

## *FRANKLY SPEAKING .....*

“What Lies between the Lines?”

I, for one, believe that too much emphasis and too high expectations are being placed on manipulating the Constitution and regulatory legislation that flows from it, as the solution to all our development problems. True, the Constitution is a dynamic document which ought to reflect changing times and circumstances. True, amendments may be required from time to time to address obvious and pressing defects in the operation of governance through changes to processes, the creation of new functions and even the elimination of ineffective provisions in the Constitution. That is as it ought to be. But I cannot be enthused by questionable philosophical propositions which call for fundamental change such as that proposed in an Executive Presidency. I cannot help but recall the old quote from my college days:

“For forms of government, let fools contend,  
Whatever is best administered is best.”

I certainly understand that the wholesale importation of the Westminster Model of parliamentary democracy has not been without its stresses and strains. But will any other option come with less bag and baggage, even more detrimental to a functional and functioning democracy? Will we wend our way through a buffet of governance dishes hoping that some unknown combination will satisfy? Or are we resigned to an inevitable future of less liberty for more bread? I wonder, have we given our present system sufficient opportunity (by this I do not mean time, but conducive conditions) to take root and to flower?

Let's be frank. The current conditions that we face are not likely to disappear because we change governance horses in midstream. I will attempt to identify some of the more pressing of these limiting conditions:

- Small geographical size and population.
- Increasing complexity of government.
- Mushrooming number of Ministries.
- Segmented development programming.
- Limited budgets.
- Fragmented and sporadic Revenue Sourcing.
- Conditions attached to Foreign Assistance (Grants and Loans).
- Human resource shortfalls and limitations.
- Inconsistent application of Local Codes, Regulations and Practices.
- Globalization and the burdens of international agreements and standards.

And these are only the tip of the iceberg!

Those who are impatient and intolerant of, or even opposed to a continuation with the present system point to the inability of the current legislature, to deal properly with these conditions. They comment on the quality and qualification of members of the legislature in terms of their ability to understand and address the local and global issues that come before them, or to lead in finding solutions whether as government ministers or opposition members. Others believe that the party system and the concept of a government in power whose policies and programs are tested by a “loyal opposition”, *ipso facto*, establishes an atmosphere of antagonisms, adverse to the emergence of positive and progressive development programming. They advocate the emergence of a (hopefully) benevolent strong man, through a democratic election process with the ability to draw capable leadership material from within and outside the legislature (but responsible in the first instance to the leader) and presumably subject to normal (as presently exists) legal, administrative and community checks and balances. In a worst case scenario, though not an indispensable condition of this proposal, there may even emerge a one party state! Though how the worst effects of such a regime can be avoided, is not clear.

Neither an assessment of the shortcomings of the current system nor an evaluation of the merits of any future alternative system has to my mind satisfactorily addressed basic processes within which any proposed system of governance would best operate. Among others are:

- An informed and discerning electorate.
- Free and fair elections.
- A free, fair and accessible and responsible press (radio, television, newspaper etc).
- Strengthening of community resource institutions and persons for leadership positions.
- The role of the private sector.
- The role of Unions and special interest groups in advancing their agendas.
- Processes for community consultation.

To my mind, proposals for a “brave new world” cannot leapfrog these intangibles which lurk to snare the rash and the unwary, and it seems to me that suggestions for constitutional review and proposals for constitutional change need to start by addressing issues such as these that are present now and will continue into any alternative future. In the meanwhile, and conscious of some of the criticisms in circulation, let me pose some questions which might help us to address the governance issue within the current system.

- (1) How can the government decision-making process be made more responsive to wider public concerns?
- (2) How can decision-makers at all levels be held to account for errors in judgment or malfeasance in public office?
- (3) How can the public be assisted to assess the benefits of publicly financed programs and especially to understand the reasons for ineffectiveness?

