

## **The Legal System of Barbados: A short history**

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**I. Historical Background:** Barbados was claimed for King James I of England by John Powell, an English captain who landed on the island in 1625. Two years later, on February 17, 1627, a group of some eighty English settlers and sixteen (16) African slaves landed at Jamestown (now Holetown). They were later joined by another group, who settled in Carlisle Bay. In the seventeenth century, it was customary for the British Monarch to issue proprietary patents giving the holder the right to govern overseas territories on the King's behalf. In 1627, King Charles I granted a proprietary patent for Barbados and the Lesser Antilles to the Earl of Carlisle which gave him authority to establish institutions and make laws governing the island.

Under the authority of the Charter, the Earl of Carlisle established the office of Governor<sup>1</sup> and a Legislative Council<sup>2</sup> in 1627, and a House of Assembly<sup>3</sup> in 1639. The Earl of Carlisle's proprietorship continued until 1663 when it was abolished by Charles II. Thereafter the Governor of Barbados was appointed directly by the English Sovereign. The form of government established between 1627 and 1639 comprising Governor, Legislative Council and House of Assembly was known as the "Old Representative System".

There are three (3) important landmarks along Barbados' historical journey to responsible self-government which represent the deliberate adoption by pre-independent Barbados of specific features of "Westminster-model government" later officially adopted at independence.

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<sup>1</sup> The Governor was also Chancellor of the Judiciary, and President of the local Court of Appeal and Court of Ordinary. As President of the Court of Ordinary, he was the sole judge dealing with ecclesiastical matters, the probate of wills, granting of letters of administration and marriage licences.

<sup>2</sup> The Legislative Council was a nominated body, usually of nine members, appointed by the Crown on the Governor's recommendation. It was in effect the local House of Lords. The Council's legislative powers were gradually limited in favour of the Assembly, but all legislation passed by the Assembly required the majority approval of the Council before being submitted for the Governor's signature. The general picture of the Legislative Council under the "Old Representative System" was one of a conservative body dependent on the Governor and supporting him against the House of Assembly.

<sup>3</sup> The Barbados House of Assembly established in 1639, is the second oldest in the Western Hemisphere. It was an elected body initially comprising two representatives from each of the island's eleven parishes. In 181843 the number of seats of the House of Assembly was increased to 24 with the introduction of two seats for Bridgetown. From 1652, the consent of the House of Assembly was necessary for the imposition of taxes, and for the expenditure of any public money. By the late 1660s, its power in the financial sphere was well established. Increasingly, the House of Assembly became the forum for the voicing of creole aspirations and dissatisfaction with imperial policy.

The first landmark was the passage in 1881 of the *Executive Committee Act*<sup>4</sup>, which became government's principle instrument of policy, embracing the Westminster notion of a central policy-making advisory body. The Act provided that four members of the Assembly and one member of the Legislative Council should be associated with the Executive Committee for the preparation of legislative measures and other purposes of government. The functions of the Executive Committee were to advise the Governor on any measures which the Executive wanted to bring before the Legislative Council, to transact public financial business, consider ways and means, look after public works and control and manage certain public institutions. The Act also provided that annual estimates of revenue and expenditure should be prepared by the Executive Committee and submitted to the Legislature.

The next notable landmark was reached with the introduction in 1946 of the constitutional arrangement, known as the "Bushe Experiment" under which the Governor announced that on assembling of the new House of Assembly, the person who appeared to be best able to command a majority in the House of Assembly would be invited to nominate the members of the House of Assembly to be appointed to the Executive Committee. The Members of the Executive Committee were also asked to take charge of the general policy for the purpose of dealing with the affairs of those Departments in the Executive Committee and in the House of Assembly.

