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The causes and the effects of the deficiency in the Pre-Legislative and Legislative scrutiny processes in St. Lucia

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St. Lucia
Pigeon Island
Gros Islet
Castries
Marigot Bay
Canaries
Grand Bois Forest
Quilesse Forest Reserve
Soufriere
Morne Fond St. Jacque
Petit Piton
Gros Piton
La Haut
Choiseul
Laborie
Vieux Fort
Savannes Bay
Maria Islands Nature Reserve

HYPOTHESIS

In St. Lucia, there is a significant deficiency in the pre-legislative and legislative scrutiny processes, the cause of which can be said to be due to Parliament's failure to (i) utilize the Standing Orders in the manner in which they were intended and (ii) develop and follow a more systematic scrutiny process. As a result, this has hindered St. Lucia's ability to gain more benefit from the legislative process and improve the quality of legislation produced with less likelihood of amendments.

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INTRODUCTION

In parliaments all over the world, the legislative process is governed by specific laws and principles, which have been set out systematically. These laws were made to ensure that maximum results were achieved in the process in the way in which the legislature which enacted them intended. Over the past few decades many parliaments have made significant reform to their legislative process in an effort to enhance its effectiveness so that greater benefits can be reaped and better laws produced.

Legislative scrutiny has always been an integral part of the legislative process. In recent years pre-legislative scrutiny has been a reform initiative which was introduced to aid in the process of scrutiny. Its use has become so important that more and more parliaments, upon recognizing the benefits which the combined effort of it and legislative scrutiny can achieve, are choosing to make them both integral parts of their legislative process, and not only legislative scrutiny.

In St. Lucia, the legislative process is governed by the House of Assembly Standing Orders 1979. The Orders set out clearly the procedure to be followed, as intended by parliament, so that the process could achieve maximum success. While legislative scrutiny is covered under these Orders, the recent phenomenon of pre-legislative scrutiny is not. Further, despite developments all over the world, there has been no reform of the legislative process since enactment.

This dissertation will prove that there is a deficiency in St. Lucia's pre-legislative and legislative scrutiny processes which has hindered the island's potential to gain more benefit from the legislative process and improve the quality of legislation produced. This deficiency has been brought about by Parliament's failure to (i) utilize the Standing Orders in the manner in which they were intended and (ii) develop and follow a more systematic scrutiny process, which includes pre-legislative scrutiny as intended by the Modernization Committee and legislative scrutiny as intended under the Standing Orders.

To prove this hypothesis, the methodology used will be the following:

> Chapter 1 of this dissertation will set the stage for the discourse and undertake an examination of the legislative process in St. Lucia, highlighting how pre-legislative and legislative scrutiny occurs.
>
> Chapters 2 will outline the two results of the deficiency of St. Lucia's scrutiny process, as outlined in the hypothesis. The criteria for assessment of these results which will be

used is the one set out by the Modernization Committee in their 1997 report.[1] This criteria will then be explained showing how effective the assessment standards are to both parliament and the citizenry in achieving its intended aim in the legislative process.[2]

Chapter 3 will assess the first of the two results mentioned, which is the impediment of the country's ability to gain more benefit from the legislative process. In so doing, the chapter will critically examine the first three assessment standards set by the Mordernisation Committee, which are the ones directly related to this result, to reveal that in St. Lucia the full benefits of the process are not being reaped and these benefits can be achieved if Parliament's failures which cause the deficiency are addressed.

Chapter 4 will deal with the second result, which is the impediment of the country's ability to improve the quality of legislation produced. In order to undertake this critical assessment, the fourth criteria will be used. To prove this, I will examine some of the legislation passed in St. Lucia, and the quality of the legislation produced focusing on the amendments made to show that with proper pre-legislative and legislative scrutiny such could have been avoided, whereby producing better legislation.

The assessment of the results discussed in Chapters 3 and 4 will be done against the background of the critical examination of pre-legislative and legislative scrutiny in St. Lucia, revealing the deficiency in the legislative scrutiny process and the causes as outlined in the hypothesis.

It must be stated from the outset that there have been no previous studies undertaken in this area in St. Lucia. The information used to make my deduction was therefore collated from interviews with persons with experience in the field[3], papers and reports prepared on specific areas, as well as relevant statutes. As a result, to prove the hypothesis, there will be a limit to the use of tangible resources relied on from my jurisdiction, particularly in the Chapters where more specific reference is being made to St. Lucia's process.

[1] Select Committee on Modernization of the House of Commons, (1997-1998), The Legislative Process, HC 190. Chapter 2 will discuss in detail why this criteria was fitting to be used.

[2] Although both results are being assessed against the criteria of the Mordernisation Committee, it was best to deal with them in separate chapters, firstly to keep them as separate issues, even though a similar criteria is used to assess them and secondly because these are the problems encountered in St. Lucia.

[3] This included The Present Clerk of Parliament, The Deputy Clerk of Parliament, A former Clerk of Parliament, A former Speaker of the House, The Solicitor General from the Attorney General's Office and a Minister of Government.

CHAPTER 1

SCRUTINY IN THE LEGISLATIVE PROCESS OF ST. LUCIA

The legislative process in St. Lucia has existed from 1979 when the island gained independence. The process is governed largely by the House of Assembly Standing Orders of 1979[4] . Over the past four decades, legislative reform has spread to parliaments across the world, manifesting developments in many of these countries.[5] Pre-legislative and legislative scrutiny are parts of the process of which this is true.[6] Although these countries are fitting examples of how beneficial such reform can be to the legislative process, our Parliament has failed to make improvements to our legislative process.[7]

The legislative scrutiny process in St. Lucia, although governed by the Standing Orders, is often exploited to suit the desires of the government of the day. In some cases the Standing Orders are not followed to the letter and in other cases some provisions contained in them are not utilized effectively or at all. Also problematic is the fact that despite reform in this area in many countries, St. Lucia has not seen it fitting to adjust with the times to enhance the process.

The role of pre-legislative scrutiny in the UK, although relatively recent has been clearly defined and executed. The 1997 report of the Modernization Committee accurately summarized the benefits that pre-legislative scrutiny would have on the legislative process when it concluded:

> " There is almost universal agreement that pre-legislative scrutiny is right in principle, subject to the circumstances and nature of the legislation. It provides an opportunity for the House as a whole, for individual backbenchers, and for the Opposition to have a real input into the form of the actual legislation which subsequently emerges, not least because Ministers are likely to be far more receptive to suggestions for change before the Bill is actually published…Above all it should lead to better legislation and less likelihood of subsequent amending legislation." [8]

In St Lucia however while some form of pre-legislative scrutiny does occur, it is a lot different to that done by parliaments who share a similar Westminster style where the reform movement has caught on and occurs in a pointedly different fashion to these parliaments. In the same way

[4] The Standing Orders were made under the Constitution of Saint Lucia and approved by the House of Assembly on 14th May 1979. Amendments were approved by the House on 27th November 1984, 9th April 1990, 23rd April 1998 and the Oaths (Amendment) Act, No. 22 of 2003.

[5] These include The UK, Canada, Australia, New Zealand, India and Scotland.

[6] In the UK the proposal in the report of the Modernization Committee following the 1997 general election propelled the move towards pre-legislative scrutiny resulting in a significant increase in its use.

