



Report of the Law Reform Commission

June 2019 to December 2022

BARBADOS

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LETTER OF TRANSMITTAL

24 February 2023

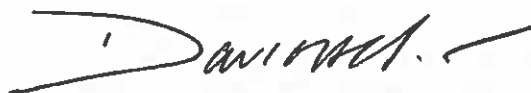
To: Hon. Dale D. Marshall S.C., M.P.
Attorney-General and Minister of Legal Affairs
Office of the Attorney-General
Jones Building
Webster's Business Park
Willey
St. Michael

Dear Attorney-General

**Report of the Law Reform Commission for the period
June 2019 to December 2022**

In accordance with Section 34(1) of the *Law Revision and Law Reform Act 2019-6*, I submit the Report of the Law Reform Commission for the period June 2019 to December 2022 for your attention and for tabling in Parliament.

Yours faithfully



SIR DAVID A.C. SIMMONS K.A., B.C.H.
Chairman of the Law Reform Commission

**REPORT OF THE LAW REFORM COMMISSION
(Consolidated for Years 2019-2022)**

CHAPTER 1

INTRODUCTION

1.1. Prior to 2019, Barbados had no formal entity specially established by law and dedicated to the reform of the law on a systematic basis. There were, however, informal committees established by some Attorneys-General, commencing in 1976, which undertook specific law reform projects from time to time.

1.2. In the period 1976 to 1981, during the tenure of Attorney-General and Minister of Foreign Affairs, Mr. Henry Forde Q.C. (as he then was), a Law Reform Section was established in the Ministry of the Attorney-General. It was headed by a Deputy Chief Parliamentary Counsel and was staffed by other Parliamentary Counsel and some experts who rendered assistance on specific projects. The Law Reform Section was quite prolific in its production of legislation. Among the reformist statutes enacted were the following:

- Companies Act, Cap.308
- Property Act, Cap.236
- Family Law Act, Cap.214
- Status of Children Reform Act, Cap.220
- Tenancies Freehold Purchase Act, Cap.239B
- Administrative Justice Act, Cap.109B
- Court Process Act, Cap.111A
- Community Legal Services Act, Cap.112A

1.3. During the period 1994 to 2001 when Mr. David Simmons Q.C. (as he then was), served as Attorney-General and Minister of Home Affairs, a Law Reform Committee was created by administrative action. It was led by Mrs. Betty Bourne-Hollands, Consultant to the Chief Parliamentary Counsel, Mr. Sherman Moore Q.C. (as he then was). Upon Mrs. Bourne-Hollands' retirement, Mr. George Griffith replaced her as Consultant to the Chief Parliamentary Counsel. Some of the legislation generated by this Committee were:

- Penal System Reform Act, Cap.139
- Magistrates' Courts Act, Cap.116A
- Bail Act, Cap.122A
- Defamation Act, Cap.199
- Criminal Records (Rehabilitation of Offenders) Act, Cap.127A
- Insurance Act, Cap.310
- Limitation of Actions Act, Cap.231

1.4. The informal approach that characterised previous law reform exercises came to an end early in 2019. On 31 March 2019, the *Law Revision and Law Reform Act 2019-6* (the Act) was proclaimed. Part III of this Act is concerned with law reform. A Law Reform Commission (the Commission) is established by section 29(1) "for the purpose of promoting the reform of the law."

REPORT PERIOD

1.5. The Commission is required, by section 34(1) of the Act, in respect of every calendar year, to submit a Report of its proceedings relating to law reform to the Attorney-General. After their appointments in June 2019, Commissioners spent the second half of that year familiarising themselves with the requirements of their office and planning for future activities. Unfortunately, however, by March 2020, Barbadians began to experience the reality of the COVID-19 pandemic and the attendant personal fears, uncertainties, as well as the overall societal disruption as they tried to adjust to life under a public health emergency declared on 28 March 2020.

1.6. These conditions continued into 2021 and 2022. The Commission was unable to function optimally. Nevertheless, it is the Commission's considered opinion that, having regard to all the unusual circumstances, it still achieved a very satisfactory level of output. This Report is consolidated and covers the period from June 2019 to December 2022.

FUNCTIONS AND POWERS OF THE COMMISSION

1.7. Section 31 of the Act provides as follows:

"31.(1) The Law Reform Commission shall systematically keep the law under review for the purpose of developing, modernizing and simplifying the law.

(2) The Law Reform Commission shall have the following powers:

- (a) to receive and consider any suggestions or formal proposals for the reform of the law which may be made to the Commission;*
- (b) to prepare and submit to the Attorney-General from time to time, programmes for the examination of different branches of the law with a view to reform, including recommendations as to whether such examination should be carried out by the Commission or some other body;*
- (c) to undertake pursuant to any recommendations approved by the Attorney-General, the examination of particular branches of the law and the formulation of proposals for reform;*
- (d) to provide at the instance of the Attorney-General, advice and information to Ministries and Departments of the Government and other authorities which are concerned with proposals for the amendment or reform of any branch of law;*

(e) to obtain such information as to the laws and legal systems of other countries as appears to the Commission likely to facilitate the performance of any of its functions.

(3) In the exercise of the functions prescribed under this Act, the Law Reform Commissioners shall be subject to the general direction of the Attorney-General."

1.8. In performing any of its functions under section 31, the Commission is empowered to –

"(a) consult any person who has specialised knowledge in any branch of the law or technical expertise in any particular field; or

(b) appoint committees to provide advice and information and to consider and report on any matter referred to the Commission." – see s.32.(2).

THE COMMISSIONERS

1.9. At its meeting of 23 May 2019, the Cabinet agreed the appointment of the following persons as Commissioners:

Sir David Simmons K.A., B.C.H.	– Chairman
Sir Elliott Mottley KCMG, Q.C.	– Member
Sir Henry Forde K.A., Q.C.	– Member
Hon. Jefferson Cumberbatch, Justice of Appeal	– Member
Mr. Alrick Scott Q.C.	– Member
Mr. Andrew Pilgrim Q.C.	– Member
Ms. Shena-Ann Ince, Attorney-at-Law	– Member

The Commissioners were appointed with effect from 11 June 2019.

