THINKING THINGS OVER

BY

THE CONSTITUTION COMMISSION (1987)

OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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ERRATA

(i) Page 25-paragraph 2-line 9-Substitute "meant" for "ment".

(ii) Page 36-paragraph 3-line 4-Substitute "3" for "three".

(iii) Page 41-paragraph 4-line 2-Close brackets after numeral "5".

(iv) Page 41-paragraph 5-line 3-Substitute "nor" for "not" after the word "small".

(v) Page 43-paragraph 3-line 3-Substitute "in" for "of" after the word "leader".

(vi) Page 44-paragraph 1-line 1-Substitute "simpler" for "simpler".

(vii) Page 47-paragraph 5-Heading "Leader of the Opposition" substitute (vii) for (iii).

(viii) Page 65-paragraph 3-line 5-Insert the word "a" before the word "power".

(ix) Page 69-paragraph 3-line 7-Substitute the word "and" for the word "or" before the word "exercise".

(x) Page 72-paragraph 2-line 5-Insert the word "by" before the words "any Court".

(xi) Page 73-Question 2-Line 2-Delete the question mark after the word "terms" and add the following: "that may be served?"

(xii) Page 73-Question 4-lines 2-3-Substitute the word "before" for the words "so that".

(xiii) Page 85-paragraph 2 lines 3-7-Insert full stop after the word "appointment" in line 3 and delete all the words that follow to end of paragraph.

(xiv) Page 86-Delete Question 5 and re-number question 6 as question 5.

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SECTION I

INTRODUCTION

"A Democratic Constitution is a body of basic rules by which the people of a country agree to govern themselves . . . But a Constitution should not be a straight-jacket. It is intended to operate in a world of movement and change. Its major purpose is so to distribute functions that the right of the people to govern themselves through the institutions which it sets up will not be disregarded". So said the Wooding Commission in 1972 in its publication "Thinking Things Through".

As recommended by that Commission, the Constitution of the Republic of Trinidad and Tobago (which we will call the Constitution) introduced in 1976 a republican form of government, based on what has been described as "the Westminster model".

Some of the major recommendations of that Commission however, were rejected by the former Government, among them being a form of proportional representation to select the people's representatives, the introduction of a single House of Parliament and the abolition of appeals to the Privy Council.

It was no doubt hoped that the 1976 Constitution would "provide for an effective working democracy, such as will meet the needs of the people" but the extent to which that hope has been realised now falls to be examined in the light of the changes in those needs and the experience gained since 1976.

Following the last General Election in 1986 and coincident with a change of government and in the Presidency, much controversy arose over the appointment of certain persons to public office by the outgoing President. An attempt to resolve the issue by amendment of the Constitution was met with strong opposition from some quarters and an equally strong request from others to undertake a general revision of the Constitution instead of making piecemeal

attempts to amend on an ad hoc basis. The Government bowed to the latter demand and as a result the present Commission was appointed.

From a cursory examination of the Constitution it appears obvious that there are many areas in which revision can usefully be made, but

before recommending any, the views and opinions of the people must first be fully heard and carefully considered.

Believing that the people should be more fully informed of what is contained in their Constitution, the Commission has written this booklet in language which, it is hoped, will achieve that objective and also place them in a better position to crystallize and present their views on those provisions which they feel are in need of revision.

SECTION II

A BRIEF REVIEW OF THE CONSTITUTION

THE PREAMBLE

The Constitution was enacted on March 29, 1976 by Act No. 4 of 1976 and became operative on August 1, 1976. Like its predecessor of 1962 (which we will call the Independence Constitution), it contains a preamble which begins with a recital of the principles and beliefs of the people of Trinidad and Tobago and ends with a firm declaration of their desire that the Constitution should not only enshrine fundamental human rights and freedoms, but also make provision for ensuring their protection in Trinidad and Tobago.

PRELIMINARY

The preamble is followed by "Preliminary" provisions which, *inter* alia, declare: the Republic of Trinidad and Tobago to be a Sovereign Democratic State; the Constitution to be the supreme law of the State; the extent and boundaries of the physical areas comprised in the State; and the meanings given to various words and phrases used in the Constitution.

CHAPTERS OF THE CONSTITUTION

The remainder of the Constitution is divided into twelve Chapters, each of which deals with separate subjects. The last of them is followed by three Schedules which set out in the first of them the "Forms of Oath (or Affirmation) of Allegiance and of Office", in the second, the Rules for the Delimitation of the Boundaries of Constituencies for the purposes of General Elections; and in the third, a supplemental list of matters not subject to investigation by the Ombudsman.

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

The First Chapter sets out in absolute terms the fundamental human rights and freedoms recognised in the State and guards their sanctity by prohibiting Parliament from enacting any law which infringes them. However, the enjoyment of these rights and freedoms as set out, is made subject firstly, to laws in existence in Trinidad and
Tobago immediately before the commencement of the Constitution; and secondly, to other exceptions in certain stated circumstances and conditions.

CITIZENSHIP

The Second Chapter deals with citizenship. It defines who is a citizen, prescribes the circumstances under which a person may become or continue as one, or acquire the status of a Commonwealth citizen, but the provisions do not permit dual citizenship to be held by a person except where the citizenship of a foreign country was conferred on him even though he did not apply for it.

THE PRESIDENT

The Third Chapter establishes the office of President of the Republic and decrees that he shall be the Head of State and Commander-in-Chief of its Armed Forces. Further, it provides, *inter alia,* for the qualifications and disqualifications for the office of President, the manner and mode of his election, the duration and extension of his term of office, the grounds upon which he may be removed from office, the procedure for effecting such removal and his immunity from answering to any court for the performance of any of the functions of his office.

PARLIAMENT

The Fourth Chapter establishes the Parliament of the State consisting of a President, a Senate, and a House of Representatives. It provides for a Senate of 31 Senators appointed by the President as follows: 16 on the advice of the Prime Minister, 6 on the advice of the Leader of the Opposition, and 9 in his discretion from outstanding persons from economic or social community organizations and other major fields of endeavour.

Provision is made for the qualifications and disqualifications of Senators, their tenure of office and the appointment of a President and Vice-President of the Senate.

For the House of Representatives, on the other hand, the Chapter prescribes that it shall consist of 36 elected Members or such other number as corresponds with the number of constituencies approved by a resolution of the House of Representatives and incorporated in an Order made by the President.

It provides further for the qualifications and disqualifications of Members of the House, their tenure of office, the consequences to them of resignation or expulsion from their political party, the election of a Speaker from within or outside the House, the qualification of voters, and for the Court of Appeal to be the final arbiter on any question challenging the validity of a person's appointment as a Senator or his election to the House of Representatives or his election as Speaker thereof.

This Chapter also sets out, *inter alia*, how Parliament is to come into being; how often it should meet; how long it is to continue; what its powers, privileges and immunities are; what procedures it should follow in discharging its main function of making laws for the peace, order and good government of the country; how it may alter the provisions of the Constitution; the restrictions on the powers of the Senate in relation to Money and other Bills; the extent of the

right of Ministers and the Attorney General to attend any sitting of the House or of the Senate and to take part in the proceedings of either House; the manner and mode of the prorogation and dissolution of Parliament; and the holding of general elections. It concludes with a stipulation that the election of Members of the House of Representatives is to be conducted by secret ballot and in accordance with the first-past-the-post system.

The functions of registering voters, reviewing constituency boundaries for the consideration of Parliament and conducting elections, are vested in an Elections and Boundaries Commission, whose independence and insulation against interference are secured, *inter alia,* by a provision that it is not subject to the control or direction of any person or authority in the performance of its duties.

EXECUTIVE POWERS

The Fifth Chapter vests the executive authority of the State and the supreme command of the Armed Forces in the President. The general control and direction of the government, however, is vested in a Cabinet with collective responsibility for such control and direction to Parliament. The Cabinet consists of the Prime Minister, the Attorney General and such number of other Ministers as the President appoints on the advice of the Prime Minister from among the Members of both Houses of Parliament. In the exercise of his executive authority the President is required to act in accordance with the advice of the Cabinet except in cases where the Constitution or some other law requires him to act in his discretion or in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet. Where however, the President is required to act in accordance with advice proffered or after consultation, it is provided that the question whether he has done so is not to be enquired into by any court. A like immunity with respect to the performance of any of the functions of his office is provided for under Chapter 3.

This Chapter also provides for, *inter alia,*

(i) the procedure for the appointment of the Prime Minister, and of the other Ministers, of whom the Attorney General must be one;

(ii) the allocation of portfolios to Ministers and their tenure of office;

(iii) the appointment of Parliamentary Secretaries;

(iv) the appointment of a Leader of the Opposition;

(v) the functions of Permanent Secretaries in the Departments assigned to the control and direction of Ministers; the composition and functions of the Advisory Committee on the Power of Pardon in relation to persons convicted of criminal offences; and

(vii) the exercise by the President of his powers relating to pardons, and to sentences imposed on persons convicted of criminal offences.

THE DIRECTOR OF PUBLIC PROSECUTIONS AND THE OMBUDSMAN

The Sixth Chapter establishes the office of the Director of Public Prosecutions and vests in him the authority to institute and pursue criminal proceedings and to take over and continue or to discontinue them at any stage before judgment. It may be noted here, that these powers could with advantage, be considered in conjunction with those conferred on the Attorney General under the Fifth Chapter which stipulates in section 76(2), that he is responsible for the administration of legal affairs in the State; also that in the Seventh Chapter of the Constitution it is provided by section 111(3) that the appointment of the Director of Public Prosecutions is subject in effect to the approval of the Prime Minister.

This Chapter also establishes the office of Ombudsman. It vests him with authority to investigate complaints of administrative injustice, against any department of government or other

specified authorities and if found justified in any case, to report his recommendations with reasons to the department or authority concerned. It also prescribes the manner and term of his appointment and the areas, which are not subject to his investigation. The Ombudsman is given no power of enforcing any finding he has made, or of making any binding and enforceable orders against anyone in any department or authority.

THE JUDICATURE

The Seventh Chapter establishes a Supreme Court consisting of a High Court of Justice and a Court of Appeal. It makes provisions for the appointment of a Chief Justice by the President after consultation with the Prime Minister and the Leader of the Opposition; and for the appointment of Judges to the High Court and Court of Appeal by the President, acting on the advice of the Judicial and Legal Service Commission.

As a safeguard against error and to furnish means of redress to aggrieved litigants and convicted persons, provision is made for appeals to the Court of Appeal and thereafter to the Judicial Committee of the Privy Council in England in the cases specified and otherwise prescribed.

The Judicial and Legal Service Commission is made an independent body. It is headed by the Chief Justice and given the additional power of appointing and exercising disciplinary control over the holders of prescribed public offices for appointment to which one is required to possess legal qualifications.

Provisions are made to secure the independence, salaries and conditions of service and security of tenure of judges who are all required to retire at age 65. With the permission of the President however, given in accordance with the advice of the Chief Justice, a judge including the Chief Justice, may continue in office after attaining that age for such period as may be necessary to

enable him to complete proceedings and deliver judgment in cases commenced before him prior to his attainment of the retirement age. The Chief Justice is thus allowed to advise on his own continuation in office beyond the prescribed age of retirement.

The Privy Council is made the final body to advise the President as to whether a judge should be removed from office on the only grounds prescribed, namely, inability to perform the functions of his office or misbehaviour.

FINANCE

The Eight Chapter deals with Finance. It establishes, *inter alia,* a Consolidated Fund and a Contingencies Fund and prescribes how expenditure from these and other public funds is to be authorised and controlled.

It provides for the appointment of an Auditor General by the President, after consultation with the Prime Minister and Leader of the Opposition, and makes the Auditor General independent of the Executive by prescribing that in the exercise of his functions under the Constitution he shall not be subject to the control or direction of any person or authority.

His function is to check and report annually to the Speaker, the President of the Senate and the Minister of Finance on the public accounts of the State, and of all enterprises owned or controlled by or on behalf of the State.

Provision is also made for the appointment of a Public Accounts Committee to consider and report to the House of Representatives on public expenditure; and of a Public Accounts (Enterprises) Committee to do likewise on the audited accounts and other financial statements of State Enterprises.

SERVICE COMMISSIONS

The Ninth Chapter provides for the appointment of a Public Service Commission, a Police Service Commission and a Teaching Service Commission. Each is constituted an independent Commission and charged with powers to appoint, promote and discipline persons under their respective jurisdictions.

In the vast majority of cases their authority is unfettered but in a small number of specified cases, a Service Commission before proceeding to make an appointment must first consult one of the other Commissions or the Auditor General or Ombudsman; and in a few other cases also specified, obtain the Prime Minister's approval of its proposed appointment.

As in the case of the President noted under the Third and Fifth Chapters, the courts are prohibited from enquiring into any question relating to the validity of the performance by any Commission of any of its functions.

In Part 2 of this Chapter provision is made for the establishment of an independent Public Service Appeal Board consisting of a Chairman appointed by the President after consultation with the Chief Justice, and two other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Chairman is required to be a person who holds or has held the office of a judge. This Appeal Board is charged with the duty of hearing appeals by public officers against decisions of a Service Commission or its delegate as a result of disciplinary proceedings brought against them. The powers of the Appeal Board on the hearing of any appeal are set out in an amendment to the Constitution by Act No. 13 of 1982 enacted on 18th June, 1982.

