

## Chapter Twelve

### Guaranteed Freedoms

I begin with the fundamental rights and freedoms which are summarized in section 3 of the Constitution as follows:

*Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, birth, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –*

- a) Life, liberty, security of the person, equality before the law and the protection of the law;*
- b) Freedom of conscience, of expression and of assembly and association; and*
- c) Protection for his personal privacy, the privacy of his home and other property and from deprivation of property without compensation.....’*

We are fortunate to enjoy in large measure the freedoms in a) and c) but we should not take them for granted. Continuous vigilance is required to maintain and to recognize when they are threatened by any leader or others. History shows that such threats are often indirect and devious and creep up on a society. Our excessively high murder rate is one such threat which needs to be curbed. We cannot afford in a tiny country like ours to become fearful for our lives and security.

I will focus on the set of freedoms in b). These I refer to as the conscience freedoms. Everyone knows the right of free speech. We have much more however than the right of free speech. I will list the conscience freedoms. They are *freedom of thought, freedom of speech, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference, freedom from interference with correspondence*. How have we done in the exercise of those

rights since independence. A summary answer is we have a long way to go to be categorized as enlightened in this aspect of democracy.

I will list a few factors which have inhibited the growth of the conscience freedoms: the divisive politics, the comparatively large size of government and the reliance of so many people on it, the secrecy of government, the weakness of Civil Society, the lack of respect by politicians on all sides for the conscience freedoms as evidenced by successive governments monopolizing and politicising the government owned media.

Until 30 years ago what passed for media consisted of The Democrat, the Labour Spokesman and ZIZ, two political rag sheets and the government radio and TV station. Despite the several pronouncements of the courts that there should be fair access for all to the government owned media successive governments have ignored the courts and the rights involved. Further details are given below.

The right to freedom of expression and the circumscription of that right have become all the more topical as the still new Information Age unfolds and communication technology becomes more prevalent. Our nation needs to begin the debate on making the most of the positive effects of the technology. But it is equally important to counter the negative effects on our democratic processes of fake and distorted news.

We see the debate taking place across the globe about what is cynically called fake news and alternative facts. Fake news is now a weapon of international relations bearing out Lenin's claim that if a lie is repeated often enough it becomes the truth. We need to strategise about protecting ourselves individually and collectively from its dangers. The most pleasing element of this phenomenon however is that it makes it all the more difficult to suppress the conscience freedoms.

I comment on the exercise by our leaders of their right of free speech. They do not set a good example in much of the political discourse. Too many of their mouthpieces abuse the

privacy of social media to attack opponents with MDM - misinformation, disinformation and malinformation. Internet laws are cropping up in various countries but they are not yet effective to deter the malignant abusers. But the time will hopefully come when sense and decency prevail.

#### Protection from Political Discrimination

Another right that most surprisingly is rarely enforced is the right not to be discriminated against on grounds of political opinions or affiliation. As defined in the constitution this discrimination is committed by any public officer or authority who in the exercise of his duty affords different treatment to different persons for political reasons. I can't think of a right that has been more frequently breached over the last 40 years. It is breached daily across the Civil Service and government corporations. And that is not a difficult breach to prove. I can only assume that the reason for the lack of enforcement of the right by legal action is that each side expects to be discriminated against when it is in opposition and waits to return the favour when the shoe is on the other foot. That has been a deep ditch on our road to freedom and true democracy.

#### Freedom of Information

The first legislation to be passed to define the fundamental right to information in relation to Government information is the Freedom of Information Act passed by Parliament in May 2018 but not brought into law (with amendments) until 2023.

The purpose of the Act is stated to be '*to make provision for the disclosure of information held by public bodies or by persons providing services for them and for connected persons.*'

Information which is available under the Act must be provided within 40 working days or in the case of information which reasonably appears to be necessary to safeguard the life or liberty of a person, within three working days.

The Act contains a process intended to facilitate requests for information including Information Officers and an Information Commissioner. The Commissioner is meant to be independent and to monitor compliance with the Act and otherwise facilitate its implementation. He also has an important role to hear complaints by persons who have been refused information and he has powers of redress.

