

**MESSAGE FROM THE PRESIDENT
HIS EXCELLENCY DR. NICHOLAS JOSEPH ORVILLE LIVERPOOL D.A.H.**

ON THE OCCASION OF THE
OPENING OF THE FIRST SESSION
OF THE SEVENTH PARLIAMENT ON 27 JULY 2005

**THE STRUCTURE AND ROLE OF PARLIAMENT AND
REFORM OF THE CONSTITUTION**

Introduction

Madam Speaker
Honourable Members of the House of Assembly

I am grateful for the opportunity afforded to me to address this Honourable House on the occasion of the First Session of this Seventh Parliament. My wife and I extend our affection and goodwill to all Honourable Members, and to all the people of the Commonwealth of Dominica. I wish all Honourable Members a successful and fruitful term of office, and pray that God will guide you in all your deliberations.

I extend warmest congratulations to you Madam Speaker on your re-election. Your onerous task has now begun and it will not always be easy, but with patience, firmness and impartiality, your burden should be considerably easier to bear. It is my hope that the Almighty will give you the strength and courage to continue to guide this Honourable House through its deliberations.

I offer congratulations to the Honourable Prime Minister on his re-appointment. I also extend every good wish for another successful term of office. I hope that as Prime Minister and Leader of your Government you will be responsive at all times to the onerous obligations that have again devolved upon you, and to your heavy responsibilities for the faithful discharge of your duties.

I congratulate also the other Ministers and Parliamentary Secretaries whom the Honourable Prime Minister has favoured with appointments. I trust that you are sufficiently acquainted with our Constitution and our laws, and that you will faithfully and honestly discharge your respective duties.

I congratulate the Honourable Leader of the Opposition, and all other elected and nominated Honourable Members. Those Members whom the Honourable Prime Minister has chosen to assist him to form the government to run the affairs of the country are aware that they should be guided by the Constitution, the laws of the country and the rules of this Honourable House; so that there should be no apprehension that they will exceed the powers with which they have been entrusted. I expect, therefore, that we will all have one aim in view, that is to co-operate with each

other and work towards the overall development of Dominica and its people, in order that our country may move to a higher level of prosperity.

My sincerest compliments go to the Chairman and members of the Electoral Commission, the Chief Elections Officer and her entire staff, the members of the security services, and indeed the entire Dominican population for their efforts in ensuring that the country went through a relatively peaceful election period.

Special mention must be made of the herculean task undertaken by the Christian Council of Churches to monitor adherence to the election code of conduct that was signed by the leaders of the political parties. The Council's enormous efforts in trying to ensure a peaceful, respectful and responsible campaign cannot be overemphasised.

Now that the elections are over there is a lot of work ahead, and the attention of Honourable Members should be turned to the important tasks with which you are faced. I entreat you to eschew the dragons of divisiveness, hate and envy; and to embrace the spirit of unity, love and peace; and above all to ensure that in all your deliberations and decisions the interests of our country are placed above personal and partisan considerations. In the words of our National Anthem "Strive for Honour.....do the right be firm be fair ".

The Structure And Role Of Parliament

Madam Speaker
Honourable Members

As this is a new Parliament I consider it timely to address you, on the structure of this institution as well as its functions and powers. Parliament consists of the President and the House of Assembly. The House consists of 21 elected members, and 9 Senators who may either be nominated or elected. Subject to the provisions of the Constitution, Parliament may make laws for the peace, order and good government of the country. The power of Parliament to make laws must be exercised by Bills passed by the House of Assembly and assented to by the President. So that it is by the combined action of the House of Assembly and the President that laws are made.

The Constitution provides that when a Bill is submitted to the President for assent in accordance with the provisions of the Constitution, he must signify his assent. Further, it is only after the President has assented to a Bill that has been submitted to him in accordance with the provisions of the Constitution that the Bill becomes law. It is very important, therefore, to bear in mind the operative words "in accordance with the provisions of the Constitution", because it is incumbent on all members of this Honourable House to ensure that Bills that are passed by this House for presentation to the President, are in accordance with the provisions of the Constitution. Failure to do so could lead to unnecessary delay in receiving the assent of the President and, may even, as has recently been the case in one of our sister islands, lead to avoidable litigation.