This Part then makes provisions, *inter alia*, for the protection of pension rights, defines the powers of Commissions in relation to the withholding, reduction, and suspension of pensions and in addition, prescribes that unless a public officer has been removed from office for misbehaviour his pensionable entitlements are not to be withheld.

After dealing with appointments by the President to certain special offices and removal therefrom on the advice of the Prime Minister, this Part of the Chapter concludes with provisions relating to the tenure, salaries and allowances, alteration of terms of service and removal of the holders of special offices. They are all designed to protect them from assaults against any frivolous or oppressive action emanating from the Executive.

INTEGRITY COMMISSION

The Tenth Chapter provides for the establishment of an Integrity Commission consisting of such number of members, qualified and appointed in such manner and holding office upon such tenure as may be prescribed. It is charged with the duty of receiving declarations in writing of the assets, liabilities and income of a limited group of persons namely, Members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers, of supervising all prescribed matters connected therewith and of exercising the powers and duties contained in the Integrity in Public Life Act enacted on 11th May, 1987 to carry out effectively the purposes of this Chapter.

SALARIES REVIEW COMMISSION

The Eleventh Chapter establishes an independent Salaries Review Commission consisting of a Chairman and four other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

Its functions are to review with the approval of the President the salaries and other conditions of service of a number of office holders among them being the President, the Prime Minister, the Chief Justice, Judges, Ministers of Government, Members of Parliament, Parliamentary Secretaries, and the holders of the special offices mentioned in section 136(12) to (15) of the Constitution and other offices as prescribed by law.

Its report on such review is required to be submitted to the President for transmission to the Prime Minister who is required to present it to Cabinet and to lay it thereafter in both Houses of Parliament.

MISCELLANEOUS AND GENERAL

Finally, *the Twelfth Chapter* provides for the procedure to be observed for tendering resignations from offices established by the Constitution, the effective date of such resignations, the re-appointment of persons who have resigned, and appointing persons to offices even though they have not been vacated by the persons holding them.

PROBLEMS AND QUESTIONS ARISING

Let us now proceed to take a closer look at the provisions of the Constitution for the purpose of considering such problems and questions as have arisen or are likely to arise hereafter under each of the twelve Chapters since their enactment in 1976. It will greatly assist the Commission to receive suggestions and proposals on the questions set out at the end of each Chapter and on such other matters as may be considered relevant.

SECTION III

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

The Constitution continues to recognise, as did the Independence Constitution that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex the following human rights and fundamental freedoms:

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly;

(k) freedom of the press.

These human rights and fundamental freedoms are based on the Canadian Bill of Rights of 1960. However, the protection guaranteed to the individual by these rights and freedoms was long before this established by the English common law which became part of the law of Trinidad and Tobago from the time these islands became British colonies. Consequently, though not always

articulated in the form in which they are set out both in the Independence Constitution and in the present Constitution, these rights and freedoms are declared always to have existed in Trinidad and Tobago.

Many of these rights and freedoms are reflected in doctrines that our nation holds dear, for example, the right to be presumed innocent until proven guilty; the right of a person charged with a criminal offence to a fair and public trial by an independent and impartial tribunal; the right not to be deprived of reasonable bail save for just cause.

Though Parliament is the supreme law-making authority, it may not make laws to interfere with the rights and freedoms set out in the Constitution except under the following conditions

(a) the law states that it is inconsistent with the human rights provisions and is supported in each House by the votes of not less than three-fifths of all the members of that House;

(b) during a period of public emergency a law is passed which. states that it is to have effect only during that emergency.

Even where so passed, however, the Courts in the former case may strike down the law if it is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual; and in the latter case, if it is shown not to be reasonably justifiable for dealing with the situation that exists during the period of such emergency.

A period of public emergency is instituted by a Proclamation issued by the President or if Trinidad and Tobago becomes engaged in any war. As is usually the case, the President's power in this regard must be exercised in accordance with the advice of the Cabinet. The grounds for the declaration of a state of emergency are-

(a) Trinidad and Tobago is about to be engaged in a war;

(b) some natural catastrophe has occurred; or

(c) there is a threat to public safety or to essential supplies or services.

The President's Proclamation which is required to be delivered to the Speaker of the House of Representatives within 3 days of its issue, remains in force for a maximum of 15 days and within that period the declaration of the state of emergency must be debated in the House of Representatives. The House of Representatives may revoke the Proclamation, or extend it by a simple majority for a period not exceeding 6 months in the aggregate. Any further extension for not more than 3 months at any one time must be approved by a three-fifths majority of all the members of each House.

The Human Rights Chapter of the Constitution therefore not only guarantees to the individual that his rights are established and protected, but sets out in quite specific terms the circumstances in which Parliament may legislate in a way which interferes with those rights.

Any person who alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened, in relation to him, may apply to the High Court for redress. This process has proved to be extremely popular especially as it may be resorted to even when some other legal process in respect of the very matter complained of is available. Thus, there have been cases where convicted persons have been able by constitutional motions to re-litigate the matter of their conviction and sentence even though the appeals against them have been rejected by the Court of Appeal and the Privy Council.

Re-litigating a matter that has already been finally determined offends against a principle of law that there should be an end to litigation, and it may also be considered as an abuse of the Court's

process. However, so long as the Constitution permits such re-litigation, convicted persons are entitled to take advantage of it.

It should be pointed out that Constitutions of all other Caribbean countries have sought to protect and guarantee human rights and fundamental freedoms though expressing them somewhat differently from the way they are expressed in our Constitution. The main difference is that in those other Constitutions a declaration of each right is immediately followed by a statement of the extent to which and the purposes for which each right may be abrogated. They contain, however, no requirement for special majorities for the passing of an Act, which does abrogate a fundamental right. The constitutionality of such an Act depends upon whether its substance and content bring it fairly within one of the exceptions to the relevant right as formulated in those Constitutions.

The right of Parliament to legislate at any time in a manner inconsistent with the rights and freedoms guaranteed by the Constitution, when no period of public emergency exists, has given cause for considerable concern. So too has Parliament's right to do so during periods of public emergency because it is felt that the individual often needs the protection of the law more urgently during such periods than at any other time.

The recognition, declaration and entrenchment of fundamental human rights and freedoms are the corner-stone of our democracy. The national community expects and accordingly relies on the Courts to guard it against attempts to infringe them by or through the exercise of executive power.

Recently, however much concern has been expressed regarding the "due process of law" protection in the Constitution having regard to the "undue delay" of the courts in deciding cases. The grant of bail too, has raised many vexing questions.

Notwithstanding the right to be presumed innocent until proved guilty, Magistrates and Judges have a clear discretion except in cases of murder, treason or piracy, to deny reasonable bail for *just cause* to a person accused of any crime. Recently, however, alarming increases in the crime rate have given rise to vigorous and often bitter criticisms of the grant of bail to persons charged with serious crimes where there appeared to be just cause for refusing it.

At the time of writing, proposed legislation seeking to relieve Magistrates and Judges of their discretion to grant bail to persons accused of certain specified offences has been published for public comment.

In the current debate on the question strong representations have been made by some for the retention of the discretion with a detailed definition introduced in the law of what constitutes "just cause"; whereas equally strong representations have been voiced by others for the removal altogether of the discretion under reference in the cases specified in the Bill.

QUESTIONS

1. Should the Constitution impose any restrictions, and if so, what restrictions on applications to the High Court for the enforcement of the enshrined rights?
2. Should Parliament be permitted to enact legislation inconsistent with the enshrined rights during periods of public emergency or at all?
3. Should the right not to be deprived of reasonable bail without just cause be restricted or extended?
4. What are the criteria by which to determine what is reasonable bail and just cause for refusing it?

SECTION IV

CITIZENSHIP

The question of citizenship is important in that it not only affects a person's status in the land of which he is a citizen but it also has implications for him when he goes abroad. For example, a citizen of Trinidad and Tobago has a right to enter and remain in and leave Trinidad and Tobago; he is entitled to a school place in our public school system if he is of school age; he can acquire and hold land and he can accept and remain in employment. A person who is not a citizen of Trinidad and Tobago cannot do most of these things in Trinidad and Tobago unless he obtains special permits, e.g., a Work Permit or Licence, e.g., an Alien's Landholding Licence to acquire an interest in real or personal property. Indeed each country has its own restrictions that apply to persons who are not its citizens.

The international community is made up of nation States and the citizens of those nation States and it is often important to be able to establish that a person is a citizen of State A and not of State B even when he is present not in State A or State B but in State C.

This Chapter of the Constitution provides that persons who, at the commencement of the Independence Constitution, became citizens of Trinidad and Tobago by birth or descent and who had not ceased to be such citizens continue to be citizens.

It also provides that persons who became citizens of Trinidad and Tobago by registration under the Independence Constitution or who acquired citizenship of Trinidad and Tobago under the Citizenship Act, 1962, and who have not ceased to be such citizens, continue to be citizens of Trinidad and Tobago.

The legal provisions relating to citizenship of Trinidad and Tobago by and large do not contemplate dual citizenship save where the citizenship of another country is acquired otherwise than by the person applying for it. For example, a woman who is a citizen of Trinidad and Tobago and who marries a citizen of another country may automatically acquire the citizenship of that other country on her marriage. Again, a person who is a citizen of Trinidad and Tobago by birth may also be a citizen by descent of some other country if at the time of his birth his parents are citizens of that other country. In both these cases a citizen of Trinidad and Tobago may also be a citizen of another country, i.e., he may have dual citizenship.

Where a person has dual citizenship and is physically present in one of the countries of which he is a citizen he cannot claim the benefits or privileges or protection of the other country of which he is a citizen so that a person who is a citizen of Trinidad and Tobago and also a citizen of Barbados, can, while he is in Trinidad and Tobago enjoy only the privileges of citizenship that Trinidad and Tobago affords.

At the time of writing, there is before Parliament a Bill which if passed would change the law relating to dual citizenship. This Bill seeks to allow persons who were Trinidad and Tobago citizens by birth and who renounced that citizenship upon the acquisition of the citizenship of some other country, to apply to the appropriate Minister to have their Trinidad and Tobago citizenship restored. If such restoration is granted it would be effective from the date of the original renunciation. Restoration however, would be granted only to those former citizens of Trinidad and Tobago who can satisfy the Minister that they are not habitual criminals or do not fall within the prohibited classes of persons described in the Immigration Act.

Should this Bill be enacted, there would be for the first time a distinction between various categories of citizens of Trinidad and Tobago. To date, though citizenship of this country may be

acquired by different methods, all citizens enjoy the same rights. However, this Bill proposes that only persons who were citizens *by birth* may have Trinidad and Tobago citizenship restored. The Bill is silent as to the children of such persons. If after having acquired the citizenship of another country, a former citizen by birth of Trinidad and Tobago has children born elsewhere than in Trinidad and Tobago, upon the restoration of the parent's citizenship do the children then become citizens of Trinidad and Tobago by descent? If the answer is yes, what would be the position if the children are habitual criminals or members of the prohibited classes referred to above? If on the other hand such restrictions of criminality, etc., do not apply to the children, should they apply to the former citizen?

The Bill also seeks to create honorary citizenship which may be granted by the Minister to such persons as he deems fit. The only right attaching to honorary citizenship is the right to be admitted into Trinidad and Tobago.

Citizenship is an important right since in addition to the privileges set out above, it also carries with it the right to participate in the Government of the country.

QUESTIONS

1. Should the right to be admitted as an honorary citizen carry with it a right to remain or to work in Trinidad and Tobago?
2. If he has a right to be admitted and to remain in Trinidad and Tobago should his spouse and infant children be denied entry to and residence in this country?
3. If the answer is yes, would this not be unfair and moreover constitute a possible breach of a fundamental right also protected by the Constitution, viz, the right to respect for his private and family life?

4. See also those questions asked in above paragraph.

SECTION V

THE PRESIDENT

(i) FUNCTIONS

The Constitution provides for a President who shall be head of State and Commander-in-Chief of the Armed forces. He is also the repository of all Executive Authority. These powers are exerciseable within certain constitutional limits and most of his constitutional acts must be performed in accordance with the advice of some other authority, usually the Cabinet. In very few circumstances is he permitted to act in his sole discretion and, even then, he is more often than not required to consult with some other person or persons before taking action.

The Constitution also states that Parliament shall consist of the President, the Senate and the House of Representatives. The President, however, does not sit in Parliament and his functions in respect of that body are confined to the summoning, prorogation and dissolution of Parliament and giving his assent to Bills. Most but not all of these functions are performed on advice, and this aspect of Presidential powers will be dealt with under different headings. The nature of the Presidency itself is still a matter in dispute and any radical change in the current position will undoubtedly call for consequential changes elsewhere in the Constitution.

The President is almost entirely a ceremonial Head of State (like the Sovereign in the U.K.) with few executive powers and, theoretically at least, completely isolated from politics. He does have the right to be informed by the Prime Minister of the state of the nation and may demand information and explanation in respect of any matter of national importance. This access to the Prime Minister gives him the opportunity to exert influence by way of advice,

encouragement or warning, but that is the extent of any intervention open to him and his words may be entirely ignored.

Because he has no political power he is isolated from political pressures. Accordingly, once elected he has security of tenure and can be removed from office only for cause, by a complicated procedure involving Parliament and a tribunal of judges.

He also enjoys the following immunities:

1. No criminal proceedings may be instituted or continued against him during his term of office without the fiat of the Director of Public Prosecutions.
2. He may not be arrested or imprisoned during his term of office.
3. If civil action is contemplated against him for any act done by him in his personal capacity, whether before or after assumption of office, he must be given 2 month's notice in writing of such intended action with full details.