Finally, the "Bushe Experiment" paved the way for the introduction on February 1, 1954 of a system of full Ministerial government along the lines set out in Governor Arundell's Message to the House of Assembly on November 2, 1953. In adopting the system, the Governor proposed that it would be incumbent on the Governor as well as upon the Ministers, to follow the constitutional conventions observed in the United Kingdom, so far as these were applicable to local circumstances and to the constitutional position in Barbados under the new system. In particular, the Ministers who would operate under party conventions, would become responsible for the formulation of Government policy, for propounding it in Executive Committee and in the House of Assembly, and for seeing that it was carried out by the administration. According to Governor Arundell, "observance of the United Kingdom conventions, within the limits set by the constitutional position of Barbados would assist a natural evolution along the lines of the English Parliamentary system".

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<sup>4</sup> The *Executive Committee Act, 1881-24*;

It is obvious from the foregoing historical developments, that by the time of its independence from Great Britain in 1966, Barbados already had in place a constitutional system of government consisting partly of law and partly of convention in which features of the British constitutional system at Westminster in Britain were clearly discernable. Furthermore, the constitutional system which had evolved in Barbados by 1966 and which was enshrined in its written constitution at independence was by no means a wholesale adoption of the British Westminster model, but rather a selective one completely consistent with the local circumstances<sup>5</sup>.

The constitutional system in place in Barbados at the time of its independence from Great Britain in 1966 is accurately described by Professor S.A de Smith's narrow definition of the "Westminster model" and is characterized by the following essential features:

*“ a constitutional system in which the Head of State is not the effective head of government; in which the effective head of government is a Prime Minister presiding over a Cabinet composed of Ministers over whose appointment and removal he has a substantial measure of control; in which the effective executive branch of government is parliamentary inasmuch as Ministers must be members of the legislature; and in which Ministers are collectively and individually responsible to a freely elected and representative legislature.”*<sup>6</sup>

**II. The Sources of law:** The Barbados legal system is modeled on the English legal system and emanates from three (3) main sources:

- The written Constitution which is expressed to be the supreme law of Barbados<sup>7</sup>;
- Statute law, which is all the law made by Parliament or the Legislature both prior to and following independence;
- Common law, which is a body of judge-made law built up from decisions made in the United Kingdom and in Barbados over the years.

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<sup>5</sup> See “*Conventions Under Independence Constitutions of the Commonwealth Caribbean: The Barbados Experience*” by Maureen Crane-Scott-a research thesis presented in partial fulfillment of the requirements for the award of the UWI Faculty of Law LL.M Legislative Drafting Degree.

<sup>6</sup> See Professor S.A. de Smith: “*The New Commonwealth and its Constitutions*”, 1964 pp. 77-78;

<sup>7</sup> See Section 1 of the Barbados Constitution which states that subject to the 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”;

### III. The Rule of Law:

The rule of law also forms a crucial part of the Barbados Constitution. In the preamble to the Barbados Constitution it is clearly stated that the people of Barbados affirm their “*beliefs that men and institutions remain free only when freedom is founded upon respect of moral and spiritual values and the rule of law*”.<sup>8</sup>

Although much has been written on the subject<sup>9</sup>, the principles which underlie the expression “the rule of law” are not easily defined. However, according to Dr. Albert Fiadjoe all of the minimum prescriptions usually laid down for meeting the requirements of the rule of law have been sensibly enshrined in Caribbean Constitutions. According to him, within the context of West Indian public law, the expression “the rule of law” has come to mean quite simply, “**the exercise of state power according to law**” and “**the subjugation of state power to the constitution**”. According to Professor Fiadjoe, “*the phrase, the rule of law, is thus a useful compendium to define the bundle of citizen’s rights or legitimate expectations to hold the state accountable for its actions.*”<sup>10</sup>

