- (f) where the property is in the hands of another who is protected by long possession.

There is also provision for the taking of possession of enemy property and for the purpose of administering the property of a deceased person, one of unsound mind, a minor, or a bankrupt.

Section 16(4) makes provision for the government to take away the property of the citizen to be used for public purposes but it must offer the citizen adequate compensation.

If a citizen's property is seized by Government and the citizen is not satisfied with Government's award, he may apply to the High Court to have it revised. The Landlord and Tenant Registration of Tenancies Act provided for a person to lose his rents if he did not register the rented property. The High Court held that provision to be unconstitutional, null and void since it had the effect of confiscating the property of the owner.

### **Protection from Arbitrary Search or Entry**

**Section 17(1) states:**

*"Except with his own consent no person shall be subjected to the search of his person or his property or the entry by others on his premises "*

The Constitution gives the citizen the right to enjoy his property without any unlawful search or seizure. This provision does not apply, however, to prevent search and entry under any law passed in the interest of defence, public safety, public order, morality, town and country planning or the use of minerals or other property for the public benefit.

It is also lawful for public officials to enter property while performing their duty in levying or collecting any taxes or other government funds, provided there is a law permitting such entry. Officials may also enter property to carry out an order of the court or for the purpose of preventing or detecting crime.

### **Provisions to Secure Protection of Law**

This provision gives the right to every person who is charged with a criminal offence to be given a fair hearing in the ordinary courts of law.

The Constitution provides that every person charged with a crime shall be presumed innocent until he is found guilty; that means that it is the duty of the Crown to prove the guilt of the accused rather than the accused having to prove his innocence.

The Constitution also makes it mandatory for an accused person to be informed as soon as is reasonably practicable of the nature of any charge against him. He must also be given time to prepare his defence and he has the right to have an attorney of his choice represent him.

At the trial, he has a right to examine any witnesses called by the Prosecution and to call witnesses in his own defence. This provision to secure the protection of law also makes it illegal for a person to be convicted for an act which was not a crime at the time the act was committed. It prevents a person from being tried (except ordered by an appeal court) for an offence for which he has been acquitted. Similarly, a person cannot be put on trial for an offence for which he has been pardoned by the Governor General. Generally, trials are to be held in public.

## **Protection of Freedom of Conscience**

Section 19(1) states:

*"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion or belief, and freedom, either alone or in the community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance."*

This is a freedom that is very cherished. Under the Constitution, every citizen is free to believe whatever he wishes. As far as religion is concerned, the citizen is free to believe in any god or gods he chooses or in no god if he so desires.

Not only can the citizen hold whatever belief he wants, but he is also free to express his opinion without fear of being punished by the state.

Every religious organisation is entitled to set up churches and freely spread its religion.

Section 19(3) of the Constitution makes it unlawful for a person attending an educational institution to be forced to take part in religious education. By Section 19(5), it is unlawful to force a person to take an oath contrary to his religion.

This freedom guaranteed under the Constitution may be curtailed if this is reasonably necessary in the interest of defence, public safety, public morality, public order or public health. It is also possible to curtail this freedom in order to protect the rights and freedoms of others including the right to practice any religion without the intervention of members of other religions.

### **Protection of Freedom of Expression**

Section 20(1) of the Constitution provides:

*"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference and freedom from interference with his correspondence or other means of communication."*

This right is similar to the protection of freedom of conscience. This section protects the right of the citizen to write or speak freely provided he breaks no legal rules.

In exercising his constitutional right, the citizen must ensure that he does not trample on the rights of others; thus there are certain restrictions on the exercise of the right of freedom of expression.

One of the major restrictions is that if one citizen defames another, the injured party can seek redress in the law courts. There are two forms of defamation; libel which is defamation in permanent form, generally that is, in writing; and slander which is in transient form, that is, speech.

The Constitution also places restrictions on persons who have confidential government information. Public officers and members of the disciplined forces may also be restricted in the information which they can disclose to the public.

## **Protection of Freedom of Assembly and Association**

According to Section 21(1) of the Constitution

*"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests."*

The right of every person to meet and associate with whomsoever he wishes is guaranteed under the Constitution.