The Presidency

Madam Speaker
Honourable Members

This Honourable House might wish to engage its attention on the question of the length of the President's term of office, with a view to defining more clearly the provisions that should apply to that office. As you are aware the President holds office for a term of five years, which runs from the date on which he is declared to be elected, but he cannot assume office until the day after his predecessor vacates office.

But the date on which the President is declared to be elected and the date on which his predecessor vacates office need not necessarily coincide, and in fact they very often do not. The Constitution Review Commission recommended that the term of office of the President should be fixed from the date he or she takes the oath and assumes office.

Alternatively, the naming of a fixed date on which a new President assumes office could also be an effective solution.

This Honourable House might wish also to consider whether Dominica should opt for an Executive President who is chosen by the electorate, and who is both Head of State and Head of Government.

The House Of Assembly

Madam Speaker
Honourable Members

It has not escaped my attention that one of the burning issues that engaged the minds of the electorate during the campaign leading up to the last general elections, was the duration of the House of Assembly. The Constitution provides that Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting and thereafter stands dissolved. The Constitution also states that a general election of representatives must be held within three months after any dissolution of Parliament. The period of five years runs, therefore, not from the date of the previous general election but from the date on which the House of Assembly first met after the previous election. Further, a maximum period of three months may constitutionally be added to that period.

It is thus possible for any government to make maximum use of the time permitted by the Constitution without breach of any of its provisions. The President has no authority to interfere. Conventional wisdom seems to suggest that in order to avoid this situation the period between elections could be fixed, but this is a matter that must be dealt with by the House of Assembly itself, not by the President. Provisions could be made for general elections to be held on a fixed date after the previous general elections, subject to the right of the Prime Minister to advise the President to dissolve the House at an earlier date. In such a case the fixed date would change but

thereafter it would follow the periodic pattern. This was also one of the recommendations of the Constitution Review Commission.

Many other suggestions have been made for changes to the Constitution. It has been suggested, for example, that Members who cross the floor, should be subjected to the power of recall by their constituents. This is a power that constituents possess in many countries, and Honourable Members may wish to consider these proposals as well as the others that are mentioned later in this address.

Madam Speaker
Honourable Members

Since this Honourable House is independent from Government's control, it must play its proper constitutional role in the governance of this country's affairs. The Opposition should foster a rigorous but constructive engagement with the Government over policy issues, opposing where there are true differences in social and political philosophy, or programmes, but should always support those policies that are in the best interest of the nation. In other words, the right to oppose should be undertaken in a robust but thoughtful and constructive manner.

You have been elected to public service, and therefore you are expected to serve this country first and foremost. The Westminster system by design creates adversaries, but adversaries need not be enemies. We need to listen to and consider other points of view as we encourage co-operation. No one side has a monopoly on originality or commonsense, and disagreeing for the sake of disagreeing is divisive and uncooperative. We are all Dominicans and should not encourage such divisiveness in our small island. We must all at all times, aim for a peaceful and prosperous Dominica.

The tone of debates in this Honourable House should be kept to a high level. Honourable Members must show respect to the Speaker and to each other, both in the form of address and in the content of their contributions. The most stinging comment could sound much better, and be more palatable, if it is delivered with as much courtesy as the Member can command.

It is accepted that the Government of the day has a right to pass its legislative programme; but it must also be accepted that Government ought not to view any Bill that the Cabinet submits as being incapable of amendment by the House of Assembly. It is therefore incumbent on the Government to allow proper, and if necessary, extended debate on legislative and other measures. Bills should be circulated well in advance of meetings of this Honourable House, thus allowing time for Honourable Members, the general public and especially those whose interests may be directly affected by particular measures to ponder on them and to make suggestions. Except in situations of urgency, consideration might usefully be given to the practice of tabling Bills at one sitting, and taking them through their remaining stages at a subsequent sitting.

