

**Law Association  
of Trinidad and Tobago**

established by the  
Legal Profession Act 1986



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18<sup>th</sup> May 2021

**Secretary to the Committee**

**The Joint Select Committee on the Constitution (Amendment) (Tobago Self-Government) Bill, 2020**

Parliamentary Complex  
Cabildo Chambers  
St. Vincent Street  
Port of Spain

Dear Madam,

**Re: Constitution (Amendment) (Tobago Self-Government) Bill, 2020; Call for  
Written Submissions**

Reference is made to the matter at caption, our letter dated 14<sup>th</sup> May 2021 and your email of even date wherein the Joint Select Committee agreed to extend the deadline by which the Law Association of Trinidad and Tobago 'LATT' could submit comments to the 18<sup>th</sup> of May 2021.

Please be advised that the LATT's Legislative Review Committee and members of the Council of the LATT have reviewed the said Bill and prepared comments thereon, which are herewith enclosed for your consideration.

Kindly also be advised that the Tobago Lawyers Association has also commented on the Bill and their comments are also enclosed for your consideration.

We thank you for the opportunity to provide feedback.

Yours sincerely,

Shankar Bidaisee

**Secretary**  
**Law Association of Trinidad and Tobago**  
/KRB

*Encls.*

*Comments of the Law Association of Trinidad and Tobago on the Constitution (Amendment) (Tobago Self-Government) Bill, 2020;*

*Comments of the Tobago Lawyers Association on the Constitution (Amendment) (Tobago Self-Government) Bill, 2020*



**Comments of the Law Association on the  
Draft Constitution (Amendment)  
(Tobago Self-Government) Bill, 2020  
and the  
Draft Tobago Island Administration Bill, 2021**

1. These are the Law Association's comments on the Draft Constitution (Amendment) (Tobago Self-Government) Bill, 2020 ("the Constitution Bill") and the Draft Tobago Island Administration Bill, 2021 ("the Administration Bill").
2. The Law Association does not consider it to be within its statutory remit to comment on the question whether there should be self-government for Tobago. This is primarily a political question in which our members in their individual capacities may be interested. The Association, however, is careful to be faithful to its statutory mandate.
3. The Association will accordingly address those aspects of the Bill which we determine touch upon principles and values which underpin the Constitution of the Republic of Trinidad and Tobago and the rule of law.

**The selection of the Premier**

4. The members of the proposed Tobago House of Assembly consist of fifteen Assemblymen elected at an election held in accordance with the Representation of the People Act ("the ROPA"), five Councillors appointed by the President on the advice of the Premier, three Councillors appointed on the advice of the Minority Leader, two Councillors appointed by the President in his or her discretion, and a Presiding Officer who may or may not be an Assemblyman – section 141B of the Constitution Bill. The Presiding Officer is elected by the House of Assembly – section 141E(1).
5. The Tobago Island Government is to be under the general direction and control of the Tobago Executive Council ("the TEC") – section 75A. The TEC consists of a Premier, a Deputy Premier, and such number of other Secretaries from among the Members of the House of Assembly appointed by the President acting in accordance with the advice of the Premier. One of the Secretaries shall be a Secretary for Legal Affairs who shall be

an attorney-at-law – section 141Q (1). The TEC continues to discharge its functions during any period that the Tobago Legislature is dissolved – section 141Q(8).

