



**Address to Parliament by**  
**His Excellency Dr. Nicholas J. O. Liverpool, D.A.H., O.C.C.**  
**President of the Commonwealth of Dominica**  
**On the Occasion of the Opening of the**  
**First Meeting of the Fifth Session of the Seventh Parliament**  
**on Friday, 31st July, 2009**

**The Sovereignty of Our Parliament**

Madam Speaker,

Honourable Members of the House of Assembly,

### ***Introduction***

I wish to express my sincere appreciation for the kind invitation which was extended to my wife to attend this sitting; and to me to address this Honourable House on the occasion of the opening of Parliament at the First Meeting of the Fifth Session of the Seventh Parliament under the 1978 Constitution of the Commonwealth of Dominica. Please accept an apology from my wife for her unavoidable absence.

My message today responds to numerous questions continuously posed by members of the general public concerning certain aspects of the workings of their government, the powers of our Parliament, and more specifically, the roles of the President, the Prime Minister and the Cabinet of Ministers.

These have been the subject of previous addresses and there is no need to repeat them today; but I wish to remind Honourable Members that although the Constitution states that the executive authority of Dominica is vested in the President, the section goes on to state that, subject to the provisions of the Constitution, that executive authority may be exercised by the President either directly or through officers subordinate to him. The words "subject to the provisions of the constitution" are to be taken seriously, since they lead us to examine the various instances in which the President can act on his own initiative, or on the advice of, or after consultation with other persons or authorities.

Some examples of the instances in which the President can act in his own deliberate judgment, are in the appointment of a Prime Minister, the Leader of the Opposition, the Chief Elections Officer, the Chairman of the Electoral Commission, and the Chairman of the Public Service Board of Appeal.

Madam Speaker,

Honourable Members of the House of Assembly,

Independence has ushered us into a new era, and has introduced changes in the manner in which this country is to be governed. The President does not possess the powers held by Administrators and Governors of yesteryear, under the colonial or pre-independence period. The President must abide by the terms of our Independence Constitution.

It is not infrequently asked what the President is doing about some concern or other. The person who is making the enquiry usually assumes that the President has the power to make a direct intervention. Fortunately, or unfortunately, the President does not have the powers contended for. When I addressed you in June 2004, I attempted to explain this to this Honourable House.

Recent discussions on the action taken by the Governor of another Caribbean territory consequent on allegations of corruption have even led some of our citizens to believe that the President can, of his own accord take similar action in this country. I am very familiar with the law relating to this matter, and I am also convinced that no such action can be taken under the provisions of our Constitution unless the President has been advised by Cabinet to do so.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***The Commissions of Inquiry Act***

In the past Administrators and subsequently Governors, have wielded these wide powers in Dominica, as they still do in non-independent countries, but first Statehood and later Independence brought us constitutional change and placed these powers firmly in the hands of the Cabinet of Ministers.

One suggestion has been that the President should utilize the power conferred on him by the Commissions of Inquiry Act. At first glance the relevant provision of that Act looks deceptively simple. It reads -

*"The President may whenever he considers it advisable issue a commission appointing one or more commissioners, and authorizing such commissioners, or any quorum of them therein mentioned, to inquire into the conduct or management of any department of the public service in the State, or of any public officer of the State, or of any parish or district thereof, or into any matter in which an inquiry would, in the opinion of the President, be for the public welfare."*

This is clearly a discretionary power. The impression is created that the President can exercise this power alone and uncontrolled.

This Act was passed in 1888 and reference therein was to the Administrator. In those days an Administrator in Dominica wielded very wide powers. He could even refuse to give his assent to any law passed by the Legislative Council.

When a new constitution was introduced for Dominica in 1967, the Governor was given power to make amendments to any existing law to bring it into conformity with the new constitution. Parliament subsequently provided that references to the Administrator were to be construed as references to the Governor.

The power previously exercised by the Administrator to appoint commissions of inquiry passed to the Governor, and in accordance with the change of status of this country, the new Constitution required the Governor to act "in accordance with the advice of the Cabinet or of a Minister acting under the general direction of the Cabinet; except where he was empowered by the Constitution to act in his own deliberate judgment. The instances in which the Governor could act "in his own deliberate judgment" were laid down in the Constitution itself.