STAFF OF THE COMMISSION

1.10. Sections 30.(1) and (2) of the Act state that the Commission must be provided with such staff, appointed in accordance with the *Public Service Act, Cap.29*, as is required for the purpose of carrying out its functions. However, owing to the need for prudent management of Government's finances in 2019, the Cabinet approved the creation of the following posts and their grades as shown in brackets:

- Administrative Director/Administrative Manager, (S7)
- Crown Counsel, (Z3-1)
- Legal Secretary, (Z16-11).

INITIAL ANNUAL BUDGET

1.11. An initial annual budget of \$250,000 was provided to facilitate the operations of the Commission.

INAUGURATION OF THE COMMISSION

1.12. On Friday, 1 November 2019 the Commission was formally launched in a ceremony at the Radisson Aquatica Resort Barbados, by the Attorney-General, Hon. Dale Marshall Q.C., M.P.

CHAPTER 2 - 2019

2.1. The Commission held its first meeting on 2 July 2019 in the Conference Room of the Office of the Attorney-General. At this meeting, the Commission, *inter alia*, formulated a work strategy. The Commission's approach to law reform involves four processes:

- (a) determining the suitability of a particular matter for reform;
- (b) having the matter carefully and thoroughly researched, followed by the preparation of a Consultation Paper;
- (c) discussing the research fully; and
- (d) presenting proposals for reform in a Policy Paper.

2.2. The Commission's Work Programme is determined by a number of considerations. Whether a project is accepted by the Commission or initiated by it depends upon the Commission's assessment of various issues. The most significant of these are the importance of the issues, the availability of resources in terms both of funding and expertise, and the suitability of the project as a law reform exercise.

AREAS FOR REFORM

2.3. At its first meeting, the Commission identified six (6) areas for possible reform, pending further determination and identification of suitable subjects for reform, namely:

- The Criminal Justice System;
- The Civil Justice System;
- The Legal Profession legislation;
- Company Law;
- Family Law;
- Road Traffic legislation.

2.4. However, since the Commission was mandated to receive and consider suggestions or proposals for reform of the law, it was agreed that when the Commission was fully functional, it would run advertisements in the media inviting members of the public and organisations to submit proposals for reform. Thereafter, the Commission would be better placed to develop a Work Programme.

PUBLIC NOTICE INVITING PROPOSALS FOR REFORM

2.5. The Commission published a Notice in the *Nation* newspaper of 6 December 2019 and in the *Sunday Sun* newspaper of 8 December 2019 inviting members of the public and organisations to submit proposals for law reform projects. The Barbados Bar Association responded to say that its Law Reform and Legislation Committee was in the process of soliciting from its membership, areas for law reform.

ASSISTANCE FROM THE COMMONWEALTH SECRETARIAT AND CALRAs

2.6. The Chairman contacted the Commonwealth Secretariat and the Commonwealth Association of Law Reform Agencies (CALRAs) and informed them of the establishment of the Commission. The leadership of these entities responded enthusiastically to the news of the Commission's establishment.

2.7. The Commonwealth Secretariat sent the Commission copies of the following Model legislation:

- Model Criminal Disclosure Act and Model Prosecution Disclosure Guidelines;
- Model Law on Electronic Evidence;
- Model Law on Computer and Computer Related Crime;
- Model Evidentiary Provisions;
- Model Freedom of Information Bill;
- Model Legislature Whistleblowing Provisions.

2.8. The Commission agreed to use the various Model Laws as the basis for relevant reform projects from time to time.

2.9. CALRAs provided the Commission with a written guide to good practice in the process of law reform titled "***Changing the Law: A Practical Guide to Law Reform***". This text is especially valuable for law reformers in Small States of the Commonwealth or developing countries and newly formed law reform agencies. The Guide takes the reader in a very practical way through a typical law reform project setting out the various stages for a successful project. For example,

- careful project selection;
- thorough research;
- effective consultation;
- use of experts;
- use of contemporary technology;
- skilful writing.

2.10. The Commission wishes to record its sincere gratitude to CALRAs for its generosity and expression of willingness to assist the Commission.

MEMBERS OF STAFF

2.11. It was not until September 2019 that the Commission was able to recruit a Researcher, albeit on a temporary basis. Ms. Keitha Ellis, Attorney-at-Law, was hired pending the Judicial and Legal Services Commission's appointment of a Crown Counsel.

2.12. In the meantime, Ms. June Christian, B.Sc. (Hons), assumed her post as acting Administrative Director/Administrative Manager and Ms. Natley Mascoll was appointed to act as Legal Secretary to the Commission.

EXAMINATION OF MODEL LAWS

2.13. Between September and December 2019, various Commissioners examined some of the Model Laws provided by the Commonwealth Secretariat.

ACCOMMODATION FOR THE COMMISSION

2.14. The Commission continued to use the Conference Room of the Office of the Attorney-General for its meetings but was informed that space was to be allocated to the Commission in the new Hastings/Worthing Police Station complex.

CHAPTER 3 – 2020

3.1. From April 2020 the Commission, like all other departments of Government, was seriously affected by the impact of the COVID-19 pandemic. Its impact was persistent through succeeding years to December 2022. Owing to the advanced years of some members of the Commission, and the small number of staff, particular precautions were taken to seek to protect Commissioners and staff, especially since the Commission continued to share accommodation with staff of the Office of the Attorney-General.

3.2. Fortunately, none of the Commissioners or any member of staff was afflicted by the pandemic. However, because of the widespread impact of the pandemic throughout Barbados and in the public and private sectors, scheduling of activities was not an easy exercise as the availability of personnel on particular dates was often unpredictable. Nevertheless, the Commission was able to conduct all of its meetings from June 2020 to December 2022 via Zoom.

