

## **Appendix A**

### **Distribution of personnel management functions in Canada, Victoria (Australia), Gauteng Province (South Africa), Malta, Mauritius, Trinidad and Tobago, and Singapore**

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
<b>1 The actors</b>			
<i>Coverage of Service Commissions</i>	Public Service Commission covering entire federal public service	Office of the Public Service Commissioner (OPSC) covering Victorian public service	Gauteng Provincial Service Commission (GPSC) covering Gauteng provincial administration
<i>Central personnel office</i>	Treasury Board	OPSC combines roles of service Commission and central personnel office	GPSC combines roles of service commission and central personnel office
<i>Other actors in personnel management</i>	<ul style="list-style-type: none"> <li>— Canadian Centre for Management Development</li> <li>— Public Service Staff Relations Board</li> <li>— Privy Council Office (PCO, or cabinet secretariat)</li> </ul>	N.A.	National Public Service Commission (PSC), which sets norms and standards applicable to the public service nationwide, including the provinces
<b>2 Selection of junior/ middle level staff</b>			
<i>Recommendations re staff selections</i>	Ad hoc selection board established by department head (recommendations binding)	Departments	GPSC (recommendations are binding subject to rejection by the Premier within six months)
<i>Actual Selection decisions</i>	Department head (authority may be further sub-delegated)	Departments	Departments

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
Public Service Commission (PSC) covering entire public service	<ul style="list-style-type: none"> <li>— Public Service Commission</li> <li>— Police Service Commission</li> <li>— Judicial and Legal Service Commission</li> </ul>	<ul style="list-style-type: none"> <li>— Public Service Commission</li> <li>— Police Service Commission</li> <li>— Judicial and Legal Service Commission</li> <li>— Teaching Service Commission</li> </ul>	<ul style="list-style-type: none"> <li>— Public Service Commission</li> <li>— Education Service Commission</li> <li>— Police and Civil Defence Services Commission</li> <li>— Legal Service Commission</li> </ul>
Management and Personnel Office (MPO)	Ministry for Civil Service Affairs and Employment (MCAE)	Chief Personnel Officer	Public Service Division (PSD) in Prime Minister's Office
<ul style="list-style-type: none"> <li>— Senior Appointments Advisory Committee</li> <li>— Board of Local Examinations</li> </ul>	Pay Research Board (PRB)		Personnel Boards
PSC to Prime Minister (recommendations binding)	Ministries/departments to respective Commissions (recommendations not binding)	Ministries/departments to respective Commissions (recommendations not binding)	Ministerial or departmental selection panels recommend to respective Personnel Board (recommendations not binding)
Prime Minister (on recommendations of PSC)	Commissions	Commissions	Personnel Boards

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
<i>Choice of selection criteria</i>	Department head (within framework set out by PSC)	Departments (within OPSC's guidelines)	GPSC in consultation with departments and subject to national norms and standards
<i>Regulation of selection process</i>	Commissions	Departments set own rules within framework of OPSC guidelines	GPSC in consultation with departments and subject to national norms and standards
<i>Conduct of actual selection process</i>	Departmental selection board	Departments	Departments
<i>Position creation and classification</i>	Department head	Departments	GPSC subject to national norms and standards
<i>Regulation of the classification system</i>	Treasury Board	OPSC	National PSC with inputs from GPSC, line departments
<i>Delegated authority (where above arrangements do not apply)</i>	Not applicable: delegated arrangements as above apply to all selections except general service categories and special cases	Not applicable: delegated arrangements as above apply to all selections	Not applicable
<i>Hearing of appeals re selection decisions</i>	Commissions	Departmental Review Tribunals, with possibility of further appeal to OPSC	GPSC

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
PSC (following submissions by line department via MPO)	Commissions, assisted by PRB, MCAE	Chief Personnel Officer decides on eligibility requirements (years of service, qualifications), use of exams as selection mechanism; Commissions decide on other selection mechanisms, criteria, weightings	PSD following submissions by ministries and departments
PSC (rules can be further elaborated by MPO with PSC's approval)	Commissions	Commissions	PSD
Selection boards nominated by departments and approved by PSC; exams conducted by Board of Local Examinations	Commissions	Commissions (or sub-committees including ministry or department representatives)	Ministries and departments
MPO	MCAE together with PRB and Ministry of Finance	Office of the Prime Minister/Chief Personnel Officer	Finance Ministry approves position creation; PSD approves position classification
MPO (in consultation with unions)	MCAE, PRB, Commissions	Chief Personnel Officer	PSD
— Below Inspector level in the Police Force only — Group A (lowest level) industrial staff — All external recruitment by public exam (undertaken by Board of Local Examinations)	All daily rated workers (30 per cent of public service)	Minor grade staff (45 per cent of the public service)	Not applicable: system as described here follows delegation of powers to personnel boards
PSC with additional possibility of appeal to Ombudsman	Commissions (Supreme Court may review legality of decisions)	Commissions	Special Personnel Board in the case of decisions taken by Personnel Boards; appeal can proceed to Commissions

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
<b>3 Selection of top-level staff</b>			
<i>Recommendations re selection</i>	Committee of department heads advise PSC re appointments at assistant department head level only; Cabinet Secretary advises Prime Minister on appointments to department head level	OPSC advises Premier on selection of staff at department head level	GPSC subject to national norms and standards (recommendations normally binding)
<i>Actual selection decisions</i>	Commission (except for departmental headships, which are filled by the Prime Minister)	Premier	Ministers
<i>Choice of selection criteria</i>	Department in concert with Commission	Departments in conjunction with OPSC	GPSC in consultation with ministers and departments, and subject to national norms and standards
<i>Conduct of selection process</i>	Jointly by department and Commission	OPSC, with involvement of ministers	Ministers and heads of department, subject to GPSC direction
<i>Position creation and classification</i>	Treasury Board (above EX-03 level)	OPSC (above EO-4 level)	GPSC subject to national PSC
<b>4 Discipline</b>			
<i>Formulation of codes of discipline</i>	Treasury Board (can be elaborated by departments as needed)	OPSC	GPSC subject to national norms and standards