No authority of the state can, therefore, prevent a person from joining a trade union, political party or other group of his choice.

Section 21(2) provides, however, that it is not a contravention of Section 21 to restrict the freedom of persons if it is reasonably necessary in the interest of defence, public safety, public morality or public health or if it is reasonably necessary for the protection of the rights and freedoms of others.

It is also lawful to restrict the freedom of public officers and members of the disciplined forces.

### **Protection of Freedom of Movement**

Barbadians are permitted to move freely throughout Barbados and to reside in any part of the country. Normally, they cannot be prevented from leaving the country, neither can they be forbidden entry to or be expelled from Barbados.

This freedom of movement is guaranteed by Section 22 of the Constitution. There are, however, provisions to restrict this freedom of movement under certain circumstances. In the first place, the citizen's movements can be restricted if he is lawfully detained. For example, if he is held by the police on a charge, if he is imprisoned or is awaiting trial and his detention is necessary to ensure that he appears before a court for his trial.

Section 22(3) of the Constitution provides that any action taken under the authority of a law which is passed restricting freedom of movement for the purposes set out in that section is not inconsistent with or in contravention of the provisions of the Constitution. The section sets out the circumstances under which the restrictions may be imposed. They are as follows:-

- (a) restrictions of movement or residence within Barbados in the interest of defence, public safety or public order;
- (b) restrictions on movement or residence within Barbados or the right to leave Barbados in the interest of defence, public safety, public order, public morality or public health;
- (c) there may be restrictions on the movement or residence of any person who is not a citizen of Barbados. Any such person may be prevented from entering or be expelled from the country;
- (d) a person may be restricted in the acquisition or use of property, e.g. the government has power under the Constitution to acquire property for public use. In such a case, the citizen's right to reside or carry on business in a particular area is forbidden; he must however be compensated for any property acquired by Government;
- (e) a person may be prevented from leaving the country if he has been found guilty of a crime or to ensure his attendance at court for trial for a crime.
- (f) public officers or members of the disciplined forces may be restricted in their movement within the country or may be prevented from leaving;
- (g) persons may be removed from Barbados to another country to be tried for a crime which was committed under the law of that country. Persons may also be removed from Barbados for the purpose of being imprisoned in another country for a crime committed under the law of Barbados for which he has been convicted;

- (h) detention for treatment in a hospital or other institution if there is a law which deals with the detention of persons suffering from some defect or disease of the mind.
- (i) the right to leave Barbados may also be restricted if it is considered reasonable to do so to ensure that a person fulfil any obligation imposed on him by law.

Where a person's freedom of movement is restricted, in the interest of defence, public safety or public order, the Government must as soon as is practicable and in any case not more than five days after the restriction begins, give him a statement showing the grounds on which his movement has been restricted.

Within 14 days after the beginning of the restriction a notice must be published in the Official Gazette stating the reasons for the restriction as well as the law under which the restriction has been authorised. A restricted person may request that his case be reviewed and within a month of his making the request, a tribunal set up by the Chief Justice and presided over by an attorney-at-law must be established to deal with the matter.

The restricted person has the right to be represented by an attorney-at-law of his choice.

### **Protection from Discrimination on the Grounds of Race, etc.**

Except as provided by the Constitution itself, no law can be passed which discriminates against any section of the community. This is provided for by Section 23(1) of the Constitution.

**Section 23(2) explains discriminatory to mean**

*"affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description"*

It is clear that there are times when laws are discriminatory, for example persons who earn highest salaries pay the highest rate of income tax, or government assistance is granted to persons who are in greater need than others. This is not the type of discrimination against which the Constitution provides. In any case, this type of discrimination is not based on race, colour or creed or any of the other descriptions set out in Section 23(2).

According to Section 23(3), the provisions of subsection 1 do not apply to laws relating to the following:-

- (a) persons who are not citizens of Barbados;
- (b) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (c) any action taken during times of public emergency;
- (d) the imposition of taxes or appropriation of revenue by the government or by any local government authority for local purposes.