The 1967 Constitution was revoked in 1978 when Dominica achieved independence with a President as Head of State. Under this 1978 Constitution provisions could be made to substitute the word "President" for that of "Governor" in any existing law; and any powers which were vested in the Governor were thenceforth to be vested in the President. Parliament subsequently exercised the power to make those changes.

The power to appoint a Commission of Inquiry is one of those powers that have been removed from the discretion of the President. That power, though vested in the President, is not to be exercised at his discretion; but rather it is now to be exercised by him acting in accordance with the advice of the Cabinet, or of a Minister acting under the general authority of the Cabinet.

Consequently, it should now be appreciated, that whereas in the past Administrators have wielded those wide powers in Dominica, as they still do in non-independent countries, first Statehood and later independence brought us constitutional change that firmly placed those powers in the hands of the Cabinet.

However, Parliament does have the power, (in some instances after a decision of the electorate in a referendum), to amend the constitution to give effect to any desired changes. Indeed, Parliament may go even further, by abolishing the post of President and combining the offices of President and Prime Minister in one person. I alluded to this in July 2008 when I went on to explain what is taking place in this direction in other parts of the Commonwealth.

Of course Parliament may not wish to abolish the Office of President altogether, but could alternatively consider increasing his powers. However, that does not seem to be the trend that has recently been followed in Dominica as the following example illustrates. The Parliaments of Jamaica, St. Lucia, Antigua and Barbuda, Trinidad and Tobago and Dominica have all passed what is popularly referred to as integrity legislation. In Antigua and Barbuda the Governor-General appoints the members in his own discretion. In St. Lucia the Governor-General appoints the members on the advice of the Prime Minister, who is required to consult with the Leader of the Opposition, before tendering any advice to the Governor-General. The Parliaments of Jamaica and Trinidad and Tobago entrusted to their Heads of State the power to appoint the members of the Commission after consulting with the Prime Minister and the Leader of the Opposition.

Our Parliament however placed the power to choose the members in the safe hands of the Prime Minister, the Leader of the Opposition and the bodies which represent the legal and accountancy professions, only leaving the President with the mundane task of issuing the formal letters of appointment.

Madam Speaker,

Honourable Members of the House of Assembly,

I am convinced that the answers to most of the questions which agitate the minds of members of the public, namely, the constitutional powers of the President and the meaning of executive authority, may be found in past addresses to this House, which are available on the President's website, where one will also find the addresses of all former Presidents.

Madam Speaker,

Honourable Members of the House of Assembly,

## ***Powers of Parliament***

My message continues with a brief account of the evolution of the powers of Parliament in the United Kingdom, the battle between the Monarch and Parliament for supremacy, and between the two Houses of Parliament for the control of financial matters, and the jostling for power between Parliament and the courts. I will then go on to illustrate that although our Parliament is a direct descendant of the United Kingdom Parliament it did not inherit many of its powers. I will also explain the procedure to be followed in declaring the seat of a Member of Parliament vacant in Dominica, and finally, I will mention briefly the steps which are followed when Acts of Parliament are passed and brought into operation.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***The Situation in the United Kingdom***

In order to grasp fully and intelligently how wide the powers of our Parliament are, it becomes necessary to trace its origins from the Parliament of the United Kingdom.

In the early days when the monarchs still ruled England Parliament was undivided and was considered to be merely an advisory body to the Crown. Members vigorously asserted their claim against the Crown and eventually obtained the right that they should be free from arrest while performing their functions or when travelling to and from London to perform their duties.

Sometime later they won the right, after several of their members had been convicted of sedition, to be immune from punishment for words spoken or resolutions passed in Parliament.

After Parliament was divided into two Houses, the House of Commons which was then the weaker House had to assert its rights, against both the Crown and the House of Lords, as it continued to demand the right to control financial legislation.

Originally the King ruled directly and without a Parliament by virtue of the theory of the Divine Right of Kings. It was said that "There was a King before Parliament" When Parliament came into existence, the King governed by virtue of the Royal Prerogative with the advice of Parliament.

Gradually there evolved the theory that Parliament consisted of the King, the House of Lords and the House of Commons, and that Parliament was sovereign so that each organ of Parliament had the right to be treated equally during the law making process.