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
Senior Appointments Advisory Committee to Prime Minister via PSC (recommendations not binding)	Head of civil service, ministry/department heads (recommendations not binding)	Ministry/department heads (recommendations not binding)	N.A.
Prime Minister after consultation with PSC, SAAC	Commissions in consultation with Prime Minister; latter's concurrence needed for appointments at permanent secretary level	Commissions in consultation with Prime Minister	Commissions (at Superscale D level and above)
SAAC (within eligibility limits set by constitution)	Commissions (in consultation with head of civil service, ministry/dept heads)	Commissions	N.A.
SAAC	Commissions	Commissions	N.A.
Permanent Secretary, Office of the Prime Minister, following MPO evaluation	MCAE, PRB, Ministry of Finance	Chief Personnel Officer	N.A.
PSC with Prime Minister's consent (in so far as procedures and penalties are concerned)	Commissions	Code of conduct (determination of correct behaviour): government; establishment of penalties applicable: Commissions	PSD formulates codes of discipline; Commissions set penalties applicable to infringements

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
<i>Hearing and decision of cases</i>	Departments	Departments	Departments
<i>Regulation of disciplinary process</i>	Treasury Board/Public Service Staff Relations Board	OPSC	GPSC subject to national norms and standards
<i>Hearing and decision of appeals</i>	Appeals can be made to department, then Public Service Staff Relations Board, then Federal Court of Appeal	OPSC (the Industrial Relations Commission is another avenue of appeal in cases of dismissal)	GPSC

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
<p>Heads of department hear and decide minor cases; PSC's Disciplinary Board hears more serious cases and reports to PSC, which then decides cases</p>	<p>Ministries/ departments hear and decide minor cases; more serious cases heard and decided by Commissions</p>	<p>Tribunals appointed by commissions hear facts and report to commissions, which decide cases. Police also have a "one-man tribunal" to hear and decide minor cases</p>	<p>Investigating Officer or Committee or Committee of inquiry investigates case; Commissions impose penalty</p>
<p>PSC with Prime Minister's consent</p>	<p>Commissions</p>	<p>Commissions</p>	<p>Commissions</p>
<p>PSC</p>	<p>Commissions; Supreme Court can review legality of Commissions' own decisions</p>	<p>Appeal Board set up for the purpose under the constitution</p>	<p>Commissions can review cases on request by aggrieved party</p>

## **Appendix B**

### **Analysis of the degree of delegation of personnel management function**

## Analysis of the degree of delegation of personnel management function

This table draws on the description of the distribution of personnel management functions provided in Appendix A to indicate the range of delegations for each of the functions.

	limited delegation	moderate delegation	significant delegation
<b>Selection of junior/middle level staff</b>			
<i>Selection decisions</i>	Made by Commission following appointment of ad hoc selection boards (various countries)	Made by ministerial personnel boards following appointment of ad hoc selection panels (Singapore)	Made by departments (Canada, Victoria/Australia)
<i>Choice of selection criteria</i>	Commission (various countries)	Central personnel office (Singapore)	Departments within framework set by Commission (Canada, Victoria/Australia)
<i>Conduct of selection process</i>	Commission (Mauritius, Trinidad and Tobago)	Ministerial Personnel Boards (Singapore)	Departments (Canada, Victoria/Australia)
<i>Regulation of selection process</i>	Commission (various countries)	Central personnel office (Singapore)	Departments within guidelines set by Commission (Victoria)
<i>Position creation and classification</i>	See right	Central personnel office (most countries) or Commission, where the latter acts as central personnel office	Departments (Canada, Victoria/Australia)
<i>Regulation of the classification system</i>	See right	Commission or central personnel office (all countries) -- degree of centralisation here depends on flexibility of classification system itself	See left
<i>Hearing of appeals re selection decisions</i>	Commission (most countries)	Special Personnel Board (Singapore)	Initial appeal to departmental review tribunal (Victoria/Australia)

	limited delegation	moderate delegation	significant delegation
<b>Selection of senior staff</b>			
<i>Selection decisions</i>	Commission in consultation with Prime Minister (Mauritius, Trinidad and Tobago)	Prime Minister following consultation with Commission (Malta)	Prime Minister, advised by Cabinet Secretary (Canada)
<i>Choice of selection criteria</i>	Commission (Mauritius, Trinidad and Tobago)	Departments in conjunction with Commission (Victoria)	Government's Senior Appointments Selection Committee (Malta)
<i>Conduct of selection process</i>	Commission (Mauritius, Trinidad and Tobago)	Jointly by department and Commission (Canada)	Senior Appointments Selection Committee
<i>Position creation and classification</i>	See right	Central personnel office or Commission, where the latter acts as central personnel office (all countries)	See left
<b>Discipline</b>			
<i>Formulation of codes of discipline</i>	See right	Central personnel office and/or the Commission in most countries	Central personnel office, but with possibility of further elaboration by department (Canada)
<i>Hearing and decision of cases</i>	Commission or their appointed tribunals (Trinidad and Tobago)	Minor cases heard by departments (Malta, Mauritius)	Departments (Canada, Victoria)
<i>Regulation of disciplinary process</i>	See right	Commission (most countries)	Departments as first avenue of recourse (Canada)

## **Appendix C**

### **Facilitating delegation of personnel management through appropriate selection methodologies**

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## **Facilitating delegation of personnel management through appropriate selection methodologies**

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Delegation of personnel management is dependent on robust systems at departmental and ministerial level. The Achilles' heel of public service staffing is often the selection interview. Interviews are used as the main selection instrument for a wide range of positions but are frequently characterised by weak procedures and vague selection criteria.