To that end Parliament should not be convened only when there are laws to be passed. There is no reason why this Honourable House should not engage periodically in

debates on matters of general importance, or on some specific aspect of Government policy. This could serve as an important educational tool to the public on important matters of State. General debates could take place, for example, on matters relating to the Caribbean Single Market and Economy, the Caribbean Court of Justice, the several recommendations of the report of the Constitution Review Commission; and other aspects of Government activity such as Education, Housing, Immigration, Health, Agriculture and Tourism, to name a few.

Review Of The Constitution

Madam Speaker
Honourable Members

In most countries of the Caribbean it is traditional for a speech by a Head of State to Parliament to contain a list of the proposals that the Government intends to pursue during the forthcoming session. This is not the case in Dominica. I would therefore like to draw to your attention today to many of the outstanding issues contained in the Report of the Constitutional Review Commission that are engaging the minds of the citizens of this country. The time may be appropriate to include at least some of these recommendations in the programme of work of this Seventh Parliament.

Our independence Constitution came into force on 3rd November, 1978. In 1981 a Commission was appointed to review the Constitution and after extensive work it reported in 1983. No action followed the submission of its report. In 1997 another Constitution Review Commission was appointed. Its report was published early in 1999. It is now six years on, and it is time to revisit those reports and to discuss at least some of the recommendations. I have chosen some of those on which I believe that national consensus would appear to be more easily attainable.

1. The Constituency Boundaries Commission.

This Commission has the sensitive task of dividing the island into constituencies. After it has reviewed the boundaries it submits a report to the President. The Prime Minister then lays before the House for its approval the draft of an Order, to give effect to the recommendations contained in the report. If the draft Order is approved by the House it is submitted to the President who will then make a final Order.

The Constitution empowers Parliament to provide for an appeal to the High Court against a recommendation made to the President by the Commission. The Constitution Review Commission recommended that without undue delay, steps should be taken to enact the law envisaged in the Constitution. However no such law has been made.

The Constituency Boundaries Commission is required to submit its report at intervals of not less than two nor more than five years in accordance with rules contained in Schedule 2 of the Constitution. The Constitution Review Commission felt that the interval between the submission of reports was too short. It therefore recommended that a report should be submitted only in the following circumstances:

- i whenever a census has been held,

- ii whenever the law dealing with the number of constituencies has been altered, and
- iii on the expiry of eight years after the conduct of the last review.

2. The dissolution of Parliament

The Constitution provides that the President must remove the Prime Minister from office

if a resolution of no confidence in the Government is passed by the House and the Prime Minister does not within three days either resign or advise the President to dissolve Parliament. It may well happen that in those circumstances there may be another Member who is able to command a majority of the elected members of the House, in which case there should be no need to dissolve Parliament.

The Constitution Review Commission recommended that in such a situation the President should not be compelled to act on the advice of the Prime Minister and dissolve the House, but should act in his own deliberate judgment; so that if there is another Member who is able to command the support of a majority of the elected members of the House, and is willing to accept the office of Prime Minister, the President should invite him to do so.

3. The Leader of the Opposition

The Constitution Review Commission recommended that the designation "Leader of the Opposition" should be changed to "Leader of the Minority Party", or "Leaders" if there was more than one minority party. The main reason advanced for this proposed change was that there would be benefits in stressing that the role of members of the House who do not belong to the ruling party is not merely that of opposing at all costs; but that on the contrary the fundamental role should be that of critical analysis of policies put forward, and the making of proposals for change and improvement.

4. The Law Officers of the Crown

The Constitution provides that the office of Attorney-General may be either a public office, or the office of a Minister. The Constitution Review Commission did not think that the role of public officer with its connotations of neutrality is compatible with that of being Government's principal legal adviser. Accordingly it recommended that the office of Attorney-General should always be filled by a lawyer who has been elected in a constituency, or appointed as a Senator. That person would be a member of Cabinet by virtue of being a Minister, and not merely by reason of being Attorney-General.

