

CONSTITUTIONAL REFORM

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PART 12

FREEDOM OF EXPRESSION

In a democratic society there is no greater right than the right of citizens to know what the government is doing on their behalf, which right includes the right to hold opinions, to receive and express ideas and information without interference. The Constitution guarantees our right to freely express ourselves by engaging in open political debate amongst ourselves as well as to engage in political discourse with our elected officials and with candidates who offer themselves for public office.

Article 23 of the Constitution guarantees freedom of expression to every person in The Bahamas that provides that:

- “1. Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this Article the said freedom includes freedom to hold opinions, to receive and impart ideas and information without interference, and freedom from interference with his correspondence.**

- 2 Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision –**
- (a) which is reasonably required –**
- (i) in the interest of defence, public safety, public order, public morality or public health; or**
 - (ii) for the purpose of protecting the rights, reputations and freedom of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless, broadcasting, television, public exhibitions or public entertainment; or**
 - (iii) which imposes restrictions upon persons holding office under the Crown or upon members of disciplined force, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”**

This guarantee is meaningless unless there is reasonable access to the broadcast media and protection of the media. Therefore the issuance of private broadcast

licences in The Bahamas beginning around 1994 has allowed greater freedom of expression in The Bahamas.

The Court of Appeal of **Belize in the Belize Broadcasting Authority v. Courtenay** (1986) 38 WIR 79, dealing with a provision, identical to Article 23 of the Bahamian Constitution, under the Constitution of Belize, held that to broadcast on radio and television is “**today an integral part of the freedom of expression and to place the need for the authority’s consent before one can do what is an integral part of the freedom constitutes a hindrance to that freedom.**” Access to the broadcast media is especially important in an archipelago, like The Bahamas, where people are scattered over many different islands separated by a wide expanse of water.

The Privy Council has held that fear of criticism cannot justify hindering the public access to the broadcast media and access to the broadcast media by political opponents. In the case **Hector v. Attorney General of Antigua and Barbuda** (1990) 2 All E. R. 103, per Lord Bridge, held that:

In a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism leveled at those who have the conduct of stewardship is to persuade the

electorate that the opponents would make a better job of it than those presently holding office . . .”

In the United States, the First Amendment of the Constitution declares that the Congress shall not abridge the freedom of the press. However, in the Constitution of The Bahamas, there is no specific mention of the press or the guarantee of press freedom. In the Bahamas the laws of defamation and a fear of offending a Prime Minister or other elected officials often places a restraint on robust investigative reporting on politically sensitive matters. A number of journalists in The Bahamas have been prosecuted, sued or threatened with prosecution for criticizing aspects of the public administration in The Bahamas. The community interests, integrity and honesty in public administration can be compromised when the people and the press do not enjoy absolute privilege to criticize public officials. This privilege should include matters of public concern, public officials and candidates for public office. As the United States Supreme Court stated, in the case **New York Times Co. v. Sullivan**, debate on public issues should be uninhibited, robust and wide open and may well include vehement caustic and sometimes unpleasant sharp attacks on government and public officials, an occasional erroneous statement is inevitable in free debate. Save and except in cases of malice, the press should be unfettered in its criticism and scrutiny of public administration in The Bahamas.

I therefore recommend that Article 23 of the Constitution be amended to include a specific guarantee for freedom of the press in order to better protect the community's interest in integrity in public administration through robust scrutiny by an independent press.