It is to be expected that there are laws which will apply to persons who are not citizens of Barbados but would not apply to Barbadian citizens, for example:

- (i) no Barbadian can be prevented entry into the country, but non-citizens may be;
- (ii) citizens have the right to work without any restrictions while non-citizens who do not have the status of immigrant or permanent resident require work permits.

One reason for the inclusion of the Section dealing with marriage, divorce etc. is to permit people of different religions, for example, to conduct their rites and ceremonies lawfully according to their own practices.

It is specifically stated that these provisions do not refer to the "institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by the constitution or other law". This, no doubt, refers to the power granted to the Director of Public Prosecutions to institute or discontinue legal proceedings.

While it is not clear why the Constitution would permit the Director of Public Prosecutions to institute or discontinue legal proceedings on the grounds of race, colour etc. one reason for this provision could be that the framers of the Constitution wanted to prevent any challenge of the actions of the Director of Public Prosecutions that his actions were motivated by considerations of colour, race, creed, religion or place of origin.

### **Derogations from Rights under Emergency Powers**

While the fundamental rights and freedoms set out in Chapter III of the Constitution are of great importance, it should be noted that Government can in

many instances find ways of preserving much of the power it possessed before Independence.

Section II of the Constitution states that the provisions of Chapter III (the section on fundamental rights and freedoms) are subject to such limitations designed to ensure that their enjoyment does not prejudice the rights and freedoms of others or the PUBLIC INTEREST. It is always difficult to define with any certainty what is in the public interest. Government, therefore, decides what is in the public interest and any citizen who does not agree with the decision may challenge it in the law courts. There are also, some laws which restrict certain freedoms of the individual.

The Constitution protects the citizen from being deprived of his property, but he has no redress if the property is compulsorily acquired by Government and he receives compensation. Similarly, there are restrictions to the protection against the rights to arbitrary search and arrest.

Section 26(1) provides that any action which is taken by virtue of powers contained in pre-independence laws cannot be challenged on the grounds that it violates the fundamental rights and freedoms of the citizen.

### **Enforcement of Protective Provisions**

The Constitution makes special provision for the enforcement of the rights and freedoms which are set out in Chapter III. Anyone who considers that his rights guaranteed under the Constitution are being infringed or are likely to be infringed may apply to the High Court for redress and the court may make such orders or give such directions as it thinks fit.

The Court, however, will not exercise its powers in this regard if there is some other legal remedy open to the person concerned.

If in a case before an inferior court any question arises as to the contravention of any of the provisions dealing with fundamental rights and freedoms, that court must refer the question to the High Court for a ruling.

Parliament may confer on the High Court such power as it considers necessary or desirable to enable it to exercise its jurisdiction in these matters. Parliament may also regulate the procedure and practice of the High Court and Court of Appeal in dealing with the fundamental rights and freedoms including the making of provision for the time within which an application may be made to the Court for relief.

### **Declaration of a State of Emergency**

Section 25 of the Constitution defines a period of emergency as any period during which:

- "(a) Barbados is engaged in any war; or*
- (b) there is in force a proclamation by the Governor General declaring that a state of public emergency exists; or*
- (c) there is in force a resolution of each House supported by the votes of not less than two-thirds of all the members of that House declaring that democratic institutions in Barbados are threatened by subversion."*

In order for such a proclamation to be valid, it must state that the Governor General is satisfied that a state of emergency has arisen because a state of war is close at hand, or there is an earthquake, hurricane, fire, flood, outbreak of pestilence, infectious disease or other calamity; or that some person has taken

such action as to endanger public safety or deprive the community, or a substantial part of it, of essential services.

A proclamation by the Governor General remains in force for one month if not revoked earlier or for up to six months if a resolution in support of it is passed by a majority of votes of all the members of the House of Assembly. The period may be extended from time to time for further periods not exceeding six months by a similar resolution passed by a majority of the members of the House of Assembly.

The Emergency Powers Act states that immediately after making a Proclamation of Emergency, the Governor General must inform both Houses of Parliament. In case Parliament is prorogued, or either House is adjourned for more than five days, both Houses must be summoned to meet within five days of the Proclamation.