In Malta, for example, selection interviews are routinely scored on the basis of criteria which include references to suitability for the post, personality, or aptitude. No definition of these criteria or guidance on how to apply them are provided to selection boards. In some cases, the weighting given to such loose criteria is enough to make up the selection pass mark. The presence on boards of staff without training in selection further opens up the possibility of poor selections even with the best of intentions.

In Trinidad and Tobago, a set of six selection criteria – knowledge of the job, required skills, work experience, physical characteristics, personality characteristics, and qualifications – are standard for selections at different levels. Only the points weighting varies from one position to another. Here also, the criteria are very loosely defined.

Mauritius, on the other hand, appears to have well-developed, job-specific interview selection criteria. Even here, however, it appears that a standard form is used to score interviews and this is based on criteria such as appearance, mental alertness, communication ability, motivation, and stability. There is no apparent relationship between these and the job-specific criteria.

Poor interview techniques are a serious weakness at the very heart of public service staffing leading Service Commissions to the conclusion that delegation would unacceptably restrict their already limited ability to control abuse.

The long-term remedy lies in clarity of procedures, not in centralisation. Clear procedures, guidelines, reporting relationships and accountability mechanisms are a prelude to delegation. Selection criteria that are specific and focused on job

requirements can assist in redressing current deficiencies within the context of a delegated system.

This appendix provides the basic framework for a robust selection methodology. The framework consists of three steps:

- (i) preparing a task-specific job description;
- (ii) deriving position-focused selection criteria;
- (iii) preparing a selection plan linking selection criteria to appropriate selection instruments (curriculum vitae, examination, specialised tests, interview, etc.).<sup>1</sup>

The framework is best outlined by providing an example of each of these three steps. The examples relate to the director of a public service training organisation.

## **1. PREPARING A TASK-SPECIFIC JOB DESCRIPTION**

Job descriptions written in task-oriented format are simple to write while offering the clearest picture of the actual content of the job and its duties.

### *Manage delivery of output*

- Assign work in accordance with spheres of responsibility and existing workloads.
- Ensure that course design and delivery take place promptly and in accordance with agreed training requirements.
- Respond to departmental requests for training promptly, subject to overall training policy and resources available.

### *Plan work programmes*

- Define training requirements in accordance with overall public service personnel policy and requests from line departments.

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<sup>1</sup> Credit for the methodology belongs to Professor Jack Duffy of the School of Business Studies, Dalhousie University, Halifax, Canada.

- Develop programme of work in accordance with agreed training requirements and resources available.
- Prepare and submit multi-year business plan and annual budget.

*Assure quality*

- Develop performance standards (quantitative and qualitative) relating to the organisation of training courses.
- Develop means to monitor organisational performance against set standards.
- Set organisational and staff performance targets and monitor and evaluate accordingly.

*Meet internal organisational needs*

- Ensure that spheres of responsibility and reporting relationships are clear and relevant to the organisation's role and requirements.
- Anticipate human and other resource needs and act on them in good time.
- Ensure that the organisation operates within financial parameters.
- Provide periodic reports to higher authorities.

**2. DERIVE POSITION-FOCUSED SELECTION CRITERIA**

Selection criteria can be drawn up for each task dimension as shown in the example below. The relationship between job requirements and selection criteria is clear.

The task dimensions set out here are the basis of a common core in position descriptions at the same level throughout the public service. Correspondingly, the same applies to the selection criteria derived from them. The second and third criteria relating to the first case dimension are position-specific; the rest would apply to most other directorships.

<i>Task dimensions</i>	<i>Selection criteria</i>
Manage output delivery	Ability to get results. Strong academic background in management/public administration. Experience in management of training.
Plan work programmes	Ability to identify and act on opportunities.
Assure quality	Commitment to pursuit of higher standards.
Meet internal needs	Knowledge of administrative procedures in public service.

### 3. PREPARE A SELECTION PLAN

Although the selection criteria developed above are qualitative, the selection plan can still convert them into a set of tangible indicators. It does this by way of three selection instruments: CV, interview, and references (performance reports, testimonials etc.). The latter are important in assessing applicants' track records: this is possible since applicants are likely to have several years' experience in the public service, whereas one has to find means to assess *potential* in the case of a clerical position.

<i>Criterion</i>	<i>CV</i>	<i>Interview</i>	<i>References</i>
Ability to get results	Evidence of career progression	Responses re past achievements	Performance in previous positions
Academic background	University or professional training	–	–
Experience in training management	Any previous training-related positions	Responses re experience in training (if any)	–

Ability to identify and act on opportunities	–	Responses re new activities developed	Evidence of new activities developed, initiatives taken
Commitment to higher standards	–	Responses re use of performance measures etc.	Evidence of development, use of performance measures
Knowledge of administrative procedures	Any previous administrative positions	Responses to procedure-related questions	–

The benefits of such a selection methodology, particularly where interviews are concerned, are that:

- it gives interviews a clear purpose and role within the selection process;
- by giving selection board members clear criteria to assess, it results in greater consistency and objectivity in interviewing;
- it produces better selection decisions;
- it provides a procedural basis for post-audits of the selection and interview process;
- it provides a clear basis for the defence of selection decisions, as well as selection criteria themselves, in the case of contestation;
- it gives newcomers to selection boards a clear guide to follow in preparing for interviews.

In practice, the methodology would ideally be supplemented by guidelines specifying which selection criteria are admissible, which to use for specific levels, and which selection instruments are best used to test for them. Developing these guidelines would be a task for either Service Commissions or the central personnel office.