As can be expected there is a whole range of protected information which cannot be disclosed. That includes banking and other information made confidential by law, personal information, information subject to legal privilege, commercial and trade secrets, information received from other countries or international organizations, personal medical records, law enforcement records, defence and security records, information the disclosure of which would endanger life, health and safety of any person, certain information relating to policy making and operation of public bodies, Cabinet records. An excepted category I will single out which is very vague is information that could seriously prejudice the ability of Government to manage the economy or seriously prejudice the legitimate commercial or financial interests of a public body. The last category shows that to be effective the Act will require the fair and honest interpretation of the exceptions by the Government.

The role of the Commissioner is also key to the success of the Act. If he or she is really independent that would set an important tone for the operation of the Act and give the public confidence in its usefulness.

The country needs more brave citizens to lead the way and enforce their rights under the Constitution and the Act. They will then put the Government to the test as to its genuine desire for transparency and the Commissioner as to his independence. The Court system, the most independent arm of our country, is available to enforce the Act. If the current culture continues then the Act could be window dressing. If properly applied the Act can be a very important step towards a mature democracy.

## Government Media

The Courts have ruled that there is a right of access by everyone to ZIZ and the government media in Nevis. Despite some liberalization in the ZIZ programming there remains the entrenched perception that ZIZ should be the mouthpiece of the ruling party.

For there to be real reform of ZIZ the powers behind that reform must recognize the fundamental constitutional right of access to the station as pronounced by the Courts and confirmed in the 2012 case of Brantley v Parry and others. In delivering the judgment of the Court of Appeal in that case Mr. Justice Mitchell said this:

*For the reasons given above I would dismiss the appeal brought by Mr. Parry, and I would uphold the findings of the learned trial judge that Mr. Brantley's right to freedom of expression and his right not to be treated in a discriminatory manner by reason of his political opinions under sections 12 and 15 of the Constitution of Saint Christopher and Nevis have been contravened by the failure of the Nevis Island Administration on its nightly Nevis News Cast to cover any of the political events organised by Mr. Brantley's political party during the campaign leading up to the election of 11<sup>th</sup> July 2011.*

The Court also said:

*The duty of the government-owned media to work in support of and not to obstruct the public's right to freedom of information and freedom from discrimination on the basis of political affiliation has been established in our region since at least the decision of Justice Saunders in the first-instance decision Suit No. 56 of 1997, (decided 8<sup>th</sup> January 1998), in the Talk Your Mind case from Anguilla: Benjamin and others v Minister of Information and Broadcasting and another [2001] UKPC 8.*

The John Benjamin case as it is famously known throughout the Commonwealth and beyond was brought by a Kittitian lawyer (recently deceased) who was resident in Anguilla.

He practiced mainly there but also in St. Kitts. In his later career he served as a Judge of the Eastern Caribbean Supreme Court. John is a legend of fundamental rights and a true hero of our country for bringing his landmark case which has become indelible in our history and the jurisprudence of all Caribbean and Commonwealth countries.

It is worth remembering the full facts of the case as set out in the judgment of the Privy Council which finally decided it. I quote:

- 1. Radio Anguilla is a Radio Station owned by the Government of Anguilla and run by a non-statutory department of government within the responsibility of the Minister of Information and Broadcasting. It is the only secular radio station broadcasting throughout Anguilla, the other station being a privately owned station concerned with religious matters.*
- 2. In 1994 a radio programme was instituted called "Talk Your Mind" which enabled members of the public to telephone their comments as part of the programme. Mr Benjamin, a lawyer and an active member of the community who had experience of producing a radio programme, was appointed to host the programme on the condition that he was responsible for its format and for obtaining sponsorship. This arrangement was made at the instance of the Director of Broadcasting and with the approval of four Ministers of the coalition government formed in 1994, following undertakings by the political parties in the coalition to free broadcasting. The programme first went out on 19th October 1994 and as it seems a great success. Issues of wide importance to the public were ventilated and government ministers took part in the discussion. But by 1996 there was much criticism of the government during the programme and in July 1996 the Minister of Information and Broadcasting suggested that the programme should be changed to one with discussion panels but no phone-in participation by the public. Mr Benjamin considered this an interference*