**Let there be no confusion. A government duly elected by the people is imbued with the right to govern as specified under the Constitution. But successful governing which requires the knowledgeable, voluntary participation by citizens in making policy work as intended. It requires public consultation, information, review and accounting. Individuals and groups may disagree with government-sponsored and legislatively-approved policies and are entitled to change them either through intervention with government or as a last resort to change the government. That is the ultimate policy sanction.** This eventuality can be avoided and policy design and implementation improved through open, honest and sincere consultation. This is not the place or time to define and discuss the hallmarks of effective consultation except to note that it is not private proposal drafting and preliminary endorsement, then circulation for re-action followed by selective response. It is an iterative process of issue definition, awareness of impact area and affected stakeholders, agreement on scope and alternative strategies, selection of a preferred strategy having regard to resources, immediacy of responses and opportunities for corrective measures, followed by a built-in monitoring program.

The second question addresses the issue of accountability of political and public service officials in the process of doing the People's Business. The behavior of public officials is clearly prescribed and ought to be impartially administered by the Public Service Commission. Yet, time and again, there are instances of infringement without either correction or reprimand. The process is in place, the lines are written, but the commitment to enforce is lacking. This laxity is likely to persist and worsen, if not checked, regardless of the structure of government.

The behavior of politicians within the legislature is subject to sanction by the rulings of the Speaker of the House. **Whatever the perceptions of the correctness of the Speaker's rulings, there is an obligation on all members to abide by them. They are entitled to pursue available legal channels to reverse the most obnoxious of such decisions. However, the speaker is the umpire in the game and the players must submit to his/her decision.** There is an obligation on the Speaker to exercise her responsibilities fairly, impartially and with good judgment and familiarity with the law, knowing that the honorable members before him/her stand in the shoes of the nation at large. Offence to this principle might occur whatever form of government and the critical issue is having competent people in that role and the will of all members to do the right thing.

The Constitution provides for the appointment of a Parliamentary Commissioner who is mandated to investigate, report on and where possible remedy allegations of administrative injustice. The scope of this inquiry is not limited by nature of the allegation or injury, and applies to all government departments, local government authorities, government contractors and other prescribed authorities. This is an important

function which offers another window for ensuring administrative accountability and transparency, and needs to be instituted fearlessly and aggressively. The lines are there! There are also sufficient checks and balances against intrusion into the merits of policies of government. The focus of this provision is to address and correct procedural and operational defects and abuse of power by bureaucrats in individual cases or as a systemic problem.

**It may be advantageous to consider expanding the scope of this office to include investigations under conflict of interest by both political and administrative officials, combined with an advisory and counseling service in matters of ethical performance of duty.**

Thirdly, questions pertaining to the effective administration of the country's finances are best, and should ultimately be, answered through the Reports of the Director of Audit. This is one of the most vital functions under the Constitution and is not confined exclusively to accountability in the collection and disbursement of government funds. Historically, the objective of the office was to ensure that the public accounts for the nation were managed in the manner as authorized by the legislature and in accordance with established accounting practices and that persons and processes involved were subject to correction and/or sanctions, as deemed necessary. The critical nature of this position and function was secured by:

- insulation of this office from political interference;
- secure funding for emoluments of the Director;
- unfettered access by officials of this office to all documents of publicly funded offices and institutions;
- obligatory tabling in the legislature of Reports from the Director.

The scope of this traditional audit report (Attest Audit) providing an opinion attesting to the proper and complete statement on the public accounts for the year in question was expanded by the Audit Act of 1994 in several important respects. More particularly to address:

- where accounts have not been faithfully maintained;
- where public monies have not been fully accounted for or paid;
- where essential records have not been maintained;
- where the rules and procedures have been insufficient.... to secure effective check on assessment, collection and proper allocation of the revenue;
- to ensure that expenditures have been made only as authorized;
- where **“money has been expended without due regard to economy or efficiency or for purposes other than for which it was appropriated by the House of Assembly; or**

- (where) **satisfactory procedures have not been established to measure and report on the effectiveness of programmes where such procedures could appropriately and reasonably be implemented.” (Section 6).**

This amplification of the functions of the Director of Audit is not accidental. It clearly establishes the intent of the Legislature to require the Reports of the Director to extend into what is familiarly referred to as “Value for Money” Audits. This revision and consolidation of the law relating to the Office of the Director of Audit **does not empower the audit function to cross over into the merits of legislation which is an essentially political process, but it does require the auditor to ensure that once authority is given in legislation, the implementation process is transparent, accountable, well-documented, traceable by proper accounting procedures and that the programmes funded are cost-efficient, timely and appropriate and are the best designed so as to achieve the intents of the legislature.**

