

BARBADOS

**IN THE SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

NO. CV 867 of 2021

BETWEEN:

GRENVILLE WALTER PHILLIPS

CLAIMANT

AND

THE ATTORNEY-GENERAL OF BARBADOS

DEFENDANT

Appearances:

Mr. Grenville Phillips in person.

Ms. Marsha Lougheed in association with Mr. Jared Richards for the Defendant.

Before: The Honourable Mr. Justice Barry L. Carrington, Judge of the High Court.

Dates of Submissions: October 26, 2021 and November 11, 2021.

Date of Decision: November 24, 2021.

DECISION

Introduction

- [1] The Applicant who is a litigant in person commenced proceedings on a Certificate of Urgency seeking judicial review of the Government of Barbados' decision to change its form of government from a constitutional monarchy to a republic. He sought a declaration that (i) "an Act of Parliament by itself cannot lawfully make Barbados a republic and, (ii) public consent has not been obtained for Barbados to become a republic. Further, the Applicant seeks 'a prohibition of Barbados becoming a republic until the explicit consent of the public has been transparently obtained". At the first hearing of the matter, case management orders were made for the filing of documents. The Defendant was dilatory in filing its response and the Applicant filed a further application for an interim injunction restraining "the Government of Barbados...from changing Barbados from a Constitutional Monarchy to a Republic, until the Claim...has been determined by the Court." The Defendant made preliminary submissions questioning the Claimant's right to commence proceedings as well as whether the matter is properly before the court.

Background

- [2] In the Throne Speech delivered on September 15, 2020, Governor General, Dame Sandra Mason, GCMG, D.A., Q.C., on behalf of the Government of

Barbados indicated that Government would take the next logical step toward full sovereignty and become a republic by the time Barbados celebrated its 55th Anniversary of Independence, on November 30, 2021.

[3] This decision came against the backdrop of the 1998 Constitutional Review Commission Report which recommended that Barbados should become a parliamentary republic with a non-executive president elected by an electoral college and serving for a renewable four-year term of office.

[4] In fulfillment of that recommendation, Government enacted the **Constitution (Amendment) (No. 2) Act, 2021** (“**the Constitution Amendment Act**”) which, by proclamation came into operation on October 7, 2021. It’s Long Title states that it is an Act to alter the Constitution to provide for Barbados to become a republic with a President who shall be Head of State of Barbados, and to provide for related matters.

[5] On October 7, 2021, the Claimant commenced proceedings on a Certificate of Urgency accompanied by a Fixed Date Claim Form and an affidavit of Glenville Walter Phillips, in which he seeks

- (a) a declaration that an Act of Parliament by itself cannot lawfully make Barbados a Republic,
- (b) a declaration that public consent has not been obtained for Barbados to become a Republic, and
- (c) a prohibition of Barbados becoming a Republic until the explicit consent of the public has been transparently

obtained.

[6] The Defendant responded to the Claimant's application by way of an affidavit filed by the Attorney General, the Honourable Dale D. Marshall Q.C. M.P. who indicated that the Act was passed unopposed in the House of Assembly and was also passed in the Senate. He also indicated that the Act became law in Barbados on October 7, 2021. The learned Attorney General said that the Claimant has not established conclusively that the application is one for judicial review and that he has not stated in his pleadings what "decision" or "administrative act or omission" was challenged. Further, the Attorney General contended that the intent of the application is the review of the decision of Parliament in passing the Act which is impermissible since judicial review matters are limited to the review by the courts of the act, decisions, determinations, orders, recommendations of individuals and bodies performing public functions.

[7] At the case management conference on October 12, 2021, it was ordered that the Defendant would respond to the Claimant's application by October 26, 2021 and then the matter would be decided on the written submissions to be filed by the Claimant and Defendant on October 26, 2021 and November 9, 2021, respectively. When the Defendant's response was not filed by the stipulated date, the Claimant on November 12, 2021 filed an Application

accompanied by an Affidavit, seeking an interim injunction in the following terms:

“The Government of Barbados shall refrain from changing Barbados from a Constitutional Monarchy to Republic, until the Claim...between the Claimant ...and the Defendant...has been determined by the Court”.