(ii) ELECTION OF THE PRESIDENT

The method of electing the President is not entirely consistent with the non-political nature of his office. At present he is chosen by majority vote of an Electoral College made up of all members of both Houses of Parliament under the charimanship of the Speaker. All members of the House of Representatives are politicians and 22 of the 31 members of the Senate are nominees of the political parties, (Government and major Opposition). The remaining nine Senators are personal nominees of the President. Even if the votes of these nine Senators-popularly referred to as Independent Senators-are discounted, it is clear that any nominee of the majority party for the post of President is bound to be elected on a simple majority vote.

It has been suggested on the one hand, that the appointment of a President who is not approved by the Prime Minister is liable to provide an almost certain recipe for conflict and

confrontation. On the other hand, there are views expressed that the selection of a President by politicians automatically taints the office; and it is pointed out that the present system does not cater for the situation in which a new Prime Minister takes office at a time when there is an incumbent President who may possibly be unacceptable to him and who still has a substantial period to serve in his office.

Both these positions are considered by some to be unsatisfactory when it is remembered that judicial review of some presidential acts at least is debarred by the Constitution.

Suggestions have been made that a solution may lie not merely in changing the mode of election (in order to give the appearance of freedom from political influence), but in providing at the same time for judicial review of acts of the President.

Any change in the method of electing the President should reflect what is required of him in the due performance of his functions. If his powers and obligations are to remain as they are, should there be any change in the mode of his election? Further, would there be need to provide in some way for judicial review of acts of the President and for a detailed description of the manner in which he is to perform these acts? Where, for example, the President is required to act after consultation with any person or organization, should it be clearly indicated what is ment by the term "consultation". Similarly, where he acts on advice, should there be documentary evidence of that advice sufficient to establish that the Constitution has been complied with?

In determining these issues, it may be necessary to balance the possible damage to the public image of the Presidency by litigation over serious issues against the possible damage to the nation by acts of a President who breaks the rules.

The view has been expressed that trivial infringements, even if deliberately performed (e.g., in certain Presidential appointments) may be less damaging than the unpleasantness which will accompany court action against the Head of State, whatever the result.

On the other hand, it should be noted that the President may be removed from office for, among other reasons, wilfully violating any provision of the Constitution, and this may make judicial review unnecessary.

There is another view that, even with safeguards, there should be the minimum of political involvement in the election of a President and that some other non-political assembly should be created for this specific purpose.

The question, which arises here, is how this can be achieved in absolute terms. Granted that there are organizations whose objectives are non-political, it is common knowledge that they are made up of citizens who can hardly avoid having political preferences or affiliations, and are quite likely to be influenced politically in their choice of a President. Consequently, it is argued that the Presidency being an essential part of our political structure, it would be wrong to debar politicians and political units from participating fully in the election of a President.

The advocates of this point of view propose for the election of a President, the creation of a broadly-based Assembly to include Local Government bodies, Trade Unions and other organizations of a national character. If this is accepted, it may be advisable to have only a prescribed number of representatives of these organizations in the Assembly in order that it should not be too large and unwieldy.

Should it be decided, however, to make substantial changes in the office of President, to have for example, an Executive President such as exists in the U.S.A., then should there be a different system of elections, such as, for example, a direct popular vote?

Between these two situations, however, there may be several variations depending on the additional powers and duties (if any) it is proposed to give to the President.

(111) TERM OF OFFICE

The President normally remains in office for a period of five years after his assumption of office, which means that under ordinary circumstances, Parliament will be dissolved and a new Parliament convened shortly before he is to demit office. One of the first functions of the President after General Elections is the appointment of Senators, nine of whom are chosen by him in his sole discretion.

Since the President's term of office has so far ended shortly after the Senator's term of office the point has been made that as a matter of principle the Independent Senators should vacate their offices when the person who appointed them ceases to be President, thus leaving the new President to select his own nominees. It is further argued that this principle should be extended to include the holders of all offices filled by the President in his discretion. This principle in so far as it relates to the holders of special offices is considered more fully later at pages 74 to 80.

One of the criticisms of the present system is that an incoming President inherits the appointments of his predecessor, and upon demitting office, he bequeaths to his successor such appointments as were made during his term of office.

On the other hand, it is contended that it is unfair for a Senator, who at present has a normal expectation of a five-year term, to be asked to vacate office within months of his appointment only because there is a change of President. Moreover, it is argued that few suitable individuals would be inclined to accept appointment on these terms.

A suggestion has been made that, in order to get over this difficulty the President should be elected for a seven-year term so that when a new Parliament is formed after 5 years, the Independent Senators can be assured of at least a two-year stint before being required to vacate office along with the President. This suggestion, however, is countered by the argument that it discriminates against one type of Senator. Further, while in the short term it may give the Independents a two year guarantee, in course of time a dissolution of Parliament and a new Presidential election will once more fall in close proximity, thus reproducing the original problem.

It is argued further, that the Independent Senators, once appointed are by no means "the President's men"; that he cannot dictate to them how they shall speak or vote in Parliament and that although he has the power to remove them in his discretion it would be difficult indeed for him to justify the removal of a Senator for any reason except misbehaviour or, inability from any cause to discharge his functions. C. C. 3

QUESTIONS

1. Do any of the present provisions regarding the election, powers, and immunities of the President need to be altered? If so, what changes should be made?

    (a) Should the powers of the President be increased, and, if so, to what extent?

(b) Should there be an Executive President as in the U.S.A., or some modification of that system?

2. Having decided on the nature of the Presidency and the powers of the President, how should he be chosen?

   (a) By an Electoral College as at present?

   (b) By a broader-based Electoral College to include national organizations?

   (c) By direct popular vote?

   (d) By any other method?

3. Should Senators appointed by the President in his discretion vacate office at the same time as the President?

4. Should the President's term of office extend beyond the life of Parliament and if so, for how long?

5. Should persons who have at one time served as party nominees on the Senate be eligible for appointment as Independent Senators?

6. Should the procedure for the impeachment of the President outlined in section 36(1) be revised? And if so, in what manner?

(IV) VACANCY IN THE OFFICE OF PRESIDENT

If the President is unable to perform his functions or the office is vacant, the President of the Senate or, failing him, the Speaker of the House of Representatives, acts as President. Both these officers will usually be party politicians and there are some who feel that they should not therefore be asked to perform even temporarily, the functions of a non-political office.

There is a further anomaly here in that, while the minimum age requirement of the office of President is 35 years (with a residential qualification of 10 years), the President of the Senate (like any other Senator) has an age requirement of 25 years and the Speaker, as a member of the House of Representatives, has an age requirement of a mere 18 years. It is possible therefore that a person who is not qualified to fill the office of President may be required to act in that post.

Suggestions have also been made for the creation of the substantive post of Vice-President, that he should be elected on the same ticket as the President, and that he should be *ex officio* President of the Senate. There are others who feel, however, that the creation of such a post is unsuited to the needs of the country, and therefore unnecessary.

The question as to whether a President who is absent from the country for a short period is thereby rendered incapable of performing his functions was the subject of a recent controversy. The view has been expressed that there should always be the physical presence in the country of a Head of State, substantive or acting.

QUESTIONS

1. Who should act for the President when he is not able to perform his functions? In particular should party politicians be selected to do so?
2. Should there be a substantive post of Vice-President, and if so
   (a) How should he be elected?
   (b) What should be his powers and responsibilities?
   (c) Should he be *ex officio* President of the Senate?

3. Should the age qualification of the President of the Senate and the Speaker of the House of Representatives be brought in line with that of the President of the Republic?

4. Should the President, whether substantive or acting, be physically present in the country at all times and, if so, should this be clarified in the Constitution?

SECTION VI

PARLIAMENT

(1) THE SENATE

Provision for a second Chamber, the Senate, was first made in the pre-independence 1961 Constitution in response to the wishes of those who desired that there should be "checks and balances" to control possible excesses or hasty legislation on the part of the elected representatives and, moreover, to extend opportunities for public service to the more conservative members of the society who felt that, in the prevailing political climate, they were unlikely to gain representation through the ballot box.

The Senate however, was so designed as not to frustrate the will of the House of Representatives. This is clear from the composition of the Senate and the limitation of its powers both in the Independence Constitution and the present Constitution.

It consists of three distinct elements totalling 31 members altogether. Of these 16 are appointed by the President on the advice of the Prime Minister, 6 on the advice of the Leader of the Opposition and 9 appointed by the President in his sole discretion, from outstanding persons in various fields of public endeavour. The first group of 16, (the Government Senators) has a slender majority of only one over the other two groups (the Opposition and Independent Senators) which together total 15. However, the President of the Senate is usually chosen from the government side resulting in an equality of votes on the floor of the Senate. So that while the Government cannot normally be defeated in the Senate on a simple majority vote, it can be in the case of an equality of votes, as actually happened on one occasion when the President of

the Senate despite being a Government Senator used his casting vote against the government. But on the other hand, legislation requiring a special majority to be passed must gain support from members of one or both of the other groups.

The powers of the Senate are restricted in certain respects. Any Bill except a Money Bill may be introduced and debated for the first time in either the Senate or the House of Representatives, and after passage in both, receives the Presidential assent. The Senate may not however, permanently reject a Bill passed in the House of Representatives. It has the power to suggest amendments, which may or may not be accepted by the Lower House, but in the final analysis it is the will of the House of Representatives that prevails. The Senate may reject a Bill sent to it in one Session but, should it be returned in the following Session, it can be sent for Presidential assent despite a second rejection by the Senate.

If a Money Bill passed by the House of Representatives is sent to the Senate at least one month before the end of the Session, the Senate cannot prevent that Bill from being assented to by the President for longer than one month.

The qualifications for membership of the Senate present no unusual features, except that the minimum age has been fixed at 25 years and not 18 years, which is the age of legal majority. Membership of the Senate and of the House of Representatives are mutually exclusive.

The President and Vice-President of the Senate are elected by the Senators themselves, but Senators who are Ministers or Parliamentary Secretaries are not eligible for election. There is now no prescribed limit to the number of Senators who may be chosen as Ministers or Parliamentary Secretaries. This may be compared with the Independence Constitution, which limited to two the number of Senators who could be appointed Ministers and to three if the Attorney General came

from the Senate. In 1970 however, the Constitution was amended by Act No. 15 of 1970 to increase these numbers to three and four respectively. A Senator who is a Minister may not be appointed as Prime Minister, unless Parliament is dissolved. Some have argued that this provision is anomalous and should be repealed. Where the Prime Minister is unable temporarily to perform his functions, any Member of Cabinet, be he Senator or member of the House of Representatives, may be appointed to act as Prime Minister.

QUESTIONS

1. Is a Senate necessary, if not, should there be changes in the way in which the House of Representatives is constituted?

2. If the Senate is to be retained, how should its members be chosen

   (a) By nomination as at present?

   (b) By some other system of nomination?

   (c) By direct election?

3. If its composition or method of selection is altered, should its powers be amended also?

4. Should a Senator ever be appointed to act in or to hold the post of Prime Minister?

5. Should there be a limit to the number of Ministers or Parliamentary Secretaries who can be drawn from the Senate?

6. Should the age qualification of Senators be the same as that prescribed for a member of the House of Representatives?

(ii) HOUSE OF REPRESENTATIVES

Members of the House of Representatives are elected from among citizens on the basis of universal adult suffrage, the age of majority being 18 years. The candidate for election is further required to have resided in Trinidad and Tobago for a period of two years prior to the date of nomination, or to be domiciled and resident in the Country on that date. Voluntary acquisition of citizenship of another country disqualifies the person for membership of the House of Representatives, but pending changes in the law to allow for dual citizenship in certain cases may remove this disability to some extent.

The Country is at present divided into 36 constituencies of which the island of Tobago is allotted a minimum of two. Each of the other 34 constituencies is represented in the House of Representatives by a single member elected on the "first-past-the-post" system by secret ballot. The Elections and Boundaries Commission, an independent body, is required to review the number and boundaries of existing constituencies and to submit its report thereon to the Prime Minister and to the Speaker of the House of Representatives not less than two nor more than five years from the date of the submission of its last report. Its recommendations on such review may be varied by Parliament.

The "first-past-the-post" system has come in for some criticism on the ground that it may not truly reflect the popular will. It is possible, for example, for a party to obtain a large majority of the seats without obtaining a majority of the popular vote. It is also possible for a party to gain substantial popular support with minimal parliamentary representation. In 1981 the party which gained the second largest number of votes overall won not a single seat whereas the party which

gained the third largest number won eight seats and formed the Opposition in Parliament. For these and other reasons various forms of Proportional Representation have been proposed, either alone or in combination with the "first-past-the-post" system. Under the "mixed" system, as recommended by the Wooding Commission in 1974, the number of seats was doubled. Half of them were to be elected on the "first-past-the-post" system, while the other half were to be selected on the basis of the percentage of total votes cast for each party, the persons in this group being selected from a list which may or may not be published in advance of the elections.

The following table illustrate the effect of applying the various systems of voting, namely, "first-past-the-post", the party list system of Proportional Representation, and a combination of both to the results of the General Elections for the years 1976, 1981, and 1986.

It should be noted that in this table all parties which receive less than 5 per cent of the votes cast are not entitled to be allocated any list seats. The votes cast for such parties are then reallocated to the other parties receiving more than five per cent, in proportion to their percentages for the "first-past-the-post" seats.