THE COMMISSION'S WORK PROGRAMME 2020

3.3. The Commission's Work Programme for 2020 as required by section 33 of the Act was forwarded to the Attorney-General and approved by him. The Work Programme, as developed prior to the impact of COVID-19 in Barbados, comprised the following matters which the Commission wished to examine to determine their suitability for reform.

1. *DISCLOSURE IN CRIMINAL PROCEEDINGS BILL*

The Commission proposed to commence work on this Bill during 2020 using the Model Bill drafted by the Commonwealth Secretariat as a guide.

2. *ELECTRONIC EVIDENCE BILL*

Similarly, the Commission proposed to commence work on this Bill during 2020 using the Model Bill drafted by the Commonwealth Secretariat as a guide.

3. *COMPUTER AND COMPUTER RELATED CRIME BILL*

The Commission proposed to commence work on this Bill during the year, using as models, a Bill drafted by the Commonwealth Secretariat and a Jamaican Act.

4. *AMENDMENTS TO COPYRIGHT ACT*

The Commission accepted a proposal from the Copyright Society of Composers, Authors and Publishers Inc. (COSCAP) to consider possible amendments to the Copyright Act to remedy certain deficiencies in the existing legislation. The Commission proposed to engage the services of a consultant specialising in Copyright Law to assist the Commission.

5. LEGISLATION TO CONTROL NOISE

The Commission received a proposal from COSCAP calling for the enactment of legislation to control and manage noise. During the year the Commission considered establishing a Working Group to assist with this matter.

6. AMENDMENT OF FIREARMS ACT, CAP.179

Representations were made to the Commission that the existing *Firearms Act* made no provision to exempt an offender from the imposition of a custodial sentence. In addition, the Commission was aware that certain provisions of that Act were held to be unconstitutional. The Commission agreed to have the matter of amendments to the *Firearms Act* included in its Work Programme for 2020.

7. AMENDMENT OF CRIMINAL RECORDS (REHABILITATION OF OFFENDERS) ACT, CAP.127

Representation was made to the Chairman that persons who were originally charged for murder but were convicted of manslaughter as long as 30 years ago, are not eligible to have their records expunged. The Chairman proposed that this matter should be included in the Commission's Work Programme for consideration at a future date.

8. WORKING GROUP OR CONSULTANT TO EXAMINE THE IMPLICATIONS OF ALLOWING PUBLIC OFFICERS TO SEEK ELECTION TO POLITICAL OFFICE

The Commission received a proposal in 2020 from the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), inviting the Commission to propose reform of the law in such a manner as would allow public officers to run for political office and, if unsuccessful, return to the Public Service. The proposal from CTUSAB was that the General Orders of Barbados be revised to provide for the granting of Leave of Absence to Public Officers who may wish to contest an election to political office. The Commission informed CTUSAB that it would consider the establishment of a Working Group or the appointment of a Consultant to examine and report on the implications of the proposal.

9. DRAFT MODEL BILLS SUBMITTED BY IMPACT JUSTICE/CARIBBEAN LAW INSTITUTE

On 24 February 2020, Professor Velma Newton sent to the Chairman of the Commission, draft model legislation developed under the auspices of the Caribbean Law Institute. The Commission decided to keep in view the several Bills and to determine, at a future date, which particular Bills should be included in the Commission's Work Programme for a particular year.

The draft Model Bills related to the following:

- Business Names Registration
- Climate Resilience
- Community Mediation
- Judicial Pensions
- Legal Profession
- Arbitration
- Sexual Harassment
- Major Organised Crime and Anti-Corruption Agency
- Trade Marks

DRAFT POLICY PAPER ON NEW LEGISLATION FOR DISCLOSURE IN CRIMINAL PROCEEDINGS

3.4. The Commission approved a Policy Paper on new legislation that would provide a statutory basis for disclosure in criminal proceedings.

APPOINTMENT OF CROWN COUNSEL TO THE COMMISSION

3.5. Ms. Keitha Ellis was appointed by the Judicial and Legal Services Commission to the temporary post of Crown Counsel with effect from 1 April 2020.

ACCOMMODATION

3.6. The Hastings/Worthing Police Station was officially opened by the Prime Minister, Hon. Mia Amor Mottley Q.C., M.P. on 7 February 2020. However, the Commission was not offered use of the previously intended area. Accordingly, the Commission continued to use the Conference Room of the Office of the Attorney-General from time to time.

MEETINGS WITH PERSONS WHO SOUGHT AN AUDIENCE WITH THE COMMISSION

(A) *CTUSAB*

3.7. The Commission has reported on this matter at No.8 of para.3.4.

(B) *COSCAP*

3.8. The Commission has commented on this meeting at No.4 of para.3.4.

(C) *NATIONAL ORGANISATION OF WOMEN (NOW)*

3.9. As a result of a meeting between a Sub-Committee of the Commission and representatives of NOW on 6 November 2020, the following were agreed:

- certain stakeholders needed to be identified to comment on certain proposals of NOW. These included, Barbados Association of Medical Practitioners, Barbados Christian Council, the Muslim Association, the Ministry of Health and the Pharmacy Council.

- it would be necessary to contract a Consultant to carry out research into Protection Orders and the *Firearms Act*.
- harmonisation of the legal age of consent and the age of medical consent could be undertaken by the Commission.
- the Ministry of Home Affairs was preparing a new Juvenile Justice Bill.

(D) MR. ERIC SMITH

3.10. The Commission met with Mr. Smith to discuss proposals that he made for reform of certain legislation at *(i)* to *(iv)* below.

(i) Tenancies Freehold Purchase Act

3.11. The Commission agreed that it would be appropriate to review this Act with a view to determining its successes, failures, strengths and weaknesses. However, before such review, the Commission undertook to consult with the Ministry of Housing, Lands and Rural Development and/or the relevant Faculty at the University of the West Indies (Cave Hill) to ascertain whether there exists any study on the impact of the Tenancies Freehold Purchase Act.

