

## THE RULE OF LAW AND INDEPENDENCE OF THE JUDICIARY

### Memorandum by the Commonwealth Secretariat

The debate on the issue of the independence of the judiciary and how it could be guaranteed is a matter that has engaged the regular attention of Law Ministers in particular and the legal profession generally. There is general acknowledgment that in order to perform their duties effectively, the judiciary must be independent. However, perceptions differ as to the limits of judicial independence and what this implies in practical terms.

2. Recent developments touching upon the promotion of the fundamental values of the Commonwealth and in particular the implementation of the Harare principles have tended to focus attention on good governance which includes issues relating to the independence of the judiciary. These developments underline the centrality of the role played by an independent judiciary in society.

3. It is not surprising therefore that Law Ministers should have established a Working Group to study the subject and to report back to it at an appropriate time. A report of that Working Group is being presented to Law Ministers at the Meeting in Port of Spain. Simultaneously, a consortium of four Commonwealth non-governmental organisations have recently sponsored a joint colloquium which examined aspects of the subject of the independence of the judiciary and how it relates to the concept of Parliamentary supremacy.

4. The colloquium, sponsored jointly by the Commonwealth Lawyers Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates and Judges Association and the Commonwealth Parliamentary Association, was held in June 1998 at the Latimer House Conference Centre in Buckinghamshire, England and was attended by judges, Ministers and Members of Parliament, legal practitioners and academic lawyers from some 23 Commonwealth jurisdictions. The

colloquium produced a set of principles and guidelines which are referred to as the Latimer House Guidelines and which the colloquium sponsors recommend for adoption and implementation by the various bodies to which the recommendations are addressed. The Guidelines\* which are annexed to this memorandum are accordingly presented to Law Ministers for their information and action as they deem appropriate.

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