The office of the Director of Public Prosecutions is a public office. This is an independent office, the holder of which has the power to institute and undertake criminal proceedings, to take over and continue any such proceedings, and to discontinue any such proceedings before judgment is delivered.

Section 72 (6) of the Constitution provides that in the exercise of his powers the Director of Public Prosecutions is not subject to the direction or control of any other

person or authority. But the proviso to that sub-section states that the powers vested in the Director of Public Prosecutions must be exercised by him in accordance with such general or special directions as the Attorney-General may give him.

The Constitution Review Commission recommended that this proviso should be deleted as it defeats the whole purpose underlying the creation of the office, and emasculates the independence of that office.

5. The Service Commissions

Each Service Commission consists of seven members: a Chairman, Deputy Chairman and not more than three other members appointed by the President acting in accordance with the advice of the Prime Minister; and two members appointed by the President acting in accordance with the advice of the Prime Minister from among persons selected by the appropriate representative bodies.

The Constitution Review Commission recommended that the members of both Commissions should be appointed by the President acting in his own discretion, after consultations.

6. Matters relating to Finance

The Minister responsible for Finance must prepare, not later than forty-five days after the commencement of each financial year (1st July), the estimates of revenue and expenditure. The Constitution Review Commission felt that as this was also the beginning of the hurricane season, it seems reasonable that provision should be made for extending that deadline in case of civil disorder or natural disaster, and recommended that the Constitution should be amended to provide for one extension of no more than thirty days to be granted by a resolution of Parliament.

7. Fundamental Rights and Freedoms

One proposal made to the Constitution Review Commission was that there should be an amendment to the Constitution to secure legal representation for anyone charged with a criminal offence. The existing law provides that every person who is charged with a criminal offence must be permitted to defend himself before the court in person, or at his own expense, by a legal practitioner of his own choice. The Commission recommended that an Act of Parliament should be passed confirming the existence of the right of a person who has been arrested to consult with reasonable promptness after arrest an attorney-at-law of his or her own choice. In addition, in the case of a minor, there should be the right of access to a parent or guardian.

Complaint was made to the Commission that although the protection of rights in the Constitution were fairly comprehensive, some individuals could find themselves in the position where they could not enforce their rights because of the costs involved, if they were unsuccessful. It therefore recommended that where a person has raised an issue of substance in litigation which was filed to secure the enforcement of the protective

provisions of the Constitution, the Court should be given a discretion to award costs against the State, even where the challenge has been unsuccessful.

8. Amending the Constitution

There are two levels of entrenchment of the provisions in the Constitution. In other words, there are two ways that the Constitution is protected from change when compared to ordinary legislation. The lower level of entrenchment requires that a Bill to amend the relevant provision of the Constitution must be supported by the votes of not less than two-thirds of all the elected members of the House. In addition there must be an interval of not less than ninety days between the introduction of the Bill in the House and the beginning of proceedings on the second reading.

Certain sections of the Constitution, (including the provisions relating to the fundamental rights and freedoms,) are protected by a higher level of entrenchment. At that level, the Bill must be supported by the votes of not less than three-quarters of all the elected members of the House, and the same interval must elapse between presenting the Bill on the first reading and the commencement of debate on the second reading. In addition, before being presented to the President for signature, the Bill must have been approved in a referendum by a majority of the votes validly cast in that referendum.

The Constitution Review Commission recommended that the requirement of a referendum should be confined to the provisions of Chapter 1 of the Constitution which protects the fundamental rights and freedoms; but that a Bill for the amendment of any other provision of the Constitution need merely be supported by the votes of not less than three-quarters of all the elected members of the House, but that the requirement for the period of ninety days should be retained.

Conclusion

Madam Speaker
Honourable Members

It is my expectation that this Honourable House will find the time to engage in debate on some of the matters that have been mentioned in this address.

May the Almighty God guide and bless you, and may He also bless this Nation.