

CONSTITUTIONAL REFORM

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PART 8

FREEDOM OF ASSEMBLY AND ASSOCIATION

The freedom of assembly and association are two fundamental rights which have shaped the contemporary political culture of The Bahamas. The right of every person to assemble and demonstrate in public places and the right to associate with others by forming and joining political parties and trade unions are seen as basic aspects of democracy in The Bahamas. The Constitution guarantees these rights under Article 24 which provides that:

- (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties, or to form or belong to trade unions or other associations for the protection of his interests.**
- (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 and freedoms of other persons; or**
 - (b) which imposes restrictions upon persons holding office under the Crown or upon members of a 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.”

RIGHT TO ASSEMBLE

In the Caribbean we have long appreciated the right of coming together in public meetings, processions, marches, demonstrations, picketing to express our views and make political, social and cultural representations. In The Bahamas these methods of collective representation were pivotal means of political expression during the anti-colonial struggle, the struggle for majority rule, protest by trade unions against the privatization of BTC. These methods of representation have been recently used by political parties, trade unions, women organisations, churches and religious organisations, youth association to express public protests and petitions on various issues.

The guarantee of Article 24 includes the right of every person in The Bahamas to engage in collective or individual public demonstrations as a method of expressing political views and influencing others. Thus, we have the right individually and collectively to use the roadways for the purpose of passing and re-passing, for the exercise of this right of assembly, provided it is exercised reasonably and without reckless disregard for the rights of others.

Restraint by the State in the exercise of the fundamental right of assembly usually takes the form of public order restraint or regulation of public meetings and public places, through a system of permits or licences, usually obtained from the Commissioner of Police. Usually, the requirements of obtaining permission or giving notice of public meetings are not applicable prior to and during

elections. The Commissioner of Police does not have an unfettered discretion in determining whether to grant an application or not. In exercising this discretion, the Commissioner of Police may prohibit the meeting if he reasonably apprehends a breach of the peace, public order or national security. The factors to be considered are the time, purpose of the meeting and the circumstances in which it is to be held. These criteria are the objective bases for the exercise of the discretion to grant or refuse an application. It would therefore be improper for the Commissioner of Police to refuse an application purely on the instructions of the Prime Minister or the Minister of National Security or on the basis of any partisan political consideration.

RIGHT TO FORM OR BELONG TO A TRADE UNION

Article 24 of the Constitution guarantees the right to every person in The Bahamas to form and belong to a trade union for the protection of her or his interest. This right has been construed by Chief Justice Hugh Wooding, under a similar provision of the Constitution of Trinidad and Tobago in the case **Collymore v. A.G. (T & T)** (1967) 12 W.I.R. 5 as follows:

“Freedom of association means no more than freedom to enter into consensual arrangements to promote the common – interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable. But the freedom to associate confers neither right nor licence for a course of conduct or for the commission of acts which in the view of the Parliament or inimical to the peace order and good government of the country.”

This restrictive judicial construction of the right of association appears to subject the right of association to legislative judgments of that which is in the best interest of the country. This definition also fails to clarify whether the objectives of association

and the means of achieving them are protected as part of the meaning and function of the right of association. Therefore, there is no constitutional right to strike, even though there is an actual enjoyment of the power to strike, based on the immunities created by the Industrial Relations Act, 1970. Further, at common law strikes were not treated as criminal action. **Crofter Hand Woven Harris Tweed Co. v. Veitch** (1942) 1 All E.R. 142.

On the other hand, the freedom not to belong to a trade union is also a part of the freedom of association. **TICFA & A.G. v. Seereeram** (1975) 27 W.I.R. 329. Every person has the liberty to freely exercise her or his conscience in determining whether to join a trade union or not.

RESTRICTIONS ON THE RIGHT TO FORM OR BELONG TO A TRADE UNION

Under Article 24(2)(b) of the Constitution, public officers and members of a disciplined force may be restricted in their enjoyment of the freedom of association. Article 30(1)(b) of the Constitution defines “disciplined force” as including “a naval, military or air force; the Police Force of The Bahamas, the Prison Service of The Bahamas and any other force or service specified by Act of Parliament to be a disciplined force...” Under Section 3 of the Industrial Relations Act, the right to register a trade union and engage in collective bargaining does not apply to members of a disciplined force.

It is instructive to note that in Europe, the United States as well as other parts of the Caribbean, police and prison officers are allowed to form and belong to trade unions which has resulted in the improvement in working conditions and increased professionalism on the Police and Prison Services in these countries. Given the present challenges on the Police and Prison Services

in The Bahamas, is it good public policy to maintain the present blanket prohibition on collective bargaining rights to police and prison officers?

In spite of the clear constitutional guaranteed right to form or belong to a trade union, and the right of collective bargaining contained in the Industrial Relations Act, it is not uncommon for employees in The Bahamas to meet subtle and sometimes not so subtle obstruction and intimidation by some employers to the exercise of this right by employees. The Code of Industrial Relations Practice, at Code 55, states that “It is in the best interest of employees that there be strong and effective trade unions”. Notwithstanding the law and clear public policy in favour of trade unions and the tripartite partnership of capital, labor and government, there is still a perception amongst employers and senior managers in both private and public sector enterprises that trade unions should be avoided or discouraged.

Perhaps the negative perception of trade unions among some employers is due the almost total reliance of the past generation of trade union leadership on public demonstrations, pickets and extravagant public salary demands as the means of negotiation. The current group of union leaders, most of whom are also qualified Labour Advocates, are more skillful at the bargaining table, utilising economists, accountants and lawyers as consultants. Also, today the bargaining issues are more broadly defined to include training, health care systems, skills enhancement, retooling, social programmes for workers, worker productivity and security.

Section 3 of Part II of the First Schedule of the Industrial Relations Act restricts membership in a trade union to a person who has been “regularly and normally employed in the industry, or as a member of the craft or category of employee, which the union represents.” This definition of unions by craft or category of employment has led to the creation of many small unions. The Rt.

Honourable Sir Lynden Pindling, in the Colloquium on Political Reform, Constitutional Change and national Development, sponsored by the College of The Bahamas on June 23, 1998, stated that “I think National Trade Unions need to be encouraged now so that they may better balance the scale with the conglomerates and monopolies, not all of which are avoidable in a small archipelagic country. Many trade unionists have advocated that Convention 87 and 98 of the International Labor Organization should be adopted and fully implemented in The Bahamas which would allow the creation of National Trade Unions in which membership is not be restricted to craft or category of employment in order to balance the power between capital and labor.

RECOMMENDATION

The restriction on the exercise by police and prison officers of the right to form and belong to a trade union should be removed from the Constitution and the Industrial Relations Act. Police and Prison officers should be able to exercise their the right of association, including the right to form and belong to a trade union, even if the right to strike is conditioned or withheld. The exercise of this right by Police and Prison officers will lead, I believe, to an improvement of working conditions and professionalism in both services which will better secure public order and the security of the Bahamian State.

The current development strategy in The Bahamas, industrialization and modernization by inviting foreign direct investment by large multinational resorts and financial institutions, some of which employ thousands of Bahamian workers, require a redefinition of trade unions, in accordance with International Labor Organization Conventions 87 and 98, in order to achieve a better balance of power between capital and labor in The Bahamas.