- [8] The Defendant filed his Affidavit in Response and Written Submissions on November 10, 2021 and November 9, 2021, respectively. The Claimant filed Submissions in Response on November 18, 2021. However, as the court will deliver a decision before November 30, 2021, there is no need to consider the application for the interim injunction.
- [9] It should be noted that at the *ex parte* hearing of the urgent application, the court enquired of the Claimant if he had engaged the services of counsel considering the importance of the matter. He responded that he had not, and expressed difficulty in procuring the services of counsel.

Claimant's Written Submissions

- [10] The Claimant indicated his belief that the fundamental alterations to the Constitution as embodied in the **Constitution Amendment Act** are contrary to the laws of Barbados. He alleged that Parliament is attempting to alter the Constitution in violation of **section 49(3) and (7)**.
- [11] In addition, the Claimant stated that there cannot be a change from a constitutional monarchy to a republic without the consent of the public. He

indicated that a referendum was necessary as provided for in the **Referendum Act Cap. 11A ("Referendum Act")** and contended that making Barbados a Republic without the consent of the public 'appears to be a violation' of that Act. The Claimant's Submissions in Response were 50 pages and should have addressed the law only, but contained mostly irrelevant facts and conjecture and failed to address the legal arguments raised in any meaningful way. For example, in his response to the submission that the **Referendum Act** was not proclaimed and is not a part of the law, the Claimant sought to argue why it should still be considered, instead of seeking to persuade the court of its validity. In my opinion, none of the responses merited reproducing as part of his submissions.

Defendant's Written Submissions

- [12] Counsel for the Defendant raised several objections to the matter filed by the Claimant. Firstly, they contend that the Claimant's Fixed Date Claim Form does not identify the legislative provision or rule of the **Civil Procedure Rules, 2008 ("CPR")** on which his application is based, pursuant to **section 6 of the Administrative Justice Act, Cap. 109B ("Administrative Justice Act")**.
- [13] Counsel further contends that the Claimant failed to establish that he has locus standi to make an application for judicial review either under the

Administrative Justice Act or in accordance with **Part 56.2** of the **CPR**.

They argue that the true intent of the Claimant's application is the judicial review of the decision of Parliament relating to the passing of the **Constitution Amendment Act**, which is not permissible.

[14] Counsel also argued that the Claimant misunderstood the constitutional requirements for altering the Constitution and that the requisite two thirds majority was obtained in both houses of Parliament. Consequently, counsel submitted that the Claimant's assertion that an Act of Parliament by itself cannot lawfully make Barbados a republic, is a gross misunderstanding of the law. Counsel submitted that the Claimant's argument that there must be a referendum under **the Referendum Act**, is misconceived since that Act has not been proclaimed and does not form part of the law of Barbados.

[15] Finally, Counsel strongly contended that 'the cumulative effect of the errors, infelicities, misconceptions and legal deficiencies in the Claimant's case is of such magnitude that the pleadings cannot be sensibly amended.'

Preliminary Submissions

[16] The Claimant's Application is for judicial review, which can be made pursuant to the **Administrative Justice Act** as set out at **section 3(1)**, or the **CPR** at **Part 56**. The grounds on which the court may grant relief, or put differently, the basis on which the court is empowered to act is found at

section 4 of the Administrative Justice Act. It should be noted that on an application made under the **CPR**, the Claimant is required to state the grounds listed **at section 4 of the Administrative Justice Act.** They are:

- (a) that an administrative act or omission was in any way unauthorized or contrary to law;
- (b) excess of jurisdiction;
- (c) failure to satisfy or observe conditions or procedures required by law;
- (d) breach of the principles of natural justice;
- (e) unreasonable or irregular or improper exercise of discretion;
- (f) abuse of power;
- (g) fraud, bad faith, improper purposes or irrelevant considerations;
- (h) acting on instructions from an unauthorised person;
- (i) conflict with the policy of an Act of Parliament;
- (j) error of law, whether or not apparent on the face of the record;
- (k) absence of evidence on which a finding or assumption of fact could reasonably be based; and
- (l) breach of or omission to perform a duty.

[17] The Claimant has not alleged a breach of any of these grounds in order to commence proceedings for any breaches and to procure the relief which he

seeks. He asserts that the **Constitution Amendment Act** on its own is incapable of changing the current form of government to that of a republic. He has not provided any facts on which the court can act, rather, his assertions were largely conjectural. In the circumstances, the Claimant has failed to identify the legislative provision of the **Administrative Justice Act** or **Civil Procedure Rules, 2008 (“CPR”)** on which his application is based.