6. Crucial to self-government as envisaged by the Bills, therefore, is the selection and appointment of the Premier.
7. There is no recommended change to the declaration in section 1 of the Constitution that Trinidad and Tobago is to be a sovereign democratic state. One of the core principles of a democracy is that the people are entitled to choose who should represent them including who should lead the government.
8. Given the pivotal position which the Prime Minister of Trinidad and Tobago is assigned under the Constitution, the principle that the Prime Minister is to be that person who, as determined by the independent President, is the Leader in the House of Representatives of the party which commands the support of the majority of the members of the House, is consistent with the solemn declaration of Trinidad and Tobago as a sovereign democratic state - section 76(1)(a). In a party system, the leader of the party which has the majority of members in the House will be the person who the electorate has chosen to lead the government. Where the majority party does not have an undisputed leader or there is no party that commands the support of such majority, the President appoints the person who in his or her judgment is most likely to command the support of a majority – section 76(1)(b). This too is consistent with the principles of democracy.
9. Whereas the Tobago Legislature and the TEC as envisaged by the Bills mirror in all material respects the House of Representatives and the Cabinet of Trinidad and Tobago, it is with respect to the selection of the Premier that there is a significant departure. By the proposed section 141F, the Premier (and the Deputy Premier) are to be elected by the Assemblymen from among their number and not appointed by the President using the formula applicable to the appointment of the Prime Minister.
10. This means that the Constitution assigns a role in the election of the Premier (and the Deputy Premier) to all Assemblymen, including those who do not support the party

which has an apparent majority in the Assembly. This may have significant consequences in a close election. One disgruntled member of the winning party may join with the members of the minority party to thwart the will of the electorate as expressed through majority support for a particular party, by voting with the minority against the candidate for Premier put forward by the majority party, or even voting with the minority party to elect the leader of the minority party as Premier. Or, a member or two of the majority party may simply not turn up on the day fixed for the election of the Premier, thereby impacting the spread of votes for the Premier. Section 10 of the Administration Bill itself envisages that an Assemblyman may simply not turn up to take the oath and participate in the election of the Premier. The exponential complications which may arise where no party has a majority of seats in the Assembly can easily be imagined.

11. Whereas it might be possible to fashion rules in the Standing Orders for the elections of Premier and Deputy Premier as envisaged in section 8 of the Administration Tobago Bill, the core issue is that the system of selection of the Premier envisaged by the Constitution Bill assigns a role to the losing party in the election of the Premier, contrary to the presumed will of the electorate.
12. The Law Association recommends that the system for the appointment of Prime Minister be applied mutatis mutandis to the appointment of Premier. If this is accepted, a different system for the appointment of Deputy Premier will have to be devised.
13. The Association notes that this recommendation is consistent with modalities for the appointment of Minority Leader who is that person who in the President's judgment "is best able to command the support of the greatest number of Assemblymen who do not support the Premier" – section 141H(2). The Assemblymen who support the majority party, in other words, play no part in the selection of the Minority Leader, nor should they.

### **Election Disputes**

14. Under the Constitution, any question whether a person is validly elected as a member of the House of Representatives is to be determined by the High Court – section 52. The ROPA governs the exercise of the jurisdiction by the High Court.
15. Under the ROPA, disputes as to the membership of the existing Tobago House of Assembly are also determined by the High Court – section 106 – and disputes concerning membership of the new Tobago Legislature will continue to be determined by the High Court under the ROPA.
16. However, given the elevated status which is now to be assigned to the Tobago Legislature, the Association recommends that the High Court’s jurisdiction to determine election disputes in relation to the Tobago House of Assembly be given the same constitutional protection afforded to the House of Representatives. We therefore recommend that section 52 of the Constitution be amended to give the High Court jurisdiction over disputes concerning elections to the Tobago House of Assembly.

#### **Finance**

17. There is no apparent intention in the Bill to make Tobago financially independent of Trinidad and Tobago. But given the move to self-government within the framework of twin-island nationhood, provision is made for the determination of the portion of the nation’s resources which is to be allocated for disposition by the TEC.
18. In this regard, it seems obvious that the underlying constitutional principles of equality and equity must ultimately guide those on whom the responsibility is imposed to decide what that portion shall be. It is not clear to the Association however, that these principles are to be followed, for the following reasons.
  - i) Parliament is to be required by section 22 of the Administration Bill to appropriate for the use of the Tobago House of Assembly for any financial year, no less than 6.8% of the total sum appropriated by Parliament in that year. There is no indication in Bill how that percentage is arrived at and accordingly

no basis for determining whether it accords with the principles of equality and equity;