## **Appendix D**

### **The Public Service Commissions of the Commonwealth Caribbean: the constitutional context**

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\* This appendix is based on material prepared previously by the author for CARICOM

## **The Public Service Commissions of the Commonwealth Caribbean: the constitutional context**

Kenny D. Anthony

General Counsel, Caribbean Community Secretariat

### **INTRODUCTION**

Under the colonial regime, the public service usually fell under the prerogative of the Crown and was exercised by the colonial Governor. During the period of decolonisation, the prerogative gradually gave way to legislation. In most states, Service Commissions were created by statute to advise the Governor on matters of appointment, discipline and removal of public officers. The Independence Constitutions absorbed, with modifications, the model which was in force prior to independence. This meant that most states entered into independence with many of the deformities of the colonial period.

The Independence Constitutions did three things:

- (1) First, they conferred authority on Parliament to impose restrictions on the fundamental rights of public officers, primarily, freedom of speech and freedom of association. Some Constitutions require these restrictions to be reasonably required for the proper performance of the functions of Public Officers,<sup>1</sup> others do not.<sup>2</sup>
- (2) Secondly, they created independent and autonomous Service Commissions to govern the appointment, discipline and removal of nearly all public officers.
- (3) Thirdly, they redefined the nomenclature to describe employees of the state. Instead of the terms "civil servant", "civil service" or "crown servant", "crown service" the Constitutions employed the terms "public officer" and "public service". Strictly speaking, therefore, employees of the state/crown should be described as "public officers".

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<sup>1</sup> See for example, s. 12(4) (b), s. 13.(2) (b), Antigua Constitution; x. 10 (2) (c), s. 11 (2) (c), St. Vincent Constitution.

<sup>2</sup> S. 20(2) (c), s. 21(2) (c), Barbados Constitution; s. 12(2) (c), s. 13(2), Belize Constitution.

Despite the new constitutional order, most countries continued to apply rules and practices fashioned by the colonial regime. The real challenge is to modernise the public service in accordance with constitutional prescriptions.

#### **THE NATURE OF THE PUBLIC SERVICE IN THE COMMONWEALTH CARIBBEAN**

It is crucial to recognise that the composition of public service has altered. Public Services have been compelled to employ persons of different skills, training and experience. It is likely that the division of skills will become even sharper in the years ahead. Existing legislation emphasises uniformity rather than diversity.

The disciplined services are governed by a separate body of laws. However, in most cases, one body of law governs all other public officers. Admittedly, such an approach is convenient. It may also be justified on the basis that it expresses the principle of equality before the law. However the terms and conditions of employment often differ among and between categories of employees. The offences which attract disciplinary action in respect of nurses are clearly not identical to the offences which may attract disciplinary action against teachers.

A modern legal framework should attempt to respond to the different sections of public service. Different regimes should exist to govern the conditions of employment of teachers, medical personnel, officers in the disciplined services, and other public officers employed in central government.

#### **CRITICISMS OF SERVICE COMMISSIONS**

Some of the most frequent criticisms of public services of the region have been directed at the composition, powers and procedure of the Service Commissions established by the various Constitutions. These Commissions were created to insulate members of the public service from political influence exercised upon them, by the government of the day.<sup>3</sup> Many have doubted that this original rationale remains relevant. Nunes contends that Service Commissions are "counter-productive anachronism[s] and should be abolished".<sup>4</sup> Where they "are weak they fail to protect [public officers] from political interference and where they are strong they undermine the managerial duties of senior [public officers]".<sup>5</sup> Collins has long

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<sup>3</sup> Thomas v. Attorney General of Trinidad and Tobago (1982) A.C.113 (P.C.); Carl Smith et al v. Attorney General of Belize (1985) LRC (Const.) 431.

<sup>4</sup> F.E. Nunes, *The Public Service Commission and Modern Management*, unpublished, 1984.

<sup>5</sup> *Ibid.*

dismissed Service Commissions as "anomalous constitutional relics".<sup>6</sup> More recently, George Eaton et al, reporting on the Grenada Public Service, declared the concept of an "impartial" Commission to be "anachronistic" and inconsistent with "the norms of modern personnel management or of professionalism".<sup>7</sup> They argued that commissioners who are "drawn exclusively from outside the service cannot be fully conversant with personnel practices and subtleties of job requirements within the public service".<sup>8</sup>

On that ground, they recommend that,

"the prohibition against the appointment of serving public officers to the PSC be removed and that the membership of the Commission be reconstituted to accord membership to at least one but preferably two of the senior Permanent Secretaries on a one-year rotating basis to represent executive management of the civil service... We can find no good reason also why the members of the PSC who are appointed on the advice of the Prime Minister after consultation with the appropriate representative bodies, cannot be serving public officers."<sup>9</sup>

Interestingly, the above approach was embraced by the Grenada Constitution Review Commission. They recommended that:

"the Chairman be appointed by the Governor-General acting in accordance with the advice of the Prime Minister for a term of 3 years. The Commission also recommends that two members be appointed for a term of 3 years by the Governor-General, acting in accordance with the advice of the Prime Minister, after the Prime Minister has consulted the appropriate representative bodies – provided, that no appointment shall be made unless the bodies consulted are in agreement. At least one of these two commissioners should be from outside the Service. The Commission recommends that the remaining two members of the

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<sup>6</sup> B.A.N. Collins, "Some Notes on Public Service Commission in the Commonwealth Caribbean", (1967) 16; 01 Social and Economic Series, No. 1.

<sup>7</sup> G. Eaton et al, "The Public Service Commission in Grenada", in S. Ryan and D. Brown (eds), *Issues and Problems in Caribbean Public Administration*, I.S.E.R., U.W.I., Trinidad and Tobago, 1992, at p.15.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, at p. 16.

