

## **CONSTITUTIONAL REFORM**

**By Alfred M. Sears**

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### **PART 7**

The Rt. Honourable Sir Lynden Pindling, after 25 years as Head of Government and 19 years as Prime Minister of an independent Commonwealth of The Bahamas, in an address at the Colloquium on Political Reform, Constitutional Change and National Development at the College of The Bahamas on the 23<sup>rd</sup> June 1998, advocated that the fundamental rights provisions of the Bill of Rights of the Bahamian Constitution should be expanded in the following terms:

**“Experience has taught me that the list of Fundamental Rights and Freedoms set out in Chapter 3 of the existing Constitution should be expanded to include matters such as:-**

- (1) The right of a citizen to vote and the right to the equal exercise of political choice.**
- (2) The right of a citizen to a passport.**
- (3) The right of a citizen to secondary education.**
- (4) The right of a citizen to good health and a clean environment.**
- (5) The right of a citizen to seek and obtain public information.**
- (6) The right of a citizen to equal access to opportunity.**
- (7) The right of a citizen to be free from fear and from victimization**
- (8) The right of a citizen to fair competition.**

**All the laws of The Bahamas, both old and new, should then be required to pass the litmus test of the revised constitution and any Bahamian citizen who wishes to institute proceedings to defend or enforce any of the Rights and Freedoms should be able to do so without having to obtain the prior consent of the Attorney General.”**

## **RIGHT TO VOTE**

Many Bahamians trace the birth of the modern Bahamas to the grant of universal adult suffrage in 1960, when women were given the right vote and right to sit in the Legislature. The exercise of the right of every adult citizen to vote in an election of members of the House of Assembly and the right to be qualified for membership therein led to majority rule in 1967 and widened the participation of Bahamians, of all class and racial background, in the governance of The Bahamas. It is this participation in the selection of the Government, more than any other right, which guarantees Bahamians a democratic government.

General elections are the source of the democratic origins of governments in The Bahamas, as an expression of the general will of the Bahamian citizens, yet the right to vote is not presently entrenched in the Constitution, although it is implicitly recognised in the constitutional provisions governing the functions of the House of Assembly and the Constituencies Commission. Under our Constitution, the right to vote is **not** included in the Bill of Rights as a fundamental right.

The Parliamentary Elections Act, 1992 is the principal basis upon which the right to vote is established. Under Section 8 of the Parliamentary Elections Act, a person is entitled to be registered as a voter for a constituency if, on the day of registration:

- “(a) he is a citizen of The Bahamas of full age and not subject to any legal incapacity; and**
- (b) he is, and has been during the whole of the period of three months immediately preceding that day, ordinarily resident in premises in that constituency.”**

Section 9 provides that every person who is registered as a voter in any polling division in any constituency shall be entitled to vote at that polling division at an election in that constituency, provided that on the day of election, the person is a citizen of The Bahamas of full age and not subject to any legal incapacity and, the case of a person who is registered as a voter in a polling division in that constituency, he is, or has been at some time during the period of one year immediately preceding that day, ordinarily resident in premises in that constituency. Legal incapacity is defined in the Act as a person who is serving a sentence of imprisonment imposed by a court of law, under a sentence of death, or one who is deemed to be a lunatic or of unsound mind.

While the right to vote is not entrenched in the Constitution, Bahamian voters perceive the right to vote as a fundamental right, reflected in consistent massive voter turnout since independence. For example, the voter turnout for May 7<sup>th</sup> 2012 General Elections was 155,948 or 90.6% of the total registered voters of 172,128 and in the March 14<sup>th</sup> 1997 General Elections when 93% of the Bahamian electorate, or about 129,000 voters, voted in the elections. The political practice of the Bahamian people demonstrates that the right to vote is treated as a fundamental democratic right.

I recommend, therefore, that we amend our Constitution to provide an entrenched constitutional right of every citizen to vote in an election of members of the House of Assembly and the right of every citizen to be qualified for membership therein as a fundamental right, subject to such exceptions and considerations as may be reasonable in a democratic society.

