

Chapter Eight

The St. Kitts and Nevis Government System

In this chapter I will look at how the Federal system of government is constructed and how it meets the essentials of democracy and the rule of law discussed in the preceding chapter.

A Freely Elected Legislature

St. Kitts and Nevis is a constitutional democracy. The constitution is the supreme law. It takes precedence over all other laws. It cannot be changed easily. The constitution provides for a representative system of government with elected Representatives and appointed Senators comprising the National Assembly. There is one elected Representative for each constituency and there are provisions for changes to and an increase in the number of constituencies. It is worth noting here that despite huge shifts in population centres the constituency boundaries have not been changed since 1984. The result is vast divergencies in the numbers of voters in each constituency. That is in total breach of the constitution. The result is the country has a freely elected legislature but not a truly representative one.

The term of the elected legislature is five years from the date of the first sitting of the National Assembly after an election but power is given to the Prime Minister in his absolute discretion to call an election sooner. If the National Assembly passes a Motion of No Confidence in the Prime Minister, the Prime Minister also has power to call an election within 90 days after.

Separation of Powers

The system of government established by the constitution is meant to be based on the separation of powers between three official branches of government, the legislative branch, the executive branch and the judicial branch each with its own role and powers. The purpose of the

separation of powers is to create checks and balances in government of the country and to prevent the concentration of power in and the abuse of power by any one branch or person. The intention is also that none of these branches should encroach on the powers of the others.

The legislative branch comprises the elected Representatives and a minority of nominated Senators sitting in the National Assembly with powers to make laws within the constitution.

The executive branch comprises the Prime Minister and Cabinet which has power to carry on the day-to-day government in accordance with the constitution, the common law and laws passed by the National Assembly but otherwise as they consider in the best interest of the country. The Prime Minister is the elected Representative who carries support from the majority of elected Representatives. He appoints the Cabinet from among the elected Representatives and nominated Senators. He has power to remove members of Cabinet and many other powers which I will set out shortly.

The judicial branch comprises the Courts established at independence and otherwise in accordance with the constitution.

Powers of the Prime Minister

The Prime Minister and the Cabinet are appointed from the members of the National Assembly. The most powerful individual position is that of Prime Minister who is referred to as the Head of Government. The Head of State is currently the British monarch represented by the Governor General who has limited powers including the power to appoint the Prime Minister. But in practice the British Monarch appoints as his or her representative the person nominated by the Prime Minister. In effect therefore the Prime Minister appoints the person who has power to appoint him or her.

The Prime Minister has extensive powers. These have led eminent constitutional lawyers to refer to our system as ‘dictatorship by Prime Minister’ or ‘elective dictatorship’. Sir Fred Phillips, a highly regarded constitutional lawyer from St. Vincent, who was the first Governor of St. Kitts-Nevis- Anguilla when Britain gave the islands associated statehood in 1967 wrote this:

We must never forget that in small communities such as Caribbean States, it is easy for the Prime Minister wielding an all pervasive influence, to manipulate almost everything and everybody, especially since, in most territories, he (or she) is the appointing authority in respect of almost every person on every board operating in the public domain.

Here is a summary of the powers given to the office of Prime Minister. The Prime Minister in effect appoints the Governor General. He appoints the Cabinet from among members of the National Assembly. He can remove members of Cabinet. He controls the appointment of government Senators. He controls the appointment of the Speaker of the National Assembly. He controls the major appointments within the Civil Service and to public and statutory boards.

Through his foregoing powers the Prime Minister can exercise inordinate influence over the change of electoral boundaries and the conduct of elections. He decides the date of elections. He can dissolve the National Assembly at any time and trigger elections. This latter power exists even if the Prime Minister loses support of a majority in the National Assembly or a majority within his Cabinet. The only realistic ways in which a Prime Minister who does not resign can lawfully be removed from office are through elections or a Motion of No Confidence in the National Assembly.