The Barbados Constitution accordingly constitutes the central framework for the exercise of state power by the various arms or branches of government, clearly setting out such matters as how citizenship is acquired or conferred<sup>11</sup> as well as the fundamental rights and freedoms which, subject to the Constitution, are guaranteed to every person in Barbados, whatever his race, place of origin, political opinions, colour, creed or sex<sup>12</sup>. The main arms or branches of government are also entrenched in the Constitution along with provisions setting out the scope and limitations of their authority<sup>13</sup>. The Constitution also establishes the framework for an independent Public Service<sup>14</sup>, creates the various Commissions and provides for the manner in which public officers may be appointed, removed and disciplined with a view to insulating public officers from political interference in the performance of their duties. Finally, the Barbados Constitution establishes the Consolidated Fund, directs the annual estimates of revenue and expenditure to be

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<sup>8</sup> Preamble to the Barbados Constitution.

<sup>9</sup> See for example Dicey, “*An Introduction to the Study of the Law of the Constitution*”; Jennings, “*The Law and the Constitution*”; de Smith, “*Constitutional and Administrative Law*.”

<sup>10</sup> See Dr. Albert Fiadjoe: *Commonwealth Caribbean Public Law: Text, Cases & Materials*,” 1996 pp. 93-94;

<sup>11</sup> Chapter II Barbados Constitution;

<sup>12</sup> Chapter III Barbados Constitution;

<sup>13</sup> Chapter IV, V, VI and VII Barbados Constitution;

<sup>14</sup> Chapter VIII Barbados Constitution;

laid in the House of Assembly before the end of each financial year and makes other provisions for the regulation of public finances.<sup>15</sup>

**IV. The Three Branches of Government:** As with most modern democratic governments, Barbados' legal system which is enshrined in its written Constitution is comprised of three (3) main arms or branches of government, namely: the Legislature, the Executive and the Judicature. An integral feature of our system is the separation of power among the three branches of government.

*i) The Legislature or Parliament:* Chapter V of the Barbados Constitution contains provisions relating to the law-making arm of government, namely the Legislature or Parliament which, by virtue of section 35 of the Constitution consists of Her Majesty, a Senate and a House of Assembly. Subject to the provisions of the Constitution, Parliament is authorized by the Constitution *“to make laws for the peace, order and good government of Barbados.”*<sup>16</sup>

*ii) The Executive:* Chapter VI of the Barbados Constitution contains provisions which describe how and by whom the executive powers of government are to be exercised. Section 63 declares that the executive authority of Barbados is vested in Her Majesty and may, subject to the Constitution, be exercised on behalf by the Governor General either directly or through officers subordinate to him.

The Constitution also establishes a Cabinet<sup>17</sup> consisting of a Prime Minister and not less than five (5) Ministers and stipulates that the Cabinet shall be the principal instrument of policy and shall be charged with the general direction and control of the government and collectively responsible therefor to Parliament. The Constitution also expressly establishes a Privy Council for Barbados to be presided over by the Governor General<sup>18</sup> and consisting of such persons as the Governor General after consultation with the Prime Minister may appoint. The Privy Council shall have such powers and duties as may be conferred or imposed upon it by the Constitution or any other law.<sup>19</sup>

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<sup>15</sup> Chapter IX Barbados Constitution;

<sup>16</sup> See Section 48 of the Barbados Constitution.

<sup>17</sup> See Section 64 of the Barbados Constitution.

<sup>18</sup> See Section 77(2) of the Barbados Constitution.

<sup>19</sup> See Section 76(2) of the Barbados Constitution.

By virtue of section 78(2) of the Constitution, the Governor General shall act on the advice of the Privy Council in the exercise of the Prerogative of Mercy or of any power conferred on him by any other law to remit any penalty or forfeiture due to any person other than the Crown.

**iii) The Judicature:** Chapter VII of the Barbados Constitution contains provisions establishing a Judicature consisting of (a) The Caribbean Court of Justice Established by the Agreement and (b) the Supreme Court of Judicature and (c) the Magistrates Courts.<sup>20</sup> The Judicature shall exercise jurisdiction under the Constitution or any other law.