Public Service Commission be appointed from the ranks of Permanent Secretaries by the Governor-General in his own deliberate judgement."<sup>10</sup>

Further afield, the Belizean Constitution has made provision for permanent secretaries to be included in the membership of the Public Service Commission. Section 105 (1) of the Constitution provides as follows:

"There shall be for Belize a Public Service Commission which shall consist of a Chairman and eighteen other members who shall include as ex officio members the Chief Justice, the Solicitor General, the Permanent Secretary, Establishment, the Permanent Secretary to the Ministry of Home Affairs, the Permanent Secretary to the Minister of Defence, the Permanent Secretary to the Ministry for the time being responsible for the Prison Service, the Superintendent of Prison Service, the Director, Security and Intelligence Service and the Commandant of the Belize Defence Force."

The Constitution assigns the permanent secretaries according to the functions to be performed. Thus, in the exercise of its functions the Commission shall be so organised that the Permanent Secretary, Establishment shall be an ex officio member and that of the eighteen members other than the Chairman, five:

"...shall be responsible for matters relating to the public service other than the judicial and legal services, the Police Force, the Security and Intelligence Service, the National Fire Service, the Prison Service and the Military Service..."

Other divisions of membership exist for the performance of function in relation to judicial personnel, military personnel, police and fire service officers, security and intelligence personnel and prison officers.<sup>11</sup>

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<sup>10</sup> Report of the Grenada Constitution Review Commission, 1985, at p. 77.

<sup>11</sup> The functions are performed by the Commission in the following divisions of membership:

- " (a) two being ex-officio the Chief Justice and the Solicitor General, shall be responsible for matters relating to the judicial and legal service;
- (b) four, of whom the Permanent Secretary to the Ministry of Defence and the Commandant of the Belize Defence Force shall be ex-officio members shall be responsible for matters relating to the military service;
- (c) three, of whom the Permanent Secretary to the Ministry of Home Affairs and

It is extremely doubtful that the inclusion of permanent secretaries on the membership of Service Commissions will help to professionalise the public service. Permanent secretaries are more likely to protect the narrow interest of the public service and where appropriate, the interests of the Executive. Beyond that, serious conflicts of interest could arise. Consider for a moment, the Belizean approach. The Permanent Secretary, Establishment, will be required to tender advice to other permanent secretaries on a range of personnel matters including disciplinary control. Yet, by virtue of his office, the Permanent Secretary, Establishment is a member of a Commission which may well have to determine cases in which the same Permanent Secretary may have given advice and directions.

It is true that permanent secretaries who are members of Commissions could, in the words of Eaton et al, sensitise other members to "personnel practices and subtleties of job requirements within the Public Services".<sup>12</sup> But this alone cannot justify their membership of Service Commissions. Placing permanent secretaries on Commissions will simply not confer greater accountability on permanent secretaries and Head of Departments to "guide the efforts of their staff towards successful achievement of objectives or realization of goals".<sup>13</sup> These changes can only occur on re-organisation of the personnel function within public services.

#### THE DIFFICULTY OF CHANGE

In most Commonwealth Caribbean states, the chapter of the Constitutions which deals with the public service is heavily entrenched, usually at the deepest level. For example, in the case of Dominica, a bill to amend the section which creates the Public Service Commission requires on its final reading in the House, the votes of

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the Commissioner of Police shall be ex-officio members, shall be responsible for matters relating to the Police Force and the National Fire Service;

- (d) three, of whom the Permanent Secretary to the Ministry of Home Affairs and the Director, Security and Intelligence Service shall be ex-officio members, shall be responsible for matters relating to the Security and Intelligence Service; and
- (e) two, being ex-officio the Permanent Secretary to the Ministry for the time being responsible for the Prison Service and the Superintendent of Prisons shall be responsible for matters relating to the Prison Services.

<sup>12</sup> George Eaton et al at 1, supra n. 8 at p. 16.

<sup>13</sup> Ibid.

three-quarters of all the elected members of the House.<sup>14</sup> Additionally, the bill is subject to a delay of ninety days between its first reading and its second reading.<sup>15</sup> The bill must also receive a majority of the votes validly cast at a referendum.<sup>16</sup> These formidable requirements do not exist in all states.<sup>17</sup>

Unless governments are prepared to effect constitutional amendments, then the only viable alternative is to utilise, in a creative manner, the existing provisions of the Constitutions to achieve greater efficiency in the management and administration of the public service.

## WORKING WITH THE CONSTITUTION

It is conceded that there is considerable force in the argument that Service Commissions of the Commonwealth Caribbean are inefficient, insensitive and dilatory. It is well known that their procedures are cumbersome. Some have over-centralised the personnel function. Delays in responding to charges of indiscipline have contributed to the undermining of the morale of the public service. Public service managers are denied control over employees and this has encouraged them to abdicate their responsibility to maintain discipline in the public service.

Some of the difficulties may be traced to the continuing confusion over the respective roles and functions of the Executive and the Service Commissions. The Constitutions contemplate that the governance of the public service is a shared responsibility. In *Thomas v. Attorney General of Trinidad and Tobago*,<sup>18</sup> the Privy Council confirmed that the Service Commissions are entrusted with the following powers:

- (a) The appointment, discipline, transfer and removal of public officers.
- (b) The enactment of rules to govern their procedure in respect of the exercise of the powers named above. For example, Commissions may establish

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<sup>14</sup> S. 42(2), Dominica Constitution.

<sup>15</sup> S. 42(3), *Ibid.*

<sup>16</sup> S. 42(3), *Ibid.*

<sup>17</sup> For example, only a two-thirds majority is required in both Houses in Barbados. See s. 49, Barbados Constitution.

<sup>18</sup> [1982] A.C. 113 (P.C.).

procedures for disciplinary proceedings and for the selection and appointment of recruits to the public service.