TABLE

YEAR	PARTY	Votes		First past the post		Proportional Representation		Mixed System	
		Numbers of Votes Cast	Percentage of votes cast	Number of Seats	Percentage of Seats	Number of List Seats	Percentage of List Seats	Total Number of Seats	Percentage of Total number of Seats
1976	P.N.M.	169,194	56.2	24	66.66	22	61.11	46	63.88
	U.L.F.	84,780	28.16	10	27.77	11	30.55	21	29.16
	D.A.C.	25,586	8.50	2	5.55	3	8.33	5	6.94
	TAPIA	12,012	3.99	-	-	-	-	-	-
	D.L.P.	9,404	3.12	-	-	-	-	-	-
TOTAL:		**300,985**		**36**		**36**		**72**	
1981	P.N.M.	218,557	53.1	26	72.2	20	55.55	46	63.8
	O.N.R.	91,704	22.28	-	-	9	25	9	12.5
	U.L.F.	62,718	15.25	8	22.25	6	16.66	14	19.4
	D.A.C.	15,390	3.74	2	5.55	1	2.77	3	4.11
	TAPIA	9,401	2.28	-	-	-	-	-	-
	N.J.A.C	13,710	3.53	-	-	-	-	-	-
TOTAL:		**411,543**		**36**		**36**		**72**	
1986	N.A.R.	380,029	66.4	33	91.66	24	66.66	57	79.1
	P.N.M.	183,635	32.09	3	8.33	12	33.33	15	20.8
	N.J.A.C	8,592	01.5	-	-	-	-	-	-
	P.P.M.	-	-	-	-	-	-	-	-
TOTAL:		**572,256**		**36**		**36**		**72**	

NOTE:	**P.N.M.**	= People's National Movement
	D.L.P.	= Democratic Labour Party
	N.J.A.C.	= National Joint Action Committee
	D.A.C.	= Democratic Action Congress
	TAPIA	= Tapia Movement
	O.N.R.	= Organisation for National Reconstruction
	P.P.M.	= People's Popular Movement
	N.A.R.	= National Alliance for Reconstruction

From the purely statistical point of view, the results do show support for the Party list system of Proportional Representation to reflect the popular will. In 1976 the effect of applying Proportional Representation was not so pronounced. The P.N.M. with 56.2 per cent of the vote won 24 constituencies out of 36 (66.6 per cent) reduced to 63.8 per cent after applying Proportional Representation. The U.L.F. on the other hand, with 28.16 per cent of the vote won 10 constituencies (27.7 per cent), increased to 29.16 per cent after applying Proportional Representation.

The figures for 1981 and 1986 were more revealing. In 1981 P.N.M. with 53.1 per cent of the vote won 26 constituencies (72.2 per cent) reduced to 63.8 per cent after applying Proportional Representation. The O.N.R. with the second largest vote (22.28 per cent) gained no constituencies but would have ended up with nine seats (12.5 per cent) after applying Proportional Representation; while the U.L.F. with 15.25 per cent of the vote won eight constituencies (22.2 per cent) reduced to 19.4 per cent after applying Proportional Representation.

In 1986 the N.A.R. with 66.4 per cent of the vote won 33 out of 36 constituencies (91.66 per cent), reduced to 79 per cent after applying Proportional Representation, while the P.N.M. with 32.09 per cent of the vote won only three constituencies (8.3 per cent) increased to 20.8 per

cent after applying Proportional Representation. The above figures show that the mixed system would tend to correct any imbalance created by a straight "first-past-the-post" system, bringing parliamentary representation more in line with the people's will as evidenced by the popular vote.

The list of disqualifications for membership of Parliament contains nothing unusual but could be extended to include convictions for other serious offences (e.g., drug related crimes). Extensions of the list can of course be achieved by amending the Representation of the People Act, but in the present state of the society, there are many who consider that convictions for drug offences are important enough to be enshrined, even entrenched, in the Constitution as disqualifications for membership of Parliament. There has been strong criticism of section 49(2)(e) of the Constitution by virtue of which a Member of the House of Representatives is required to vacate his seat if he resigns or is expelled from his Party. This amendment of the Constitution was first introduced in 1978. It is argued that whatever obligations a member may have towards his Party, it is his constituents who have elected him for a full parliamentary term and consequently it is they who should decide at the end of his term whether he has served them well or ill, and whether he should continue to represent them or not.

On the other hand, there are some who feel that there should be some means of removing before the end of his term a representative who betrays his trust, or is otherwise unsatisfactory in his performance. It is felt that constituents should not in such a situation be forced to put up with him for the full five-year term. A system of "recall" under which constituents would be entitled to petition for the removal of their representative before the end of his term, has been suggested, and if accepted in principle would have to be worked out in detail.

QUESTIONS

1. Should elections continue to be under the "first-past-the-post" system as at present, if not should there be
   (a) some form of Proportional Representation; or
   (b) a combination of the systems of Proportional Representation and "first-past-the-post"?

2. Should a Member of the House of Representatives who leaves or is expelled from his Party be required to vacate his seat?

3. Should the constituents be given an opportunity to recall an elected member regarded by them as unsatisfactory? And if so, how should this be effected?

4.)Should the list of disqualifications for membership of Parliament include (a) convictions for drug related offences and (b) the retention of foreign citizenship?

(iii) SPEAKER

The first duty of the House of Representatives is to elect a Speaker, who may be chosen either from the House itself or from outside Parliament altogether. In the United Kingdom the Speaker, who is an elected Member of Parliament, ceases to perform political functions as soon as he is elected Speaker. If he seeks re-election to Parliament at the next General Elections, he presents himself to the electorate not as a party candidate but as an Independent seeking re-election, and in the past more often than not has been unopposed in his constituency. There is some evidence that problems have arisen as a result of our having adopted some but not all of the features of the United Kingdom system particularly in relation to a Speaker who is an elected Member of the House.

Whatever the system, everyone will no doubt agree that it is necessary to ensure that the impartiality of the Speaker be visibly maintained. One method of achieving this would be to choose as Speaker a person from outside Parliament who has no constituency obligations and preferably no party ties.

The result of this would obviously be to increase the number of members by one, and moreover by a member who has been selected not by the electorate but by the votes of the government majority. The question that would arise in such an event is whether the Speaker should be allowed any vote at all, even a casting vote and whether he should be counted as a member of the House for the purpose of determining how many votes are needed to constitute a special majority.

QUESTIONS

1. (a) Should an elected member be eligible to be elected Speaker of the House of Representatives? and

   (b) If such a member is elected, should he cease all political activity?

2. If the Speaker is not an elected member, should he have any Party affiliation or connections?

3. Should a Speaker who is not an elected member have any special qualification, e.g., previous parliamentary or judicial experience?

(IV) POWERS, PRIVILEGES AND PROCEDURES OF PARLIAMENT

Parliament is empowered to "make laws for the peace, order and good Government of Trinidad and Tobago", but those powers must be exercised within the limits of the existing Constitution. The Constitution itself may be altered by Parliament--and only by Parliament but the

procedures for amendment, including the required majorities in each House, vary according to the degree of sanctity accorded to the particular provision to be amended.

The list of matters so entrenched is long and fairly comprehensive and it is not easy to determine whether or not there should be different degrees of entrenchment, and if so, the nature and extent of the variations.

Presumably the drafting of a Constitution is not effected without mature consideration and possibly, after a large degree of public participation, in which case changes should not be undertaken lightly or whimsically, nor should they be introduced to suit a particular aberrant individual or circumstance. Certainly, it should not be altered to serve partisan political ends. The need for entrenchment of the fundamental principles, and basic framework is therefore obvious. What is not so obvious is the need to differentiate further, once it is understood what is fundamental and what is purely marginal, circumstantial or even decorative.

The architects of the Constitution did, however, consider even those matters touching the core of the Constitution as being of differing degrees of fundamental importance requiring a greater or less degree of entrenchment and provided accordingly. We therefore have relatively simple cases, which can be dealt with by a simple majority vote and others, which can only be changed by a two-thirds, three-fourths or three-fifths majority in one or other of the Houses of Parliament or both.

To ensure unhindered performance of its extremely important functions, Parliament has been endowed with wide privileges. Members enjoy freedom of speech in the Senate and House of Representatives to the extent that they are immune from civil or criminal proceedings for

performing their duties in either House, and for the publication of any document by or under the authority of either House. In other respects the powers, privileges and immunities of each House and of the members of Committees of each House are those prescribed by Parliament; but it is provided that until so prescribed they are to be those applicable to the Parliament of the United Kingdom. Persons appearing to give evidence before either House or any of its Committees enjoy the privileges and immunities of Members.

The extensive privilege of free speech enjoyed by members can be abused and there have been complaints that it has been wantonly used in the past in the pursuit of personal animosities. If so, this may be an argument for curtailing the privileges, but it may well reduce the efficiency of members. An alternative solution suggested is to make provision for the disciplining of members who abuse their privileges, so as to avoid bringing Parliament itself into disrepute.

Calls have been made for an immediate and comprehensive review of the Standing Orders and, if necessary, for the Constitution itself to lay down the guidelines for such a review. The current Standing Orders date back to 1961 and although there is provision for invoking, where necessary, the practices which obtain in the U.K. House of Commons, this may lead to great uncertainty, if only because many of the traditional powers of the Commons, though never abrogated, have fallen into disuse.

It is considered by some that the provision whereby a Minister who is a member of one House is entitled, or may be requested, to speak in the other is unusual. Further that it does not reflect creditably on the membership of either Chamber, and points the way to the creation of an enlarged single Chamber.

QUESTIONS

1. Should members of one House be permitted to attend and speak in the other?
2. Should Parliament undertake an early review of the Standing Orders?
3. Should such Standing Orders contain special provision for disciplining members for abuse of the privileges of free speech?
4. Should the Constitution itself lay down the guidelines for a review of the Standing Orders?

(V) ELECTIONS AND BOUNDARIES COMMISSION

The Constitution introduced a single body, the Elections and Boundaries Commission, to replace both the Elections Commission and the Boundaries Commission established under the Independence Constitution. The registration of voters and the conduct of elections are under the direction and supervision of the Commission. In the performance of these functions it is specifically provided that the Commission is not subject to the directions or control of any person or authority.

The Chairman and Members are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. This consultation introduces a political input in connection with the appointments but ultimately it is the President's decision that is final.

The Commission is of a reasonable size (not less than 3 and not more than 5 so that in the exercise of its functions it is neither too small not too unwieldy to be effective. Neither Public Officers nor Parliamentarians are eligible to sit on this body and the emoluments of the Commissioners are charged on the Consolidated Fund.

The need for such independence is evident from the nature of its functions, which are:

1. Registration of Voters.
2. Conduct of Elections.
3. Review of the numbers and boundaries of constituencies.

The Constitution requires the Commission to make the review mentioned and to submit its report on it to the Prime Minister and the Speaker for presentation to the House of Representatives. Every such report must be presented not less than 2 nor more than 5 years after the last report.

It is not so stated in the Constitution, but quite clearly the report is then considered at Cabinet level, when possible amendments may be made. Thereafter, a Minister designated by the Prime Minister, lays on the table of the House of Representatives a draft Order by the President to give effect to the recommendations in the report with amendments, if any, approved by Cabinet. Where amendments to the report have been made, the Minister lays on the table a statement of the reasons for them. The House is then asked to give its approval and, if the vote is positive an Order in terms of the draft is made by the President, to come into force on a particular day and to stand until revoked. It is significant that in this entire exercise the Senate is completely ignored.

QUESTIONS

1. Should the registration of voters, the conduct of elections and the delineation of constituencies continue to be vested in a single body, the Elections and Boundaries Commission?

   If yes_._

   (a) Are the provisions in the Constitution adequate to ensure the independence of the Elections and Boundaries Commission in the discharge of its functions?

(b) Should an elections Ombudsman be appointed and if so, what should be his functions?

2. If two separate bodies are to be re-introduced, how should they be appointed and constituted?

3. Should Parliamentarians or party nominees be appointed to serve on any such body or bodies?

SECTION V11

EXECUTIVE POWERS

The executive authority vested in the President, both as Head of State and Commander-in-Chief of the Armed Forces, is confined within constitutional limits which, in most cases, are well defined.

Effective control of the nation's affairs is undertaken by a Cabinet which constitutionally is collectively responsible to Parliament. The Cabinet is headed by the Prime Minister and such number of other Ministers as he may decide to have, except that it must include the Attorney General whose portfolio is specified in the Constitution. No other portfolios are specified in the Constitution. The entire Cabinet, is appointed by the President in accordance with a prescribed formula.

THE PRIME MINISTER

After a General Election, the President must appoint as Prime Minister "a Member of the House of Representatives who is the leader of that House of the party which commands the support of the majority of members of that House". Under the party system which now operates, that person is usually the party leader.

Where no majority Party emerges or the Party has no undisputed leader, the President appoints as Prime Minister the person who, in his view, is most likely to command majority support in the House. Here he uses his discretion. The person selected must of course be willing to accept, otherwise the President has to make another selection along the same lines.

(ii) THE OTHER CABINET MINISTERS

The other Cabinet Ministers are appointed by the President acting in accordance with the advice of the Prime Minister. Here the President has no discretionary power. The responsibilities allocated to Ministers are also detailed in their letters of appointment, which means that if the Prime Minister should subsequently desire to amend a Minister's portfolio, a new letter of appointment must issue from the President.