After what is popularly referred to as the restoration, and the Monarchy, in the person of King Charles II was restored to the throne, it was maintained that the King had no law-making power independent of Parliament. Since Parliament was now supreme, its legislative pronouncements could not be questioned in any court.

But the right which was most bitterly fought was the right to have exclusive jurisdiction over matters which arose within the precincts of the Houses of Parliament. In that case the battle lay not between the House of Commons and the Crown, or the Commons and the Lords, but between the Commons and the courts. The courts soon conceded that the House had exclusive jurisdiction over matters which arose within the four walls of the House if they had a direct connection with its proceedings.

Where crimes were committed these matters were to be left to the criminal courts, although there could be matters in which both the courts and the House of Commons could have a concurrent jurisdiction. When in doubt, however the courts have always tended to tread warily on any matter which the House considers to fall within its exclusive preserve.

The House has always asserted its privileges by taking action against members and others whom it adjudges to have broken them. Complaints of breach of privilege are dealt with in the manner stipulated by the Rules of the House, and are dealt with accordingly.

Originally the House imposed fines and even imprisonment for contempt, but these powers are now obsolete as they have not been exercised for over three hundred years in the case of fines, and no person has been imprisoned for contempt of the House for over a hundred years. However, it is important to note that the courts never conceded these coercive powers to the Parliaments of the Colonies.

Madam Speaker,

Honourable Members of the House of Assembly,

## ***The Doctrine of the Reception of Law***

In theory the privileges of Parliament in the United Kingdom are part of our law having been brought to our shores as part of the Common Law in so far as they are not in conflict with the Constitution. We received them with the common law of England by a process referred to as the doctrine of the reception of law. Put simply, according to the doctrine of the reception of law as laid down by the courts in the United Kingdom, if an uninhabited country is discovered by English subjects, all the laws which are in force in England will be immediately applied to the new State; that being the birthright of every Englishman, so long as those laws are applicable to the local conditions.

Where, however the territory has been acquired by conquest or by treaty, the local laws remain until they are replaced by the conqueror with its own laws. In 1763, under the terms of the Treaty of Paris Dominica was finally ceded to the British Crown, and its first Legislative Assembly was constituted in 1770. That Constitution gave the Governor, with the advice of a local Council, power to make laws for the good government of Dominica.

Madam Speaker,

Honourable Members of the House of Assembly,

## ***Other Parts of the Commonwealth***

The right to punish for contempt has also been claimed in the past by jurisdictions which were formerly governed by the British Crown on the ground that they are as much a Legislative Assembly as the House of Commons in England. And in what transpired to have been an occasion when Homer nodded, the Judicial Committee of the Privy Council conceded that right to the Legislative Assembly of Jamaica in 1836. But better judgment soon prevailed and that case was quickly overruled six years later; and since 1858 it has been consistently held that Legislative Assemblies in the colonies do not have those coercive powers.

The reasoning was, and continues to be, that the privilege of the House of Commons in England to commit for contempt was peculiar to, and inherent in the two Houses of the legislature of the United Kingdom; and that it could not be inferred that the possession of that power which existed

by virtue of ancient usage and prescription was also available to Legislative Assemblies of comparatively recent creation in the dependencies of the Crown.

This reasoning has been applied in subsequent cases in countries such as the Isle of Man in 1864; and more recently in Guyana in 1963, the Solomon Islands in 1990, Fiji in 1993, and Anguilla in 2000, to name a few.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***The Position on Dominica***

One of the old classic cases arose right here in Dominica, where the events occurred in this chamber and on this very site in 1863.

In that case, a member of the House of Assembly had referred to the Speaker as a robber and a disgrace to the House, and refused to apologise. The House resolved that he was in contempt and on the authority of a warrant issued by the Speaker he was arrested by the Sergeant-at-Arms, and marched off through the town to the jail to be held there at the pleasure of the House. The aggrieved member sued for trespass and was awarded the princely sum of seven hundred and seventy pounds in damages. It may be of passing historical interest to be informed that the jail was then situated in the area which now houses the present Police Headquarters. The Judge who heard the case was Chief Justice Sholto Pemberton, and that one of the members of the House of Assembly was a Mr. Dupigny.