In turn, it is the constitutional responsibility of the Executive and/or Parliament to:

- (a) lay down terms of service for public officers. Terms of service include,
  - (i) determining the duration of the contract of employment, e.g. for a fixed period, ending on attaining retiring age;
  - (ii) remuneration and pensions;
  - (iii) the physical and educational qualifications for recruitment into the public service; and
- (b) the enactment of a code of conduct, to include, inter alia, the offences which render public officers liable to disciplinary action by a Service Commission.

In effect, the Service Commission are not employers of public officers. They merely appoint, discipline and remove public officers on behalf of the State/Crown in accordance with the Constitution.

It is possible for the Executive to compromise public officers by the nature of the terms and conditions of employment which they establish. For example, the Executive may specify that the term of employment should be no more than x years or y months. In that event, the relevant Commission is compelled to appoint a public officer for a duration of time specified by the Executive. Clearly, in this situation the ability of the Commission to protect the public officer is severely compromised.

The prevailing deformities and weaknesses of Services Commissions have often led to attacks on the constitutional arrangements which govern their composition and functions. However, the simple truth is that no Commonwealth Caribbean government has modernised its public service in accordance with the constitutional prescriptions. No government has yet exploited the promise of the Constitutions by enacting the statutory regime contemplated by the Constitutions.

The behaviour of some Services Commissions have not been helpful. Some Commissions seem preoccupied in jealously protecting their independence and neutrality. Consequently, they define their agenda narrowly. Others behave as rubber stamps and abdicated their constitutional responsibilities to the Executive. Most Service Commissions are unwilling to decentralise their authority to the extent permitted by the Constitutions.

## THE SCOPE FOR DELEGATION

All the Constitutions provide that the Service Commissions "may, by directions in writing and subject to such conditions as they think fit, delegate, any of their powers [to control] to any one or more members of the Commission or with the consent of the Prime Minister [or Head of State], to any public officer".<sup>19</sup> Yet, few Commissions have utilised these powers in a creative way.

Some authority could be delegated to permanent secretaries and heads of departments by appropriate "Delegation Orders" to strengthen their professional control over public officers. There is no reason why permanent secretaries cannot be conferred with delegated authority to appoint and discipline public officers in specified cases. Likewise, the Service Commissions could constitute themselves into committees to handle matters pertaining to specific areas of the public service. For example, where no Teaching Service Commissions exist, the Public Service Commission could delegate to a sub-committee its power and authority in relation to members of the Teaching Service. The sub-committee could then meet on a regular basis to deal with matters pertaining exclusively to the Teaching Service. A similar approach could be taken in respect of the nursing staff.

Another power that is available but hardly ever utilised relates to the power of some Service Commissions, with the consent of the Prime Minister, to confer powers or impose duties on any public officer or any authority of the government for the purpose of the exercise of its functions.<sup>20</sup> The Grenada Constitution Review Commission is of the view that section 83(3) of the Grenada Constitution which

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<sup>19</sup> Antigua and Barbuda Constitution, s. 100 (2).  
Bahamas Constitution, Art. 110.  
Barbados Constitution, s. 92 (1).  
Belize Constitution, s. 106 (5).  
Grenada Constitution, s. 84 (2).  
Dominica Constitution, s. 84 (13).  
Guyana Constitution, Art. 20 (2).  
Jamaica Constitution, s. 127 (1).  
St. Christopher & Nevis Constitution, s. 77 (12).  
St. Lucia Constitution, s. 86 (2); s. 93 (2).  
St. Vincent Constitution, s. 78 (2).  
Trinidad and Tobago Constitution s. 127 (1).

<sup>20</sup> Antigua and Barbuda Constitution, s. 99 (13).  
Grenada Constitution, s. 83 (13).  
Dominica Constitution, s. 84 (13).  
St. Christopher & Nevis Constitution, s. 77 (12).  
St. Lucia Constitution, s. 85 (13); s.  
St. Vincent Constitution, s. 77 (13).  
Trinidad and Tobago Constitution, s. 129 (1).

expresses a similar power allows the Public Service Commission to use the Ministry of the Public Service as its "executive arm".<sup>21</sup> Unfortunately, the Commission failed to specify the nature of the executive powers which could be entrusted to the Ministry of the Public Service. Notwithstanding, the recommendation demonstrates a possible use of the provision.

#### THE LEGAL CHARACTER OF THE EMPLOYMENT RELATIONSHIP

Delegation would be facilitated if there were greater clarity concerning the nature of the employment relationship between public officers and their employers. Is the relationship "contractual" or is it better described as "a relationship of status"?

The relationship appears to have four of the five dimensions of a contract, namely, (a) offer; (b) acceptance; (c) capacity; and (d) consideration. The fifth requirement, the intention to create legal relation, is often said to be absent on the grounds that the Crown/State never intended to enter into contractual arrangements with its employees. Indeed, the General Orders of some countries deny that the Orders constitute or form a contract between the Crown/State and its employees.

It does appear anomalous to suggest that the relationship is contractual when a substantial body of the terms and conditions is defined by statute. Subject to the Constitution, Parliament is free to alter those terms at its pleasure. In other words, there is no contractual equality between the Crown or State and its employees. Public officers have little freedom to regulate the incidents arising out of the employment relationship. The relationship is *sui generis*, largely governed by statute. The legal compulsion as to the fixing of the terms appears to be inconsistent with the creation of a contract. For this and other reasons, the courts of some countries have concluded that the relationship is one of status.<sup>22</sup> It is, however, true to say that the courts in the Commonwealth Caribbean appear to be moving in the direction of treating the relationship as contractual.<sup>23</sup> English courts appear to be moving in a similar direction.<sup>24</sup> In the final analysis, it may be necessary to enact legislation to resolve the issue. This would help public officers

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<sup>21</sup> Report of the Grenada Constitution Review Commission, 1995 at p. 38.