[18] The Defendant argued that the Claimant has no locus standi to commence these proceedings. If found to be true, the court may summarily dismiss the application and in that regard, the Claimant’s status will be examined based on the procedural requirements of the legislation.

[19] Judicial review is not defined in the **Administrative Justice Act** or the **CPR**, but is aptly described by **Professor Albert Fiadjoe** in his text, **‘Commonwealth Caribbean Public Law’, Third Edition** as the jurisdiction of the superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they are within their given powers. Simply put, he advises that it is the power of the courts to keep public authorities within proper bounds and legality. Lord Brightman in **R. v. Chief Constable of North Wales Police ex parte Evans [1982] 1 WLR 1155 at 1173** indicated that “...Judicial Review is concerned, not with the decision, but with the decision-making process...” The examination of the claim for judicial

review therefore must of necessity, focus more on the process rather than the outcome.

[20] **Section 3(1)** of the **Administrative Justice Act** states that an application to the Court for relief against an administrative act or omission may be made by way of an application for judicial review in accordance with the Act and with rules of court. “Administrative act or omission” is described as an act or omission of a Minister, public official, tribunal, board, committee, or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any enactment. The Claimant’s challenge to the change from a constitutional monarchy to a republic by the **Constitution Amendment Act** by way of a judicial review application is in effect, a challenge to the passing of the Act by Parliament. Since Parliament is not listed in the description of ‘administrative act or omission’, consideration must be given to whether it falls under “other authority of the Government of Barbados....”

[21] In **Williams Construction Ltd. v. Attorney General of Barbados (1994) 45 WIR 94**, the Privy Council held that Cabinet of Barbados was caught in the definition of ‘administrative act or omission’ because of the provision in the **Interpretation Act, Cap. 1** that ‘words in the singular shall include words in the plural’, and that the word ‘minister’ found in the definition may be read in

the plural as applicable to the Cabinet. Lord Bridge, delivering the decision of the court said at page 100, “But if this view is not correct, the Cabinet ...is unquestionably an ‘other authority of the Government of Barbados.’ Their Lordships’ view was predicated on the Cabinet exercising a specific statutory function under the **Financial Administration and Audit Act, Cap. 5** and the **Financial Administration and Audit (Financial) Rules, 1971** which, had it been conferred on a Minister instead of the Cabinet, would unquestionably have been subject to judicial review. On that basis, the court opined that their Lordships could see no reason in principle why the Cabinet's exercise of the function should not be subject to judicial review to the same extent and on the same grounds as the Minister's would have been.

- [22] The same, however, cannot be said of ‘Parliament’ for the following two (2) reasons. Firstly, applying the *ejusdem generis rule*, the meaning of ‘other authority of the Government of Barbados’ cannot be given a broad interpretation to include any organ or other authority of Government. Commonly referred to as ‘of the same kind’ interpretation, **E.A. Dreidger** in his text “**Construction of Statutes, 2nd Edition** describes the rule as one when specific words are used and are then followed by general words, the general words must be construed as meaning the same genus, or category of the specific words used. In the case at bar, the genus is ‘Minister, public official,

tribunal, board, committee’ and therefore ‘other authority of Government must be of the same kind: put differently, it cannot include the legislating power of Parliament which is in an entirely differently class or category altogether.

[23] Secondly, Parliament has been described in **section 35** of the **Constitution** as consisting of Her Majesty, a Senate and a House of Assembly, which are the three (3) major entities or organs of government responsible for making law and whose right to make law is not subject to judicial review. **Section 48** of the **Constitution** states that Parliament may “...make laws for the peace, order and good government of Barbados.” Bills that later become Acts of Parliament must be passed in both the Senate and the House of Assembly and, must be assented to by Her Majesty’s representative, the Governor General, before becoming the law of the land. This function of Parliament sets it above and apart from the class of bodies defined in the **Administrative Justice Act**. Against the backdrop of constitutional authority to make laws, rather than challenging Parliament’s law making power, the challenge instead ought properly to be on the constitutionality of the **Constitution Amendment Act**. There is therefore no administrative act or omission, as outlined in the Claimant’s pleadings, that is susceptible to judicial review.