The constitutional provisions to force the tabling of a Motion of No Confidence and the opportunity to manoeuvre and delay given to the Prime Minister in this regard were experienced by the country to its great detriment in the 2015 election. That election was held only after Douglas had dragged out the process for 26 months following the tabling of a Motion of No Confidence which he would obviously have lost. And as if that is not bad enough the constitution gives the Prime Minister the ridiculous power even when facing a Motion of No Confidence or after one is passed to dissolve the National Assembly and call an election within 90 days. We have seen why I call this power ridiculous in the experiences of the collapse of the Harris Government and the elections of 2022. These anomalies require urgent amendment failing which we will continually face the threat of autocratic Prime Ministers and a broken democracy.

A Prime Minister who loses the required support to remain in office should be removed from office and other Representatives should be given the opportunity to form another government. Only if that fails should there be an election. The dismissed Prime Minister should not have power then to determine the date of that election. Why should he retain that crucial power when he no longer enjoys the required support. Why should he remain in office until an election is held. He should remain a Representative because he was elected as such but he was not elected as Prime Minister. He should leave immediately on being thrown out by Motion of No Confidence. A process should be established for the exercise of executive power until an election can be held and that election should be held in as short a time as is realistic set by the constitution.

Term limits may be another way to constrain the dictatorial powers of the Prime Minister. At least they remove the thought of entrenched power which may come to a Prime Minister.

After 20 years of Douglas as Prime Minister the Harris government was elected on a promise (among others) to introduce term limits of two terms but we did not see any such legislation passed in the seven years of his administration. And as we saw Harris was seeking a third term in the 2022 election.

It is worth noting that in many cases where democracy collapses and is replaced by dictatorship the collapse is engineered by a leader or leaders who were democratically elected. Hitler was an elected leader before destroying German democracy and trying to take over the world through his dictatorship which ensued. The Second World War was the result.

The world is full of other examples. Here are a few:

- Poland: 1926-1989
- Austria: 1933-1945
- France: 1940-1945
- Spain: 1939-1976
- Brazil: 1964-1985
- Chile: 1973-1990
- Guyana under Burnham
- Nicaragua: 1979-1990, 2006-Present
- Venezuela: 2002-Present
- Hungary 2010- Present

While therefore our legislature may be freely elected and our Prime Minister comes from among the elected Representatives our system is open to abuse by a Prime Minister who is so inclined.

Another serious weakness in our system is that there is no real separation of powers between the legislative and executive branches of Government. This is mainly because of the size of our legislature and the fact that almost inevitably therefore the Cabinet will comprise the majority of members of the National Assembly. There are not enough seats to create genuine back benchers. Back benchers are Representatives who are not members of Cabinet and are not as such controlled by the Prime Minister and who are more likely therefore to exercise independent judgment in voting on legislation. The size of the legislature leaves the legislature under the control of the Prime Minister and the judiciary as the only branch left to provide the checks and balances which are so critical to our democracy.

The Public Service

While the Prime Minister and Cabinet are at the top of the power chain they are not the only ones who wield power. The Public Service is a crucial source of power and a key element in our democracy and our economy.

I use the term The Public Service to describe two main arms of the government - the Civil Service and the statutory and government controlled corporations and companies. They are intended to be the bedrock of government service to the public. Their purpose is to provide that service in an orderly, fair and efficient manner in accordance with the constitution and the laws. They are meant to recognize and respect the rights of the people whom they serve including the right to the best public service possible. They are intended to implement on a day-to-day basis the policies of the government in power and to provide for the smooth transition from one government to the next. They hold responsibility for government assets, government purchases,

government businesses and government services. The attitude of Public Servants towards their role and the way they carry it out is crucial therefore to true democracy.