(ii) Official Secrets and Freedom of Information Legislation

3.12. The Commission explained that it was in possession of a draft Model Freedom of Information Bill from the Commonwealth Secretariat and would consider his proposal in light of that Bill.

(iii) Victims' Rights Legislation

3.13. The Commission pointed out that the Manifesto of the Barbados Labour Party contained a pledge to provide legislation providing for victims' rights as well as restorative justice. In due course, these matters would be included in the Commission's Work Programmes.

(iv) Public Defender Legislation

3.14. The Commission agreed to have this matter researched and studied. In particular, the Commission would consider whether abolition of the Office of Ombudsman was merited, and its functions subsumed in a revamped Public Defender's Office.

(E) DR. CARLOS CHASE

3.15. Dr. Carlos Chase met with a Sub-Committee of the Commission on 4 September 2020. He appeared in his private capacity and not as a representative of the Barbados Association of Medical Practitioners (BAMP). He discussed a large number of areas for possible reform.

These included:

(i) Motherhood

3.16. Dr. Chase made the following submissions:

- (a) maternity leave for breastfeeding mothers should be for one year;
- (b) fathers should be allowed two months' paternity leave;
- (c) there should be areas for breastfeeding in the workplace, or time away from work for 2 hours to allow mothers to breastfeed;
- (d) children should be fully immunized before admission to day-care/nursery;

3.17. The Sub-Committee informed Dr. Chase that the Commission could not adopt this proposal as a Project, as it would require a policy decision by the Government and the Social Partnership.

(ii) Healthcare Tort

3.18. On this topic, Dr. Chase suggested the following:

- (a) there should be a limit of \$2 million on health awards;
- (b) there should be a time limit of 3 years from knowledge of event to bring a law suit;
- (c) there should be full disclosure by a hospital, doctor or clinic of any adverse incidents or outcomes;
- (d) there should be apology legislation where a doctor or health care professional could apologise for an adverse outcome without the matter being used in court as an admission of guilt;
- (e) there should be guidelines for encryption technology in health care;
- (f) there should be disposal technology where phones and hard drives used in medical care could be properly erased or destroyed.

3.19. The Commission agreed to examine these proposals in a Project in due course.

(iii) Death, Organ Transplant and Living Wills

3.20. Dr. Chase proposed that Do Not Resuscitate Orders should be implemented in Barbados especially where the patient is reliant on ventilator support or brain dead. The Sub-Committee decided that, owing to the reduction of funds in the Vote of the

Commission, this proposal could not be facilitated in the current Financial Year, but should be included in the Commission's Work Programme in a future Financial Year.

(iv) Defensive Use of a Firearm

3.21. Dr. Chase suggested that there should be legislation regarding defensive use of a firearm in the home, allowing a homeowner to use deadly force to protect himself and loved ones from an uninvited intruder. The Sub-Committee decided to refer this matter to the Commission for its consideration.

(v) Financial Institutions

3.22. Dr. Chase's proposal was that banks should limit charges on credit cards and mortgages. The Sub-Committee decided that the Commission could examine the legal implications regarding this proposal.

(vi) Professional Fees

3.23. Dr. Chase proposed that lawyers, architects and engineers remove their minimum fees. He stated that professional fees were currently kept high as a schedule of minimum fees was based solely on the value of property or claim, rather than the actual work done. The Sub-Committee decided that this proposal be referred to the Commission with a view to arranging a meeting with professionals in an effort to remove the unfairness created by the charging of minimum fees.

(vii) Property Transfer

3.24. Dr. Chase proposed that, in the era of computers, two parties should be in a position to transfer land without the need for a lawyer. He also suggested that Government needed to have all land registered. The Sub-Committee decided to follow-up this proposal at a future date.

(viii) Business

3.25. Dr. Chase submitted that a person should be able to register their own company without the services of a lawyer and that the registration process should only take one day to complete. The Sub-Committee informed Dr. Chase that there was nothing preventing a person from forming their own company and registering that company with the Office of Corporate Affairs and Intellectual Property.

(ix) Children and the Elderly

3.26. Dr. Chase proposed that there should be mandatory penalties for abuse of children and the elderly. The Sub-Committee informed Dr. Chase that the Commission could not recommend mandatory sentences as it would be unconstitutional, and would take away the discretion from the Judge who, having sat throughout the trial, would be in a better position to consider all the factors involved.

DRAFT DISCLOSURE IN CRIMINAL PROCEEDINGS BILL

3.27. By June 2020, the Commission had to hand a draft Disclosure in Criminal Proceedings Bill which was forwarded to relevant stakeholders for comments on or before 31 August 2020.

CYBERCRIME LEGISLATION

3.28. The Commission agreed to have Crown Counsel present a paper to determine whether the *Computer Misuse Act, Cap.124B* was in need of reform or not, having regard to the passage of time since the enactment of that Act, the development of technology and the threat of cybercrime. Subsequently, the Commission received a Consultation Paper from Crown Counsel in which she explained that the Model draft legislation from the Commonwealth Secretariat was deficient in many respects. It was agreed that the Commission would include a project for new Cybercrime legislation in its Work Programme for 2021.

ACCOMMODATION

3.29. The Commission was informed that the Government was renovating and redeveloping the site of the former Supreme Court and Registration Office at Coleridge Street. It was proposed to locate the Commission at the renovated and re-developed premises upon completion.

AMENDMENT OF FIREARMS ACT, CAP.179

3.30. Crown Counsel began work on a Consultation Paper concerning possible amendments to the *Firearms Act* to deal with the unconstitutionality of mandatory sentences and the provision of consecutive sentences for certain offences.