*with the public's right to freedom of expression and was unwilling to change the format which he personally arranged and paid for. The programme was then closed down which led to widespread criticism, indeed anger, on the part of the public. Subsequently, on 23<sup>rd</sup> October 1996, the programme was reinstated with the Minister of Information and Broadcasting as guest speaker.*

- 3. On 16th July 1997, during the programme, a question was raised by a caller as to the legality and propriety of the national lottery which had recently been set up. Mr Benjamin expressed the view that the lottery was not appropriate for Anguilla and said that it had been turned down by the House of Assembly. Indeed he said that in his view it was illegal. A Mr. Todd Washington, the Vice President of the Anguilla Lottery and Gaming Company Limited, also spoke to put his views. The next day Mr. Washington asked for equal time to respond to the criticisms made in the programme but by letter dated 17th July 1997, he gave notice of the company's intention to sue Radio Anguilla and Mr. Benjamin 'for defamation, malicious intent to injure and destroy the economic interests of the Company in Anguilla and for other serious tortious actions'.*
- 4. The government then without discussing the matter with Mr Benjamin suspended 'Talk Your Mind'. The appellants applied to the High Court and, by their amended notion of motion, sought a declaration that the suspension of the programme was a contravention, active suppression and abridgement of the First-named Applicant's rights to freedom of thought, freedom of expression and freedom from discrimination as guaranteed by sections 1, 10, 11, 13 and enshrined by sections 10, 11, 13 and 16 of the Constitution of Anguilla.*

The Trial Judge Mr Justice Adrian Saunders (now President of the Caribbean Court of Justice) held that the Minister's decision to suspend the programme on July 19<sup>th</sup>, 1997 was a

contravention of the Applicants' rights to freedom of expression guaranteed and enshrined in the Constitution and protected by section 11. He ordered that Mr Benjamin should have damages to be assessed by a judge in Chambers and that those damages be paid by the Minister. That was another highly desirable first in our jurisdiction. A Minister breaks your constitutional right he must pay you damages personally.

The Government of Anguilla appealed and the Court of Appeal was reactionary in its finding, dismissing John Benjamin's case and saying that the public did not have a right to speak on a public radio station.

As it has done in other free speech cases in our jurisdiction the Privy Council saved the day and upheld the judgment of Mr. Justice Saunders. The Privy Council quoted from an earlier Commonwealth case the following judicial statement about democracy:

*Democracy is a government by the people via open discussion. The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational price of democracy which distinguishes it from all other forms of government.*

Thus, there is every legal precedent and authority that could be needed to force the reform of ZIZ. Whether the country will do so will reflect on the maturity of its democracy.

In summary there are three fundamental rights enshrined in the constitution which ZIZ (and the Government in its operation and control of same) has a duty to respect. These are freedom of expression, freedom from discrimination on grounds of political affiliation and freedom of information. ZIZ has from inception ignored its duty to respect these rights and has operated as a mouthpiece of the political party in power. The following recommendations could assist in achieving the due recognition and application of the duty:

1. The establishment of a professional and independent news service which applies the tenets and standards of news reporting accepted regionally by The Association of Caribbean Media Workers.
2. It is particularly important that journalists be trained to ask incisive and difficult questions rather than pandering to the interviewees as is the norm when politicians and other government connected persons are interviewed.
3. Fair and ample coverage should be given to the Opposition parties in keeping with their fundamental right and consistent with the news reporting standards. This should occur at all times not only at election campaigns.
4. The station should promote televised debates between opposing politicians during pre-election periods. There is a body in Jamaica which does this - the Jamaica Debates Commission. The Commission has in the past, through members who visited our country, expressed an interest in providing advice to St.Kitts and Nevis in organising such debates.
5. Programmes on matters of public importance and interest should be broadened and improved to inform and educate the public using local and available foreign expertise on the subjects involved and in appropriate instances allowing public participation. These programmes should include unrestricted discussion on controversial matters.
6. The relationship between the ZIZ News Service and the Government Information Service should be established by transparent and published rules.
7. Policies of ZIZ which incorporate the above should be established and published.
8. A review committee should be established comprising a cross section of Civil Society recommended via a process established in consultation with Civil

Society bodies. The duty of the review committee should be to monitor the broadcasting of ZIZ, to receive complaints from members of the public on unfair reporting, other breaches of the reporting standards and any abuses by and of the station, to report publicly on its findings on such complaints, to interact with and make recommendations to the corporate board of ZIZ and to report annually to the public. The station should fund the operations of the committee.