[7] The Mordernisation Committee notes "All innovations should be open to review and improvement after two decades. Therefore on our reappointment we decided that it was timely to consider how we could strengthen and improve Parliament's role of scrutiny through its committee system." See House of Commons, Modernization of the House of Commons: First Report, (2001-2002), A Reform Programme, HC 224-I. at para 5.

[8] Modernisation Committee, (1997-1998), The Legislative Process, HC 190 at para 14.

that the scale on which pre-legislative scrutiny is executed is quite varied, so are the results achieved.

The benefits reaped from pre-legislative and legislative scrutiny in the UK for instance far surpasses that of what is achieved in St. Lucia. Before undertaking a critical assessment of these benefits it is necessary to do so against a thorough examination of the legislative process in St Lucia.

The Making of Legislation

The need for legislation on a given area usually stems from the Minister initiating the preparation of such legislation. In some cases, the Minister, during the course of his tenure with a particular ministry, may come across areas which are either in need of the implementation of new legislation to adequately govern an area or to amend existing legislation to make the area of law more efficient. In other cases the need for legislation may be unveiled as a result of extensive discussion in Cabinet after which a Cabinet Memorandum is produced laying out the decision taken on the need for new or amending legislation.

Whatever the case, once the need for new legislation has been identified, the Minister will then authorize the commencement of the drafting process. This is done through consultation with key persons in the ministry such as the Legal Advisors and Permanent Secretary, to discuss the area and prepare for the drafting process. A team of persons appointed by the Minister for the specific purpose will then conduct the necessary research into what is needed. This research may include the preparation of legal opinions and reports and the examination of court documents and case law if necessary. Sometimes at this stage consultations are held depending on the nature of the area and the degree of public attention which the area draws. These consultations will then be held with stakeholders if necessary, and members of the public. The research into preparing for legislation is often very extensive and can at times be lengthy. Where consultations are held, in particular with members of the public, it is often not hurried so as to encourage as much participation as possible.

The result of the research is then transferred into written instructions to the Attorney General who reviews and gives further instructions to Parliamentary Counsel of the Attorney General's Chambers.[9] These instructions would be accompanied by any reports, legal opinions or Cabinet Memoranda. Upon receiving these instructions the Parliamentary Counsel review them and resolve any discrepancies or queries which they may have about their instructions. The instructions are then transmuted into the Draft Bill. Upon completion the draft Bill is reviewed by the Attorney General and is then submitted to the relevant Minister for review and approval or otherwise.

In St. Lucia the situation is different to that of the UK in that all legislation is done in draft. In 2002 the Modernization Committee stated:

> "We hope eventually to see publication in draft become the norm. We recommend that the government continue to increase with each session the proportion of Bills published in draft."[10]

This measure assists tremendously and is a good framework upon which pre-legislative scrutiny can take place. This is therefore yet another reason for St. Lucia being in a position to reap far greater success from pre-legislative scrutiny than it presently is. Now mostly what is needed is a better structure to allow pre-legislative scrutiny to take place.

Pre-Legislative Scrutiny

When the draft legislation suits the intention of the Minister, he or she then presents the draft Bill to the Cabinet of Ministers at a scheduled Cabinet meeting. The Cabinet of Ministers then have extensive discussion on the Bill clause by clause. Depending on the complexity of the Bill, Parliamentary Counsel may be asked to be present for the discussion to provide further

[9] The Attorney General would be well appraised of the details of the Bill because under Section 61(2) of the St. Lucia Constitution "At any time when the office of Attorney-General is a public office the Attorney-General shall, by virtue of holding or acting in that office, be a member of the Cabinet in addition to the Ministers." Sec 72(2) provides that the office of AG can be either a public office or the office of a Minister. Therefore in any event the AG will form part of the Cabinet.

[10] Modernisation Committee, (2001-2002), Modernization of the House of Commons: A Reform Programme, HC1168-1.

assistance to the other Members of Cabinet should it be necessary. At this stage, changes can be made to the draft Bill if the majority of the Members agree. The draft is then reverted to the Attorney General's Chambers to make the changes from the Cabinet Meeting.

The above can be viewed as the only form of pre-legislative scrutiny which occurs in St. Lucia's legislative process.

After the deliberation by the Cabinet of Ministers, the reviewed Draft is then submitted to the Attorney General and the draft bill then begins its final decent in preparation for being laid before Parliament. The Attorney General's Chambers is responsible for making the copies to be given to the Minister responsible for recommending the Bill to pass on to Parliament.

Legislative Scrutiny

The legislation which governs the procedure for presenting a Bill to parliament are the St. Lucia Constitution Order 1978 and the Standing Orders of the Honourable House of Assembly of St. Lucia 1979 and its amendments.[11]

Under the Standing Orders a Bill can be introduced to the House in one of two ways:

" Any member may move for leave to introduce a Bill of which he has given notice but a Bill may be presented to the House on behalf of the government after notice without an order of the House for its introduction."[12]

[11] Supra note 4.
[12] SO 47(1).

The Standing Orders further state that the House shall not proceed upon a Bill or amendment to a Bill or any motion for leave to introduce a Bill if it is in contravention with Section 48 of the Constitution.[13]

Once the criteria has been satisfied under the legislation, the member who has given notice hands the Bill to the Clerk, who then reads aloud the short title, after which time it is recorded in the minutes as the Bill having been read a first time and then an order is made for the Bill to be printed.[14] If a Bill has been brought from the Senate and a Member of the House takes responsibility for the Bill then it is recorded in the minutes of proceedings as having been read a first time and a date shall be given for a second reading.[15]

At this point the member in charge of the Bill can either state a day to be appointed for the second reading of the Bill, which may not be less than four days, or move that the next stage take place at an earlier date or forthwith.[16] In any event no Bill should be read a second time unless it has been printed and circulated to Members.[17]

Responsibility for the printing and circulation of the Bill as soon as possible after printing is that of the Clerk who does so from the draft given by the Minister in charge of the Bill. At this time the Clerk is expected to perform some measure of scrutiny which extends only to ensuring that the Bill is divided into successive clauses, contains margin titles and that the provisions of the Bill do not go beyond the title. The Clerk shall also publish every Bill in the Gazette.[18]

When the Bill is read the second time it shall stand as being committed to a Committee of the whole House, unless a motion is made by any Member immediately after the second reading to

[13] Section 48 states - ***Restrictions with regard to certain financial measures***

(1) A bill other than a money bill may be introduced in the Senate or the House; a money bill shall not be introduced in the Senate.

(2) Except on the recommendation of the Governor-General signified by a Minister, neither the Senate nor the House shall-

a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:-

i) for the imposition of taxation of the alteration of taxation otherwise than by reduction;

ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of Saint Lucia or the alteration of any such charge otherwise than by reduction;

iii) for the payment, issue or withdrawal from the Consolidated Fund or any public fund of Saint Lucia of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

iv) for the composition or remission of any debt due to the Crown; or

b) procedure upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provisions for any of those purposes.

[14] SO 47(4).

[15] SO 47 (5).

[16] SO 48 (1)-(2).

[17] SO 48 (3).