<sup>22</sup> *Roshan Lal v Union of India* (1967) S.C. 1889.

<sup>23</sup> *Thomas v Attorney General of Trinidad and Tobago* (1982) A.C. 113 (P.C.) at p. 127D; *Bernadette Hood-Caesar v the Prime Minister and Minister of Finance and Economy and Attorney General* (Unreported, No. 3015 of 1987, 7 June 1988, H. Ct., Trinidad and Tobago).

<sup>24</sup> *R v. Lord Chancellor's Department, ex parte Nangle* [1992] 1 All E.R. 897.

to understand properly the nature and character of their relationship with their employers, and would enable a more coherent debate concerning the appropriate framework for personnel management in a modern public service.

The uncertainties in the employer relationship are compounded by the larger uncertainties in the legal regime for the public service. The provisions of the Constitutions which established public services were never supported by the enactment of appropriate and comprehensive statutory regimes. Some Service Commissions have not enacted rules to govern their procedure. Some states have not enacted Regulations pertaining to the conduct of public officers. Reliance is placed on General Orders which were introduced by the colonial authorities. Many of the provisions of these General Orders are unconstitutional. Barbados, Jamaica, and St Lucia have modernised their General Orders but it is exceedingly doubtful that these Orders enjoy the force of law. Commonwealth Caribbean Courts are not unanimous in their treatment of the legal status of these Orders.<sup>25</sup> In any event these Orders use archaic language and are of little use in a modern public service.

A legal regime for the public service should comprise the following:

- (i) A Public Service Act with provisions, *inter alia*, for a modern personnel department, creation and abolition of public officers, and treating with the public service. The Act should also empower the minister to make regulations governing the conditions of employment including the code of conduct.
- (ii) Regulations made by the minister to govern conditions of employment. Separate regulations should be enacted for (a) The Teaching Service; (b) The Police Service; (c) The Fire Service; and (d) The Nursing Service. These Regulations should be made by the responsible minister under authority conferred by the appropriate Act. For example, in the case of teachers, the minister should enact regulations under the authority of the extant Education Act.
- (iii) Regulations enacted by Service Commissions under the appropriate provisions of the Constitutions to govern their procedure in respect of matter of appointment, disciplinary procedure and removal of public officers.

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<sup>25</sup> Evelyn v. Chichester (1970) 15 W.I.R. 410; Sheik Mohammed Hyder Ali v. Public Service Commission (Unreported, No. 37 of 1974 C.A. – Guy); Fahie v. Attorney General of Guyana (Unreported, No 10 of 1983, 16th Nov., 1984, H.Ct. – Anguilla); Winton Campbell v. Attorney General and Chief Personnel Officer (Unreported, No. 134 of 1990, Feb. 20, 1991, H.Ct., Barbados).

## MODERNISATION OF PERSONNEL DEPARTMENTS

Save, to some extent, the cases of Jamaica, Trinidad and Tobago and possibly Barbados, Commonwealth Caribbean countries have not modernised their personnel departments.

In a recent report to CARICAD on *The Role of the Public Service Commission In Management of Human Resources*, Sir Carlisle Burton and associates advocated the strengthening of human resource management systems in the public services of the Commonwealth Caribbean. Sir Carlisle advised that the following issues need to be addressed:

- the development of appropriate human resource policy statements;
- review of existing orders, rules and regulations;
- the development of human resources information systems (already begun in some countries);
- the strengthening of training and development functions, and the provision of more management training for middle- and senior-level managers;
- the development of a core of personnel technicians to work in line ministries.<sup>26</sup>

Legislative reform to the public service should aim at enhancing the human resource management capabilities of the public service. The personnel department should be recognised in legislation, preferably in a Public Service Act, and could be renamed and re-designed as the Public Service Human Resources Development Department. Legislation should provide that the functions of that department shall be the administration and management of the public service and, without limiting the generality of those functions, should include:

- (a) promotion of efficient service to the public;
- (b) conducting management audits of departments by reviewing the organisation of the business of government, including the organisation of ministries and departments of government, and providing advice and making recommendations regarding the organisation;

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<sup>26</sup> Carlisle Burton, Report on the Role of the Public Service Commission In Management of Human Resources, Nov. 1992, at p. 12.

- (c) promotion of the efficient use of the human resources of the public service;
- (d) reviewing the classification, re-classification and nomenclature of offices and providing and making recommendations respecting the classification, re-classification and nomenclature of offices;
- (e) development and maintenance of an integrated human resource information system of personnel records and training profiles to aid in the making of training decisions in the public service;
- (f) conducting personnel and training needs assessments, establishment of areas of priority based on the findings of the assessments and on resource constraints and taking appropriate action to satisfy those needs;
- (g) compilation and dissemination of personnel-related information and policy decisions to authorised officers for the efficient administration and management of the public service and the efficient performance of officers;
- (h) ensuring the maintenance of a safe and development-oriented working environment for officers;
- (i) promotion of a high-level of performance and productivity, setting of work standards, development of results-oriented job descriptions, and techniques that contribute to high morale, motivation and job satisfaction amongst officers;
- (j) reviewing the terms of service, including salaries and allowances for officers, providing advice to the minister and officers and making recommendations to the minister regarding those terms;
- (k) reviewing legislation, collective agreements and directives affecting officers and making recommendations to the minister respecting the legislation, collective agreements and directives;
- (l) co-ordination of the work of any committee established by the minister;
- (m) effective management of any housing provided by government to public officers or to other persons who serve the government in a civil capacity.

## **SUMMARY: THE AGENDA FOR REFORM**

In the legislative domain, reforms to the law of the public service should aim to:

- (a) update existing laws to reflect the Independence Constitution;
- (b) utilise the plentitude of powers conferred by these Constitutions to modernise the public services;
- (c) cure existing gaps in some Constitutions; and
- (d) introduce appropriate legal regimes to control and regulate the employment of public employees who fall outside the jurisdiction of Service Commissions.