It has been suggested that it may be simplier if the President's letter of appointment should merely be in respect of ministerial status, leaving the subject matter to be defined from time to time by the Prime Minister. Some recent changes of portfolios have been the subject of controversy, which, in the view of some persons was unnecessary and could have been avoided if this procedure had been in operation.

(iii) THE ATTORNEY GENERAL

The Attorney General is the only Minister specifically mentioned in the Constitution and his duties as defined have raised the question whether they trespass upon or are in conflict with the duties or the independence of the Director of Public Prosecutions. Prior to the Independence Constitution, the Attorney General was a public officer and also a member of the Executive Council and, later, the Cabinet. The need for a political Attorney General was seen in the context of the further development of the party system in Responsible Government, where it was thought that there should be a Member of Cabinet who could give both political advice in legal matters, and legal advice in political matters, even while retaining independence of action as an Officer of the Court and Head of the Legal Department.

It was said that opponents of this system feared a campaign of harassment against the Opposition and favouritism towards the Government and its supporters. Aspersions were thus cast against both the integrity and the independence of the Attorney General. Similar arguments were unsuccessfully advanced in opposition to the appointment of a Minister of Home Affairs in charge of the Police and Security.

The powers and responsibilities of the Attorney General are indeed quite formidable and can be abused, but to affirm on that account that they should not be entrusted to a politician is held by some to be a confession of unfitness for self-rule and democracy.

(1V) PARLIAMENTARY SECRETARIES

In addition to the Members of Cabinet, the President may appoint, on the advice of the Prime Minister any number of Parliamentary Secretaries from among the Senators and Members of the House of Representatives to assist Ministers in the performance of their duties. Revocation is effected in the same way.

Like the Prime Minister and Ministers, Parliamentary Secretaries retain office after dissolution of Parliament until a new Prime Minister is appointed or the old one reappointed. They may vacate office by replacement or resignation, or by ceasing to be a Member of the House to which they belong.

(V) ACTING APPOINTMENTS

The Prime Minister may advise the President to make acting appointments to the posts of Minister and Parliamentary Secretary in any case where the substantive holder is out of the country or otherwise temporarily unable to discharge his functions and these are terminable by the same route when matters return to normal. Appointments may also be made where a vacancy occurs during a

dissolution of Parliament and the persons eligible are the same as those who were eligible before dissolution. The anomaly arising from the appointment as Prime Minister of a Senator who is a Minister at the time of the appointment during such a period of dissolution has already been mentioned (page 32 *ante);* and although such an appointment would normally be for a short period, there would seem to be no valid reason why a Minister who is an elected Member should not be chosen to fill the post.

It is not so stated in the Constitution, but it would appear that if the occasion arises for the appointment of a Senator as Prime Minister the President must act in his discretion, there being no Prime Minister to advise him. The exercise of this power at a time when either the Country or the ruling party is in a state of turmoil will require rare powers of discernment on the part of the President and it may very well be that in such a situation he is the only one to whom such a task should be properly entrusted.

QUESTIONS

1. Should a Minister for Legal Affairs be appointed from among the Members of Parliament and a Public Officer be appointed as Attorney General?
2. Should the Attorney General be a Member of Parliament; and if so, of which House should he be a Member?
3. Should the House of Representatives decide who should be appointed Prime Minister where it is made to appear that there is no undisputed leader in that House, or that no Party commands the support of the majority?
4. Should elected members constitute the majority in the composition of Cabinet?

5. Should the Prime Minister in the selection of his Cabinet be restricted to elected Members of Parliament? Should he be allowed to recruit Ministers from outside of Parliament?

6. Should a Senator ever be appointed to perform the functions of Prime Minister, or to hold the post of Prime Minister?

(vi) NO CONFIDENCE VOTE

Section 77(1) of the Constitution states: "Where the House of Representatives passes a Resolution supported by the votes of a majority of all the Members of the House, declaring that it has no confidence in the Prime Minister and the Prime Minister does not within 7 days of the passing of such a Resolution either resign or advise the President to dissolve Parliament, the President shall revoke the appointment of the Prime Minister".

Points to be noted are these. Firstly, that the no-confidence motion must be carried by a majority of all the Members of the House and not merely those present and voting. Presumably that is to prevent a snap vote being taken when many members are absent and one or other side is clearly out-numbered.

Secondly, it is a simple majority vote that is called for and there are some who feel that the removal of the Prime Minister (and quite likely the fall of the Government) is too fundamental a move to be settled by a simple majority, which may be built up by temporary pressure. On the other hand, it may be argued that if the Prime Minister cannot gain a simple majority to stay in office he is quite likely to face continuing defeat on other issues, which would make his position untenable anyway.

Thirdly, it is to be noted also that the no-confidence vote is directed against the Prime Minister and not the Government. The Constitution offers a way out by giving the Prime Minister the option to resign or advise dissolution of Parliament. He will no doubt advise dissolution if he feels that a vote against him would be tantamount to a vote against the Government's actions or policies. If however, he considers that the affairs of the Country would be better run by having someone else as Head of the same Government, he will resign. Prime Minister Neville Chamberlain did exactly that when Britain's war effort was going badly in World War II. He did so despite the fact that the voting on a no-confidence motion resulted, not in a defeat of the Government, but in a greatly reduced majority, to which many of the Conservative Members contributed by remaining in their seats and refusing to vote.

If after seven days of the no-confidence vote the Prime Minister has not exercised either option, the President must revoke his appointment as Prime Minister and presumably employ the same constitutional devices as he did before to appoint a successor.

QUESTION

Should a vote of no-confidence in the Prime Minister be carried by a bare majority or by a larger majority?

(iii) LEADER OF THE OPPOSITION

In pursuance of the principle that the role of the Opposition in Parliament is not merely a passive one and that the Opposition is in fact an essential part of the machinery of parliamentary democracy, provision is made in the Constitution for the post of Leader of the Opposition, the holder of which has certain rights and privileges not extended to back-benchers. He has to be consulted by

the President in the making of certain appointments and his advice in such cases ranks on a par with that of the Prime Minister. The Opposition is considered to be at least theoretically, an alternative Government and is expected to act accordingly.

The Leader of the Opposition is appointed by the President in a manner similar to the method of appointing the Prime Minister. He is the person who, in the opinion of the President, is best able to command the support of the majority of members of the House of Representatives who do not support the Government. In a well developed two-party system he will undoubtedly be the Leader of the major Opposition party, the others usually being representatives of groups with little public support and perhaps the odd independent candidate. Should there not be a single party controlling the majority of Opposition seats, the President will use his own discretion to select and appoint a Leader.

The President however, is required to revoke the appointment of the Leader of the Opposition if it appears that he has lost the support of the majority of Members in the House who do not support the Government. After such revocation the President takes steps to find a successor and to appoint someone if he satisfies the test of having the support of such a majority.

It may happen, of course, that a single party makes a clean sweep at the polls, leaving Parliament with no Opposition Members and therefore no Leader of the Opposition. This occurred in Jamaica in 1983 where the P.N.P. boycotted the polls and in this Country in 1971 where, although there was not a total boycott by the Opposition, the P.N.M. won all thirty-six (36) seats in Parliament.

In such a case the President can appoint no Opposition Senators and where the Constitution requires consultation with the Leader of the Opposition, action can proceed without such

consultation. This also applies where the office of Leader of the Opposition is vacant for any reason, but one would expect that the President would not only make early efforts to fill the vacancy but perhaps refrain from taking any but the most urgent action until the post is filled.

It is of interest to note that an Opposition subsequently emerged after the 1971 Elections when one P.N.M. member "crossed the floor" and was appointed Leader of the Opposition. Shortly thereafter, he was followed by another P.N.M. member.

The Leader of the Opposition retains his position during a period of dissolution of Parliament but his appointment may not be revoked during that period on the ground that he no longer commands the required support.

QUESTIONS

1. Should the Constitution specifically provide for the appointment of a successor to the Leader of the Opposition where for any reason the latter ceases to function as such?
2. Should the Constitution provide for a meaningful Opposition to be constituted where a single political party wins
   (a) all the seats in Parliament, or
   (b) so many seats that the strength of the Opposition in Parliament is less than say one-quarter of the total seats?

(VIII) MINISTERS AND PERMANENT SECRETARIES

The Constitution provides that a Minister "shall exercise general direction and control" over departments within his portfolio but, "subject to such direction and control the department shall be under the supervision of a Permanent Secretary whose office shall be a public office".

It is not difficult to envisage the possibility of conflict between Minister and Permanent Secretary and, in the case of a Permanent Secretary who may be unsympathetic to the Government in power, there can be at least covert opposition to the implementation of the Minister's plans and policies. The Minister does not and cannot undertake the day-to-day administration of any department. That is the sphere of the Permanent Secretary. Members of the Public Service, especially those in the higher branches are expected to be strictly impartial in the execution of their duties, whatever may be their personal political views, and in the case of the most senior members their advice to the Minister (on which he bases his actions) should be strictly impartial and professional leaving the final political decision and responsibility entirely in his hands. In some countries there is provision for the appointment of political advisers to the Minister who also go out of office with the Government to which they are attached. It is a matter for consideration whether such a system should be introduced here. *(See* also in this connection the observations on pages 76 to 78).

QUESTION

Should there be provision for the appointment of political advisers to Ministers who all go out of office when the Government changes?

(1X) POWERS OF PARDON

The power of the President to grant pardons is very extensive. However, it is divided into two categories-(a) section 87(1) relates to the power of pardon being exercised before or after a person is charged with any offence and before he is convicted thereof; (b) section 87(2) relates to the power of pardon being exercised in various ways after a person is convicted of any offence.

Section 87(3) specifies that the power of the President to grant a pardon under section 87(2) shall be exercised by him in accordance with the advice of a Minister chosen by the Prime Minister. Yet section 87(3) does not specify the manner in which the power of pardon shall be exercised by the President under section 87(1). If the Minister chosen by the Prime Minister is expressly excluded from this latter process, then must the President exercise this power on the advice of Cabinet as per section 80(1) or in his own discretion as per section 80(3)?

For the purpose of tendering such advice, the Minister may consult with the Advisory Committee on the Power of Pardon, composed of

(a) the Minister, as Chairman,

(b) the Attorney General,

(c) the Director of Public Prosecutions, and

(d) not more than four other persons appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

A special provision is made in the case of the death penalty, where the Minister is required in every instance to have a full report of the case, including the Judge's notes, presented to and considered by the Advisory Committee. The Minister, however, in any case, capital or otherwise is not obliged to advise the President in accordance with the views of the Advisory Committee.

QUESTIONS

1. Should the power of pardon and the prerogative of mercy be vested in the President alone and should if exercised be free from any extraneous influence, political or otherwise?
2. Is it wise in any case to vest such awesome power, especially in the case of capital punishment, in one single human being?
3. If 2 is answered in the negative, should the Minister be obliged to accept the advice of the Committee and advise the President accordingly?
4. Should the Minister be obliged to consult the Advisory Committee in all cases, capital or otherwise?
5. Should there be any political input, Government or Opposition, in the appointment of the ordinary members of the Committee, having regard to the fact that the Minister chairs the Committee and the Attorney General is also a politician? Should the President be required to consult the Prime Minister and the Leader of the Opposition before appointing the four other members of the Committee as obtains at present?
6. Should provisions be introduced to ensure that the committee is totally independent?

SECTION VIII

THE DIRECTOR OF PUBLIC PROSECUTIONS AND OMBUDSMAN

(i) THE DIRECTOR OF PUBLIC PROSECUTIONS

The Office of the Director of Public Prosecutions is a public office. The Director has the power to institute and undertake criminal proceedings against any person. He may do so before any Court with regard to any offence against the Laws of Trinidad and Tobago. Not only may he institute such proceedings, he is also given the exclusive power (a) to take over and continue any criminal proceedings; and (b) to discontinue, at any stage before judgment is delivered, criminal proceedings whether instituted by himself or by any other person.

By section 76(2) of the Constitution the Attorney General who is a member of Cabinet is vested with responsibility for the "administration of legal affairs".

In the light of these provisions the question has arisen as to whether the Director of Public Prosecutions in the performance of his duties is subject to the control or directions of the Attorney General. Two answers, one in the negative and the other in the affirmative, have been given to this question. It is necessary therefore to decide whether the Director of Public Prosecutions should or should not be made subject to the control or directions of the Attorney General and the answer to the question should then be incorporated in the Constitution in unambiguous terms.

(ii) THE OMBUDSMAN

Part II of Chapter 6 of the Constitution establishes the office of the Ombudsman as an Officer of Parliament who is appointed by the President after consultation with the Prime Minister

and the Leader of the Opposition. He holds office for a term not exceeding 5 years and is eligible for reappointment.

The powers and functions of the Ombudsman are restricted. Generally speaking he is authorised to investigate decisions and recommendations made by public departments of Government or officers in the exercise of their administrative functions. The investigation is directed to the question whether an injustice has been suffered as a result of a fault in administration.

On the other hand, the Ombudsman is under certain constraints, in that inter alia

(a) he is prevented from investigating the long list of matters set out in the Third Schedule to the Constitution;

(b) in investigating a matter connected with or resulting from a decision of a Minister he may not enquire into or question the policy on which the Minister based his decision;

(c) he may investigate a complaint which raises a question of corruption in the public service or any section of it, but if in the course of doing so he discovers evidence of corruption on the part of a person or public officer relating to the public service he is required to report the matter to the appropriate authority with his recommendation and to desist from investigating specific charges of corruption against individuals;

(d) he may not be empowered to summon a Minister or Parliamentary Secretary to appear before him, or to require either of them to answer any questions relating to a matter being investigated, or to produce Cabinet papers or to provide confidential income tax information.