- ii) The Fiscal Review Commission, in addition to determining what sums to recommend to Parliament should be appropriated to Tobago in each financial year, must also ensure that “all revenues, fees and duties collected in Trinidad that are attributable to Tobago” shall be held for the account of Tobago – section 23(4)(b) of the Administration Bill. This principle by itself appears to accord with the principles of equity. Revenues, fees and duties attributable to Tobago should be at the disposal of Tobago just as revenue, fees and duties attributable to Trinidad should be at the disposal of Trinidad. But given the likelihood that this formula could potentially result in an imbalance in the relative ‘wealth’ of the two islands (revenues from energy resources attributable to Trinidad may far exceed revenue from Tobago tourism), there plainly must be some other formula for determining what additional sums (if any) should be allocated to Tobago;
- iii) It is not clear whether the principle encapsulated in section 23(4)(b) means that the sums to be held for the account of Tobago are in addition to the sums of no less than 6.8% which are to be appropriated by Parliament for Tobago, or whether the sums to be held for the account of Tobago are to be taken in account by the Fiscal Review Commission in determining what sum to recommend to Parliament for appropriation for Tobago. If the former, it brings into even sharper relief the need for justification for the minimum appropriation of 6.8%;
- iv) In addition to the sums appropriated by Parliament, the Tobago Island Government is permitted separately to collect, borrow or be granted other monies which will form part of the Tobago Fund – section 24. It is to be presumed that the sums which the Tobago Island Government is permitted to collect will be taken into account in determining the appropriation to be made by Parliament, but this has to be made clear;

- v) The TEC is empowered to borrow locally and internationally such sums as it considers necessary for the discharge of its functions – section 28. However, it is not clear whether the entire state of Trinidad and Tobago, and not only the Tobago Island Government, will be liable for re-payment, as is most likely. If this is so, requiring the state of Trinidad and Tobago to repay debts for monies used solely for Tobago’s purposes would be inequitable. It should be made clear that any repayment of those debts must be made from appropriations made by Parliament in the ordinary course or from monies lawfully collected or otherwise raised by the Tobago Island Government.

Respectfully submitted,  
Law Association of Trinidad and Tobago  
18<sup>th</sup> May 2021



17<sup>th</sup> May, 2021

Ms. Sophia Chote S.C.  
President  
Law Association of Trinidad and Tobago  
95-97, Frederick Street  
Port-of-Spain  
Trinidad

Dear Madam,

**RE: FEEDBACK FROM THE TOBAGO LAWYERS ASSOCIATION ON  
THE CONSTITUTION (AMENDMENT) (TOBAGO SELF-GOVERNMENT)  
BILL 2020 AND THE TOBAGO ISLAND ADMINISTRATION BILL 2021 TO BE  
SUBMITTED TO THE JOINT SELECT COMMITTEE**

We refer to the matter at caption and the invitation to submit our feedback on this critical piece of legislation which seeks to define the relationship between Trinidad and Tobago.

The Tobago Lawyers Association (TLA) hosted a virtual meeting on even date and there was consensus on several critical points by the members in attendance. As LATT may understand this is not merely a legal topic for our members but also one that affects the identity and sense of belonging on a national scale. These issues cannot and must not be separated for Tobagonians.

To this end, please find hereunder the comments/concerns of the TLA in relation to critical clauses which are proposed within the Bills referenced at caption.

**Draft Constitution (Amendment) (Tobago Self Government) Bill**

**1. Equality of Status**

Clause 5 of this Bill proposes to amend the Constitution and insert after section 1 a new Section 1A which states:

President: Dawn Palackdharry Singh  
Vice President: Trudy Caraballo  
Treasurer: Sherle Frank

**Executive**

Secretary: Marvelyn Henry  
Assistant Secretary/Treasurer: Sherese Alfred  
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“ Equality of status 1A. There shall be equality of status between the island of Trinidad and the island of Tobago within the sovereign democratic state of Trinidad and Tobago”

While this sounds like exactly what Tobagonians have been asking for on further examination it really rings hollow. One member pointed out that this is a watered down version of what has appeared in previous incarnations of legislation of this nature. The Constitution (Amendment) (Tobago Self-Government) Bill, 2018 also contained a Clause 1A however, that Clause expressly stated, in addition to what is cited above in relation to the equality of status, that the island of Tobago shall no longer carry the designation of a ward.

