

## **CONSTITUTIONAL REFORM**

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**PART 11**

### **SUPREMACY OF THE CONSTITUTION**

Chapter 1 of the Constitution states that the Constitution is the supreme law of The Bahamas in the following terms:

“This Constitution is the supreme law of the Commonwealth of The Bahamas and, subject to the provision of this Constitution, if any other law is inconsistent with this Constitution, this Constitution, shall prevail and the other law shall, to the extent of the inconsistency, be void.”

In a political culture where the political directorate is perceived to be the highest law of the land, it is the Constitution which is the supreme law and should any other law be inconsistent that other law would be declared null and void and of no effect. The Prime Minister, the Cabinet and Parliament are subject to the Constitution and any executive action,

which contravenes a provision of the Constitution, can be declared to be null and void and of no effect by the Supreme Court.

The Supreme Court, the Court of Appeal or the Judicial Committee of the Privy Council, through the power of judicial review, can examine any law passed by the Parliament or any action by the Executive Branch of Government to determine whether it is consistent with the Constitution. If it were found that a law or an action by the Executive Branch is inconsistent with the Constitution, the Court can declare it unconstitutional and award a remedy to the aggrieved person.

The supremacy of the Constitution was dramatically affirmed in the case *D'Arcy Ryan v. Attorney General* (1977). In this case, Mr. Ryan had applied to become a citizen of The Bahamas on October 24, 1974, pursuant to Article 5 of the Constitution. Mr. Ryan had been living in The Bahamas as his primary residence from 1947 and received Belonger status in 1966. He was married to a citizen of The Bahamas and all of his seven children of the marriage had been born in The Bahamas. Mr. Ryan was informed on June 16, 1975 that the Minister of Home Affairs had refused his application. The Minister gave no reason

for his refusal of the application. Mr. Ryan instituted legal proceedings in the Supreme Court seeking a declaration that upon the true construction of the Constitution he was entitled to be registered as a citizen of The Bahamas and that Section 7 of the Bahamas Nationality Act, 1973 was ultra vires the Constitution. Two Justices, sitting as a division of the Supreme Court, held that the purported decision of the Minister was a nullity and referred the matter back to the Minister to be reconsidered in accordance to law. The Attorney General appealed the decision of the Supreme Court to the Court of Appeal. The Court of Appeal held that Section 7 (a) – (e) of the Bahamas Nationality Act was not ultra vires, but that the proviso thereto was ultra vires the Constitution, as it did not prescribe any ground on which the Minister could base his refusal. The Court of Appeal found that the Minister's refusal to grant Mr. Ryan's application for citizenship was therefore a nullity. The Attorney General appealed the decision of the Court of Appeal to the Privy Council. Lord Diplock, writing for the Privy Council in 1979, held that:

**“Their Lordships accordingly propose humbly to advise Her Majesty that for the single declaration made by the Court of Appeal, the following declarations as to the several question of law that have been raised by these proceedings should be made:**

**(1) A declaration that the Minister’s decision of 28 May 1975 to refuse the plaintiff’s application dated 27 June 1974 for registration as a citizen of The Bahamas is null and void.**

**(2) A declaration that the final words of the proviso to section 7 of The Bahamas Nationality Act, 1973, viz:**

**“or if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas”**

**are inconsistent with the Constitution of the Commonwealth of The Bahamas and are void.**

**(3) A declaration that the plaintiff is entitled to have his application for registration as a citizen of The Bahamas**

**dated 27 June 1974 reconsidered by the Minister according to law, as it has been stated in their Lordships' reasons for their humble advice to Her Majesty in this appeal."**

The Ryan case demonstrates that the Court, if inconsistent with the Constitution, can declare ministerial decisions, null and void.

Notwithstanding the clear direction by the Privy Council in 1979 that Mr. Ryan should be given Bahamian citizenship as a matter of constitutional entitlement, the Government did not issue Mr. Ryan a Bahamian passport until 1993. This case illustrates the need for citizens in a democratic society to be vigilant to ensure that the guarantees enshrined in the Constitution are in fact observed by the State.

### **RECOMMENDATION**

The Supreme Law Clause of the Constitution should be strengthened in the following ways:

- (a) by granting to the courts the power to review legislation to ensure consistency with the Constitution;

- (b) by conferring legal standing to citizens of The Bahamas, in their own interest, or as part of an association or interest group, to initiate a constitutional challenge with respect to the validity of any legislation that they consider to be inconsistent with the Constitution.