The Ombudsman may in appropriate circumstances and for sufficient reason investigate matters even though the complainant may have taken court proceedings to remedy his complaint. Further he may decline to investigate or he may discontinue his investigation of a matter, but whichever he does, he is required to give reasons for his action. Upon completion of each investigation, the Ombudsman must communicate his findings both to the complainant and to the department of Government, which he investigated. If he finds injustice sustained because of maladministration, he must recommend how it is to be redressed and may specify a time within which this is to be done. If the injustice is not remedied. within the specified time and in any case of sufficient public importance the Ombudsman is required to make a special report to Parliament.

The Ombudsman has powers of the High Court to summon witnesses to appear before him and to compel them to give evidence and to produce relevant documents. He may also enter and inspect any department of Government or any relevant authority that comes under his purview and may retain documents kept on such premises or carry out any investigation as may be necessary in the line of his duties. The Ombudsman and those holding office under him cannot be called to give evidence in any court or in any judicial proceedings in respect of any knowledge gained in the exercise of their official functions.

The role of the Ombudsman is an advisory one and the consequence of any investigation he makes can only lead to recommendations and the submission of reports by him to relevant persons, authorities or to Parliament. There is no provision for the enforcement of any action recommended even if injustice is suffered by complainants. Where his recommendations for corrective action of an injustice are not complied with, the Ombudsman is required to lay a special report on the case before Parliament.

QUESTIONS

1. Should there be one Ombudsman or more than one for the purpose of discharging the functions prescribed by the Constitution?
2. Should provision be made for the Ombudsman's report to be debated in Parliament?
3. Should provision be made for the legal enforcement of the Ombudsman's recommendations?
4. Should an Administrative Court or Tribunal be introduced to discharge or alternatively to supplement the functions of the Ombudsman?

SECTION IX

THE JUDICATURE

The Judiciary is one of the three independent and crucial pillars upon which our democratic Republic rests. The judicial function is entrusted to the courts which are responsible to the Country for administering justice without "fear or favour, affection or ill will".

The Constitution provides for a Supreme Court consisting of a High Court of Justice and a Court of Appeal. A further right of Appeal from the latter, however, lies to the Judicial Committee of the Privy Council of England in specified cases. Accordingly, all the members of this Committee, which we shall call the Privy Council, are comprised in the Judiciary of Trinidad and Tobago.

The Chief Justice is the Head of the Judiciary. He is President of the Court of Appeal and presides over it with the other Judges of this Court who are called Justices of Appeal. He is also ex officio, a Judge of the High Court and can therefore sit in that Court. Unlike the Chief Justice, Justices of Appeal cannot sit in the High Court, nor Judges of the High Court other than the Chief Justice sit in the Court of Appeal unless specifically appointed to fill or act in a vacancy therein.

The High Court is essentially a trial court. It has jurisdiction to hear and decide all civil and criminal cases coming before it, including constitutional questions. Appeals against decisions of the High Court are heard by the Court of Appeal and against decisions of this Court by the Privy Council as *of right* in the following cases:

1. Final decision in civil proceedings where the matter, property or right relating thereto is of the value of $1,500.00 or upwards.
2. Final decisions in proceedings for divorce or nullity of marriage.

3. Final decisions in any civil, criminal or other proceedings involving the interpretation of the Constitution.

4. Final decisions in disciplinary matters against Attorneys.

With the leave of the Court of Appeal a litigant may also appeal against its decisions in other civil proceedings if that Court is of the opinion that the questions raised should be submitted for decision to the Privy Council because of their great general or public importance, or otherwise. And by special leave of the Privy Council a litigant may also appeal to it in any civil or criminal matter in any case in which he could have done so before Trinidad and Tobago became a Republic. Appeals may also be taken to the Privy Council in cases other than those mentioned above, where Parliament prescribes that a litigant may do so as of right or with the leave of the Court of Appeal.

The Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Judges of the High Court and Court of Appeal are appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission. This body is an independent one. Its two ex officio members are the Chief Justice, (who is its Chairman) and the Chairman of the Public Service Commission. Its other members are firstly, a person who holds or has held office as a Judge of a Superior Court; and secondly, two persons with legal qualifications one of whom must not be in "active practice as such". The President in the first case, makes an appointment after consultation with the Prime Minister and the Leader of the Opposition; and in the second case he does so after consulting the same two persons mentioned and such organizations, if any, as he thinks fit.

All Judges must retire at age 65. If there is a temporary vacancy in either court or if the state of business justifies it, the President acting on the advice of the Commission, may appoint any qualified person to act in such circumstances. A recent amendment to the Constitution (Act No. 2 of

1988) permits a person who has held office as a judge and who has attained the age of 65 to be appointed temporarily as a judge of the High Court only, for "fixed periods of not more than two years".

A Judge who has attained the retirement age of 65 may, however, acting on the advice of the Chief Justice be permitted by the President to continue in office after that age for such period as may be necessary to enable him to deliver judgments and to complete proceedings in cases that were begun before him prior to his attaining that age. The provisions of the Constitution are so worded that it enables a Chief Justice, in effect, to extend his own tenure beyond 65, for the purposes noted, for such period as he thinks necessary and it would seem for further periods thereafter if he thinks it appropriate.

A Judge's office cannot be abolished while he holds office, nor can his terms and conditions of service during that period be altered to his disadvantage. Judges can only be removed from office for inability to do their work (whether arising from infirmity of mind or body or any other cause) or for misbehaviour. "Misbehaviour" is not defined in the Constitution, but in *7 Halsbury's Laws of England,* (3rd Edition), page 341, paragraph 733 it is stated that "misbehaviour as to the office itself means improper exercise of the functions appertaining to the office or non-attendance or neglect of, or refusal to perform the duties of the office".

The provisions for removing a Chief Justice or a Judge of the High Court or Court of Appeal on the grounds stated are designed to give them security of tenure and independence of such a nature as to insulate them from political interference or extraneous influence emanating from privileged or powerful sections of the community, or any other source.

The authority to remove a Judge from office is vested in the President, acting on the advice of the Privy Council. The procedure is set in motion by a representation made to the President in the case of a Judge by the Judicial and Legal Service Commission and in the case of the Chief Justice, by the Prime Minister, that the question of his removal from office on any of the grounds previously stated ought to be investigated.

The President thereupon sets up a tribunal consisting of a Chairman and at least two other members selected from among persons who hold or have held office as a Judge of a Superior Court to enquire into the question, report on the facts to the President and give its recommendation as to whether the question of the Judge's removal from office should be referred to the Privy Council.

After a reference has been made to the tribunal, the President acting on the advice of the Prime Minister in the case of the Chief Justice, and of the Chief Justice in the case of a Judge, may suspend either of them from performing his duties. Such suspension, however, must be removed thereafter if the Prime Minister, in the case of the Chief Justice, or the Chief Justice in the case of a Judge, so advises.

If the tribunal does not recommend a reference to the Privy Council the question is dropped and the Judge continues in office. If however the question is referred to the Privy Council as the President must do if the tribunal so recommends, then the Judge is dismissed from office if the Privy Council so recommends. He continues in office however, if it recommends otherwise.

The selection of the tribunal under reference is made in the case of the Chief Justice, by the President acting in accordance with the advice of the Prime Minister, or in the case of a Judge by the President on the advice of the Prime Minister after consultation with the Judicial and Legal Service Commission.

Apart from its functions in relation to Judges, the Judicial and Legal Service Commission has other important duties to perform. It appoints to the public offices set out in the three Schedules to the Judicial and Legal Service Act (Chap. 6:01) persons who are required to have legal qualifications; and in addition it exercises power to promote, transfer, confirm, remove and discipline such persons.

Among the offices included in the Schedules referred to are Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General and Chief State Solicitor. However, the Commission is obliged to consult with the Prime Minister before making an appointment to any of these offices and further to desist from appointing someone of whom he does not approve. In effect therefore appointments to these offices can only be made by the Commission with the consent of the Prime Minister. *See* in this connection the comments made at page 80 on the power of veto vested in the Prime Minister.

In relation to appointments to the other offices in the Judicial and Legal Service which include the Chief Magistrate, Senior Magistrates and other Magistrates, the Commission has the sole and unfettered authority to make them.

The Commission, like the other Service Commissions which are considered later at pages 69 to 72, is made immune from enquiry by the Courts into the question whether it has validly performed any function vested in it or whether any person to whom its authority has been lawfully delegated on any matter has validly discharged it.

QUESTIONS

1. Should appeals to the Privy Council be retained? If yes, should there be any further qualifications and if so, what? If no, what final Court of Appeal for the Republic should take its place?

2. If the Privy Council is retained, should its role be eliminated from the procedure for the removal of Judges? If yes, what body or tribunal, if any should take its place?

3. Should "Inability" of a Judge to do his work be defined to include his omission or failure without just cause to deliver his reasons in respect of a reserved judgment after a fixed period? Should "misbehaviour" be also defined to include a Judge's neglect without just cause in the same circumstances?

4. Should the tribunal to enquire into a Chief Justice's removal be appointed by -the President acting in accordance with the advice of the Prime Minister or should it be in the President's discretion after consultation with the Prime Minister?

5. Should the tribunal to enquire into a Judge's removal be appointed by the President in accordance with the advice of the Prime Minister after consultation with the Judicial and Legal Service Commission or should it be by the President in his discretion after consultation with that body?

6. Should a Judge who it is advised, be removed from office have a right of appeal? If yes, to whom or what body or tribunal?

7. Should Judges be required to retire at age 65? If no, what should be the retirement age be fixed at?

8. If Judges are required to retire at age 65, should the provisions of the 1962 Constitution relating to their re-employment be re-introduced or should they be re-employed instead on a contractual basis for a fixed period or on a year-to-year basis

or on a month-to-month basis? On whose advice should the President appoint such Judges? Should such appointment be subject to medical fitness?

9. Should the principle of "once a Judge, always a Judge" be introduced in the Constitution so that a retired Judge may be recalled from time to time to sit in the High Court or the Court of Appeal? And if so, what conditions, if any, should be prescribed?

10. If a Judge is allowed to continue in office beyond 65 for the purpose of completing cases begun before him prior to his attainment of that age, should the period of continuation be limited? In the case of the Chief Justice, should he be entitled to advise on his own continuation in office after 65 for that purpose? If not, who should give such advice to the President? If the Chief Justice is allowed to continue in office thereafter should his powers and duties during the period of his continuation be circumscribed?

11. Should provision be made to enable Justices of Appeal to sit as Judges of the High Court?

12. Should provision be made for a Chancellor to head the Court of Appeal?

13. Should the Chief Justice be *ex officio* Chairman of the Judicial and Legal Service Commission?

14. Should the Chairman of the Public Service Commission be *ex* officio a member of the Judicial and Legal Service Commission or any other Service Commission?

15. Should a practising Attorney-at-Law be a member of the Judicial and Legal Service Commission?

16. Should the Prime Minister retain his veto in relation to any of the legal offices specified and if so, which?

SECTION X

FINANCE

Recognizing that finance is for all practical purposes the life-blood of any country, the Constitution makes special provisions for the preservation and utilisation of the nation's revenues and for a fairly tight system of accountability on the part of those to whom funds are entrusted or allocated. In pursuance of these objectives a number of offices and institutions are created all of which are ultimately responsible to Parliament as the peoples' official representative body. They are as follows

1. The first of these is the Auditor General who is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition, but who thereafter is not subject to any person or authority in the exercise of the functions allocated to him under the Constitution. Broadly speaking, he is responsible for the auditing of the accounts of all public bodies, agencies, institutions, offices and departments and all statutory bodies or other enterprises owned or controlled by or on behalf of the State.

   In order to discharge these functions he is required to be given adequate staff, the members of which are public servants. Because of the nature of their duties the Auditor General has to be consulted on the appointment and control of these officers, but the Constitution does not give him power of veto.

   The Auditor General makes an annual report to the Minister of Finance, the Speaker of the House of Representatives and the President of the Senate.

2. State moneys are deposited in a Consolidated Fund from which withdrawals can be made only for the purpose of meeting expenditures charged upon this fund by the Constitution or by Act of Parliament, more specifically by an Appropriation Act. The Appropriation Act (based on the Estimates of Expenditure) authorises the annual withdrawals necessary for the services of the State, but where the passage of the Appropriation Act has been delayed beyond the date of the commencement of the financial year, Parliament may make provision whereby the Minister responsible for finance can authorise withdrawal of funds necessary for servicing the State until the Act is passed, but in any case for a period of not longer than 30 days. The independence of certain officers is preserved by having their expenditure charged directly on the Consolidated Fund. This includes the Auditor General.

3. A Contingencies Fund may also be established by Parliament to meet unforeseen expenditure not otherwise provided for. In such a case a Supplementary Appropriation Bill must be passed to replace the amount so utilised from the Consolidated Fund.

4. The Constitution also provides for the establishment of two watch-dog Committees of Parliament, viz., the Public Accounts Committee (PAC) and the Public Accounts (Enterprises) Committee (PAEC). It is probably because of the importance attached to financial accountability that these bodies are enshrined in the Constitution and not left to Parliamentary discretion.

Both are Joint Select Committees of Parliament.