The Public Service consists of close to 50 per cent of the country's work force. It is very much a mixed bag. There are many highly committed, competent, efficient and capable men and women within the service. They include specialists and professionals and highly experienced personnel in many areas of the service. But there are also many who have no interest in hard work and regard their jobs as a political privilege. They come to work when they like. They leave when they like and nobody can tell them anything. One of the few parliamentary debates I have heard in Parliament in which there was strong consensus across the floor was the debate in March 2024 on legislation aimed at monitoring and improving productivity. Every Parliamentarian who spoke stressed the need for improved service in the public sector. But what is even worse is that some of the Ministers lamented that they cannot do anything about it. More likely they don't want to do anything about it.

What then is so sacrosanct about this body of people that so many can be a waste of taxpayer money and a power unto themselves and bring a bad reputation on their committed and efficient colleagues. Why do so many blatantly and arrogantly ignore the word service in their title. It would be useful to start with the origin of the Civil Service and then move on to the statutory corporations which came after.

The Civil Service

The Civil Service comprises the thousands of people employed and responsible for the management and administration of the country in accordance with the law and the policy directions of the Cabinet of Ministers. Each department of the civil service takes direction on

government policy from the Minister responsible for the department. Their focus is intended to be on service not politics.

The standards of performance of the Civil Service directly affect the performance and economy of the country and its reputation. Decisions and actions (and lack of decisions and inaction) of the Civil Service affect the fundamental and other rights of citizens and residents on a daily basis. The Civil Service should be impartial and politically neutral whatever the political views are of individual Civil Servants. The Civil Service should have public trust and that can only be achieved by fairness, efficiency, integrity and impartiality.

The role of the Permanent Secretary is crucial to the Civil Service. The Permanent Secretaries head the respective Government Departments and are meant to be advisors to the Government on the subjects covered by the Ministry. Permanent Secretaries are therefore intended to be the leaders of the Civil Service.

Permanent Secretaries should be able to distinguish between their personal right to support whatever political group they want and their professional right to serve impartially and fairly and without political bias. They are meant to provide continuity and experience to the Civil Service and thereby enable it to operate efficiently and productively in serving all the people not just supporters of the ruling clique.

The word Permanent is intended to reflect the role of the Permanent Secretary as transcending Governments and as non-political with primary responsibility to the people and not to the political party or parties in power. For that reason the position is protected by the Constitution.

No Government since independence has changed the structure of the Civil Service nor the rules which apply to it. The name Permanent Secretary inherited from the British has remained. However in practice Governments have selected Permanent Secretaries and the holders of lower ranking offices based mainly on loyalty to the governing party and politicians. Integrity, competence and experience are lesser considerations. Because however of the protection given to the office it is not easy to fire a Permanent Secretary hence Governments have simply transferred them into insignificant and non-leadership or meaningless positions or appointed advisors who make the decisions instead of the Permanent Secretary. Hence the Civil Service is full of Permanent Secretaries all over the place getting well paid and with benefits as such. Those who have been sidetracked simply do as little as possible and wait for their retirement package. And they get the annual Civil Service bonus which has become the norm.

We should not therefore be surprised that a body which has such extensive power and which has such a crucial role in the operation of the country should be so largely dysfunctional and inefficient and political biased. And we should not be surprised that the standard of service of the Civil Service should be so variable and inconsistent because the whole system has been politicized. We should not be surprised that mediocrity is so readily accepted and that excellence is a bad word. That is why the Civil Servants who provide neutral and excellent service stand out a mile.

Reform is badly needed. The reform of the Inland Revenue Department is clear evidence that it can be done all across the institution. The politicians should stop complaining in Parliament about lazy Civil Servants and recognize they created them and can reverse the damage they have caused in politicizing the Civil Service.

A very interesting piece of history was when Lee Moore took office as Premier after the death of Paul Southwell in 1979. He expressed his dissatisfaction with the standard of service provided by the Civil Service by ordering the whole body to appear at the Basseterre High School where he gave them a stern lecture. Well who tell him do that. He was defeated in the election a few months later and this was a contributing factor.