9. A code of conduct and process for the appointment of the corporate board of ZIZ should be established with the objective of achieving a fair balance within the membership of the board and obtaining the requisite expertise. A seat should be reserved on the Board for a representative of the Opposition.

10. The commercial exploitation of the station in terms of advertising revenue should be professionalised.

11. The station should conduct regular surveys within the community to gauge public interest in its programming. The results of the surveys should be published.

12. Copyright of artistes should be respected and paid for.

#### Role of the Non-government Media.

The media is a critical organ of democracy. It is correctly referred to as the fourth estate. It informs and facilitates discourse and provides a platform to the citizen for the exercise of the conscience freedoms. It helps to counter the huge power of the Prime Minister and to keep politicians in check. The media should be a positive influence for good in a democracy. The St. Kitts and Nevis media is young. It is only since the mid 1990s that newspapers independent of Government have sprung up and since the turn of the century that independent radio stations have appeared with any consistency. Before that the only real media were the Government owned radio and TV stations.

As can be expected some of the radio stations have had a political agenda and reflected that in their news and broadcasting but that is their right. More independent stations like WinnFM are required to allow all views to be expressed and promote responsible journalism.

In the face of the government spin machine the media should play a key role in ferreting out the truth, protecting the fundamental right of free speech and enhancing democracy. However the standard of journalism is still substantially below international standards and hence the impact of the growing media has not been as strong as it should be. As noted above the expansion of social media has widened communication but has hardly improved the level of dialogue. Both will hopefully prove more impactful in future as our young people lose the fear they inherited and exercise their fundamental rights responsibly and widely to the benefit of the country and the detriment of the fakesters.

It is worth noting some of the constraints on the growth of the media:

- limited earning capacity of journalists reducing the attraction of talent and the quality of service
- the limited market for advertising which can affect the range of stories on which journalists can report
- the huge size of government commercial activity and advertising power
- the competition of social media for the market
- the political hostility which independent reporting can invoke
- the effect of social media in dramatizing news.

### Effect of Technology

As with inventions from time immemorial there are positive and negative effects and they can be exploited for good and bad. The modern technology is no different. Just as it promotes free speech and keeps people in touch so it can be abused for lies and DMM. So

much depends on human mentality and character and moral values which vary from country to country. The truth with human mentality is that despite the massive advances in science and technology greed, self-indulgence, ego, mistrust, hatred, jealousy, violence, fraud, lies, propaganda and other political abuses are as prevalent as they were 2000 years ago.

Parents rely on the telephone to bring up their children. Humans don't have to kill each other with the sword now. They can destroy each other online. They can spread lies and DMM with a single finger. They can get information true or false just as easily. They can speak to each other across the world without cost but many can't speak the language properly and miscommunicate regularly.

Everything is instant so books are out of fashion. You have to get what you want immediately without spending the time needed to learn and understand what you are pursuing. Everybody is a Google doctor and lawyer and engineer and scientist because they can ask questions online and take the answers at face value. You don't need to understand the principles or study in depth.

I have little doubt that use of the internet, AI and other technology will improve and there will be genuine benefits but the question is will societies implode or destroy each other before that happens. The new technology should solidify democracies but the exact opposite is happening in many countries. Albert Einstein said "a little knowledge is a dangerous thing so is a lot". Nowadays a little knowledge makes everybody an expert in everything.

The question for St. Kitts and Nevis is will our society follow the other societies which are plunging towards autocracy or will we come to grips with the blessings of our democracy and use the technology to make it stronger and more mature.