(a) The PAC consists of not less than 6 nor more than 10 members, equally divided between the House of Representatives and the Senate. The Chairman is normally an

Opposition Member of the House of Representatives, but failing his acceptance the post is offered to an Opposition Senator and finally, if necessary, to an Independent Senator. It is the House of Representatives, which decides on the size of the Committee. The functions of the PAC are to consider and report to the House of Representatives on the manner in which moneys appropriated for public use are spent and to examine and report on any other accounts legally referred to it. It is also required to comment on the Auditor General's report on the above matters.

(b) The PAEC also comprises 6 to 10 members, but the Constitution does not, as in the case of the PAC, specify that the number shall be equally divided between the House of Representatives and the Senate. The numbers are determined by the House of Representatives, but the Chairmanship is allocated to an Opposition Senator and failing his acceptance, an Opposition Member of the House of Representatives and finally an Independent Senator.

The function of the PAEC is limited to a consideration of and report on:

(i) "The audited accounts, balance sheets and other financial statements of all enterprises that are owned or controlled by or on behalf of the State; and

(ii) The Auditor General's report on any such balance sheets and other financial statements".

The Constitution does not specify the powers exerciseable by these two Committees in the performance of their functions, e.g., the power to send for persons, papers and records. With two exceptions, this power is, however, exerciseable by all select committees in accordance with the

Standing Orders of both the House of Representatives and the Senate. These Standing Orders are silent on the question of punishment for failure to comply, but there is a reservation which allows for the application of the usages and practice of the United Kingdom House of Commons. This is unsatisfactory but the situation can be rectified by a review by Parliament of current Standing Orders, which date back to *1961*. *See* the comments and questions on pages 40 and 41.

The powers of the PAEC were challenged some time ago and although there was an eventual compromise, there would seem to be need to clarify the powers of these bodies and to make proper provision for their establishment and effective operations.

QUESTIONS

1. Are there adequate arrangements for accountability with respect to public funds?

2. Should the Auditor General's Department be insulated from all other public influences either completely or in part?

3. Should the PAC and the PAEC be given the full powers of Select Committees of Parliament to send for papers and persons and to examine documents?

4. To what extent and to whom may the Auditor General delegate any of his powers?

SECTION XI

SERVICE COMMISSIONS, ETC.

The Service Commissions established under the Constitution are the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission and the Teaching Service Commission. None is created for the Statutory Authorities or State Enterprises.

Office holding according to merit is a fundamental principle of Parliamentary democracy. Its proper application requires inter alia, that appointments and promotions in the Public Service are based on a merit system that is insulated from political influence and one which is designed to secure a government that is efficient, politically neutral and dedicated to the extension of equality of opportunity to all. It was for the purpose of introducing such a system and ensuring thereby impartiality in matters of appointments, promotions, transfers and discipline that the Service Commissions under reference were created. The Judicial and Legal Service Commission has been considered earlier.

The Public Service Commission consists of a Chairman, a Deputy Chairman and not less than 2 nor more than 4 other members. The members are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Commission has the power to appoint persons to hold or act in offices under its jurisdiction, to make appointments by way of promotion and transfer, to confirm appointments, to remove from office or exercise other disciplinary control over such persons. In the latter case, however, the concurrence of the Judicial and Legal Service Commission is required if the act or omission charged involves the exercise of a judicial function.

The Prime Minister has a power of veto with regard to appointments to each of the following offices that come within the purview of the Public Service Commission

1. Permanent Secretary
2. Chief Technical Officer
3. Director of Personnel Administration
4. Head of Department of Government
5. Chief Professional Advisor in a Ministry of Government as well as appointments of Deputies to any of these offices.

Furthermore the Prime Minister has the power to transfer a Permanent Secretary from the latter's office to another such office carrying the same salary. Also, he may transfer the holder of any office who is required to reside outside of Trinidad and Tobago for the proper discharge of his function and the holders of such offices in the Ministry of External Affairs as may be designated by the Prime Minister after consultation with the Public Service Commission. Public offices coming under the jurisdiction of the Public Service Commission, comprise those in the Civil Service, the Fire Service and the Prison Service, but not those offices to which appointments are made by the Judicial and Legal Service Commission, the Police Service Commission or the Teaching Service Commission.

Finally, the Public Service Commission must consult the Auditor General or Ombudsman before making any appointment or transfer of members of staff pertaining to these two offices.

(i) THE POLICE SERVICE COMMISSION

The Police Service Commission consists of a Chairman and four other members. The members are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Chairman of the Police Service Commission is either the Chairman or Deputy Chairman of the Public Service Commission. The powers of the Commission are similar to those of the Public Service Commission. Like the Public Service Commission, this Commission requires the concurrence of the Judicial and Legal Service Commission to discipline an officer if the "act or omission charged involves the exercise of a judicial function. The Commission is required to consult the Prime Minister before making appointments to the offices of Commissioner and Deputy Commissioner of Police but in any event appointments to these offices are subject to the veto of the Prime Minister.

(ii) THE TEACHING SERVICE COMMISSION

The Teaching Service Commission consists of a Chairman and not more than four other members. They are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. The Teaching Service Commission appoints persons to hold office or to act in offices in the Teaching Service established under the Education Act. Its powers include making appointments on promotion and transfer, confirmation of appointments, removal of persons from office and disciplinary control.

(iii) ADDITIONAL MATTERS PERTAINING TO SERVICE COMMISSIONS

No qualifications for membership for these Commissions have been prescribed as in the case of the Judicial and Legal Service Commission, but there are common disqualifications for membership in all these Commissions. Members of the House of Representatives or the Senate or anyone holding or acting in any public office cannot be a member of a Service Commission. Also,

anyone who has held public office cannot be appointed unless at least three years have expired since the date he or she last held office. Similarly, a person who has been a member of a Commission is not eligible for appointment to any public office for a period of three years after holding office as Commissioner. Commissioners are appointed for periods of three to five years as may be specified. A member of a Service Commission may be removed from office by the President at his discretion for inability to do his work from mental or physical infirmity or other cause or for misbehaviour.

With the approval of the Prime Minister a Service Commission may delegate most of its functions to any of its members, or

(a) in the case of the Judicial and Legal Service Commission, to a Judge;

(b) in the case of the Public Service Commission, or the Teaching Service Commission, to any public officer;

(c) in the case of the Police Service Commission, to the Commissioner of Police or a Deputy Commissioner of Police or to any Police Officer above the rank of Superintendent.

Commissions must also consult with each other on appointments through which officers are transferred from one Commission to another.

Further, the question whether a Service Commission has validly performed any function which it has powers to perform in accordance with the Constitution or whether any person to whom the powers of the Commission have been delegated has so performed his obligation cannot be enquired into any Court.

As has been noted, the Statutory Service Commission created under the Statutory Authorities Act (Chap. 24:01) has not been included in the present Constitution. There is however, a growing

body of opinion in favour of having it so included, and vested with like powers, restrictions and immunities as those applicable to Service Commissions. There are some who also advocate the creation of a Commission under the Constitution for State Enterprises for the purposes of ensuring impartiality in appointments, promotions and disciplinary proceedings and insulation from political influence. On the other hand, there are those who hold the view that the Chairman and Members of the Board of State Enterprises should vacate their offices upon the election of a new Government.

(IV) PUBLIC SERVICE APPEAL BOARD

The Public Service Appeal Board consists of a Chairman and two other Members. The Chairman must be a Judge or former Judge or a citizen of Trinidad and Tobago who has held similar office in some part of the Commonwealth. He is appointed by the President after consultation with the Chief Justice. The other two members are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. One Member of the Appeal Board must be a retired Public Officer. The qualifications and disqualifications for membership in the Appeal Board are similar to those of the Service Commissions. The Appeal Board must hear appeals from any decision of a Service Commission or from the decisions of any person to whom the powers of a Commission have been delegated. The Board may affirm or set aside any decisions of the Service Commissions and may substitute any other decision of its own. For the purpose of exercising its functions the Board with the consent of the Prime Minister may by regulations or otherwise confer powers and impose duties on any public officer or any Government authority.

(V) PENSIONS

Several cases now exist where retired public officers are or have been in receipt of more than one pension from the State. Some consider it wrong in principle that a person should receive more

than one pension from the same employer, but those enjoying this advantage point out that wherever this has occurred the pensions paid relate to employment in two or more separate and independent services of the same employer, e.g., the Public Service and service in the higher Judiciary; or the Public Service and service as President of the Country. The Constitution contains no provision to disable a person from receiving two or more separate pensions from the State in the circumstances under reference.

QUESTIONS

1. Should membership of the various Commissions be increased?

2. Should the reasons for disqualification for membership be expanded to include age or the number of terms?

3. Should the powers of the Commissions be expanded to facilitate greater efficiency in dealing with matters of discipline on the part of Public Servants?

4. Should disciplinary procedures be so reformed as to enable Commissions to give their decisions in writing in every case, so that a person aggrieved by such decisions could take legal proceedings in reference thereto?

5. Should Members of the Commission be full-time paid officers to facilitate efficiency and promptness of action?

6. Should there be prescribed qualifications for the Chairmanship of the Commission?

7. Should the membership of the Public Service Appeal Board be expanded to enable it to sit in more than one division for the disposal of appeals?

8. Should the Chairman of the Public Service Commission be appointed on the advice of the Prime Minister and the Deputy Chairman on the advice of the Leader of the Opposition? Should the other Members be appointed from among persons representing other specified interests and/or professional organization after consultation with the Prime Minister and the Leader of the Opposition? Should this policy be applied to other Commissions? Or should membership in the various Service Commissions be at the sole discretion of the President?

9. Should Members of the Service Commissions be removable at the discretion of the President?

10. Should the Court be precluded from enquiring into the validity of any performance of the function vested in a Service Commission?

11. Should all appointees to Service Commissions vacate office, with every outgoing President, but be eligible for reappointment?

12. Should any Public Officer be entitled to receive more than one pension from the State?

(vi) SPECIAL OFFICES

One of the most important changes introduced by the Constitution was a change in the manner by which appointments were made to a number of important offices. The most important of these offices is undoubtedly that of Chief Justice. Under the Independence Constitution the Chief Justice was appointed by the Governor-General acting in accordance with the advice of the Prime Minister. Effectively therefore, it was the Prime Minister who selected the Chief Justice. It was

expected, however, that before making his selection he would consult the Leader of the Opposition although the necessity for such consultation was not written into the Independence Constitution.

Under the Constitution the Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. So now the selection is effectively made by the President though both the Prime Minister and the Leader of the Opposition must be given the opportunity to influence his decision. This new method of appointment, that is, by the President after consultation with the Prime Minister and Leader of the Opposition, is now used in respect of the following other offices

(a) Members of the various Service Commissions.

(b) The Members other than the Chairman of the Public Service Appeal Board (the Chairman being appointed by the President after consultation with the Chief Justice).

(c) The Chairman and other Members of the Salaries Review Commission.

(d) The Chairman and other Members of the Elections and Boundaries Commission.

(e) The Members other than the Minister, the Attorney General and the Director of Public Prosecutions, of the Advisory Committee on the Power of Pardon.

(f) The Ombudsman.

It is probably true to say that except for the office of Ombudsman which did not exist under the Independence Constitution the change referred to above was prompted by a combination of the following considerations

(a) It was thought that the Prime Minister's powers were too great and all pervasive.

(b) It was thought necessary to ensure that these officials are insulated from any political influence or allegiance, and that they are and are seen to be truly impartial.

(c) There was good reason to believe that there was in fact no meaningful consultation by the Prime Minister with the Leader of the Opposition prior to making those appointments on which he was expected to consult with the Leader of the Opposition.

The new system of appointments has been in existence for over 10 years and people may by now have formed some judgment as to the way in which it has worked. When a few months after the change of Government in December, 1986, there was a change of President as well, an issue was raised as to whether all the persons appointed by the President and selected by him for appointment after consultation with the Prime Minister and the Leader of the Opposition should not automatically cease to hold office at the same time as he leaves office.

Those who support this point of view argue that it is wrong that a President who is about to leave office should be able to make appointments which ensure long after he has gone so that the new President is saddled with appointments made by his predecessor. The controversy was fuelled by two appointments made by the former President shortly before he demitted office. One of these appointments was to the Judicial and Legal Service Commission and the other to the Public Service Commission and in the case of the latter, it was alleged to have been made without consultation with the Prime Minister which was required by the Constitution.

Those who support the present Constitutional provisions however, point out that the powers to make these appointments is not given to the President because he has no control over, responsibility for, or even connection with, those whom he appoints. He does not have an "administration" in the way in which the Prime Minister does. The power of appointment is vested in him simply because he can be trusted to exercise that power with the best interests of the country

at heart and free from any political influence. For these reasons it is argued that whoever happens to be the President at the time when the occasion for such an appointment arises should make the appointment and there is logically no justification whatever for requiring the appointee to vacate office when the appointing President does so.

After all, under the Independence Constitution the Chief Justice in effect was appointed by the Prime Minister, but no one ever thought of suggesting that the Chief Justice should vacate office if the person who so appointed him ceased to be Prime Minister.

Again it has been pointed out that it is irrational to make the tenure of office of these important officials depend on the expiration of the President's tenure of office or his premature demission from his office. Moreover, if the President is getting near to the end of his term in office, he may have difficulty in finding persons who are prepared to accept appointment for what may turn out to be a very short period, given the disruption in one's schedule that .such appointment often causes.