Section 79D of the Constitution expressly provides that the Caribbean Court of Justice (a) shall have exclusive and compulsory jurisdiction in relation to i) disputes between Contracting Parties to the Agreement; ii) disputes between any Contracting Parties to the Agreement and the Community; iii) referrals from national courts or tribunals of Contracting Parties to the Agreement; iv) applications by persons in accordance with the Caribbean Court of Justice Act, Cap. 2003-9 concerning the interpretation and application of the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy; (b) has exclusive jurisdiction i) to deliver advisory opinions concerning the interpretation and application of the Treaty upon the request of Contracting Parties or the Community; ii) where there is a dispute as to whether the Court has jurisdiction, in a matter whether the court has to decide, such jurisdiction; and (c) shall be the final Court of Appeal from any decision given by the Court of Appeal.

The Supreme Court of Judicature of Barbados shall consist of the Court of Appeal and the High Court and shall have such power and authority as may be conferred upon those Courts by the Constitution or any other law.<sup>21</sup> Jurisdiction to hear and determine matters is conferred on Supreme Court Judges under and by virtue of the Constitution as well as under and by virtue of the Supreme Court of Judicature Act, Cap. 117A, the Rules of the Supreme Court, 1982, the Supreme Court(Non-Contentious) Probate Rules, 1959 and other enactments conferring jurisdiction on the Registrar and the Judges of the Supreme Court.<sup>22</sup>

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<sup>20</sup> See Section 79C of the Barbados Constitution inserted by the Constitution (Amendment) Act, 2003-10;

<sup>21</sup> See Section 80(1) of the Barbados Constitution amended by the Constitution (Amendment) Act, 2003-10;

<sup>22</sup> Such enactments include, inter alia, the Judicial Sale of Land Act, Cap. 227, the Probates and Letters of Administration(Resealing) Act, Cap. 247, the Succession Act, Cap. 249, the Family Law Act, Cap. 214, the Status of Children Reform Act, Cap. 220, the Adoption Act, Cap.212, the Probation of Offenders Act,

The Constitution provides security of tenure for all Judges of the Supreme Court by providing<sup>23</sup> that no office of Judge shall be abolished while there is a substantive holder thereof and that the salaries and allowances and other terms of service of Judges cannot be altered to their disadvantage after their appointment.

The Constitution does not provide Magistrates with any special protection or safeguards other than the fact that as public officers, they are appointed and may be dismissed only by the Judicial and Legal Service Commission. Magistrates derive their jurisdiction in criminal and civil matters under the *Magistrates Jurisdiction and Procedure Act, Cap. 116*, the *Coroners Act, Cap. 113* and numerous enactments<sup>24</sup> conferring jurisdiction upon Magistrates.

**V. The Structure of the Barbados Court System:** Based on the foregoing discussion, Barbados' Court Structure<sup>25</sup> is quite simply as follows:

- *The Caribbean Court of Justice;*
- *The Barbados Supreme Court*<sup>26</sup>, consisting of:
  - a) The Court of Appeal; and
  - b) The High Court
- *The Magistrates' Courts.*

i) **Jurisdiction of the Caribbean Court of Justice:** As already indicated<sup>27</sup>, in its *appellate jurisdiction* the CCJ has replaced the Privy Council as Barbados' Final Appellate Court and now hears all appeals from decisions of the Barbados Court of Appeal whether in its civil or criminal jurisdiction. In its *original jurisdiction*, the CCJ

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Cap.146, the *Criminal Appeal Act, Cap. 113A*, the *Juries Act, Cap. 115*, the *Bail Act, Cap. 122A*, and the *Legal Profession Act, Cap. 370A*;

<sup>23</sup> See Section 80(3) of the Barbados Constitution amended by the *Constitution (Amendment) Act, 1990-17*;

<sup>24</sup> See for example the *Juvenile Offenders Act, Cap.138*; the *Maintenance Act, Cap.216*; the *Domestic Violence (Protection Orders) Act, Cap. 130A*

<sup>25</sup> See Section 79C of the Barbados Constitution amended by the *Constitution (Amendment) Act, 2003-10*;

<sup>26</sup> See Section 80(1) of the Barbados Constitution amended by the *Constitution (Amendment) Act, 2003-10*. There are presently some thirteen (13) Judges of the Barbados Supreme Court comprising the Chief Justice, four (4) Court of Appeal Judges and eight (8) High Court Judges. The Chief Justice has power to act as a High Court Judge as well as on the Court of Appeal.