[24] The second preliminary objection made by the Defendant is that the Claimant has no *locus standi* to commence proceedings in court. **Section 6** of the **Administrative Justice Act** identifies who may apply for judicial review, namely, a person whose interests are adversely affected by an administrative act or omission, or any other person if the Court is satisfied that that person's application is justifiable in the public interest in the circumstances of the case. The Claimant has nowhere in his pleadings established that his interests are adversely affected by the government's enactment of the **Constitution Amendment Act**. He merely asserts that an Act of Parliament by itself cannot lawfully make Barbados a republic and that public consent (through a referendum) is necessary for Barbados to become a republic. He has not identified if and how his interests are adversely affected. As it relates to the court exercising its discretion to entertain the Claimant's application as being justified in the public interest, I am not so persuaded especially in light of there being no administrative act or omission that has been identified by the Claimant that is subject to judicial review. Consequently, the Claimant, has no *locus standi* to commence these proceedings under the **Administrative Justice Act**.

[25] The issue of *locus standi* for judicial review is also addressed at **Part 56.2** of the **CPR**. Unlike its predecessor, **Order 53 of the Rules of the Supreme**

Court, 1982, no leave to apply is required. The criteria are almost identical to that required by the **Administrative Justice Act**. The categories of persons who may apply are:

- (a) Any person ...whose interests have been adversely affected by the decision which is the subject of the application; or
- (b) Any other person or group who satisfies the Court that an application is justifiable in the public interest and in the circumstances of the case”.

[26] Again, the Claimant is faced with the same hurdle, which he has not surmounted, of establishing how his interests have been adversely affected.

[27] I agree, based on an assessment of the pleadings and submissions, that the Claimant’s application is bound to fail for the reasons outlined above. The Claimant has made significant missteps in his application for judicial review: he has not established that he has locus standi to commence proceedings and he has not highlighted any viable grounds for relief against the Defendant. These egregious errors are sufficient for the court to exercise its power under **Part 26.2 (i)** of the **CPR** and “...dismiss or give judgment on a claim after a decision on a preliminary issue....”

[28] King J was faced with a roughly similar situation in the case of **McClellan v Barbados Telephone Co. Ltd., BB 1996 HC 9** (“**McClellan v Barbados Telephone Co. Ltd.**”) where the Applicant, Mr. Wendell McClellan, a litigant

in person appealed a decision given by the Public Utilities Board (the precursor to the Fair-Trading Commission) in an application for a rate adjustment by the Barbados Telephone Company and made a number of missteps. King J said:

“Both counsel for the respondent and the Board argued that the appellant was seeking relief not provided for by the Act. I had, in the result, given serious consideration to dismissing the appeal, at this point, but I believe the public of Barbados is deserving of a decision based on the arguments presented by both sides, particularly by the appellant whose obligation it is to prove his case”.

[29] Respectfully, I wish to adopt the reasoning and approach taken by the learned trial judge. This is a matter of national importance that will see a change in the country’s governmental structure and consequential changes that are attendant on removing the nomenclature associated with the changeover. One recently published caricature declared that all of Barbados is awaiting the outcome of the Claimant’s challenge. The public deserves a full discussion on the legal process that facilitated the change. Instead of summarily dismissing the Claimant’s application, I shall examine it against the background of what the law requires.

Can Act of Parliament by itself lawfully make Barbados a Republic?

[30] The Claimant has contended that an Act of Parliament by itself cannot lawfully make Barbados a republic. He identified two (2) narrow grounds for

that proposition. These will be examined to determine if they have merit and in addition, an overview of the critical provisions of the Act will be analyzed.

[31] In his grounds for relief, the Claimant alleged that the passage of the **Constitution Amendment Act** fundamentally changed the constitutional association between Barbados and the rest of the Commonwealth, which is contrary to **section 49(3)** of the Constitution, that states:

“(3) Subsection (2) shall not apply to a Bill in so far as it alters any of the provisions specified in that subsection for the purpose of giving effect to arrangements for the federation or union of Barbados with any other part of the Commonwealth or for the establishment of some other form of constitutional association between Barbados and any other part of the Commonwealth”. (Claimant’s emphasis).

[32] The Claimant asserted that ‘other form of constitutional association between Barbados and any other part of the Commonwealth’ appears to refer to the Commonwealth’s London Declaration of 1949 when India proposed changing from a Constitutional Monarchy to a Republic but wanted to remain in the Commonwealth. He stated that the **Constitution Amendment Act** was passed to establish a form of constitutional association between Barbados and the rest of the Commonwealth that does not require allegiance “to the Crown”.