CONSULTATION PAPER ON ELECTRONIC EVIDENCE

3.31. The Commission accepted the recommendation of the Sub-Committee which examined the Model Bill sent by the Commonwealth Secretariat. It was agreed that there was no need to draft new legislation incorporating the draft of the Secretariat's Model Bill since the matters covered in that Bill were already enacted in various pieces of legislation in Barbados.

COPYRIGHT ACT

3.32. COSCAP made a proposal for certain amendments to the *Copyright Act, Cap.300*. The Commission offered a Consultancy to Mr. Nicholas Lowe, a retired English Solicitor with vast experience of Copyright legislation, to draft a new Copyright Bill. A new Copyright Bill would seek to make Barbados compliant with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

3.33. Mr. Lowe presented a draft of a new Copyright Bill before the end of August 2021. The Bill was then sent for comment to the Advisory Committee on Intellectual Property. After a short conference in December 2021 with members of that Committee, Mr. Lowe, and Sir David Simmons and Ms. Ince as members of the Commission's Focus Group, it was agreed to send the Bill, as finally amended, to the Ministry of International Business and Industry for submission to the Cabinet.

CHAPTER 4 – 2021

WORK PROGRAMME FOR FISCAL YEARS 2021 TO 2024

4.1. Although section 33 of the Act requires the Commission to prepare, at the beginning of each year, a Programme for law reform for that year and submit it to the Attorney-General on or before 31 January of the particular year, the Commission was directed by the Office of the Attorney-General on instructions from the Ministry of Finance to prepare a Work Programme for fiscal years 2021 to 2024. Necessarily, there was bound to be overlapping in the formulation of programmes which straddled two different time periods, that is to say, a calendar year as opposed to a fiscal year. The Commission has therefore determined to present in this Chapter, the Work Programme as submitted to the Office of the Attorney General for the fiscal years 2021-2024.

“PROPOSED WORK PROGRAMME OF THE LAW REFORM COMMISSION FOR FISCAL YEARS 2021 to 2024

1. *DISCLOSURE IN CRIMINAL PROCEEDINGS BILL*

The Commission circulated a draft Bill for discussion by relevant stakeholders in July 2020. It is anticipated that a final draft will be ready for submission to the Attorney-General by the end of January 2021.

2. *ELECTRONIC EVIDENCE BILL*

The Commission proposes to undertake the preparation of this Bill as a project and to have a draft Bill ready for submission to the Attorney-General, following relevant consultations, by the end of January 2021.

3. *CYBERSECURITY LEGISLATION*

The Commission will commence work on this legislation in F/Y 2021/2022, using as models, a Bill recently drafted by the Commonwealth Secretariat and a Jamaican Act.

4. *LEGISLATION TO CONTROL NOISE*

The Commission has received a proposal from COSCAP calling for the enactment of legislation to control and manage noise. During the year the Commission will establish a Working Group to assist the Commission with this matter.

5. *AMENDMENT OF FIREARMS ACT, CAP.179*

It has been represented to the Commission that the existing Firearms Act makes no provision to exempt an offender from the imposition of a custodial sentence. The Commission will submit a proposal to amend the Act to allow

a Court, on conviction for possession and certain other offences under the Firearms Act, to impose a mandatory minimum sentence of 7 years unless the Court finds that there are exceptional circumstances in respect of the offence or the offender.

6. AMENDMENT OF CRIMINAL RECORDS (REHABILITATION OF OFFENDERS) ACT, CAP.127

Representation has been made to the Chairman that persons who have been convicted of manslaughter over 30 years ago are not eligible to having their records expunged. The Chairman proposes that the issue should be referred to the Commission for further consideration.

7. ESTABLISH A WORKING GROUP TO EXAMINE THE IMPLICATIONS OF ALLOWING PUBLIC OFFICERS TO SEEK ELECTION TO POLITICAL OFFICE

The Commission received a proposal from CTUSAB inviting the Commission to propose reform of the law in such a manner as would allow public officers to run for political office and, if unsuccessful, return to the Public Service. The Commission recommends the establishment of a Working Group to consider the implications of such a proposal.

8. A NEW LEGAL PROFESSION BILL

This Bill will incorporate, *inter alia*, recommendations arising from the Report of the late Professors Marshall and Patchett.

9. FREEDOM OF INFORMATION BILL

10. WHISTLE-BLOWING LEGISLATION

11. EVIDENCE (MODERNISATION) BILL

The Commonwealth Secretariat has sent the Commission a draft "Model Evidentiary Provisions Bill". This is a Bill dealing with seven (7) different evidentiary matters, including for example:

- measures for the assistance of witnesses;
- witness anonymity;
- DNA;
- corroboration and competence to testify.

12. PUBLIC DEFENDER BILL

This Bill would replace the Ombudsman Act.

13. ORGAN TRANSPLANT AND NON-RESUSCITATION ORDERS

Legislation to provide for organ transplant and non-resuscitation orders for patients who are brain dead or can no longer benefit from ventilator support.

14. FULL DISCLOSURE AND APOLOGY LEGISLATION

Legislation to provide for full disclosure of relevant information concerning a patient by a hospital, doctor or clinic and apology legislation where a doctor or health care professional could apologise for an adverse outcome without the apology being used as an admission of guilt. – based on Canadian legislation.

15. VICTIMS' RIGHTS AND RESTORATIVE JUSTICE

Legislation to ensure that the rights of victims of crime are protected and to provide for restorative justice.

16. ASSISTANCE WITH LEGISLATION RELEVANT TO BARBADOS BECOMING A REPUBLIC

The Commission envisages that it could provide assistance in respect of legislation that will necessarily be required to be created or deleted from the statute books, as a result of Barbados becoming a Republic."

CYBERCRIME LEGISLATION

4.2. Crown Counsel's Consultation Paper on Cybercrime legislation, including the relevance of the *Mutual Legal Assistance in Criminal Matters Act, Cap.140* highlighted several serious deficiencies in the existing Computer Misuse Act, especially with regard to Enforcement and Procedure. On the other hand, Guyana had a more comprehensive and contemporary statute. The Commission agreed to use the Guyana statute as a guide to new legislation.