[18] SO 49(1)-(3).

refer the Bill to a Special Select Committee.[19] If this motion is passed then there shall be no further proceedings taken by the House at that time.

A Bill is often passed on to a Special Select Committee when the Members are of the opinion that more clarification is needed on the Bill. The Special Select Committee for that purpose is established, the composition of which, accordingly to the Standing Orders, "shall consist of such and so many members as the House may nominate."[20] This flexibility allows for the committee to be established based on the complexity of the Bill and the number of persons which the House may deem necessary to deal with that Bill. The composition of the Committee, as much as possible, must reflect the balance of parties in the House.[21] This provision however is drafted loosely to allow for the government members to make up the majority, which is often the case.[22]

The Standing Orders also make provision for a Joint Select Committee to be appointed for the same purpose, consisting of not more than five members of the House, sitting along with an indefinite number of members from the Senate.[23] Whatever the case, the members of the Special Select Committee are chosen by the party leaders. The life of any Special Select Committee extends only to scrutinize the Bill for which it has been established and the Committee is therefore dissolved when its work on that Bill is completed.

The main function of the Special Select Committee is to discuss the details of the Bill and not the general merits or principles. The Committee is free to make amendments to the Bill as it sees fit, provided that it is within the title of the Bill.[24]

When the Special Select Committee meets, it is expected to conduct a thorough scrutiny of the Bill. This scrutiny often involves meeting with stakeholders and persons pertinent to the Bill. The Committee is empowered to examine and to take evidence from witnesses. The main purpose of the scrutiny is to ensure the appropriateness of the contents of the Bill. This is in order to achieve the clarification necessary for the House to debate and pass the Bill from an

[19] SO 51(1).
[20] SO 73(1)(c).
[21] SO 74(1).
[22] It is the norm in St. Lucia that the political scene is dominated by two parties. Therefore it's always a choice between the incumbent and the other main opposing political party. In the last election held on 28th November 2011 there was an unprecedented 5 political parties contesting the election. However the clear front runners were the two usual parties. See http://www.caribbeanelections.com/lc/default.asp
[23] SO 75(1).
[24] SO 52.

informed position. When the Committee's work has been completed it must present a report to the House[25] along with a copy of the minutes of proceedings, including any evidence taken.[26]

When the report is presented to the House, a motion that it be adopted is moved. If agreed to without amendment, the Bill shall be recommitted to a Committee of the whole House and discussed in accordance with Standing Order 53 - that is by dealing with each clause in succession, as well as any amendments which may have been proposed. If there have been amendments made, then the House will vote on whether to accept them and if agreed then the Bill is returned to the Attorney General to incorporate the amendments, following which it is brought back to the Committee of the whole House.

The above process is another level of pre-legislative scrutiny which takes place in St. Lucia's legislative process. However, since it is not mandatory, the use of this form of scrutiny may not occur on every occasion. In fact the reality is that the Special Select Committee and The Joint Committee are rarely ever utilized in St. Lucia.

The role of the Special Select Committee in St. Lucia is similar to that of a Standing Committee in the UK which is a temporary committee established to scrutinize a Bill in detail. In the pre-1997 era, pre-legislative scrutiny in the UK was achieved through the mechanism of a Special Standing Committee which was a temporary committee that combined the functions of select and standing committees.

When the Bill is committed to a Committee of the Whole House it is at this point that debate is held on the Bill and its individual clauses. Debates are a way for Members to raise and discuss important issues. In St. Lucia this is arguably the main form of scrutiny which legislation undergoes since Special Select Committees are rarely utilized. Therefore debate is an integral part of the legislative process. While in the UK Select Committees are, in theory, responsible for the clause by clause scrutiny of legislation, this is not the case in St. Lucia. During the debate, the members of the House have the opportunity to peruse the Bill and offer their opinions on it, making any suggestions for amendments. This is the stage where members opposite get an opportunity to give their views on the proposed legislation. Depending on the nature of the legislation there is often extensive debate on the Bill.

However, the best way in which members of the House can effectively scrutinize a Bill is if they understand them and to do so the Bill must be presented against a suitable background of the

[25] SO 51(2).

[26] SO 79(6). Jessica Levy, in her report notes that *"Select committees have demonstrated that evidence-gathering can add to the effectiveness of scrutiny. Witness sessions add value in the form of increasing the quantity and quality of information available to MP's, they are a way of enhancing the collective knowledge of committee members."* See *Strengthening Parliament's Powers of Scrutiny?; An assessment of the introduction of Public Bill Committees,* July 2009 at p.15.

appropriate information.[27] In St. Lucia since all Bills are done in draft, the ideal situation is for a bill to be circulated to all the members of the House prior to it being debated, for that Bill to be accompanied by ample explanatory notes and for the presenting Minister to give an adequate explanation of the Bill when presented to the House. This would then leave members with the opportunity to peruse the bill in an effort to prepare to engage in meaningful debate on it. However, too frequently is the bill circulated only a short space of time prior to it being tabled in Parliament, unaccompanied by any or adequate explanatory notes, presented against a scanty background of facts. Further, based on the majority in the House, the stages of reading in the House can be accelerated moving into a hurried debate on the Bill. [28]

Clearly the most ideal situation for adequate pre-legislative scrutiny in an environment where there is unhurried and informed deliberation on the Bill's principles. This should be the opportunity for critical examination of any new policies which are contained in the Bill as well as thorough contemplation of any practical and technical issues which may arise in the Bill.

After the Bill has been debated, any amendments which have been made are incorporated into the Bill. Prior to the third reading, amendments for correction of errors or oversight may be made with the permission of the Speaker of the House.[29] Once such matters have been disposed of the Bill will be read a third time and a printed copy which has been endorsed by the Speaker will be passed on to the President of the Senate indicating that the House has passed the Bill, either with or without amendments. The Senate will then be expected to discuss the Bill and give their concurrence or otherwise.

At this point some further scrutiny takes place as the Senate discusses and debates the Bill similarly to how it is done in the House. If there are any amendments proposed by the Senate then the Bill is returned to the Committee of the whole House for consideration of the amendments. Upon a motion being put, the House may choose to accept or reject the amendments made by the Senate. There can be no amendment to any of the Senate's amendments except in exceptional circumstances.[30]

After consideration of the amendments made by the Senate, one of three things can happen. If the Senate's amendments have been agreed to, the House shall send a message to the Senate

[27] House of Lords, The Select Committee on Constitution, Fourteenth Report states at para. 75, "For Parliament to examine bills effectively, it needs to understand them. That encompasses the purpose of the bill and the provisions designed to achieve that purpose."

[28] See the House of Lords statement in this regard at *House of Lords Select Committee on the Constitution, 14th Report of Session 2003-2004, Parliament and the Legislative Process* at p. 25.

[29] SO 58(2).

