

SELECTION OF THE PRIME MINISTER

Section 70, Sub Section I of the Jamaica Constitution establishes that the Governor General is the only Officer of State in Jamaica who "has occasion to appoint the Prime Minister".

The Section goes on to state that the Governor General "in his discretion shall appoint the Member of the House of Representative who, in his judgment, is best able to command the confidence of a majority of the members of that House..."

Section 70 confers the discretion to appoint the Prime Minister only on the Governor General and no other Officer of State. It is a constitutional convention that the Governor General will be advised by the Member of Parliament who is most influential in the House of Representatives. This convention is derived from the Westminster model or system of Government which adopts the British or United Kingdom system and has, in fact, been adopted in many Commonwealth nations. A constitutional convention is an unwritten rule or practice which has binding constitutional effect.

The discretion exhibited by the Governor General has been described as "the secret fusion" of the legislative and executive functions of Government. The Prime Minister, under the Westminster model, presides over a Cabinet of Ministers which is also provided for under Section 70, Sub Section I of the Jamaica Constitution.

CONSTITUTIONAL CRISIS?

The Constitution to a certain extent, presumes the existence of the two-party system because the Constitution creates a Leader of the Opposition. The Constitution does not adopt by reference any of these party's internal procedures.

The Constitution does not acknowledge the existence of the People's National Party National Executive Committee and, in fact, it must be said that the National Executive Committee is irrelevant to the Constitution. In the same way the Constitution does not recognize the Standing Committee of the Jamaica Labour Party.

The creation of a large heavily publicized battle for the Presidency of the PNP has implications for Jamaica's constitutional stability. What will happen if the individual who gets the majority of the delegates does not command the majority of support of the parliamentary Members of Parliament? Suppose most of the parliamentary M.P.s oppose the delegates' choice? Who in those circumstances should the Governor General's discretion favour? *The* extra constitutional National Executive Committee, or the very constitutionally referenced Members of Parliament? Will this lead to a constitutional crisis? Will it precipitate a vote of no confidence which would lead to a General Election?

A BETTER METHOD

Perhaps a better method of resolving this issue of the succession of power in a manner consistent with Section 70 of the Constitution would be the holding of a quiet parliamentary caucus within the parliamentary party that is changing leaders.

The Simpson-Phillips contest is so close that, whatever the final Delegate count becomes, there will be deep dissatisfaction among some parliamentary members of the ruling party. How will this deep dissatisfaction

express itself? Will some M.P.s feel that they are not obligated to vote in favour of legislation to be introduced by the future Prime Minister?

The Opposition has a strong presence in the House and a Motion of No Confidence in the Government would be very possible if the leadership contest among Government M.P.s led to the resignation of Government M.P.s after the result is declared.

SECRET

The whispers reaching us overseas are that some Government M.P.s have thought to have declared that they are not prepared to serve under a particular candidate. These somewhat surprising views are being discussed in the overseas Jamaican communities with great interest. Is there any Jamaican M.P. who is so important that he or she would not serve in the Government led by one of his or her colleagues?

There have been many famous Motions of No Confidence. In 1950, in the United States a No Confidence motion was passed against Dean Acheson who was then the sitting Secretary of State. It was symbolic and had no effect.

Following the defeat of the British Army at York Town in the American Revolutionary War in March 1782, the then Prime Minister, Lord North, resigned after losing a vote of No Confidence in the British Parliament.

In 1979, James Callahan, British Labour Prime Minister, resigned after losing a vote of No Confidence in the British House of Commons. In Australia, in 1975, Malcolm Fraser, a Liberal, was appointed Prime Minister of Australia despite the fact that the Labour government had a clear majority. After his appointment by Sir John Kerr, the then Governor General of Australia, Fraser lost a vote of No Confidence and the Governor General dissolved the House and there was a General Election in Australia. Fraser won a 'landslide' victory. Sir John Kerr's conduct proved that the Governor General's discretion is not always governed by the whims of the parliamentary majority.

In Jamaica we can look to these British and Commonwealth precedents which may assist us in understanding Section 70 of the Jamaica Constitution and its implications.

We should all remember that the P.N.P. delegates will not select the next Prime Minister; only the Governor General can and will, cloaked in his constitutional and conventional discretion.

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