One member pointed out that it is important that any Bill purporting to grant autonomy to Tobago must expressly indicate that Tobago is no longer a Ward of Trinidad as the Order in Council Constituting Tobago a Ward of the Colony of Tobago, which came into operation on the 1<sup>st</sup> January, 1899 is still valid law and has never been repealed. This Order in Council states:

2. On and after the date of the coming into force of this Order the Island of Tobago shall be a Ward of the Colony of Trinidad and Tobago; and the revenue, expenditure, and debt of Tobago shall be merged in and form part of the revenue, expenditure, and debt of the united Colony, and the debt due from Tobago to Trinidad shall be cancelled.

A copy of the Order in Council is attached hereto.

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Will this Order be expressly repealed? Whilst members noted the comments of the members of the Joint Select Committee on this issue, members believed that it is important and do not see the harm in expressly providing this change in the island's designation in 'black and white'. This was also an issue that members felt was tied to the Tobago psyche, the relegation to a lesser status that has manifested in other ways – a lesser citizen.

## 2. Definition Sections

THE CONSTITUTION (AMENDMENT) (TOBAGO SELF-GOVERNMENT) BILL, 2016  
began with the following definition of the islands.

“(2) (a) The Republic of Trinidad and Tobago shall comprise the Island of Trinidad, the Island of Tobago and other islands of the archipelago that are enclosed landward of the archipelagic baselines as well as the archipelagic waters, the 12-mile territorial sea and including the seabed and subsoil situated beneath the territorial sea of Trinidad and Tobago and their suprajacent air-spaces. The Republic of Trinidad and Tobago shall exercise, inter alia, sovereign rights over the living and non-living resources appurtenant to its Exclusive Economic Zone and its continental shelf situated beyond the territorial sea and extending to the bilateral boundaries established with Venezuela, Barbados, Grenada and neighbouring states together with such other areas as may be declared by Parliament to form part of the Republic of Trinidad and Tobago.

(b) Trinidad comprises the island of Trinidad and other islands of the archipelago that are enclosed landward of the archipelagic baselines drawn around the island

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of Trinidad as well as the archipelagic waters. the 12-mile territorial sea measured seawards from the said base-lines as well as such part of the inland waters equidistant between the island of Trinidad and the island of Tobago and to the extent of the territorial sea of Trinidad and Tobago and the respective suprajacent air-space above these aforementioned maritime areas and over the land-space.

(c) Tobago comprises the island of Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and other off-shore islands. the archipelagic waters lying landward of the established straight base-lines, the 12- mile territorial sea measured seawards from the said base-lines as well as the inland waters equidistant between the island of Trinidad and the island of Tobago and to the extent or the territorial sea of Trinidad and Tobago and the suprajacent air-space above these aforementioned maritime areas and over the land-space.

(d) There shall be equality of status between the Island of Trinidad and the Island of Tobago within the sovereign democratic State of Trinidad and Tobago and the Island of Tobago shall no longer carry the designation of a ward.'

Considering this was a version proffered in 2017, the current attempt at a definition is disappointing in the least and ties into the important point of Maritime Limits. Members expressed that it was important to recognise that Tobago has brought with it important geographical area with potential revenue.

### 3. The Fourth and Fifth Schedules

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Mrs. Moore-Miggins pointed out that the responsibilities which currently fall under the purview of the Tobago House of Assembly as per the Tobago House of Assembly Act No 40 of 1996 have been removed. These areas include: State Lands, Marine Parks, Environment, Forestry, Transportation (airports and seaports). Members expressed great concern as to the fact that a Bill which purports to grant greater autonomy actually granted less power to the Tobago House of Assembly if one were to conduct a “like for like” comparison of the schedules. Having regard to the fact that the North-East of Tobago has been declared a UNESCO Biosphere Reserve and the importance of eco-tourism to the island, it is imperative that Tobago Island Administration retain control over the areas the Environment and Forestry.