[30] SO 59(3) provides: "Upon any such amendment being disagreed to an amendment may be made to the Bill in lieu thereof, but no amendment may be proposed to a Senate amendment save an amendment strictly relevant thereto, nor may an amendment be moved to the Bill unless the amendment be relevant to or consequent upon either the acceptance or rejection of a senate amendment."

informing of their decision and a printed copy as amended shall be submitted to the Governor-General for assent. If amendments made by the Senate were further amended by the House a printed copy of the Bill as amended and endorsed by the Speaker shall be returned to the Senate informing of the amendments and requesting concurrence. If the Senate amendments were not agreed to, a message is sent to the Senate indicating this. In the latter case if the senate insists on their proposed amendments the House can either agree to the amendments, amend such amendments, postpone the consideration of the amendments for six months, order the withdrawal of the Bill or in accordance with the St. Lucia Constitution Order 1978 present the Bill to the Governor-General for assent as passed by the House of Assembly, irrespective of the disagreement of the Senate.[31]

There is a slight difference with Private Bills however. A private Bill must first meet the requirements in sections 84 (1) –(5) before being introduced to the House and read for the first time. Some of these requirements include, not less than three publications of the Bill in the gazette and publication in a local newspaper stating the objects and reasons for the Bill;[32] the petitioner lodging a sum of money sufficient to defray the costs of printing the Bill and other expenses as may be determined by the Clerk of Parliament, and a duly executed bond for the payment of any additional expenses which may arise as a result of printing.[33]

When the Bill is read the second time it must be referred to a Special Select Committee for consideration. This Committee, prior to considering the clauses of the Bill, is required to delve into the necessity and facts of the Bill, reviewing any evidence which it may think necessary to make its determination and then present a report to the House. If the Committee finds that the facts and allegations have been proved then it considers the clauses of the Bill, making whatever amendments it deems necessary to achieve the purpose of the Bill. Any opposition to the Bill must come from a non-Member of the House and must be lodged through a petition with the clerk stating the objection. If the petitioner make a request to be heard then the matter is referred to the Committee who, upon determination, presents a report to the House and the Bill is read a third time. The Bill is passed to the Senate for concurrence. Private Bills however are very rare and in the history of St. Lucia's independent parliament one has never been brought to the House.

This Chapter has detailed the process of pre-legislative and legislative scrutiny in St. Lucia. We have seen that although in St. Lucia the framework for scrutiny is present, it is still not developed in a systematic manner, neither has there been any reform of the process. Further, even in cases where the process has been legislated, it is not followed in the manner intended

[31] Sections 48-50 St. Lucia Constitution Order 1978.
[32] SO 84 (3)(b).
[33] SO 84(5)(ii) - (iii).

by Parliament nor is it adequately utilized. The blame for this must rest solely on the shoulders of parliament who is responsible for addressing these deficiencies. Consequently, this has hindered St. Lucia's ability to gain more benefit from the legislative process and improve the quality of legislation produced with less likelihood of amendments. The subsequent chapters have been devoted to discussing the cause of the deficiencies and the results.

CHAPTER 2

CRITERIA FOR ASSESSMENT OF RESULTS OF DEFICIENCY

In many of the countries where pre-legislative scrutiny is employed, the response since its inception has been remarkable. Many would concur that having tried out the process, its success speaks for itself in convincing skeptics that it has made a marked difference in the legislative process,[34] the benefits of which are highly noticeable, and it has become integral to the legislative process.[35] The Modernisation Committee in their 1997-1998 report remarked:

> "The introduction of pre-legislative scrutiny is generally acknowledged to be one of the most successful innovations in the legislative process in recent years."[36]

In St. Lucia although some form of pre-legislative scrutiny exists, it is not the form intended by the Committee and further there is no systematic process followed. The impact of pre-legislative scrutiny in countries where it is used in a more structured and efficient way, coupled with the practice of proficient legislative scrutiny, paints a very successful picture. When the UK Parliament established the Modernisation Committee to make recommendations on how the procedures of the House could be modernized, this was all in an effort to make the legislative process more efficient and effective on a number of levels.[37] From its first report, a more systematic approach to pre-legislative scrutiny was identified for the benefits which it could bring to the process. In this report the Committee remarked:

> "There is almost universal agreement that pre-legislative scrutiny is right in principle, subject to the circumstances and nature of the legislation. ***It provides an opportunity for the House as a whole,*** for individual backbenchers, ***and for the Opposition to have a real input into the form of the actual legislation*** which subsequently emerges, not least because Ministers are likely to be far more receptive to suggestions for change before the Bill is actually published. ***It opens Parliament up to those outside affected by legislation.*** At the same time such pre-legislative scrutiny can be of real benefit to the Government. ***It could, and indeed should, lead to less time being needed at later stages of the legislative process;*** the use of the Chair's powers of selection would

[34] The Mordernisation Committee in their report noted that "The introduction of pre-legislative scrutiny is generally acknowledged to be one of the most successful innovations in the legislative process in recent years." See *Select Committee on Modernization of the House of Commons, 1st Report of Session (2005-2006), the Legislative Process*, HC 1097 at para. 12.

[35] Greg Power notes that "The distinctive feature of Labour's approach to consultation was not so much that it was promising to publish more bills in draft but that it regarded Parliamentary Scrutiny as integral to the process." See *Parliamentary Scrutiny of Draft Legislation* 1997-1999 by Greg Power, at p. 10.

[36] Select Committee on Modernization of the House of Commons, (1997-1998), the Legislative Process, HC 190.

[37] Pre-Legislative Scrutiny by Richard Kelly at page 15.

> naturally reflect the extent and nature of previous scrutiny and debate. ***Above all, it should lead to better legislation and less likelihood of subsequent amending legislation***."[38] (***My emphasis***)

The parts of the above on which I placed emphasis identify the key purposes for which pre-legislative scrutiny was intended, and by extension legislative scrutiny as well since the two are meant to work in tandem to improve the legislative process. I submit that any country which uses a similar system of parliament to the UK[39] would be in a good position to attain success as the UK has, even though pre-legislative scrutiny is utilized on a lesser scale, as long as the purpose is achieved and parliament is willing. The impact which pre-legislative scrutiny has on the legislative process is so potent that when utilized as intended along with an efficient form of legislative scrutiny, the rewards are noticeable as they can change the outcome of the legislative process for the better.

However, as seen in Chapter 1, the island is testimony of a deficient legislative scrutiny process, burdened by a limited form of pre-legislative scrutiny and poorly utilized legislative scrutiny, caused by Parliament's failure to (i) utilize the Standing Orders in the manner in which they were intended and (ii) develop and follow a more systematic scrutiny process.

Although some may say that the legislative process has worked over the years and still is, this, in my view, is highly debatable. Given the changes made to the parliamentary climate in so many countries over the world, particularly where scrutiny is concerned, one can envision the positive impact which reform to a more developed procedure as well as the proper use of legislated procedure can have on the legislative process, whereby relieving the current deficiencies. Unfortunately this change lies in the hands of Parliament, who has failed to reform the process.

One of the results of this deficiency is the island's deprivation of the maximum benefits which such scrutiny can bring to the legislative process. The other is the impediment of the country's ability to improve the quality of legislation produced. In finding a suitable criteria to assess these results, my research revealed that the best place to look would be at the womb from which the idea of pre-legislative scrutiny was birthed, which is also intrinsically linked to legislative scrutiny. The Modernisation Committee, in finding ways to improve the legislative process, identified in the statement above[40] the purposes against which the impact of pre-legislative and by extension legislative scrutiny can be assessed. I submit that these purposes are appropriate criteria to assess the results of the deficiency in the scrutiny process in St.