[33] The Claimant further asserted that **section 49(7)** does not allow Parliament to unilaterally alter the provisions of the First Schedule (Oaths) or the Second

Schedule (Tribunals), but the **Constitution Amendment Act** does make the changes. **Section 49(7)** states:

“(7) Nothing in subsection (2) shall be construed as including any of the provisions of the First Schedule or the Second Schedule among the provisions specified in that subsection”.

[34] As it relates to the changed constitutional association between Barbados and the rest of the Commonwealth, which the Claimant alleged is contrary to **section 49(3) of the Constitution**, the Defendant argued that this supposition is an erroneous and misconceived assumption or opinion. The Defendant quite correctly argued that **section 49(2)** clearly stipulates that certain specified provisions and sections of the Constitution cannot be altered without securing the votes of at least two-thirds of all members of both Houses. The named provisions are:

- (a) section 49 and section 1;
- (b) Chapter II;
- (c) Chapter III;
- (d) sections 28, 32, 35 to 39, 41, 41A to 41E, 42, 48, 60(2), 61, 62, 63, and 76 to 79 (other than subsection (7) of section 79);
- (e) Chapter VII (other than section 83);
- (f) Chapter VIII;
- (g) Chapter IX;
- (h) any provision of Chapter X in its application to any of the provisions specified in paragraphs (a) to (g).

[35] The Defendant again argued quite correctly that **section 49(3)** indicates that if Barbados sought to have a new form of constitutional association with other members of the Commonwealth, the requirement for a **section 49(2)** two-thirds majority would not apply. It seems to me that the Claimant has been labouring under a misapprehension that the changeover to republicanism would engender entering or establishing some other form of constitutional association with other member states. My perusal of the **Constitution Amendment Act** does not reveal any relinquishment of membership of the Commonwealth or the fostering of a new constitutional association with any country. In that regard, the Act simply makes a change in the form of government and should therefore not be interpreted in the manner suggested the Claimant.

[36] The Claimant's argument that **section 49(7)** forbade the altering of oaths in the First Schedule was also correctly rebutted by the Defendant who contended that, on a proper interpretation, the section means that any alteration in relation to the Oaths (First Schedule) and Tribunals (Second Schedule) does not require the high threshold of a two-thirds majority. The words in **section 49(7)** are in my opinion, clear and unambiguous. They say that nothing in subsection (2) shall be construed as including any of the provisions of the First Schedule. That is the same as saying that the First

Schedule is omitted from the requirements of two-thirds majority in **section 49(2)** and therefore, Parliament is not forbidden from altering the oaths in the First Schedule as stated by the Claimant.

- [37] The arguments raised by the Claimant in relation to both **sections 49(3) and 49(7)**, in my opinion, stem from a misinterpretation of those provisions and do not have the meaning intended by the Claimant.

Amending a Constitution

- [38] The issue raised by the Claimant whether an Act can by itself, lawfully make Barbados a Republic cannot be fully answered by the arguments advanced by him. Barbados is regarded as being a constitutional monarchy, which has been described as "...a form of government in which a non-elected monarch functions as the head of state within the limits of a constitution. Political power in a constitutional monarchy is shared between the monarch and an organized government...."¹ According to Vernon Bodganor, a constitutional law expert, in an article titled "**The Monarchy and the Constitution**", "...a constitutional monarchy can be defined as a State which is headed by a sovereign who rules but does not reign." The legal authority that establishes that form of government is found at **sections 28 and 63 of the Constitution**

¹ Robert Longley, "What is a Constitutional Monarchy? Definition and Examples."
<https://www.thoughtco.com/constitutional-monarchy-definition-examples-4582648>

which, by virtue of **section 1**, is the supreme law of Barbados, rendering void any law that is inconsistent with its provisions. **Sections 28 and 63** state:

“28. There shall be a Governor-General of Barbados who shall be appointed by Her Majesty and shall hold office during Her Majesty’s pleasure and who shall be Her Majesty’s representative in Barbados.”

“63(1). The executive authority of Barbados is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of Barbados may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him”.

[38] It is therefore axiomatic that any change to this form of government can only be achieved by amending **sections 28 and 63** since any other law (ordinary Act of Parliament) that seeks by itself to make the alteration will be inconsistent with the Constitution and declared null and void. **Section 49 of the Constitution** states that Parliament may, by an Act of Parliament passed by both Houses, alter the Constitution.