AMENDMENTS TO FIREARMS ACT

4.3. It was decided to include amendments providing for sports shooting in the draft Bill.

LEGISLATION TO CONTROL KITE FLYING

4.4. The Commission drafted a Bill to amend the *Public Order Act* and to make provision for the control of noise occasioned by the flying of kites, especially at night. The Bill was sent to the Attorney-General for further action.

WORKSHOP ON CYBERCRIME – COUNCIL OF EUROPE

4.5. In February 2021, the Commission was informed that the Council of Europe wished to assist Barbados in drafting new Cybercrime legislation. A preparatory meeting was held on 9 April 2021 under the sponsorship of the Commission. The Minister of Innovation, Science and Smart Technology, Senator The Hon. Ms. Kay McConney, and Ms. Jo-Ann Clarke of the Chambers of the Chief Parliamentary Counsel were specially invited.

4.6. It was agreed that the Council of Europe would sponsor a Workshop on 14 and 15 June 2021 to discuss the content of new Cybercrime legislation while conducting a thorough analysis of the *Computer Misuse Act*. The objective of the Workshop was to develop new legislation that would facilitate Barbados' accession to the Budapest Convention for which the Council of Europe has oversight.

4.7. In the meantime, in April 2021 the Commission contracted Mr. Steven Williams, Consultant on Cybercrime, to assist the Commission for a period of 6 months, in its preparation of new legislation. Crown Counsel sent to the Council of Europe a copy of a Consultation Paper on Cybercrime prepared by her for the Commission.

4.8. The Workshop in June was a huge success. It covered, primarily, drafting of a new Bill and capacity building. Two drafters from the Chambers of the Chief Parliamentary Counsel attended. A follow-up Workshop was scheduled for 22 and 23 July 2021. The Council of Europe offered to conduct, at its expense, training for members of the judiciary, magistracy and prosecutors.

4.9. On 22 and 23 July 2021, the two drafters met with officials of the Council of Europe to review outstanding issues before preparing a final draft of a new Cybercrime Bill. The two drafters, Ms. Rhea Drakes and Ms. Jo-Ann Clarke were highly complimented by the officials of the Council for the quality of their work. A final Workshop was held on 3 December 2021.

DRAFT ACCESS TO INFORMATION BILL

4.10. When the Commission began to consider the Model Freedom of Information Bill sent by the Commonwealth Secretariat, it was made aware that the Chief Parliamentary Counsel had a draft of a Freedom of Information Bill prepared about 2016. The Minister of Home Affairs, Hon. Wilfred Abrahams, requested the Commission to examine the suitability of the draft Bill for submission to Cabinet.

4.11. A Sub-Committee of the Commission was established to examine the draft Bill.

4.12. The Commission prepared a report on the draft Access to Information Bill and submitted it to the Ministry of Home Affairs for further action.

MEETING WITH BARBADOS INTERNATIONAL BUSINESS ASSOCIATION (BIBA)

4.13. On 8 April 2021, a Sub-Committee of the Commission met with representatives of BIBA to discuss its proposals for reform. Some of the proposals were outside the purview of the Commission.

4.14. In respect of other proposals which were within the remit of the Commission, it was agreed that Mr. Justice Christopher Blackman, former Judge of the High Court, should be engaged as a Consultant to prepare a Policy Paper regarding BIBA's proposals for reform of the *Companies Act* and the *Notaries Public Act*. Justice Blackman was duly contracted and he submitted Policy Papers on the *Notaries Public Act*, the *Companies Act* and *Limited Liability Partnerships Bill*. These were referred to a Sub-Committee of the Commission.

MEETING WITH SOCIETY OF TRUST AND ESTATE PRACTITIONERS (STEP) BARBADOS

4.15. A Sub-Committee of the Commission met with representatives of STEP on 15 April 2021 to discuss their proposals for new legislation.

4.16. The Commission was asked to give priority to the following:

- Trust (Miscellaneous Provisions) Act
- Living Wills
- Enduring Powers of Attorney

4.17. The Commission accepted STEP's offer to work with the Commission to make amendments to the *Trust (Miscellaneous Provisions) Act* but noted that the *Trustee Act, Cap.250* would also require reform which the Commission itself could undertake. In any event, the Commission indicated that it would research similar legislation in other jurisdictions.

FINAL POLICY PAPER ON AMENDMENT TO FIREARMS ACT

4.18. The Commission proposed amendments allowing a Court to depart from the imposition of mandatory sentences where there were circumstances exceptional to the offender or the offence. In that regard, useful precedents were found in the legislation of the UK and the Turks and Caicos Islands.

4.19. The Commission also recommended an inclusion of a clause in the *Firearms Act* to facilitate the granting of a sporting firearm licence and a consequential amendment of the definition section of the *Firearms Act*.

DRAFT NOTARIES PUBLIC BILL

4.20. The Commission completed work on a draft Notaries Public Bill. The Commission had examined legislation in Australia, Canada, the Turks and Caicos Islands and elsewhere. A major proposal of the Bill is its application to persons outside the Public Service. It is proposed that attorneys-at-law of ten (10) or more years' standing be given status as Notaries Public.

LIMITED LIABILITY PARTNERSHIP BILL

4.21. The Commission reviewed legislation from the Cayman Islands, the Turks and Caicos Islands and the British Virgin Islands. It is considered that the legislation of the Cayman Islands is the most appropriate to be used as a precedent. The Commission also agreed that the Sub-Committee dealing with this matter be expanded to include representatives from BIBA, the Institute of Chartered Accountants of Barbados (ICAB), the Bar Association and Mr. Justice Blackman.