[38] Select Committee on Modernization of the House of Commons, (1997-1998), The Legislative Process, HC 190, at para 20.
[39] That is the Westminster System.
[40] At FN 38.

Lucia. It stands to reason that if the process was working in St. Lucia as it was intended, and the purpose was being achieved, then the country would reap greater benefits and the quality of legislation would be enhanced whereby achieving much better success from the process.

Therefore the criteria used are:

(a) *It provides an opportunity for the House as a whole, including the Opposition, to have a real input into the form of the actual legislation.*
(b) *Connecting with the public by involving outside bodies and individuals in the legislative process. It therefore opens Parliament up to those outside affected by legislation*
(c) *Achieving consensus so that the Bill completes its passage through the house more smoothly. It could, and indeed should, lead to less time being needed at later stages of the legislative process*
(d) *It should lead to better legislation and less likelihood of subsequent amending legislation.*

I believe that this criteria[41] which summarized what the intended purpose of pre-legislative scrutiny was, can aid the country's scrutiny process and therefore there is no better criteria which can be used to assess the impact of scrutiny in the legislative process in St. Lucia. Because both St. Lucia and the UK follows a similar model of parliament, the various structures of the legislative process is similar enough to allow the above criteria to be used to assess the results which the deficiency in the scrutiny process has on the legislative processes in St. Lucia.

In assessing these results and their impact, this criteria will be used to show that the deficiency has hindered the country's ability (i) gain more benefits from the process and (ii) produce better quality legislation. As indicated in my introduction, Chapters 3 and 4 will deal with these.

[41] As established in the Committee's 1997-1998 report.

CHAPTER 3

THE BENEFITS OF PRE-LEGISLATIVE & LEGISLATIVE SCRUTINY

In this Chapter the first result of the deficiency will be examined, i.e. the hindrance of St. Lucia's ability to gain more benefit from the legislative process. This will be done, using the assessment criteria (a)-(c) which are directly related to this result.[42]

Provides an opportunity for the House as a whole, including the Opposition, to have a real input into the form of the actual legislation.

In Chapter 1 we discussed the procedure by which a Bill is prepared prior to it being brought to the House of Assembly. The chapter detailed the extensive review by the Cabinet of Ministers, which is the main form of pre-legislative scrutiny in St. Lucia's legislative process.

This form of scrutiny is a clear example of how important the above purpose of pre-legislative scrutiny as indicated by the Modernization Committee is. All the members of Cabinet are not necessarily members of the House of Assembly.[43] This therefore provides an opportunity for these persons who play a vital role in the governance of the country to make their contributions to the making of legislation, although they are not a part of the legislature.[44] In recent years there has been a marked increase in the number of non-elected members who form part of the government predominantly because of the skills which such persons have to offer to the country's governance. Therefore in order to fulfill these roles these persons are made government Senators.[45] By this initial scrutiny such persons are afforded an opportunity to have an early review of the legislation and the case made by the government for passing it, before the Bill reaches their attention in the Senate.

[42] Chapter 3 will deal with (d) which is directly related to the second result.

[43] St. Lucia has a bicameral legislature made up of the House of Assembly and the Senate. Section 60(4) of the St. Lucia Constitution provides that "Appointments to the office of Minister, other than the office of Prime Minister, shall be made by the Governor-General, acting in accordance with the advice of the Prime Minister, from among the Senators and the Members of the House."

[44] In St. Lucia, under the present government which came into office on 28th November 2011, the Cabinet of Ministers consists of 13 Ministers, 10 of whom are Members of the House of Assembly. See http://www.stlucia.gov.lc/govfolks/the_cabinet_of_ministers.htm.

[45] Under Section 24(2)(a) of the Constitution, 6 of the 11 Senators provided for by the Constitution shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

By taking the Draft Bill to Cabinet, the Bill benefits from the review of members of Cabinet who not only approve the passing of the Bill, having discussed it in a prior Cabinet session, but who also may have valuable contributions to make in the contents of the Bill, given their experience on the area. Although this review is not done by a specialized committee, the benefit of such persons is vital, as Cabinet consists of persons of varied disciplines and often vast experience.

Scrutiny at this time is an opportunity for an initial review prior to the Bill being presented in the House of Assembly. This initial review by Cabinet gives the government the opportunity to have all of its members, whether elected or appointed, to scrutinize the legislation prior to it being presented to the House as a whole. This will ensure that the contents of the Bill reflect the intention of the members of Government so that when presented to the other members of the House, being the Opposition, the elected Members on the government's side, who will form the majority, will be in one accord. This is essential especially where there are new policy initiatives contained in the Bill, or practical and technical issues which may ensue from the Bill as it is imperative that all members of the majority are on board with the government's proposal.

By first discussing it amongst them, not only does it ensure that everyone is on board and in agreement with the policies and principles which may be contained in the Bill, but also members may feel a bit more inclined to make any changes at this time, before it is finalized and laid before the House. Such persons at this time can have the opportunity to become better informed about the Bill and its contents. By doing this, when the Bill is formally introduced in the House and the Senate, these members will be able to make greater contributions in their respective areas, whether it is in debate or if a Select Committee is used, at that time. This will therefore serve to make more efficient and informed debate and other scrutiny, if undertaken.[46]

Scrutiny at this stage also makes it easier for the government to amend legislation at an early stage before it enters the formal legislative process, without having the debate or objection placed by the opposition. Here scrutiny can be seen to make a tremendous difference in the legislative process as well as the final outcome of the Bill.

While there are a few benefits to this initial scrutiny, the down side, and the more important issue, is that the true intention of scrutiny is not being fulfilled. While the above results were the intention of the Committee, it was intended to benefit Members of the entire House and

[46] Hansard Society Briefing Paper, Issues in Law Making, 5:Pre-Legislative Scrutiny, July 2004, at p. 3 "Another important benefit is that members of the committee that conducted the scrutiny will become better informed about the bill and the issues that it addresses. Therefore they are able to make more expert contributions when the formal bill is introduced, whether in standing committee or in debate, thus raising the quality of debate and scrutiny."

not only government members. With St. Lucia's form of pre-legislative scrutiny, there is no opportunity at an early stage for members of the opposition to have a real input into the form of the legislation, whereby turning pre-legislative scrutiny into something of a partisan nature.[47]

In addition to this form of pre-legislative scrutiny, had the same form of scrutiny been applied using a specialized committee comprising of members of the entire House, then the intended purpose would stand a greater chance of being achieved, whereby causing greater benefits to be reaped.

The Modernisation Committee perceived pre-legislative scrutiny as being non-partisan because it is parliament who is the main law maker and not Cabinet.[48] As we progress we will realize that this is one of the main problems with the legislative process and goes to the root of our inability to reap the full benefits of scrutiny.

Scrutiny by a Select Committee

The next form of scrutiny occurs when the Bill is laid before Parliament.[49] In both St. Lucia and the UK, after the second reading, the Bill moves into its Committee Stage to either a Standing[50] / Select Committee or to a Committee of the Whole House. The difference however is that in

[47] A Chairman of one of the Joint Committees for pre-legislative scrutiny remarked: "I remain a real convert to the pre-legislative process. ... That process is far less partisan and far more open to analysis and debate, and, as a consequence, makes where it is possible, for far better law." See Supra note 1.

