

**ILO CARRIBEAN SUB-REGIONAL SEMINAR**

**JOLLY BEACH**

**19<sup>TH</sup> - 23<sup>RD</sup> MAY, 2003**

**ANTIGUA AND BARBUDA COUNTRY PAPER  
FOR THE CARIBBEAN SUB-REGIONAL SEMINAR ON  
EMPLOYMENT AND COLLECTIVE BARGAINING  
IN THE CIVIL SERVICE**

**HELD AT JOLLY BEACH  
19<sup>TH</sup> - 23<sup>RD</sup> MAY, 2003**

**Composition, Appointment and Functions of the Public Service Commission**

The Public Service Commission is a creature of the Constitution of the Antigua and Barbuda and is comprised in CHAPTER VII Part I Sections 99 to 103.

The Commission is composed of a Chairman and not less than two or more than six(6) other members who are all appointed by the Governor General, acting in accordance with the advise of the Prime Minister, in consultation with the Leader of the Opposition. The Commission may be composed of persons other than persons being public officers, a member of either House of Parliament, anyone below the age of twenty-five (25) years or a person who is not resident in Antigua and Barbuda.

As far as tenure is concerned, each Commissioner is appointed to hold office for a term of two (2) years at the end of which, the office of such member shall become vacant. In practice members have held appointments for successive terms. A Commissioner may be removed from office during the above period of tenure only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

In any event, the removal of a Commissioner is subject to the procedure laid out in Section 99(5) of the Constitution of Antigua and Barbuda. Upon the representation by the Prime Minister to the Governor General that a member of the Commission ought to be removed from office for inability as aforesaid, or for misbehaviour, the Governor General must appoint a tribunal to determine the question of the removal. This tribunal must consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held office as a judge of a High Court or a Court of Appeal in some part of the Commonwealth. Once convened, the tribunal shall inquire into the matter and report on the fact to the Governor General and recommend to him whether the member ought to be removed.

Once the question of removing a member has been referred to the tribunal by the Governor General, he may, acting on the advice of the Prime Minister, suspend the member from the functions of his office. The suspension may be revoked at any time upon the advise of the Prime Minister or where the tribunal finds that the member ought not to be removed.

The Public Service Commission by virtue of the Constitution, is an autonomous body. Section 99(11) provides that the Commission shall, in the exercise of its functions under the Constitution, not be subject to the direction or control of any other person or authority. Additionally, the Commission may regulate its own procedure. Further, the Commission may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

Section 100 vests in the Commission the power to appoint persons to hold or act in offices in the public service (including the power to make appointment on promotion and transfer and to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office. The Commission is however, not vested with the authority to appoint the following officers:

1. Secretary to the Cabinet
2. Permanent Secretary
3. Head of Department of Government
4. Deputy Head of a Department of Government
5. An office of a chief professional adviser to a Department of Government
6. Persons residing outside Antigua whose services relate to external affairs
7. Director of Public Prosecutions
8. Director of Audit
9. The office of Attorney-General
10. Supervisor of Elections
11. Magisterial and High Court appointments
12. Public offices in the Department of the Attorney-General requiring qualifications of a Barrister or Solicitor in Antigua and Barbuda
13. Public offices in the Department of the Director of Public Prosecutions requiring qualifications of a Barrister or Solicitor in Antigua and Barbuda
14. Any office in the Police Force

In respect of 1-6 and 8 above the power to exercise disciplinary control over persons holding these offices and the power to remove such persons from office shall be vested in the Governor General acting in according with the advice of the Public Service

Commission with the exclusion that Permanent Secretaries may be transferred only by the Governor General acting on the advice of the Prime Minister. It should be noted that before the Public Service Commission can tender its advice to the Governor General in relation to these offices that it shall consult the Prime Minister and if the Prime Minister signifies his objection to the appointment of such person, the Commission shall not advise the Governor General to appoint that person.

By extension the Commission in its deliberations recognized at all times the provisions of:-

- Public Service Commission Regulations # 12 and # 13 of 1967
- Civil Service Act 1984
- Civil Service Regulations 1993

The Commission enjoys excellent relationship with the Public Service Association, and no dispute has been recorded in the last twenty-two (22) years.

Challenges facing the Commission for reform for greater effectiveness and specific recommendation for improvement, and contribution to an efficient Civil Service can be drawn from the ensuing.

**JULY 10, 2001**  
**RECOMMENDATION FROM THE CHAIRMAN**  
**PUBLIC SERVICE COMMISSION**  
**TO THE CONSTITUTION REFORM COMMISSION**

**RECOMMENDATION 1**

Section 100 (1) of the Constitution of Antigua and Barbuda vest in the Public Service Commission the power to appoint persons to hold public office. This power is not given to any other body and is an exclusive and absolute power of the Public Service Commission. The power extends to discipline and promotion of Public Officers.

The practice has grown up in Antigua and Barbuda given the right to the Minister to appoint officers under another branch of the Public Service bearing the nomenclature "Non-Established Worker". The system has been so widely used that most public officers in the service of the Government of Antigua and Barbuda are non-established workers-estimated at sixty percent (60%).

The Commission is of the view, that this practice diminishes the effectiveness and quality of the Public Service in addition to removing such officers from the control of the Public Service Commission contrary to the provisions of the Constitution. Additionally, in many instances non-established officers fail to meet the minimum qualification threshold for entering the Civil Service. Therefore, to effect a cross-over, a waiver of the minimum requirements must be sought, causing a dilution of the quality of the Civil Service in general and the destruction of its very fabric.

The Commission therefore recommends that the practice outlined above be discontinued and that any constitutional reform, must ensure that an appropriate safeguard be included which prevents the abuses outlined above. It is suggested that the provision regarding the Public Service and the Public Service Commission be entrenched provisions in the Constitution so that the sector can be free from political influences and considerations.

**RECOMMENDATIONS 2**

The Constitution as it presently stands does not contemplate the initiation of disciplinary action against Permanent Secretaries.

As a result, instances have arisen where it was clearly necessary that Permanent Secretaries be disciplined, but, there was no one to initiate proceedings. Obviously, the

process could not be initiated by the Public Service Commission since the Commission would eventually hear the matter, in which event due process would be severely compromised.

In recognition of this obvious lacuna in the present Constitutional provisions, the Commission recommends that locus standi be extended to any citizen, with the exception of the Prime Minister, for the purpose of instituting proceedings against a Permanent Secretary on the grounds of public interest.

### **RECOMMENDATION 3**

Section 78 of the Constitution gives to the Minister the right to exercise direction and control over the department for which he has been assigned responsibility.

The Commission recommends that this should remain unchanged but suggests that a Code of Conduct should be introduced which would encourage the maintenance of the chain of command and would encourage the Minister in charge to implement policy via the Permanent Secretary.

### **RECOMMENDATION 4**

In light of the fundamental right and freedoms enshrined in the Constitution, it is recommended that these be linked with the Civil Service Acts and Regulations as there currently exist inconsistencies between the Constitution and the Civil Service Acts and Regulations.

### **RECOMMENDATION 5**

The Commission recognises the delays encountered in obtaining legal opinion to accelerate action on matters coming before it regarding Civil Servants.

Normally, legal opinion would be sought by the Establishment Department through the Ministry of Justice and Legal Affairs and often very lengthy delays are usually encountered.

The Commission therefore recommends that a legal officer be attached to the Establishment Department.