<sup>27</sup> See text on page 6 above under the sub-heading, "*The Judicature*";

(a) has exclusive and compulsory jurisdiction in relation to i) disputes between Contracting Parties to the Agreement; ii) disputes between any Contracting Parties to the Agreement and the Community; iii) referrals from national courts or tribunals of Contracting Parties to the Agreement; iv) applications by persons in accordance with the Caribbean Court of Justice Act, Cap. 2003-9 concerning the interpretation and application of the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy and (b) has exclusive jurisdiction i) to deliver advisory opinions concerning the interpretation and application of the Treaty upon the request of Contracting Parties or the Community; ii) where there is a dispute as to whether the Court has jurisdiction, in a matter whether the court has to decide, such jurisdiction.

ii) **Jurisdiction of the Court of Appeal:** The Court of Appeal has jurisdiction to hear four (4) broad categories of appeals, as follows:

- i) Magisterial appeals from decisions of magistrates exercising criminal or civil jurisdiction;
- ii) Civil appeals against orders or decisions of High Court Judges exercising civil jurisdiction;
- iii) Criminal appeals against conviction and/or sentence before a High Court Judge or against the order of a High Court Judge in relation to bail;
- iv) Appeals from a tribunal where no other provision is made by Rules of Court for the hearing of the appeal; or where under an enactment the Court of Appeal has power to determine such matters.

iii) **Divisions and Jurisdiction of the High Court:** The jurisdiction of the High Court is exercised within three (3) broad Divisions, namely,

- a) the Criminal Division<sup>28</sup>;

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<sup>28</sup> Currently the Criminal Jurisdiction of the High Court is exercised by two (2) High Court Judges who sit on a rotation basis throughout the year to preside over the trial of accused persons who have been charged with indictable offences and who have been committed by a Magistrate to stand trial before the High Court. High Court Judges also have jurisdiction under the *Bail Act, Cap. 122A* and under Rules of Court to hear bail applications by persons committed to stand trial, or in relation to an appeal against the refusal of a Magistrate to grant bail.

- b) the Civil Division<sup>29</sup>; and
- c) The Family Division<sup>30</sup>.
- iv) **Jurisdiction of the Magistrates:** Although expressly recognized in the Constitution as part of the Barbados Judicature, Magistrates derive their jurisdiction under the Magistrates Jurisdiction and Procedure Act, Cap. 116, the Coroners Act, Cap. 113 and numerous statutes and Rules conferring criminal and civil jurisdiction upon magistrates. They also exercise functions as the licensing authority under the Liquor Licensing Act.

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<sup>29</sup> The Civil Jurisdiction of the High Court broadly includes i) Actions for Constitutional redress, judicial review, land disputes, contentious probate matters, breach of contract, debt actions, negligence, trespass, defamation, intellectual property rights cases and numerous orders under any number of statutes conferring jurisdiction on the High Court; ii) Probate & Administration proceedings, involving both contentious and non-contentious applications for a grant of probate or administration in deceased's estates or for the resealing of foreign grants; iii) Admiralty proceedings; and iv) Foreclosure proceedings (i.e. applications for the grant of a Registrar's conveyance under the Titling of Land Act, Cap. 227 and Rules of Court.

<sup>30</sup> The Family jurisdiction of the High Court includes applications for divorce, custody, maintenance, property division and other relief.