[48] This is also what obtained in India. Mandakini Devasher, Research Analyst with the Accountability Initiative in defending the development of pre-legislative scrutiny in India notes "The transparency and accountability of the pre legislative process is crucially important for a mature and responsible democracy… A typical Bill is drafted in secret by the concerned government department (sometimes in consultation with other departments, and often with just a few bureaucrats hastily preparing a draft), and this secret draft is approved by the Cabinet for presentation before a House of Parliament (or the State Legislature, as the case may be). Usually, it is only upon its introduction in the House that the contents of the Bill are made public." See Transparency and Accountability in the Pre Legislative Process at pp. 2-3.

[49] As discussed in Chapter 1 the Bill may be put to a Select Committee for consideration and report and then to a Committee of the whole House.

[50] Now referred to as "Public Bill Committees" in the UK.

the UK it is usual that a Bill move to a Standing Committee[51], whereas in St. Lucia this option is rarely ever used.[52]

The reason for going this route in the UK is because of the role the Committee is expected to perform. The Committee's primary function is to delve into an in depth analysis of the contents of a Bill,[53] either proposing amendments or pointing the Minister in a direction regarding some detail in the Bill which the Committee advises is more appropriate.[54] The scrutiny at this point should bring to light provisions in the Bill which do not clearly state parliament's intentions, whereby giving them an opportunity to clarify the language or the provision itself, if needs be. It is not intended to destroy the main principles of the Bill, but rather to ensure that these principles are brought forth clearly.

The Hansard Society adequately stated:

> "As a basic model it is sensible and practical for a relatively small group of legislators to spend many hours, over several weeks, examining the minutiae of a Bill's provisions. Indeed, on occasion, when provided with enough time, when the Members are well informed and when the Minister taking through the Bill is prepared to engage in genuine debate, STC's can provide an effective form of scrutiny and can tease out the details of a Bill."[55]

Scrutiny by a Select Committee is an ideal provision which should be utilized more frequently in St. Lucia. Its infrequent use is evidence of the fact that a more efficient and developed form of pre-legislative scrutiny is missing from the legislative process. It is also evidence of the fact that it is missing from legislative scrutiny as well. The impact which scrutiny by such a committee can have on the final content of legislation cannot be stressed enough and is invaluable. Clearly this was recognized as Parliament saw it necessary to make provision for it in legislation[56].

While our House of Assembly Standing Orders does not provide for pre-legislative scrutiny to be structured in the way it is in the UK, the provision for Select Committees can be utilized in such

[51] See *Parliamentary Stages of a Government Bill*, House of Commons Information Office, Factsheet L1 Legislation Series, Revised July 2008 at p.5.
[52] This was revealed through interviews with the present Clerk of Parliament, a former Speaker of House and a former Clerk of Parliament. The former Clerk of Parliament indicated that during her tenure from 2003-2005 this Committee was never utilized. The Current Clerk recalls one recent Bill for which this Committee was used. This Bill will be discussed later.
[53] The two Committees perform similar functions in the UK and St. Lucia.
See http://www.parliament.uk/about/how/committees/general .
[54] See http://en.wikipedia.org/wiki/Public_bill_committee .
[55] Hansard Society Briefing Paper, Issues in Law Making, 2: Standing Committees, July 2003, at p.2.
[56] SO 51(1).

a way where legislative scrutiny can perform a similar role and aid in achieving similar benefits for the legislative process.[57]

As a result, in many cases the legislative process is clearly not reaping the full benefits of pre-legislative and legislative scrutiny as was intended by the Modernization Committee when it recommended this to the UK parliament as a phenomenon which could catch on to so many parliaments over the world. This use of a Select Committee would be an opportunity for an unbiased, well informed assessment to be done on a Bill as the Select Committee can take as much time as is needed to scrutinize the contents of the Bill as opposed to simply engaging in debate over it as is done by the Committee of the Whole House. The Mordernisation Committee stated:

> "The Committee Stage of a bill, which is meant to be the occasion when the details of the legislation are scrutinized, has often tended to be devoted to political partisan debate rather than constructive and systematic scrutiny." [58]

This describes the situation in St. Lucia quite appropriately, which we will now discuss.

Legislative Scrutiny

As seen in Chapter 1, one of the main forms of scrutiny in St. Lucia is the debate which ensues in the House on a Bill.[59] For this reason, in St. Lucia analysis and debate is a highly critical area of the legislative process.

The level of debate which is undertaken in the House, as described in Chapter 1, will vary from Bill to Bill. This is the opportunity where members of the opposition get to have an input on law making, which is their duty as part of the legislature. This form of scrutiny has the potential to

[57] The Liason Committee in speaking about the success of the Select Committee system in its report *Shifting the Balance* wrote; "...it has provided independent scrutiny of government...It has been a source of unbiased information, rational debate and constructive ideas...It has shown the House...at its best: working on the basis of fact, not supposition or prejudice; and with constructive co-operation rather than routine disagreement." See *Levy, Jessica, Strengthening Parliament's powers of Scrutiny?; An assessment of the introduction of Public Bill Committees, July 2009 at p.15.*

[58] Mordernisation Committee , First Report, July 1997, HC 190.

[59] As seen in Chapter 1 When a Bill is laid before the House if it is not committed to a Select Committee then it is committed to a Committee of the whole House at which stage the first form of debate is engaged in. After debate by the elected members of the House the Bill is then committed to the Senate where these members have further debate.

be extremely successful in reaping great rewards and making a significant impact in the legislative process. However it is unfortunate that this is not always the case. The primary reason is because the process is not being utilized in the manner in which Parliament intended when making the legislation to govern the legislative process, particularly in the House of Assembly.

Legislation is often proposed to cure some mischief which exists in the law or to legislate on areas which are void of the necessary legislative provisions to allow an area to function properly.[60] Therefore while government members would have previously benefited from extensive discussion in Cabinet on the need for such legislation and the intricate details of that legislation, this is not the case for members opposite. This is even more reason why the members of the House should be given as much information on the Bill as possible which would enable them to engage in an informed debate on the Bill. Included in this information would be the Bill accompanied by explanatory notes, reports of any consultations and the Minister's introduction to the Bill.