During the period of emergency, the Cabinet may make any orders which it considers in the public interest. These orders may provide for:

- (a) supply of food, water, fuel, light and other necessities;
- (b) the maintenance of transportation by land, air or sea;
- (c) the taking of possession of any property or undertaking;
- (d) the entering and search of any premises.

No order can be made to authorize any form of compulsory military service.

The Act also provides for the Cabinet to make orders dealing with compensation to any person affected by any order during the state of emergency.

**Any orders made by the Cabinet take effect for seven days only unless this period is extended by Parliament.**

### **Protection of Persons Detained under Emergency Laws**

**The Constitution recognizes that a period of emergency may become necessary and the freedoms protected by it may have to be curtailed, but it makes provision for the emergency powers to be challenged by any person affected by them.**

**Any law which is passed under emergency powers must be in strict conformity with the Constitution and any action taken by virtue of such a law must be in strict accordance with the particular law.**

**Section 13 of the Constitution deals with the question of unlawful detention. Section 13(5) specifically provides that any law passed during a period of emergency providing for any reasonable measures for dealing with the situation that exists during that period of public emergency is not to be held to be in contravention of the protection of freedom from unlawful detention as set out in the Constitution.**

**Section 13(6) sets out the procedure to be followed in dealing with persons detained during a period of emergency:**

- (i) within five days of his detention the person must be furnished with a statement in writing in a language that he understands, of the grounds upon which he is detained;**
- (ii) within fourteen days of his detention it must be published in the Gazette that he has been detained and provisions of the law under which the detention is authorised must also be published;**

- (iii) the detainee may from time to time request that his case be reviewed. He cannot however, make a subsequent request until three months after a previous one has been made;
- (iv) when a request is made for the detainee's case to be reviewed, within one month from making of the request it must be reviewed by an independent and impartial tribunal presided over by an attorney-at-law entitled to practice in Barbados. The Chairman is appointed by the Chief Justice;
- (v) the detainee must be afforded the opportunity to instruct his own attorney-at-law who is permitted to represent him before the tribunal;
- (vi) when the tribunal has reviewed the case of a detained person it may make recommendations concerning his detention to the authority which ordered the detention but unless some specific law so provides the authority is not bound to act according to the recommendations of the tribunal.

Thirty days after the commencement of the detention of a person and thereafter at intervals of not more than 30 days the Prime Minister or a minister authorised by him must report to each House of Parliament the number of persons detained and the number of occasions on which the authority had not acted on the recommendation of the tribunal set up under the Act.

In the Trinidad and Tobago case of *Kelshall v Pitt et al*, a detention order was served on Kelshall before the Proclamation was made Public. The Emergency Powers Ordinance made no provision for the establishment of a tribunal as provided by the Constitution and when Mr. Pitt requested that his case be reviewed before a Tribunal there was no Tribunal appointed. The court held that he was unlawfully detained. Among the reasons given for the illegality were:-

- (i) at the time of his arrest the proclamation of the period of emergency had not been made public;
- (ii) his constitutional right to review by an independent tribunal was infringed;
- (iii) the regulations under which he was detained were supposed to be made under the Emergency and since there was not yet such a period of emergency when they were made, the regulations were invalid.

## **CHAPTER 6**

### **FINANCE**

#### **Consolidated Fund**

Section 107 of the Constitution makes provision for all Government revenue collected, except a particular Act provides otherwise, to be paid into a central fund known as the Consolidated Fund. An example of public funds which are not paid into the Consolidated Fund is the Transport Levy.

Each year the Minister of Finance must have prepared annual estimates of revenue and expenditure showing the amount of money necessary for the public services during the succeeding financial year, which begins on 1st April of each year.

No money can be paid from the Consolidated Fund without the approval of Parliament, thus the Minister must take to Parliament before the beginning of the financial year "The Appropriation Bill" which sets out the amount of money to be voted for the various government departments. A sum of money voted for one purpose cannot be spent for another purpose. If the funds voted for a department are exhausted before the end of the financial year, the Minister of Finance may introduce in the House of Assembly a "Supplementary Appropriation Bill" for further funds.