In relation to the offices now under consideration, two different mechanisms of appointment have been tried, one under the Independence Constitution and one under the Constitution. There are of course other alternatives that are possible. One such alternative is to give the right of nomination to such offices to the Head of Government but to require such nomination to be confirmed by some other authority. This system is used in the United States of America where the Senate must confirm Presidential nominations to offices such as those of Chief Justice, Justice of the Supreme Court, Cabinet Minister and Ambassador.

The trouble in the context of Trinidad and Tobago is to find a suitable body to make the confirming authority, given that any body which was controlled by the Prime Minister would

inevitably operate simply as a rubber-stamp. The Prime Minister as head of the ruling party would control both the House of Representatives and the Senate and therefore there would seem to be little point in giving the right of confirmation to either or both of these bodies.

For such a system to work successfully in Trinidad and Tobago therefore it might be necessary to create some new body (whatever it be called and however it be constituted) in which people would have confidence, which would be representative of different interests and sections of the community, and in which the Government of the day would not have a built-in majority.

Another possible difficulty however, in the way of adopting the American system of appointments, is the close public scrutiny which it involves of the persons nominated for appointment. Such scrutiny if carried out in public and in a small community like ours, might prove unacceptable to many worthy candidates for appointment.

Another method of appointment involves reversing the roles of the Head of Government and the confirming authority in the American model. In other words, give the right of nomination to some independent authority while reserving for the Head of Government the power of veto. The advantage of such a system is that it leaves the final choice in the hands of the elected leader, but he presumably would not lightly reject a nominee, particularly if he was required to give reasons for such rejection. The question again arises as to whether such a system is in keeping with the ethos of our community. It may be that persons would not accept nomination for fear of being publicly humiliated by a rejection by the Prime Minister.

Yet another possibility is to eliminate the Prime Minister altogether from the process of appointment and to vest the power of appointment exclusively in the independent body.

Assuming that the present system of appointment is retained, there are two questions that need to be re-examined having regard to our recent experience. One is whether there should be a definition of "consultation" in the Constitution. It has been suggested that what constitutes consultation should be set out in some detail and this with a view to ensuring that the consultation held is meaningful and not something casually undertaken for example by means of a phone call. If there is to be a definition of "consultation" the question immediately arises as to what shape that definition should take. Should the consultation be required to take a written form? Or is it not the physical presence of the person being consulted necessary in order to make consultation truly effective? What should the person doing the consulting be required to disclose to the person consulted? Should the person consulted receive some advance notice of what the person consulting intends to do before being required to communicate his views? These are some of the issues that arises in the formulation of a definition of consultation.

There is however, the opposing view that prescribing a ritual to be followed by the person consulting, does not even conduce to rendering the consultation meaningful. In fact it may even have the opposite effect by creating the impression that it is sufficient for him simply to follow a certain prescribed procedure without really taking account of the views expressed by the person consulted. According to this line of argument, consultation is a concept which is well understood by all and sundry and what is needed is not a definition of "consultation" but a true spirit of consultation, i.e., a willingness to give due weight to the expression of views by the person consulted, and this cannot be legislated for.

The other major issue, which needs to be re-examined, is whether it should be competent for a Court of law to enquire into whether the consultation required by law has in

fact been held. Section 80(2) of the Constitution provides that where the President is required to act in accordance with the advice of, or after consultation with, any person or authority, the question whether he has in any case so acted shall not be enquired into in any court. As has already been mentioned there are arguments that can be advanced both for the retention and the abolition of this provision. The retentionists would point to the damage that could be done to the prestige of the office of the President if he could be brought before a court by anyone dissatisfied with an appointment he had made on the grounds that the appointment had not been made after the requisite consultation, and point to the possibilities of abuse that would exist if the issue of consultation was made justifiable. It might also be suggested that the parties to such consultation would feel inhibited in the expression of their views if they were conscious of the fact that the details of their conversation could be the subject of an inquiry by a court of law sitting in public.

On the other hand, those who advocate the repeal of section 80(2) are unhappy with a situation in which appointments made in defiance of the Constitution cannot be challenged so that the office in question continues to be occupied by a person who has no rightful claim to fill it. The proponents of this view maintain that to tolerate such a state of affairs is too great a sacrifice to pay for the maintenance of confidentiality of what passes between President and Prime Minister or Leader of the Opposition and for shielding these high Officials from the possibility of having to give evidence in a court of law.

There are two other provisions covering appointments to important offices that require attention. Firstly, there are a number of top posts in the Public Service appointment to which is made by the Public Service Commission or the Judicial and Legal Service Commission, but over which the Prime Minister exercises a power of veto. In the legal service, the following posts fall into this

category; the Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General and Chief State Solicitor. In the case of the general Public Service, appointments to the following posts are subject to this veto: Permanent Secretary, Chief Technical Officer, Director of Personnel Administration, Head of a Department of Government, Chief Professional Adviser in a Ministry of Government, and deputy to any of these offices.

The reason why this power of veto is given to the Prime Minister is that these offices are so crucial to the formulation and implementation of policy that it is considered essential for them to be filled by persons acceptable to the Prime Minister. The danger is that this power of veto may be exercised in such a way as to elevate it in effect to a power of appointment. The question arises whether the power of veto by the Prime Minister is to be retained in the case of certain offices and if so, whether the existing list of such offices should be extended or reduced. Given the special type of independence which the Director of Public Prosecutions is expected to exercise there might well be a challenge to his inclusion in this category.

In the case of Permanent Secretaries, they are specially recognised by the Constitution. Section 85(1) of the Constitution provides that subject to the general direction and control exercised over it by a Minister, each department of Government shall be under the supervision of a Permanent Secretary. Again the recent experience we have had of a change of Government has tended to highlight an apparent anomaly in the present Constitution, in that the Prime Minister is able by his power of veto to play a very significant role in the selection of persons to be Permanent Secretaries during his period of office; but if as a result of a general election, a party previously in opposition takes over the Government and its leader becomes Prime Minister, he inherits all the Permanent Secretaries who were presumably, to put the matter at its lowest, acceptable to his predecessor but

who may be totally unacceptable to him. This raises a very fundamental point as to whether, as in the United States for instance, the upper branches of the Civil Service should consist of political appointees who go out of office with the party appointing them. This would represent a radical departure from the tradition of the English Public Service which we have inherited.

Those who support the present system point out that such difficulties as were experienced on the occasion of the recent change of Government may well be the result of the previous Government having been in power continuously for such a long time and ought not to recur if in the future Governments change with greater regularity. One expedient which has been adopted by the Government is the introduction of advisers to the Minister who do not hold any post in the establishment. This innovation may give rise to difficulties given the lack of official recognition of the position of such persons. It used to be thought that the possibility of transferring Permanent Secretaries from one Ministry to another was a sufficient means of coping within compatibilities produced by a change of Government, but this proposition may be open to question in the light of recent experience.

Finally, the last category of appointees are Ambassadors, High Commissioners and principal representatives of Trinidad and Tobago in foreign countries. They are appointed by the President acting in accordance with the advice of the Prime Minister. The Prime Minister is required before advising the President to appoint to one of these posts a person who holds any public office first to consult the appropriate Service Commission. It is not anticipated that anyone would dispute the right of the Prime Minister to make these appointments.

QUESTIONS

1. Should the Constitution define what is meant by "consultation" and the form it should take?
2. Should it be competent for the Courts to enquire into the question whether consultation (whether defined or not) has in fact been held where the necessity to hold such consultation is prescribed by law?
3. Should persons appointed to offices by a President after consultation with the Prime Minister and Leader of the Opposition be required to vacate them when the President demits office?
4. Should a new system of appointing persons to the special offices referred to be introduced, and if so, what form should it take?
5. Should the power of veto of the Prime Minister in relation to the offices specified be retained? And if so, should the existing list be reduced or extended?
6. Should the upper branches of the Civil Service consist of political appointees who would go out of office with the party which selected them?

SECTION X11

THE INTEGRITY COMMISSION

While integrity in public life is ultimately a moral question, some States do find it necessary to promote the idea by requiring some of its prominent office holders to set the lead. If public service is to be truly seen as service to the public rather than to a private cause then institutions need to be put in place to ensure that public service is neither translated into private gain nor compromised.

Sections 138 and 139 of the Constitution accordingly provide for the establishment of an Integrity Commission, consisting of such members and for such period as may be prescribed. The Constitution requires the Commission when established to receive from time to time declarations in writing of the assets, liabilities and income of members of the House of Representatives, Ministers of Government, Parliamentary Secretaries and Chief Technical Officers; and to supervise all matters connected therewith as may be prescribed by law. Parliament is empowered to make provisions for the effective discharge of the Commissioner's duties; to ensure proper custody of declarations and documents delivered to it and to maintain the secrecy of information in its possession. It is of interest to note that there are officers in the public service who perform all the functions of Chief Technical Officers and in the same salary grade but who are not so described and therefore do not fall under the umbrella of the Constitution or the Integrity in Public Life Act.

It was not until 11th May, 1987 that this Act was enacted to establish the Integrity Commission and to provide for its membership and matters incidental thereto.

QUESTIONS

1. Should the net be so narrow? What of the Chief Executives in State Enterprises?

2. To what extent would this discourage persons from public service?

SECTION X111
THE SALARIES REVIEW COMMISSION

The Salaries Review Commission is charged with the duty of reviewing from time to time with the approval of the President the salaries and conditions of service of the President, the holders of the special offices described in section 136(12) to (15) of the Constitution, members of Parliament including Ministers of Government and Parliamentary Secretaries and the holders of prescribed offices. Among those prescribed since the enactment of the Constitution are Top Management Personnel in the Public Service and Central Bank, Public Utilities and other Statutory Authorities, Senior Officers in the Protective Services and the Defence Force, Senior Diplomatic Representatives, Officers in the Judicial and Legal Service, the Chairman and Members of the Tax Appeal Board, the Public Service Appeal Board, the Mayors, Aldermen and Councillors of Municipalities, the Chairmen, Aldermen and Councillors of County Councils and the Chairman and Members of the Integrity Commission.

The Chairman and Members are appointed for a period of 5 years or such shorter period not being less than 3 years as may be specified at the time of their appointment but there is no provision in the Constitution which, as in the case of special offices, secures their salaries and terms of service from alteration to their disadvantage while they hold office, or prescribes the procedures and grounds for removal from office.

The salaries and conditions of service recommended by the Commission are subject to the approval of Cabinet and Parliament. The Report containing its recommendations are submitted to the President for transmission to the Prime Minister who thereafter presents it to Cabinet and lays it as soon as possible thereafter on the table of each House.

The Commission was established with the object of having an independent and impartial body to consider and recommend salaries and terms of service of office holders to whom the "avenues of appeal and redress, a normal feature of collective bargaining and industrial relations processes, were not available"; also to remove extraneous and political forces from having any influence in the determination of salaries and conditions of service for the offices placed under the purview of the Commission.

QUESTIONS

I. Should one of the Commissioners be an economist?

2. Should the jurisdiction of the Commission be expanded or reduced?

3. Should the recommendation of the Commission be accepted without amendments?

4. Should there be a right of appeal against the recommendations of the Commission?

5. Should the terms and conditions of service including removal from office of the Chairman and Members of the Commission be secured along the lines prescribed in the Constitution for the holders of special offices?

6. Should a review by the Commission be dependent on the approval of the President or should it be mandatory for the Commission to make such a review after fixed intervals?

SECTION XIV

SPECIAL SUBJECT

CONSULTATION ON NATIONAL ISSUES

One of the issues which generated controversy during the framing of the Independence Constitution was that of consultation between the Prime Minister and Leader of the Opposition. The Opposition complained that important national decisions and appointments to national offices were being made without any reference to their views. It was argued that in the Westminster model the Opposition was in fact "Her Majesty's Loyal Opposition" and was entitled to and often received courtesies of one kind or another, e.g., on certain foreign or defence policy issues and legislation of a non-partisan character, the British Prime Minister may choose to consult the Leader of the Opposition before making a decision especially if it was likely to impose obligations on future Governments. In times of national crisis, the Opposition may also wish to signify the unity of the nation by identifying with the Government on a particular policy.

This convention was eventually agreed to at Malborough House. The Conference decided that "it was a matter of great importance to honour the convention whereby the Prime Minister consults the Leader of the Opposition on all appropriate occasions, in particular on all matters of national concern, including appointments to suitable offices of a national character-for example the Chairmanship of the Elections and Boundaries Commissions."

In the post-independence period, Leaders of the Opposition have complained and have continued to complain that the convention was honoured more in the breach than in the observance in

that either they were not consulted or that consultation was ritualistic. The problem was partially resolved in the present Constitution which provided that the Leader of the Opposition in addition to the Prime Minister should be consulted before appointments to certain key offices.

The resolution of this problem by means of a change in the constitutional formula relating to appointments to some of the key offices of a national character left open the question as to whether or not there should still be consultations between the Prime Minister and Leader of the Opposition on other national issues including appointments to other national offices. Some observers feel that there should be consultations when the national interest suggests that this is appropriate. Others note that even if there is agreement that the convention is a desirable one, there are still no suitable mechanisms which could force a Prime Minister to consult if he did not wish to do so. The system would only work, it is argued if the two leaders respected each other or if there was a tradition of alternating parties which would lead an incumbent Prime Minister to expect that he may one day become Leader of the Opposition.

QUESTION

> Should an attempt be made to write the principle of consultation on national issues into the Constitution or should the matter be left to evolve as a convention as time and circumstances dictate?