The House of Lords in support of this noted:

> "For Parliament to examine bills effectively, it needs to understand them. That encompasses the purpose of the bill and the provisions designed to achieve that purpose. For many years, the way in which bills were brought before Parliament was not conducive to aiding understanding. Bills were often drafted in fairly obscure language with no accompanying material to explain the provisions and no clear explanation of the effect of provisions that substituted words for those in earlier Acts. Members were dependent on the Minister's speech on Second Reading and explanations offered in response to probing amendments."[61]

In St. Lucia however the most background information which will be given on a Bill will be in the introduction of the Bill into Parliament which is normally not circulated in print, but is rather read by the Minister presenting the Bill. This introduction is supposed to be a detailed explanation of the Bill detailing the reasons for which it is being proposed and the procedure taken to arrive at the content necessary for the Bill. However, most times this introduction is rather brief and is not sufficient to give as detailed a background as is needed for a more in

[60] This principle was established in Heydon's Case [1584] EWHC Exch J36, where it was stated that for the true interpretation of all statutes, four things are to be considered: "1st. What was the common law before the making of the Act. 2nd. What was the mischief and defect for which the common law did not provide. 3rd. What remedy Parliament resolved and appointed to cure the disease. 4th. The true reason of the remedy; and then the function of the judge is to make such construction as shall suppress the mischief and advance the remedy." See also http://www.lawteacher.net/english-legal-system/lecture-notes/statutory-interpretation.php

[61] House of Lords Select Committee on the Constitution, 14th Report of Session 2003-2004, Parliament and the Legislative Process at p. 25.

depth scrutiny by members particularly since it is on the heels of this explanation that a debate in the House ensues.[62]

In the case of explanatory notes, while in St. Lucia it is recognized that sufficient explanatory notes should accompany Bills, this is not always the case. Although the use of explanatory notes has not been mandated by legislation, there is an in-house policy within the Attorney General's Chambers that all legislation, save for statutory instruments, should be accommodated by explanatory notes.[63] While this is commendable, there are a few pertinent facts that affect its effectiveness. There are still Bills which are laid before parliament without accompanying explanatory notes. Further, if the Bill is accompanied by explanatory notes these are very scanty and simply regurgitate what can already be found in the Bill. This is clearly insufficient as it does not serve the purpose for which it was created.

The UK Cabinet Office in their publication entitled "Guide to making Legislation" adequately stated the purpose of explanatory notes.[64] If in the very least explanatory notes fail to achieve their intended purpose then it is clear that they are inadequate. The purpose given by the UK Cabinet Office is directly related to legislative scrutiny, particularly the level of scrutiny utilized in St. Lucia in the form of debate. With proper explanatory notes, members of the House, in particular members opposite, would have an adequate medium through which effective scrutiny on their part can take place. Therefore, the introduction proffered by the Minister presenting the Bill to parliament, coupled with explanatory notes should assist greatly in setting members in good stead to undergo proper scrutiny of the Bill. When either, or both are lacking, and compounding the situation further, when the Bill is not referred to a Select Committee, then the only logical result is that scrutiny will be lacking as well.

This is even more detrimental in circumstances where the government wishes to expedite the Bill through parliament. Since it is very often the norm for members of the House on the government's side to support a government Bill, then it is likely that a motion to expedite a Bill would receive the majority vote. Compounding this is the fact that although in St. Lucia all Bills are prepared in Draft, there is often not much time between the members' receipt of the draft

[62] An example of how this mechanism operates can be found in St. Lucia Hansard; House Of Assembly Fifth Session Of The Ninth House Seventh Meeting - Tuesday, February 1, 2011 at page 17, where for the introduction of the Legal Profession (Amendment) Act 2011 the introduction by the Minister was done in under 300 words.
[63] This was confirmed by The Solicitor General of the Attorney General's Chambers in an interview.
[64] These they summarized as follows: "help the reader grasp what the Bill does, how it does it, and to provide helpful background; explain what the Bill does, perhaps by explaining what the problem the bill is trying to address, is. Reference can be made to a White Paper, or sometimes another document which it follows; inform Parliament and others of the main impact on public expenditure or public service manpower, on business, the third sector and the environment; where relevant, to explain the reasons why Parliament is being asked to expedite the parliamentary progress of the Bill." See Cabinet Office "Guide to Making Legislation" at para. 11.8. http://cabinetoffice.gov.uk/making-legislation-guide/explanatory_notes.aspx.

Bill and debate on the Bill. This is often because of the expedition of Bills through the House and insufficient time being given for members to adequately peruse the Bill prior to debate on it.[65]

Another circumstance which can aid in legislative scrutiny is the Keeling Schedule. It would assist greatly in providing a comparative view by which members can see the old provisions and the effect that the amendment has on it. Sir Geoffrey Bowman opined that it is a very important utility which brings value to its members when the Bill is being considered.[66] The House of Lords too posited that the Keeling Schedule has great potential to considerably improve Parliament's scrutiny of legislation.[67] In St. Lucia however the Keeling Schedule has never been utilized and therefore we are placed in the regrettable position of not being able to benefit from such a tool.

Even in the absence of following the legislated procedure to the letter, legislative scrutiny has achieved some measure of success in allowing all members to have an input in legislation. A good example is the debate which ensured on Tuesday, 1st February 2011 on the Legal Profession (Amendment) Bill[68]. The Minister for Finance in describing the purpose of the Bill indicated:

> *"We are attempting to protect and safeguard the citizens of this country, who are often abused by either negligence or unscrupulous behaviour on the part of certain lawyers, who have been engaged in the preparation of mortgages and other legal instruments."*[69]

The amendment sought to make professional indemnity insurance mandatory for lawyers providing that in order to conduct a transaction of a certain amount the lawyer must be covered for that amount.

Here there was general consensus on the Bill but members were able to offer constructive criticism on the wording of the clauses of the Bill to ensure that it adequately reflected the intention of Parliament. There was extensive discussion on what the wording of one of the clauses should be. One of the government MP's proposed an amendment which would seek to cover every security instrument which is prepared by a lawyer as opposed to the specific and limited ones stated in the Bill, whereby also seeking to protect the interests of the Banks as well

[65] Recognizing that this is in fact a worrisome area, the current Prime Minister declared in an address to the House of Assembly that his government would in fact ensure that more time will be given for members to peruse Bills prior to debate in the House as this would enable them to make greater contributions to the debate on the Bill.
[66] House of Lords Select Committee on the Constitution, 14th Report of Session 2003-2004, Parliament and the Legislative Process at p. 28.
[67] Ibid.
[68] See St. Lucia Hansard; House Of Assembly Fifth Session Of The Ninth House Seventh Meeting - Tuesday, February 1, 2011 at pages 17-30.
[69] Ibid at page 17.

as and not only the clients.[70] The leader of the opposition argued extensively that this would render the section too broad, meaning that every transaction done by a lawyer would require insurance.[71] The debate in the House was focused around achieving the intension of the section, which was to protect the clients and the banks from lawyers who sought to misappropriate client's funds by not registering security instruments and not to protect lawyers. Further many members argued that they saw no discrimination in the provision as lawyers would take work according to their means and would always have the option to adjust their coverage.

The above is evidence that effective scrutiny makes the legislative process far more open to analysis and debate. Through parliamentary debate more discussion is promoted on policy options and it assists in shaping fitting policy options. The procedure however could reap far greater benefits more frequently if there was a formal procedure adopted by Parliament to ensure that each Bill enjoys a full level of scrutiny from, Cabinet, Select Committees, The House of Assembly and the Senate. By putting a Bill through scrutiny at all levels, the success which is achieved by some of the levels could be increased by achieving the same or more at all the levels.

[70] Honourable Richard Frederick, Minister for Physical Planning, Housing, Urban Renewal, Local Government and the Environment at p.19.

[71] At pp. 21-30. He stated that by doing this, some younger lawyers may be discriminated against as they may not be able to afford exorbitant coverage. His suggestion was to include in the section that there would be a ceiling on the amount of insurance which could be taken out and this would be agreed by the Minister in consultation with the Bar.

Connecting with the public by involving outside bodies and individuals in the legislative process. It therefore opens Parliament up to those outside affected by legislation.