It will be recalled that the Constitution makes special provision for the payment of the salary of some public officers. These are the Governor General, the Judges, the Auditor General, the Director of Public Prosecutions, and the 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 Consolidated Fund.

**This expenditure which is known as "Statutory expenditure" is not voted by Parliament annually but is paid directly from the Consolidated Fund on the authority of the provision of the Constitution or relevant Act of Parliament.**

**No money can be paid from the Consolidated Fund except the Minister of Finance or someone authorized by him in writing, signs a warrant for payment.**

### **Public Debt**

**By Section 111 of the Constitution, the public debt which includes the interest on such debt as well as the costs and charges and expenses incidental to the management of that debt are all charged on the Consolidated Fund.**

### **Audit of Public Accounts**

**As we have already seen, it is the Auditor General who has the responsibility for the audit of public accounts.**

**The Financial Administration and Audit Act sets out the duties and powers of the Auditor General. It is his duty to ascertain that accounts are well kept, are punctually and properly posted and that there are effective checks against irregularity and fraud.**

**He is also to be satisfied that all laws and other regulations dealing with finance are strictly observed. In case there are any irregularities, the Auditor General is to bring them to the attention of the accounting officer involved and if the matter is serious, to the attention of the Director of Finance and Planning. When the Auditor General makes such a report, the Director of Finance and Planning may surcharge the accounting officer, i.e. make him pay the money that is missing if he is satisfied that the officer failed to collect money due to the**

Government or was responsible for any improper payment or overpayment of public money or any such money which is not duly vouched for.

In order that he can carry out his functions efficiently, the Constitution and the Financial Administration and Audit Act provide that the Auditor General and his staff are entitled to have access to all books, records and reports relating to government accounts. He can call on any officer for explanations and information in order to enable him to carry out his duties. He also has power to summon and examine on oath any witness whom he considers necessary in respect of receipt or expenditure of government funds.

The Auditor General must submit his reports to the Speaker of the House of Assembly. He is not subject to the direction or control of any other person while he is carrying out his functions prescribed under the Constitution.

If the House of Assembly passes a Resolution directing the Auditor General to audit the accounts of a statutory body, he must do so and make a report to the appropriate Minister to be presented to the House of Assembly. If the Minister fails to present the accounts to the House of Assembly within a reasonable time, the Auditor General can submit them himself to the House of Assembly.

The Auditor General may authorize an accountant to carry out the audit of the accounts of any statutory body which he is required to examine. The accountant must then report to the Auditor General.

The accounts of the Auditor General are audited by the Minister of Finance.

## **CHAPTER 7**

### **CONCLUSION**

Although the Constitution is the supreme law, it does not cover every aspect of the country's activities. It is left to the government of the day to manage the economic and general affairs of the country.

Certain fundamental rights are set out in the Constitution. Some believe that other rights, for example, the right to work, should be included. It is quite possible, however, for a government, in spite of these declarations, to find means of violating those rights which the Constitution seeks to protect. Nevertheless, the human rights provisions serve as an ideal which we should all strive to reach.

By setting out these guaranteed rights boldly in the Constitution, the country shows the world that it respects the individual rights of the citizen and maintains a free, democratic society. The citizen is aware of what the government claims to stand for, and can easily see the areas in which his rights appear to be violated. He is also confident that he can approach the law courts for redress.

It must be remembered, however, that the Constitution is only a document; it is the persons in control of the affairs of the country who have the opportunity and the power to ensure that it works.

In times of emergency, the Government is given wide-ranging powers which allow it to violate every right guaranteed by the Constitution. Citizens, therefore, must be vigilant to see that the political directorate obeys both the spirit and the letter of the law of the Constitution. They must be prepared to speak out and act whenever their individual rights and the rights of any section of the society are being infringed.

**Before we can defend our rights, we must first know them; thus the Constitution should not be regarded as a document for lawyers and scholars only; all citizens should be aware of the most important provisions of the supreme law of the land in which they live.**