[39] Dr. Francis Alexis, in his seminal text “**Changing Caribbean Constitutions**”, **Second Edition**, discussed the manner in which a constitution can be amended or altered. He said that to effect a constitutional amendment, ‘a Caribbean Parliament may have to observe demanding procedures...[which] vary in difficulty depending on which provision...is

being altered.’ He added that those procedures are laid down by the Constitution itself under a scheme of “entrenchment” which is described as protecting some of the provisions of the Constitution against change by the ordinary legislative process. Dr. Alexis further states that the most common entrenchment provision is the two-thirds vote, and indicated that in Barbados, it means two-thirds vote of all the members of each House, and not just those present and voting. For the avoidance of doubt, two thirds of the votes in the Senate are fourteen (14) of the twenty-one (21) members, irrespective of the numbers present and voting at the time.

[40] It is against these criteria that the government must be judged in determining whether the steps taken to transition to a republic is compliant with the manner and form requirements of the Constitution. In addition to the constitutional imperative of **section 49(2)**, there is constitutional mandate that must be adhered to when altering provisions of the Constitution. **Section 49(6)** states:

“No Act of Parliament shall be construed as altering this Constitution unless it is stated in the Act that it is an Act for that purpose”.

[41] The **Constitution Amendment Act** was enacted on October 7, 2021 and its Long Title states that it is

“An Act to alter the Constitution in order

- (a) to provide for Barbados to become a republic with a President who shall be Head of State of Barbados; and
- (b) to provide for related matters.

The following preambles that declare the purpose and intent of the legislation, accompany the Long Title:

“WHEREAS section 49 of the Constitution provides that Parliament may, by an Act of Parliament passed by both Houses, alter the Constitution:

AND

WHEREAS that section further provides that a Bill for an Act of Parliament under that section that alters certain fundamental provisions of the Constitution shall not be passed in either House unless at the final voting in the House the Bill is supported by the votes of not less than two-thirds of all the members of the House:

AND

WHEREAS the Parliament of Barbados by this Act intends to alter the Constitution, including the fundamental provisions of the Constitution”.

"Enacted by the Parliament of Barbados in accordance with provisions of section 49 of the *Constitution* as follows:".

[42] The **Constitution Amendment Act** has two (2) Parts and three (3) Schedules as follows:

- **Part 1** - Savings and Transitional Provisions Relating to Barbados becoming a Republic.
- **Part II** - Alteration of the Constitution.
- **FIRST SCHEDULE** - Oaths
- **SECOND SCHEDULE** - Provisions relating to certain Tribunals
- **THIRD SCHEDULE**- Constituency Boundaries

[43] The significant and necessary change to facilitate the transition from Constitutional Monarchy to Republic is, in my opinion, the amendment to **sections 28 and 63** of the Constitution dealt with at **sections 21 and 27** respectively, of the **Constitution Amendment Act**. So far as is relevant, those sections are as follows:

28(1) There shall be a President who shall be the Head of State.

(2) The President shall be Head of the armed forces.

(3) The President shall have such functions as are assigned to him by this *Constitution* or any other law.”

63.(1) The executive authority of Barbados is vested in the President.

(2) Subject to the provisions of this Constitution, the executive authority of Barbados may be exercised by the President either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.”

[44] These specific sections have therefore altered the system of government from that of a Constitutional Monarchy by ending the tenure of ‘a sovereign (Her Majesty) who rules but does not reign’ and replacing her with a President. However, the matter does not end there since for it to be effective and become law, the **Constitution Amendment Act** must comply with the manner and form requirements of the Constitution, namely, state on its face that it is an Act to alter the Constitution, be passed by a two-thirds majority in both the House of Assembly and the Senate and finally, receive the Governor General’s Assent.

[45] The first requirement was satisfied by the placement of the following words on the face of the **Constitution Amendment Act**:

“An Act to alter the Constitution in order....”

[46] As it relates to the second requirement, in his Affidavit in Response filed on November 10, 2021, the learned Attorney General deposed at paragraphs [9] and [10] as follows:

“[9] It is to my certain knowledge that the Constitution (Amendment) (No. 2) Bill was passed unopposed on the 28th day of September 2021 by the House of Assembly of the Parliament of Barbados. I am aware that twenty-five (25) votes clearly constituted in excess of the two-thirds majority required by

section 49(2) of the Constitution of Barbados to give effect to a bill such as the Constitution (Amendment) (No. 2) Bill which proposed to alter the Constitution

'...(a) to provide for Barbados to become a republic with a President who shall be Head of State of Barbados; and

(c) to provide for related matters.'