An appeal was taken to the Judicial Committee of the Privy Council where the award of damages was affirmed and the rule was emphatically restated -

*"If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another".*

The interesting sequel to this case is contained in the book - "The Dominica Story" by Dr. Lennox Honychurch.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***The Remedy of an Aggrieved Member***

The history of Parliaments shows that now and then injustice has been done by an elected House to individual members of that House, but it would seem that the remedy lies not in actions in a court of law, but by an appeal to the constituents whom the elected House represents.

But the courts are entitled to enquire into the existence and extent of any privilege claimed by the House of Assembly; and the court will intervene where Parliament or the Speaker has exceeded its powers, or has claimed for itself powers that it does not possess, or has acted in a manner which is clearly inconsistent with a constitutional provision.

The principle remains, however, that what is said and done within the walls of Parliament cannot be inquired into in a court of law. The House is the sole judge of the lawfulness of its own proceedings.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***Prolonged Absence of a Member from the House***

One instance in which the court could enquire into the internal proceedings of Parliament is provided by the Constitution itself. Section 35 states that a Member shall vacate his seat in the House if he is absent from sittings of the House for such period and in such circumstances as may be prescribed in the Rules of Procedure of the House. The relevant Rule which is contained in the Standing Orders of the House stipulates that if, without the leave or Order of the Speaker previously obtained, any Member is absent from three consecutive meetings of the House to which he has been separately summoned during the same session, that Member shall vacate his seat.

But section 40 of the Constitution confers jurisdiction on the High Court to hear and determine the question whether any Member of the House has vacated his seat. In order to exercise this jurisdiction the court may, in certain circumstances be required to determine whether the

circumstances which have led to the exclusion, even though they took place within the confines of the House of Assembly had breached the applicant's constitutional rights.

In such a case a court could enquire into what took place in Parliament so that it may decide whether or not the Member's seat had in fact been vacated. It would not be simply a matter for Parliament to decide, even if the Member had missed the required number of meetings in the circumstances laid down in the Standing Orders. Nor could Parliament or the Speaker invoke the sovereignty of Parliament in an effort to prevent the enquiry by this court.

In these circumstances it would be misleading to invoke the sovereignty of Parliament to paralyse the effective exercise of the jurisdiction of the Court; since this jurisdiction is based, not on normal jurisdiction conferred on the court by the Constitution to determine whether the applicant's rights had been infringed, but on the specific jurisdiction which has been conferred on the Court by the Constitution to determine whether in fact the circumstances had arisen which would cause the Member's seat to be declared vacant.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***Passing of an Act of Parliament***

I would now like to deal with the procedure which is followed when a law is to be passed by Parliament.

When it is proposed to make a law the draft is presented to the House of Assembly in the form of a Bill. After a Bill is passed by the House of Assembly it is submitted to the President for his Assent. The President must give his Assent if the Bill is in accordance with the provisions of the Constitution, and the Bill then becomes law in the form of an Act.

The President must then cause the Act to be published in the Gazette, because no law made by Parliament can come into operation until it has been published in the Gazette. But Parliament may postpone the coming into operation of any law, AND, it may also make laws with retrospective effect.

The usual method used to postpone the coming into operation of an Act is for Parliament to state in the Act itself that it will come into operation on such day as the President or a Minister may determine by an Order published in the Gazette. Until this order is made the Act is not in force and cannot therefore be enforced.

A simple example should suffice. If an Act makes provision to reduce the speed limit for motor vehicles, and it is to be brought into force by an Order to be made by a Minister, no successful prosecution can be brought until such an Order is made. Until then the old speed limit will remain.

Madam Speaker,

Honourable Members of the House of Assembly,

### ***Conclusion***

I think I have said enough in the attempt to clear up any misunderstandings which may have arisen in respect of those matters mentioned in this address, and I hope that my clarification is understood and appreciated.

On a previous occasion I alluded to the fact that there were no general debates in this House on matters of national interest. I am not aware that any heed has been paid to this call. But right thinking members of society may themselves initiate such debates in an atmosphere of respect for, and cordiality to, the other point of view.

The estimates of revenue and expenditure will be laid before you later today for your consideration. I pray the wisdom of God's guidance on your deliberations, and his blessings on you and all the people of this country.

It only remains for me to extend every good wish to the Members of this Honourable House for a fruitful, enjoyable, productive and pleasantly interactive session.

I thank you for the courtesy of your attention.