When well-applied, the provisions of the Audit Act would address and perhaps even resolve such controversial issues as the operation of the Economic Citizenship Programme (an issue that also be-devilled several past administrations); the Offshore Financial Services Sector Programme (an issue that sits on the front burner of the present administration though inherited from previous administrations); the most effective functioning of the Social Security System (also an old bugbear); the effectiveness and functioning of the National Commercial Bank and the AID Bank (both long-standing policy and operational irritants); effective, responsible and accountable Public Assistance programmes; privatization and out-sourcing of government services; the incidence of cost over-runs for budgeted projects; the incidence of retro-active approvals for un-authorized expenditures; adequacy of provisions for depreciation of major capital works, including government buildings, to name a few.

It should be noted that even where some statutory and government-assisted bodies conduct their own private (attest) audits, nothing precludes the Director of Audit from exercising an oversight Attest audit and an independent Value for Money Audit on behalf of government in such instances. Indeed, this expanded role for the Director now sanctioned by law may require increased funding and increased staffing etc for this office, but the lines are there, and the onus is on the willingness of the legislature to fund appropriately!

It is my contention that all the ingredients for good governance are in place in the Constitution and as further clarified by enabling legislation and implementing regulations. The lines are written. So why then doesn't the system work or why does it work so imperfectly? The answer may lie by reading between the lines.

1. Good governance requires our society to be informed about their (political) duties as citizens which do not end at the close of election day, and about their (civic) responsibilities of simply obeying the law and being “good neighbors” to each

- other. We need to learn and grow in learning as to what is required of us individually, and to ensure that we each live up to our obligations.
2. Good governance requires continuous monitoring of our society, of what is good and bad and how we can make living together for and with each other better. It demands that we funnel our concerns to our elected decision makers and require them to consider and act upon our concerns.
  3. Good governance requires that we support and maintain a professionally responsible media, fearless in investigation and balanced and fair in its reporting, accessible to the public and diligent in service.
  4. Good governance requires that public servants fulfill the functions of their office without partisanship or political bias seeking reward based only on merit.
  5. Good governance requires that where public officials act in contravention of their powers, those entrusted with the responsibility of ensuring their good behavior take them to task and hold them to account without acrimony or animosity.
  6. Good governance requires that a duly elected government be recognized as having the authority to act in the best interests of the nation with transparency, accountability subject to removal at the will of the people.

Very little is accomplished by adding layers upon layers of bureaucracy in a vain attempt to legislate ethics and honesty. If the political process is able to throw up only persons of questionable character and integrity then no amount of watchdogs will ensure good behavior. The procedures for sanctions are in place, the lines are written. Other forms of government will not induce honesty. Indeed, the suggested alternatives are more prone to abuse. We must require that the intentions written between the lines be implemented.

We are a society of limited means and even more limited human capacity. By this I mean, numbers of competent, trained, experienced personnel to spread around. Personal and family ties are too extensive and inter-locking to have us split by artificial distinctions of party, colors, rural-urban, complexion and such! Our country is too precious to see its future squandered in endless squabbling and expensive litigation. No borrowed political system will solve our problems where the answers lie between the lines and among us working together at our assigned tasks.

A well-respected friend reminded me recently of the rejoinder to the quoted opening couplet with which I might appropriately close:

“But what is best must free men still decide,  
Lest leaders gull them and officials ride.”

*As I write, the Canadian Parliament is locked in a significant contention between the Members of Parliament, of all parties, who are opposed to audit oversight of their state-funded expenses by the Auditor-General on grounds of “ultra vires”, and an adamant, professional Auditor-General intent on doing her job, who asserts that by law, they*

***must. Public sentiment and the overwhelming legal opinion is that as a servant of the Constitution (just as in Dominica), even though individual incumbents are appointed by Parliament, Parliament is subject to financial scrutiny by the Auditor-General who in turn owes a duty of service to the country in assuring good, responsible, transparent and accountable management of the country's financial resources.***

If there, why not here?

That's the way I see it, anyway!