[10] I am also aware that the Senate of Barbados subsequently considered Constitution (Amendment) (No. 2) Bill on the 6th day of October 2021. The records of the Parliament of Barbados available to me confirm that the Senate also approved the Constitution (Amendment) (No. 2) Bill with the required majority specified by section 49(2) of the Constitution of Barbados.

[47] Pertaining to the Governor General's Assent, the learned Attorney General deposed at paragraph [11]

[11] It is now a matter of public record that the Constitution (Amendment) (No. 2) Act, 2021-22 was assented by Her Excellency Dame Sandra Prunella Mason, Dame Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Dame of St. Andrew, Q.C. ("the Governor-General") on the 7th day of October, 2021 and became law in Barbados."

[48] Government, having satisfied the manner and form requirements of amending the Constitution outlined above, the **Constitution Amendment Act** is valid and adequate to facilitate the change from a constitutional monarchy to a

republic. Nothing more is needed. The answer therefore to the issue raised by the Claimant is that the **Constitution Amendment Act** has by itself, observing the mandatory requirements of the Constitution, altered the Constitution to lawfully make Barbados a Republic.

[49] The Government however did not stop there. Not surprisingly, the **Constitution Amendment Act** has ensured that the process of the change is complete. Significantly, it revoked the **Barbados Independence Order, 1966 (L.N. 1966 No. 1455) (UK)** without affecting the validity of the Barbados Constitution which was a Schedule in that Order. The result is a Constitution completely detached from the U.K.'s legislative framework and is now the supreme law under the new republican system of Government.

[50] It also made provision for the election of the President, saving of existing legislation and the making of consequential amendments changing references from the 'Crown' and 'Her Majesty' to the 'State', and from the 'Governor General' to 'the President'.

Is public consent necessary for Barbados to become a republic?

[51] The Claimant contends that the public's consent is necessary for Barbados to become a republic. He refers to **section 3** of the **Referendum Act** that states that a referendum shall be held on the question set out in the Schedule and the

question is whether citizens agree that Barbados should become a Parliamentary Republic with a citizen of Barbados as President.

[52] The Defendant made short shrift of that argument by stating that the **Referendum Act** was passed in 2005 but clearly stated that it was to come into force by Proclamation and it was not proclaimed. Therefore, counsel argued, it is not the law of Barbados and accordingly the **Referendum Act** cannot be relied upon in these or any proceedings while in that state.

[53] **Dr. Francis Alexis**, said that everywhere in the Caribbean, except in Barbados, Belize and Trinidad and Tobago, the alteration of several provisions of the Constitution cannot be accomplished unless the people approve the amendment in a referendum, that is, a poll on the question whether the amendment should be made. He added, at para. 3.133:

“Changing a Constitution without public consultation may occur where the Constitution does not require that the people vote in a referendum giving their prior approval for changing it. So, no referendum being stipulated by the Barbadian Constitution for its alteration, far-ranging amendments were made to it in 1974 under the DLP Government of Prime Minister Errol Barrow without public consultation to speak about. According to Mr. Barrow, a committee had been appointed in 1972 to look at the Constitution and make proposals to Cabinet for such changes...as the committee felt were desirable or reasonable. He seemed to be suggesting that the amendments were based on these proposals.”

[54] Barbados still does not have provision for a referendum enshrined in the Constitution. However, in 2005 the **Referendum Act** was passed. Its Long Title states that it is an Act to provide for the holding of a referendum on the Question:

*“WHEREAS the State of Barbados is now a Constitutional Monarchy with Her Majesty as Head of State:
AND WHEREAS the Constitution Review Commission in its Report of 1998 has recommended that the State of Barbados should become a Parliamentary Republic with the Head of State being a President and with executive power continuing to be exercised by a Cabinet with the Prime Minister as Head of Government:
AND WHEREAS the Government of Barbados considers that as a Parliamentary Republic Barbados should retain its membership in the Commonwealth:
DO YOU AGREE WITH THE RECOMMENDATION OF THE CONSTITUTION REVIEW COMMISSION THAT BARBADOS SHOULD BECOME A PARLIAMENTARY REPUBLIC WITH THE HEAD OF STATE OF BARBADOS BEING A PRESIDENT WHO IS A CITIZEN OF BARBADOS?”*