Ever since the Civil Servants have ruled the roost and no government has done anything significant to change the rules of the game despite continuous reviews over the years. Every government has exacerbated the problem by pandering to those who abuse the service. They have appointed political lackeys who they know are not capable, they have sidetracked those who do not support them and they have tolerated incompetence and poor service. The latest practice developed over the past three governments has been to give universal bonuses. Everybody gets the same level of bonus whether they work or don't work. And the size of the service has increased exponentially with Civil Service jobs as a reward rather than an obligation.

St. Kitts and Nevis will never become a Sustainable Island State with this type of Civil Service. Consistent productivity and efficiency across the board will only be achieved if the public service is reformed into a modern entity. Productivity in the public service will not come from talk in Parliament. It requires a change by the leaders in the political mentality. It requires substantial reform of the structure of the service and recruitment and human resource training to make government employees more productive and accountable.

Statutory Corporations

The system of statutory corporations and government controlled companies (both of which I will call government corporations) have been used by successive governments to

circumvent the archaic systems, logjams and limitations of the Civil Service in the operation of Government businesses and services. The intention was to use the more efficient corporate management structure. Employment in a government corporation is not entrenched in the way it is in the civil service. Employees can be engaged by contract and can be disciplined or removed for misconduct or poor performance or incompetence. The management of a government corporation is more flexible. Governance of such entities falls under Boards of Directors who are usually not full-time employees but provide policy direction and decision making as do Boards of Directors of companies in the private sector.

Like the Civil Service there are many excellent people in the governance, management and operations of the government corporations. However in many instances the government has made its corporations subject to the same political manipulation as the Civil Service. Boards are too often appointed based primarily on political loyalty. Directors do not carry out their legal duties but follow the dictates of the Minister. Many do not realize or care that they can be personally liable for losses suffered by the corporation due to their failure to act in accordance with their legal duties. In some corporations management is also appointed based on political loyalty rather than competence. Many employees behave like Civil Servants because of their political protection. Productivity is disregarded. The result is too often financial loss and costs to the public purse.

Here are the government corporations in existence at May 31st, 2024.

- (a) Corporations established by an Act of Parliament for a public purpose or as a subsidiary company of that corporation registered under the Companies Act, including but not limited to:

- (i) Development Bank of Saint Kitts and Nevis;
- (ii) Social Security Board;
- (iii) St. Kitts Investment Promotion Agency;
- (iv) Financial Services Regulatory Commission;
- (v) Medical Cannabis Authority;
- (vi) National Disaster Management Agency;
- (vii) National Housing Corporation;
- (viii) Clarence Fitzroy Bryant College;
- (ix) WhiteGate Development Corporation;
- (x) Frigate Bay Development Corporation;
- (xi) Saint Christopher Air and Sea Ports Authority;
- (xii) Saint Christopher Tourism Authority;
- (xiii) Saint Christopher and Nevis Solid Waste Management Corporation;
- (xiv) National Handicraft and Cottage Industries Development Board;
- (xv) Agricultural Land Development Authority;
- (xvi) National Carnival Committee;
- (xvii) Saint Christopher National Trust;
- (xviii) Nevis Solid Waste Management Authority;
- (xix) Nevis Air and Sea Ports Authority;
- (xx) Nevis Cultural Development Foundation;
- (xxi) Nevis Electricity Company Ltd.;

(xxii) Nevis Tourism Authority;

(xxiii) Nevis Housing and Land Development Corporation;

(b) A bank or corporation owned by the Government of Saint Christopher and Nevis or in which the Government of Saint Christopher and Nevis has a controlling interest including but not limited to:

(i) St. Kitts-Nevis Anguilla National Bank Limited;

(ii) ZIZ Broadcasting Corporation;

(iii) Urban Development Corporation;

(iv) St. Kitts Electricity Company;

(v) St. Kitts-Nevis Cable Communications Limited;

(vi) La Vallee Greens Limited.

The system of government corporations is a good one in principle. That principle needs to be converted more widely into practice.