Another critical issue raised on this point relates to the ambiguity which exists in the schedules themselves. For example, the Fifth Schedule provides that the Tobago Island Administration Government shall have exclusive administrative powers for tourism, however the Fourth Schedule grants exclusive law making powers for amenities to tourism. What does ‘Amenities for tourism’ mean? If the Tobago Island Government attempts to regulate the use of Styrofoam on the island of Tobago in an effort to ensure that Tobago becomes more appealing to eco-tourists, will this be captured under the purview of ‘amenities for tourists’?

#### 4. Mediation Committee

Concerns as to the composition of this Committee were raised as the Bill purports to have persons who are likely to be embroiled in potential disputes sit on the Committee as Mediators.

#### 5. Public Service Commission

President: Dawn Palackdharry Singh  
Vice President: Trudy Caraballo  
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Clause 16 of the Bill provides that Section 121 of the Constitution is to be amended to mandate that the Public Service Commission consult with the Premier before making appointments to the office of Chief Administrator, Administrator, head of a department in a Division and to a chief professional advisor in a Division. This is alarming as the Bill grants unfettered powers to the Premier over key office holders who should be insulated from political interference. It should also be noted that there is a disconnect between the mentioning of a Chief Administrator in Clause 16 and the provisions found at 141 Q (6) which fails to mention the post of Chief Administrator.

Further what is the reason for including a provision for 2 or more Administrators in one Division? How would deadlocks be resolved between them, who has final approval? (Clause 141 Q(7)).

## 6. President to be informed

Section 81 A - What if there is a failure to do so?

## 7. The New Structure

How can an increase to at least 25 members of the House of Assembly be justified? Why was there an increase to 15 (which is divisible by 3) when there could have been an increase to 13 which is a prime number? Why the need for so many Councillors?

Further having regard to the recent amendments made to the Tobago House of Assembly Act to deal with the current impasse, it is noted with concern that provisions for dealing with future deadlocks is not contained within the Bill. Member noted the suggestion of the Joint Select Committee that this issue could be addressed pursuant to the standing orders but it is our considered view that clear legislative provisions should be made to deal with the possibility of a deadlock.

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## 8. The Presiding Officer

Perhaps this is an office that needs more attention and resources, and in particular to having access to legal resources of an independent nature. There should also be basic minimum qualifications for the holder of this post.

## 9. The Two Bills

One member was very concerned that it was possible for the Constitution Amendment Bill to fail to pass as it needed a special majority but that the Tobago Island Administration Bill could pass with a simple majority repealing the current THA Act and leaving massive gaps in the legal framework. Another member thought that the Government would ensure the timing of the Bills to prevent this.

We do wish that we had more time to look at other elements of the proposed legislation and in particular the ability to 'make laws for the peace, order and good government of Tobago', a phrase that seems to be borrowed from the Constitution of St Kitts and Nevis. We would have liked to compare and examine some of the constitutional questions that have arisen from similar drafting.

The unanimous view of our members at the meeting today was that these Bills should be rejected forthwith as failing to effect the meaningful change that Tobagonians have been yearning and deserving to see.

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We thank you for the opportunity to express our views.

Yours faithfully,

Dawn Palackdharry Singh  
President

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**ORDER IN COUNCIL CONSTITUTING TOBAGO A WARD  
OF THE COLONY OF TRINIDAD AND TOBAGO**

*made under section 1 of the Trinidad and Tobago Act 1887*

*Made .. .. . 20th October 1898*

*Came into operation .. . 1st January 1899*

WHEREAS by an Order of Her Majesty in Council, bearing date the Seventeenth day of November 1888, (hereinafter called the principal Order), the Colony of Trinidad and its Dependencies and the Colony of Tobago, were, from and after the First day of January 1889 (in the said Order referred to as "the appointed day"), united into one Colony:

And whereas by Our Order in Our Privy Council, bearing date the 6th day of April 1889, We did amend the 13th Clause in the principal Order:

And whereas it is expedient to revoke the principal Order, except Clauses 1, 2, and 37 thereof, and to revoke the Order in Council of the Sixth day of April 1889:

Now, therefore, in pursuance of the powers in Us vested by the Trinidad and Tobago Act 1887, it is hereby ordered by Her Majesty, by and with the advice of Her Privy Council, as follows:

1. The whole of the principal Order, except Clauses 1, 2, and 37, and the Order in Council of the Sixth day of April 1889, are hereby revoked, but such revocation shall not affect the validity, invalidity, or effect of anything done or suffered before the date of the coming into force of this Order.