[55] **Section 3** of the Act states that a referendum “shall” be held in Barbados on the Question set out in the Schedule. **Section 4** states that the Governor General shall by proclamation appoint a “Referendum Day” for holding the referendum which should be between 60 and 90 days after the date of the proclamation. **Section 5** indicates that registered voters would be those persons permitted to vote on Referendum Day. **Section 9** specifies that the

Act would come into force on a day fixed by proclamation. The Schedule to the Act, which contained the question is as follows:

SCHEDULE

(Section 3(1) and (2))

QUESTION TO BE ASKED IN THE REFERENDUM TO BE HELD PURSUANT TO SECTION 3

BARBADOS
Form of Ballot Paper
QUESTION TO VOTER

WHEREAS the State of Barbados is now a Constitutional Monarchy with Her Majesty as Head of State:

AND WHEREAS the Constitution Review Commission in its Report of 1998

has recommended that the State of Barbados should become a Parliamentary

Republic with the Head of State being a President and with executive power continuing to be exercised by a Cabinet with the Prime Minister as Head of Government:

AND WHEREAS the Government of Barbados considers that as a Parliamentary

Republic Barbados should retain its membership in the Commonwealth:

DO YOU AGREE WITH THE RECOMMENDATION OF THE CONSTITUTION REVIEW COMMISSION THAT BARBADOS SHOULD

BECOME A PARLIAMENTARY REPUBLIC WITH THE HEAD OF

STATE OF BARBADOS BEING A PRESIDENT WHO IS A CITIZEN OF

BARBADOS?

YES

NO

[56] **Section 16 of the Interpretation Act** states that every enactment shall be published in the Gazette and unless otherwise provided, comes into operation on the date of the publication. **Subsection (3)** stipulates that where an Act provides that it is to come into force or operation on a date to be fixed by proclamation, that proclamation may apply to the whole Act or any provisions of the Act and may be issued at different times in respect of any provision. No proclamation has yet been issued to provide a commencement date for the **Referendum Act**. It is therefore an Act that has been passed but not yet part of the law of Barbados and no reliance can be placed on any of its provisions. Consequently, the Government is under no legal obligation to have a referendum on the question whether Barbados should become a republic with a President who shall be Head of State.

Access to Justice

[57] Before finally disposing of this matter, I wish to make a few observations. Barbados adheres to the right to access to justice and litigants in person have the right to petition the courts to have their matters heard and determined. It is accepted that access to justice is a basic principle of the rule of law and in its absence, people are unable to have their voices heard, their rights exercised, challenge discrimination or hold decision-makers accountable. That has been

aptly demonstrated in this case with the ease and freedom with which the Claimant has commenced these proceedings and prosecuted his case.

[58] However, with rights come responsibilities. There is for example, the responsibility to follow rules, especially when dealing with complex matters. Very early on in these proceedings, I urged the Claimant to endeavor to have counsel represent him. I informed him that in **McClellan v Barbados Telephone Co. Ltd.**, King J admonished Mr. McClellan for not having counsel since there were things that he did that he should not have done, and things that he should not have done that he did.


[59] Modern day legislation is drafted in simple terms, having shed the shackles of the old-styled legalese that at times confounded some lawyers. Litigants in person are encouraged to participate in the process by complying with the legal requirements that are set before them, so long as they are not busy-bodies or given to filing frivolous and vexatious claims, It may be necessary at times to consult counsel for guidance because instituting legal proceedings requires a response from the opposing side and the allocation of judicial time to hear and determine the matters. Failure to comply may result in the imposition of sanctions or worse, having their matters dismissed.

Disposal

[60] The court makes the following orders:

- (1) The claim for a declaration that an Act of Parliament by itself cannot lawfully make Barbados a republic, is refused.
- (2) The claim for a declaration that public consent has not been obtained for Barbados to become a republic, is refused.
- (3) The request for a prohibition against Barbados becoming a republic until the explicit consent of the public has been transparently obtained, is refused.
- (4) Government, having complied with the manner and form requirements relating to amending the Constitution, the **Constitution (Amendment) (No. 2) Act, 2021** properly facilitates the amendment of the Constitution to change its governmental structure from a constitutional monarchy to a republic; and
- (5) There is no legal obligation by the Government to have a referendum to facilitate the change in its governmental structure.

[61] The Claimant shall pay the Defendant's costs in the amount of \$5,000.00.


Barry L. Carrington
High Court Judge