

Introduction to the legal system of the Commonwealth of the Bahamas

The Commonwealth of The Bahamas is a parliamentary democracy. Its system of law and government is based on the Westminster model, which envisages three arms of the State - the Executive, Parliament and the Judiciary. The relationship between each is governed by the principle of separation of powers and the functioning of each is clearly articulated in the Country's written Constitution.

Article 38 of the Constitution provides that "there shall be a Parliament of The Bahamas which shall consist of Her Majesty, a Senate and a House of Assembly. Pursuant to Article 52 (1) of the Constitution, "Parliament may make laws for the peace, order and good government of The Bahamas". In this jurisdiction laws passed by Parliament are called Acts or Statutes. Acts come into effect immediately on publication in the official Gazette on a date specified in the Act; or a date specified in a document called an Appointed Day Notice.

The supremacy of the Constitution of The Commonwealth of The Bahamas is declared in Article 2 of the Constitution which provides:

"2. This Constitution is the supreme law of the Commonwealth of The Bahamas and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

The Honourable Mr. Justice J.C. Gonsalves-Sabola the President of The Bahamas Court of Appeal in *Harbour Lobster & Fish Co. Ltd. and Jeffrey Butler Sr. and the Attorney General of the Bahamas (No 34/1995)* noted:

" [I]n a country with a Westminster model written constitution like that of The Bahamas, the express enactment in it that it is the supreme law of the land and subject to the provision of this constitution this constitution shall prevail and the other law shall to the extent of the inconsistency be void necessarily give jurisdiction to the courts to determine whether Parliament keeps within its own jurisdiction and does not legislate in violation of the constitution."

The significance of the supremacy of the Constitution and the principles enshrined therein, is that all legislation, government action, and action by the citizenry are subject to review by the Courts to ensure that they are consistent with the Constitution.

The highest court in the Bahamian judicial system is the Privy Council. It is the final Court of Appeal of the Commonwealth of The Bahamas. Other courts in the system's hierarchy are The Bahamas Court of Appeal, the Supreme Court and the Stipendiary & Circuit Magistrates Courts. Generally, a right of appeal from a lower Court lies to the Court immediately above it in the hierarchy.