A modern legal framework should recognise the diversity of the public service. Different statutory regimes should be enacted to govern the conditions of employment of the separate categories of public officers.

The public services of the region should operate on a philosophy of partnership between the executive, the Service Commissions, public officers, representative organisations and the public at large. Every effort should be made to reform the legislative framework on the basis of shared consensus.

The Service Commission must be enticed to participate fully in any process of legislative reform. Specifically, they should modernise the legislation which governs procedural matters pertaining to the appointment, discipline and removal of public officers. The legislation should emphasise speed and efficiency of decision-making. Equally, the new regime should decentralise decision-making wider use of powers of delegation to the chairpersons of the Commissions, committees of the Commissions and to permanent secretaries and heads of departments. In order to improve the efficiency and independence of Service Commissions, consideration should be given to increasing the financial resources of Service Commissions to enable them to meet, inter alia, the costs of employing their chairpersons on a full-time basis, to secure the services of independent counsels if and when the need arises, and to computerise their records and other correspondence.

As far as possible, efforts should be made to eliminate any misunderstanding arising out of the failure of the State/Crown to clarify its legal relationship with its employees. In this regard, it seems necessary to clarify the nature of the employment relationship by determining whether it is one of status or of contract.

The role of the personnel department is critical to the reform process. Considerable care should be exercised in staffing these departments. Adequate provision should

be made in the Public Service Act to provide these departments with the legal powers to reform and transform the public service over time.

## **Appendix E**

### **Managing human resources for results in the public service: the strategic options**

Working Group Meeting, Malta, 15 to 17 May 1995

#### **List of Participants**

## **List of Participants**

### **Australia**

Mr P R Salway  
Commissioner  
Public Service Commission  
State of Victoria

### **Barbados**

Mr Selwyn Smith  
Permanent Secretary  
Ministry for Civil Service

### **Canada**

Ms Ginette Stewart  
Commissioner  
Public Service Commission of  
Canada

### **Malta**

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Prime Minister

Mr Joseph Sammut  
Permanent Secretary  
Office of the Prime Minister

Mr Joseph Curmi  
Director General  
Management and Personnel Office

Mr Charles Polidano  
Principal  
Staff Development Organisation

Professor Borg Constanzi  
Chairman  
Public Service Commission

### **Malta (cont'd)**

Mr Joseph Tabone  
Chairman  
Management Systems Unit Ltd

Mr David Spiteri Gingell  
Group Manager  
Consultancy Services Group  
Management Systems Unit Ltd

### **Mauritius**

Minister A Jugnauth  
Ministry for Civil Service Affairs  
and Employment  
(Civil Service Affairs Division)

Mr R P Ramlugun  
Principal Assistant Secretary  
Ministry for Civil Service Affairs  
and Employment

Mr V Sooben  
Chairman  
Public Service Commission

### **Singapore**

Mr Lim Hup Seng  
Deputy Secretary for the Office of  
the Prime Minister  
Prime Minister's Office  
Public Service Division

### **South Africa**

Mr Patrick Fitzgerald  
Chairperson  
Gauteng Provincial Service  
Commission

**South Africa (cont'd)**

Dr Sibusiso Vil-Nkomo  
Commissioner  
Public Service Commission

Mr Job Mokgoro  
Director General  
Province of the North West

**Trinidad and Tobago**

Minister Gordon Draper  
Minister of Public Administration  
and Information  
Office of the Prime Minister  
(Public Administration)

Sir Ellis Clarke  
Office of the Prime Minister  
(Public Administration)

Mr K Lalla  
Chairman  
Public Service Commission

**United Kingdom**

Mr Hugh Taylor  
Head of Management Development  
Group  
Cabinet Office  
Office of Public Service and  
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**Commonwealth Secretariat**

Mr Nick Manning  
Adviser (Organisation Structure and  
Design)  
Management and Training Services  
Division  
Commonwealth Secretariat

## **Further publications from the Management and Training Services Division**

### **Management of the Privatisation Process**

A guide to policy-making and implementation, 1994

### **Capacity Building for Management of Privatisation**

Report of the regional consultation workshop held at ZIPAM, Zimbabwe, March 1994

### **Economic Management and Planning**

Case studies of selected Commonwealth countries

Baku H Dholakia and Ravindra H Dholakia, 1994,  
price £7.95

### **Administrative and Managerial Reform in Government: a Commonwealth Portfolio of Good Practice**

Proceedings of a pan-Commonwealth Working Group Meeting held in Kuala Lumpur, April 1993

### **Choices in Decentralisation**

An overview and curriculum for central government officials responsible for the re-organisation of administrative at local level

Brian Smith, 1993

### **Government Information Technology Policies and Systems**

Success strategies in developed and developing countries

Chun Kwong Han and Geoff Walsham, 1993

### **Information Technology Policies and Applications in Commonwealth Developing Countries**

Mayuri Odedra and Shirin Madon, edited by G Harindranath and Jonathan Liebenau, 1993

price £8.00

### **The Changing Role of Government: Administrative Structures and Reforms**

Proceedings of a Commonwealth Roundtable held in Sydney, February 1992

### **Public Administration in Small Island States**

edited by Randall Baker, 1992

### **Successful Decentralisation**

Proceedings of a Roundtable held in Male, December 1992

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**Government in Transition**

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**From Problem to Solution: Commonwealth Strategies for Reform**

Managing the Public Service: Strategies for Improvement Series No. 1, 1995

This lead publication for the series illustrates the commonality of both the pressures for change and the responses, and draws conclusions for sustainable impact. price £9.00/US14.00