### **SECRET POLITICAL CAMPAIGN CONTRIBUTION**

In early 1966, the then Opposition Progressive Liberal Party charged that the then Governing United Bahamian Party was maintained in power by gerrymandered constituencies, strong conflict of interest in the operations of Ministers and that some Ministers were in the pay of shady casino operators active in Grand Bahama. In that same year, the **Wall Street Journal** alleged that the Premier and the Speaker of the House had received “consultancy fees” from certain Grand Bahama casino operators, who at the time were reputedly under the influence of Meyer Lansky of Miami Beach. The paper alleged that Sir Stafford Sands had received “consultancy fees” in excess of millions of dollars for using his political influence for legalizing casino gambling.

After the Progressive Liberal Party came into power in the general elections of 1967, a Commission of Inquiry (“**the Bacon Commission**”) was appointed in April 1967 to investigate irregularities over the casino concessions. The Bacon Commission confirmed the allegations that had appeared in the **Wall Street Journal**. With respect to Sir Stafford Sands, the Commission reported that the legal fees paid to him for expediting the Freeport Casino licence was “*even by Bahamian standards, out of proportion to the legal services he rendered ... the enormity of the fee demanded and the speed and a manner with which payment was affected,*

*coupled with every circumstances of his handling of this application leave ... no doubt that he was selling his services primarily as an influential Members of the Executive Council and not as a lawyer.”* The Commission detailed a pattern of secret financial contributions by foreign investors to Bahamian political parties.

After the Bacon Commission was debated in the House of Assembly, a Progressive Liberal Party’s sponsored resolution was passed alleging that Sir Stafford Sands, a former United Bahamian Party Minister, a Senator and three Members of the United Bahamian Party, including the former Speaker were *“guilty of a crime against the people of The Bahamas”*.

However, the issue of secret campaign contributions to our political directorate was again raised, 17 years later, in the Commission of Enquiry Into the Illegal Use of The Bahamas for the Transshipment of Dangerous Drugs in 1984. The findings of the Commission resulted in significant erosion in the brand and reputation of The Bahamas. If we were to have a Commission of Inquiry today to investigate the role of secret campaign contributions to our political parties would there be the same result as the Commissions of Enquiries of 1967 and 1984?

The Bahamas acceded to the United Nations Convention against Corruption on the 10<sup>th</sup> January 2008. Pursuant to Chapter II, Article 7 (4) of this Convention, The Bahamas accepted an international obligation “o make good faith efforts to “enhance transparency in the funding of candidatures for elected public office and, when applicable, the funding of political parties.” In light of this international obligation and the current political campaign practices, The Bahamas runs the risk of being listed again by

multilateral agencies for lack of transparency in its political process, which will result in the further erosion of the global brand and reputation of The Bahamas.

The CARICOM Electoral Observer Mission of the General Elections of the 7<sup>th</sup> May 2012, in its report dated the 21<sup>st</sup> May 2012, recommended that “consideration should be given to implementing laws to govern campaign funding focusing on (a) source of funds; (b) use of funds; and (c) limits on expenditure.” They proposed that “such legislation would (i) lessen the risk that those who contribute funds will control the elected representatives they finance; (ii) eliminate the risk that illicit money can corrupt the system and undermine the rule of law; (iii) improve the chances of persons without money or access to money but are interested in running for office; and (iv) reduce the risk of large sums of money in election campaign giving undue advantage to some candidates and constrain competition.”

Financial contributions provide political parties with the means to quickly travel the length and breadth of the archipelago and orchestrate large conventions, rallies and distribute expensive posters, handbills, shirts, and purchase ads in the media, etc. can project the appearance of momentum which will influence the voters. However, the long-term effect of secret campaign contributions will be voter cynicism arising out of a general impression that the political process is corrupt and/or favours foreign investors and other secret donors.

I, therefore, recommend that we amend our Constitution to provide for the public funding of national elections, with appropriate legislation to establish a system of public campaign financing to better secure the right to vote, reduce corruption of the political process and increase competition by independent candidates and small parties.