CHAPTER 5 – 2022

WORK PROGRAMME 2022

5.1. The Work Programme for 2022 included the following:

- New Legal Profession Bill
- Evidence Modernisation Bill
- Consultation Papers in respect of legislation for Organ Transplant and Non-Resuscitation Orders
- Consultation Paper in respect of legislation for Full Disclosure and Apology Legislation
- Bill to provide for Victims' Rights and Restorative Justice
- Amendments to the Companies Act
- Harmonisation of the Legal Age of Consent and the Age of Medical Consent
- Legislation for Protection of Persons with Disabilities
- New Criminal Procedure Rules

CIRCULATION OF DRAFT CYBERCRIME BILL

5.2. The Commission agreed in February 2022 to circulate the draft Cybercrime Bill as well as a companion Bill amending the *Mutual Assistance in Criminal Matters Act, Cap.140* and Explanatory Memoranda to various persons concerned with the administration of justice and law enforcement. The deadline for return of comments was 31 March 2022.

CREATION OF NEW COURTS WITH FULL INTERMEDIATE JURISDICTION

5.3. The Commission agreed to include in its Work Programme (2022) consideration of the possible creation of two District Courts (in the North and the South) with jurisdiction between that of the Magistrate's Courts and the High Court. Crown Counsel was given instructions to proceed to prepare the necessary Consultation Paper.

DRAFT NOTARIES PUBLIC BILL

5.4. On 3 November 2022, the Sub-Committee examining the matter of a new Notaries Public Bill presented a final draft of the Bill for consideration by the Commission. *Inter alia*, the draft Bill will repeal the *Notaries Public Act 2017* which has proven to be very deficient and limited in substance and procedure. The Commission's draft will expand the categories of persons eligible for appointment as Notaries Public to include attorneys-at-law, certified public accountants and Chartered accountants of ten or more years' standing. Public officials who were appointed as Notaries Public in the Act of 2017 will continue to be eligible for appointment. A proper procedure for persons to apply is set out in the Bill as well as provision for the Registrar of the Supreme Court to recommend or refuse to recommend appointments to the President of Barbados. The Bill provides for suspension or revocation of an appointment as a Notary Public. The final draft was forwarded to the Attorney-General for further action on 24 February 2023.

PREPARATION OF THE RIGHTS OF PERSONS WITH DISABILITIES BILL

5.5. On 10 June 2022, the Commission met with the Minister of People Empowerment and Elder Affairs, Hon. Kirk Humphrey, Mr. Edmund Hinkson Q.C., Chair of the Advisory Committee on Policy and Legislation for Disabled Persons and Dr. Jason Haynes, Senior Lecturer, Faculty of Law, UWI.

5.6. It was agreed that Dr. Haynes would prepare a draft Bill to protect the rights of persons with disabilities, as well as an Explanatory Memorandum on or before 15 August 2022. Dr. Haynes has special expertise in this area and has drafted similar legislation for other countries.

REGISTRATION OF BUSINESS NAMES BILL

5.7. The Commission proposed the establishment of a Sub-committee to examine the draft Model Bill sent by IMPACT Justice to determine its suitability for enactment in Barbados as a Bill to reform or repeal the existing *Registration of Business Names Act, Cap.317*. It was agreed that the President of the Bar would be invited to sit on the Sub-Committee.

CONSIDERATION OF THE OECS RULES OF CRIMINAL PROCEDURE

5.8. The Commission agreed to undertake a project to reform the Rules of Criminal Procedure to ensure that the criminal procedure was made more efficient, more speedy and embrace techniques of case management. The Commission had previously expressed its willingness to prepare such Rules to the judiciary. The Commission is cognizant of the operations of new Criminal Procedure Rules in Trinidad and Tobago and the OECS. Accordingly, the Commission established a Sub-Committee to review the OECS Rules. It was agreed to invite Mr. Oliver Thomas of the Director of Public Prosecution's Office to join the Sub-Committee.

SUB-COMMITTEE ON ORGAN TRANSPLANT AND NON-RESUSCITATION ORDERS AND DISCLOSURE AND APOLOGY LEGISLATION

5.9. A Sub-Committee was established comprising –

- Sir David Simmons
- Justice Jefferson Cumberbatch
- Mr. Alrick Scott
- Ms. Shena-Ann Ince

5.10. It was agreed that Dr. Carlos Chase be invited to join the Sub-Committee.

SUB-COMMITTEE ON EVIDENCE (MODERNISATION) BILL

5.11. The members of this Sub-Committee comprise –

- Sir David Simmons
- Sir Elliott Mottley
- Mr. Andrew Pilgrim Q.C.

DRAFT BILL ON THE RIGHTS OF PERSONS WITH DISABILITIES

5.12. Dr. Haynes submitted a draft of a Bill to protect persons with disabilities in accordance with the contractual deadline. The Commission agreed that the Ministry of Elder Affairs should circulate the draft Bill to all relevant stakeholders for about a month to enable them to study the contents of the draft Bill. It was proposed that during the month of November 2022, at a date convenient to all relevant stakeholders, a one-day Workshop would be held at the Lloyd Erskine Sandiford Centre at which a wide cross-section would be accommodated to discuss the draft Bill with Dr. Haynes and members of the Commission.

5.13. IMPACT Justice had promised to fund the Workshop.

WORKSHOP ON DRAFT RIGHTS OF PERSONS WITH DISABILITIES BILL

5.14. On 16 November 2022, the aforesaid Workshop was convened. About 44 persons attended including Minister Kirk Humphrey, the Permanent Secretary and Deputy Permanent Secretary of the Ministry of Elder Affairs, and Mr. Edmund Hinkson. One noteworthy feature of the Workshop was that the CPC agreed to allow two of her staff, namely, Ms. Deidre Kinch and Ms. Paulette Atkins, to attend the Workshop. Their contributions were sincerely valued and the Commission anticipates that when the draft Bill is ultimately sent to the Chief Parliamentary Counsel for refinement before introduction into Parliament, the fact that the two officers were able to participate in the discussions on the Bill, would assist in its speedy progress to Parliament. Chairman, Sir David Simmons, took participants through the draft Bill, line by line, and a number of amendments were submitted to Dr. Jason Haynes for his final amendments. The Workshop lasted from 9.30 a.m. to 5.30 p.m. and participants showed great enthusiasm for the interactive event.

