

Constitutional Role of the Attorney-General

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The constitutional Office of Attorney-General in Saint Lucia was established under section 72 of the Saint Lucia Constitution Order 1978 which came into effect on February 22nd 1979. By virtue of Statutory Instrument Number 41 of 1997, the Office of Attorney-General was declared to be a public office effective June 15th 1997. However, constitutionally speaking, it may be either a public office or the office of minister. The constitutional significance of this declaration is that the Attorney-General may now be appointed to hold or act in the office of Director of Public Prosecutions and is now accountable to parliament in either or both capacities.

Subsection 1 of section 72 defines the role of the Attorney-General to be that of principal legal adviser to the government, which, if given its constitutional meaning, refers to the executive branch of the government. As the principal legal adviser to the Government, the Attorney-General has a seat in Cabinet, and now, as a public officer, is accountable to parliament in the exercise of his function in respect of legal matters of public interest.

As part of Cabinet, the Attorney-General is obliged to give independent advice to the government on matters of law or matters which may have legal consequences. This is to ensure that the Executive discharges the business of government in a lawful manner in observance of the rule of law. In that regard, the government, including departments of government, is not only obliged to accept the legal advice of the Attorney-General, but to consult with the Attorney-General before committing the government to critical decisions or those with legal consequences.

Whilst it is understood that an Attorney-General may not know all the law, or be specialized in all areas, it is the Attorney-General, who should select external counsel who is, in his view, capable of submitting a reliable legal opinion to the government. By the same token, the Attorney-General is accountable for, and so superintends all legal advice given to government by all government lawyers and external counsel.

It is this advice and the actions of the government which places on the Attorney-General the duty to appear (through his/her law officers) on the government's behalf in all matters litigated before the courts, and in whose name the Crown is sued. This is given statutory force under section 13 of the Crown Proceedings Act, a statutory adjunct to section 72 of the Constitution. The Attorney-General is also at liberty to appear personally before the courts, often in matters of considerable importance, where he/she, in the English tradition, is called, "*Mr. Attorney*".

In constitutional theory, some commentators are of the view that what places the Attorney-General at the heart of the constitution is his/her role as the guardian of the public interest. This is because the law reserves to the Attorney-General, the right to intervene in "*the functioning of the justice system in the interests of supporting the system itself and maintaining public confidence in the administration of justice*". This power, when exercised, is not amenable to judicial review. For instance, when he/she exercises that power: to bring relator actions; to review an inquest under the Coroners Act; to bring contempt proceedings (in relation to the media); to bring actions to restrain vexatious litigants; or to assert the

privileges of parliament in the courts. It is this aspect which makes the declaration of his/her office as a public office all the more constitutionally significant, as the Attorney-General now becomes directly accountable to parliament for the acts or omissions in respect of the public interest.

As our Constitution was written and handed down to us by the constitutional lawyers of Great Britain, its interpretation and operation is presumed to be informed by British constitutional ideas. And so, until such time as we depart from them, whether by constitutional reform or judicial interpretation directed to achieve modern local realities, it is useful to import the British understanding of the role of the Attorney-General into ours to augment our own understanding.

Consequently, the constitutional role of the Attorney-General may be summed up in the words of the former Attorney-General of England, the Right Honourable Lord Goldsmith QC, who succinctly articulated his role as follows:

“to give legal advice and take decisions based on a scrupulous approach to the law and to evidence; where I am exercising my public interest functions, to act on the basis of an objective, dispassionate assessment of the public interest, without regard to party political considerations; and to act independently, fairly and with accountability”.