2. On and after the date of the coming into force of this Order the Island of Tobago shall be a Ward of the Colony of Trinidad and Tobago; and the revenue, expenditure, and debt of Tobago shall be merged in and form part of the revenue, expenditure, and debt of the united Colony, and the debt due from Tobago to Trinidad shall be cancelled.

3. Save as in and by this Order expressly otherwise directed, the Laws of Trinidad in force on the date of the coming into force of this Order shall be in force in Tobago, and the Laws theretofore in force in Tobago, so far as they differ from the Law in force in Trinidad, shall thereupon cease to be in force. Provided that this clause shall not affect the validity, invalidity, or effect of anything done or suffered before the date of the coming into force of this Order, or any right, title, obligation, or liability acquired or incurred before that date.

4. All future Ordinances enacted by the Legislature of the Colony shall extend to Tobago. Provided that the Legislature of the Colony may at any time by Ordinance provide for the special regulation of all or any of the matters and things dealt with in the several Acts, Ordinances and Regulations of Tobago enumerated in the Schedule hereto, and of any other and further matters and things in respect of which it may be deemed necessary to enact special and local Ordinances or Regulations applicable to Tobago as distinguished from the rest of the Colony.

5. The Acts, Ordinances and Regulations of Tobago enumerated in the Schedule hereto shall, until repealed or amended by the Legislature of the Colony, continue locally in force in Tobago, but such Acts, Ordinances and Regulations shall in every case be construed as amended by and read together with this Order; and in particular wherever in such Acts, Ordinances, and Regulations any duty is imposed or power conferred upon any specified officer or person, such duty or power shall be performed or exercised by such person or persons as the Governor may from time to time by Proclamation appoint for the purpose.

6. Until the Legislature of the Colony shall otherwise provide, the following provisions shall take effect in Tobago, that is to say:

- (a) Any land tax payable in respect of lands in Tobago, shall be levied at such rate as to the Governor in Council shall seem fit,

notwithstanding that any similar tax is levied throughout the rest of the Colony at a higher rate. [Fixed at 9d. per acre for 1903—5.]

(b) There shall not be charged upon produce which shall have been raised or manufactured in Tobago, and shall be shipped from Tobago for ports or places beyond the limits of the Colony, any taxes, rates, or charges for raising funds in aid of immigration.

7. Such of the powers and duties heretofore exercised and performed by the Commissioner of the Supreme Court in Tobago, and by the Deputy Marshal of Tobago, as it shall seem expedient to continue, shall be exercised and performed by such person or persons as by rules of the Supreme Court, to be framed under the Judicature Ordinance (No. 34) shall be prescribed and determined.

8. This Order shall come into force from and after a date to be proclaimed in Our Colony of Trinidad and Tobago by Our Governor and Commander-in-Chief of Our said Colony. [Came into force on 1st January 1899].

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**SCHEDULE**

1. An Act relating to Lands in this Island commonly called the Three Chains, 28 Vict. cap. 1, as amended by regulation No. 5 of 1894.
  2. The Medical Aid Ordinance 1882, No. 6 of 1882, as amended by the District Medical Officers Amendment Regulation 1895, No. 8—1895.
  3. The Turtle Preservation Ordinance 1885, No. 2—1885.
  4. The Wild Birds Protection Ordinance 1885, No. 8—1885.
  5. The Anglican Church Incorporated Trustees Ordinance 1887, No. 7 of 1887.
  6. The Destitute Persons Relief Regulation 1893, No. 10 of 1893.
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