FINAL DRAFT OF RIGHTS OF PERSONS WITH DISABILITIES BILL

5.15. In mid-December 2022 the final draft Bill was forwarded to the Ministry of Elder Affairs for further action by that Ministry.

FINAL DRAFT OF CYBERCRIME BILL

5.16. By November 2022 a draft Cybercrime Bill 2022 was ready to be sent to the Attorney-General. However, the Commission was requested to hold the Bill pending a report from Ms. Rhea Drakes on her attendance at a meeting in Costa Rica hosted by the Council of Europe.

5.17. In the result and arising from Ms. Drakes' attendance at the meeting, the Bill was further amended to include the additional offences of child grooming; online child sexual abuse; "revenge pornography"; cyberbullying and cyber-terrorism.

5.18. The draft Cybercrime Bill 2023 and the draft Mutual Assistance in Criminal Matters (Amendment) Bill 2023, together with Explanatory Memoranda were forwarded to the Ministry of Innovation, Science and Technology in January 2023 for further action.

5.19. The Commission wishes to place on record its gratitude to the Chief Parliamentary Counsel for permitting Ms. Rhea Drakes and Ms. Jo-Ann Clarke to attend all of the sessions with the Council of Europe. The speed with which the two ladies were able to produce a draft Bill was no doubt due to the fact that they observed and participated in all of the discussions. The Commission expects that after formal drafting instructions are given by the Cabinet to develop new cybercrime legislation, the draft prepared by Ms. Drakes and Ms. Clarke will ensure the Bill's speedy progress to Parliament.

NEW LEGAL PROFESSION BILL

5.20. The Commission decided at its meeting on 25 October 2022 to draft a new Legal Profession Bill in-house using the model provided IMPACT Justice as a guide.

NEW ACCOMMODATION FOR THE COMMISSION

5.21. On 18 November 2022 the newly refurbished and renovated buildings at Coleridge Street that formerly housed the Registration Office, some courts and other offices were officially re-opened and re-named after two members of the Law Reform Commission. The complex is now known as the "Henry Forde and David Simmons Legal and Judicial Complex".

5.22. The Commission congratulates these two Commissioners on an honour richly deserved.

5.23. The Commission has been assigned commodious and excellently appointed offices on the top floor of what was formerly the Registration Office.

CHAPTER 6 – EPILOGUE

DESCRIPTION OF THE COMMISSION

6.1. The Law Reform Commission of Barbados is an example of the classic or standard model of a law reform agency in the Commonwealth. According to the authors of *"Changing the Law – A Practical Guide to Law Reform"* (p.29):

"Most Commonwealth law reform agencies are classic or standard model law reform agencies, established by statute."

The main characteristics of the standard model are identified as follows:

- A statutory body;
- Its only or main function is law reform;
- It is a permanent body;
- It receives all or most of its funding from government;
- It usually has several Commissioners from disparate parts of the legal profession;
- It has an agreed Work Programme;
- It is independent of government to the extent that actual independence resides primarily in the intellectual independence of Commissioners;
- It produces a final Report at the end of a project which is submitted to a Minister of Government, often with a draft Bill.

6.2. The Commission started its work in the second half of 2019 with a very small staff and modest funding. For the succeeding three years, although funding has increased, the complement of staff has remained static. The small staff worked assiduously, COVID notwithstanding, to ensure that the Commission functioned as best as it possibly could in the difficult years 2020 to 2022. The Commission thanks members of staff for their unstinting efforts.

6.3. The Commission needs another legal Counsel to assist with research and the preparation of Consultation and Policy Papers. Provision has been made in the Commission's budget for Fiscal Year 2023 to 2024 for an additional Counsel and the Commission would be profoundly grateful if and when its request is satisfied.

DRAFT BILLS SUBMITTED TO MINISTRIES AS AT DECEMBER 2022

6.4. The limited resources of the Commission notwithstanding, it was nevertheless able to advance work on a number of projects. In fact, at 31 December 2022, the following draft Bills had been submitted to the relevant Ministries for further action with a view to their introduction in Parliament early in 2023 if Cabinet approves:

- (i) Copyright Bill
- (ii) Cybercrime Bill
- (iii) Rights of Persons with Disabilities Bill
- (iv) Access to Information Bill
- (v) Bill to control kite flying at night
- (vi) Firearms (Amendment) Bill

6.5. Drafting of a new Notaries Public Bill was completed in 2022 but was approved by the Commission in February 2023 and submitted to the Attorney-General on 24 February 2023.


6.6. If the Commission's work had not been disrupted by the impact of COVID-19 in every sector across Barbados, the Commission is confident that it could have increased the quantity of legislative drafts.

6.7. Over the course of the period under review, the Commission experienced the consequences of bureaucratic delay in the Public Service. These have prompted the Commission to seek greater autonomy, independence, and flexibility through appropriate amendments to the Act.

6.8. The Commission wishes to thank the Hon. Attorney-General for his generosity in making the Conference Room of the Office of the Attorney-General available to the Commission for its monthly meetings. The Commission is also grateful to the Attorney-General for the role he played in ensuring that the Commission now has its own separate offices at Coleridge Street.

Dated the 24th day of February 2023


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Sir David Simmons K.A., B.C.H., Chairman

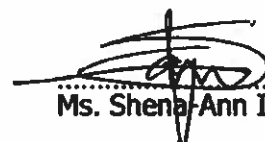

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Sir Elliott Mottley K.C.M.G.


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Hon. Mr. Justice Jefferson Cumberbatch


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Mr. Alrick Scott K.C.


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Mr. Andrew Pilgrim K.C.


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Ms. Shena Ann Ince