It is understandable why this features so prominently in the Modernisation Committee's expectation of pre-legislative scrutiny. Having the views of persons who possess a certain expertise in the area being legislated provides for persons who live through situations everyday or maybe even persons with a keen interest in an area, to influence legislation at an early stage, whereby making better legislation.[72] When utilized effectively this works out quite well. Laws are made for the citizenry to follow to improve the functioning of society. These laws therefore need to take into consideration what the problems are in society, which brought about the need for legislation and what are the best ways in which to address these ills.

The Hansard Society aptly notes that this provides a "mechanism for collaboration between the executive, legislature and the electorate".[73] This is therefore one of the reasons why public consultation is so essential to the legislative process. Politicians make up a small percentage of the citizenry, and therefore may not be aware of all of the ills of society which need to be cured. By involving outside bodies and other individuals in the legislative process, legislators can get a feel for public opinion on an issue and can tap into this resource to assess potential consequences. This could also aid in improving the relationship between the citizenry and parliament, making the former feel like their view does in fact matter. The Committee in their report stated:

> "It is an important matter of principle, in a democracy, that citizens should be able to make their views known to legislators, and an accessible legislative process provides access to the many thousands of smaller groups as well as to the larger, better organized interests."[74]

[72] The House of Lords hit the nail on the head when it stated: "We believe that legislation is most likely to emerge fit for purpose if Parliament has the opportunity to be involved at all stages of the legislative process and has mechanisms to digest informed opinion and comment from concerned citizens and interested organisations. Parliament does not operate in a vacuum. It is important that those affected by, or with knowledge of or having an interest in proposed legislation should have an opportunity to make their voices heard while the legislation is being considered rather than after it has taken effect."See House of Lords Select Committee on the Constitution, 14th Report of Session 2003-2004, Parliament and the Legislative Process at p. 9.

[73] See Hansard Society Briefing Paper, Issues in Law Making, 5:Pre-Legislative Scrutiny, July 2004 at pg.1.

[74] Modernisation Committee, First Report of Session 2005-2006, The Legislative Process, HC 1097 at para 17.

By involving various action groups and organizations in this manner the government increases the scope for involving more persons in the legislative process. This would assist greatly in assessing the potential consequences of the legislation against a background of persons who will be affected.[75]

Greg Power, in speaking of consultation prior to the preparation of draft Bills remarked:

> "If at this vital stage, which determines how policy is implemented, there is little outside consultation with experts, any flaws in the technical detail of the Bill tend not to manifest themselves until the legislation is introduced to Parliament. By which time it is often too late to constructively amend the legislation."[76]

I am in agreement with this pronouncement as this is reflective of the situation in St. Lucia. Consultation is not an established or mandatory practice and very little consultation is done on a number of bills. When the draft Bill is produced and sent to government, it is subjected to the main form of scrutiny which is debate, since the Select Committee option is infrequently used. At this level of debate what the majority agrees with will stand and the majority is always the incumbent, whose members will more likely than not agree with the Bill laid by their government. So therefore although the criticisms levied by the opposition in debate may be constructive, it is hardly unlikely that if the government is not in agreement that any of the provisions will be amended.

As seen in Chapter 1, in St. Lucia consultation can also take place at the stage of the legislative process when the Bill is committed to a Select Committee for scrutiny. The committee at this stage, in conducting as thorough a scrutiny of the Bill as possible, may wish to consult with various stakeholders to obtain any further information which may be required. Standing Order 77 allows the committee to summon witnesses to give evidence on any aspect of the Bill.

Consultation may take place at varied degrees depending on the nature of the legislation. The more contentious the legislation, the more extensive the consultation. Further, some legislation comes as a result of research projects aimed at improving the quality of life for certain people,

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[75] Mandakini Devasher, Research Analyst with the Accountability Initiative, India stated: "The lack of a forum for the many interested stakeholders to express their opinion on different matters is not only frustrating to them, but does great damage to democratic policy making and the policy itself. If there were to be a mandatory "pre legislative consultative framework" adopted, it would prove to be of great potential benefit to having much more informed and potentially beneficial legislation, without curtailing the executive, or legislative prerogative. In fact better and more informed opinion presented to policymakers and legislators before the formulation of detailed legislation would ensure that the draft law is free of avoidable shortcomings." See article *Transparency and Accountability in the Pre Legislative Process*.

[76] See *Parliamentary Scrutiny of Draft Legislation*, 1997 -1999 by Greg Power, at pages 7-8.

particularly minors. The Ministry of Family Relations is often responsible for holding consultations for various areas under their capacity. These consultations do not always result in legislation but it provides various areas upon which the government will place their focus for new policies and other initiatives.

One example is the government's research into the revision of the substantive law which relates to Family Law in St. Lucia, particularly the Civil Code of St. Lucia. The Committee on Family Law was established by the Attorney General to make recommendations with respect to the above.[77] In addition one of the aims of the Committee was to strengthen the role of the Civil Code of St. Lucia as the fundamental legal framework of law in Saint Lucia that is comprehensive in scope, coherent and without gaps. This revision was deemed necessary because the institution of the Family has undergone significant changes in the island since the inception of the Civil Code in 1879. No longer was marriage the only recognized form of life, women had rights in the marriage, adoption became a reality and illegitimate children deserved to be on equal footing as legitimate children. Above all the law had to be brought into compliance with the United Nations Convention on the Rights of the Child 1989 and the Convention on the Elimination of all Forms of Discrimination Against Women 1979, both of which St. Lucia is a member of.[78]

From this Committee's work came a number of recommendations regarding Family law including recommendations which formed the basis of the Status of Children's Bill 2010. One of the major controversial provisions of this Bill sought to change the position of illegitimate children when it came to succession on their fraternal side. As the law stood at the time, an illegitimate child, who is defined as a child born to a single man, was not regarded as an heir to succession of his father's estate in cases where there was no will prepared.[79] The law at the time also defined a single man as "a man who has never been married"[80] whereby rendering illegitimate children born to "a man who has never been married" in the same position as illegitimate children of a married or divorced man. The recommendation of the committee was that the law be amended to remove inequality among children so that there is no distinction between legitimate and illegitimate children in matters of succession.

In recent times, as social circumstances changed, this latter provision sparked much public attention, and continues to do so to date. Therefore the introduction of this Bill was as a result of extensive public debate. As a result of the consultations and extensive research at such an

[77] The Committee consisted of 7 persons from various disciplines including Social Workers, persons from government agencies, Lawyers, and a Psychologist. See *Report of the Committee on Family law*, July 2004, at p.17.
[78] The Committee in addition to conducting thorough research into the area also relied on reports and research papers done by consultants in the Organization of Eastern Caribbean States (OECS), of which St. Lucia is a member.
[79] Article 589 of the Civil Code of St. Lucia.
[80] Ibid.

early stage a better feel was able to be achieved on what the mischief was that needed to be cured and how the legislation could be made better.

This was clearly very beneficial to the legislative process. In this case it was successful in providing persons with a point of view on the matter and an avenue to put this across in the legislative process, just as the Modernisation Committee intended pre-legislative scrutiny would do.[81] It worked remarkably well for this legislation and could work equally well for so many others if only it was used more frequently.[82]

The above example affirms the impact that the Modernisation Committee indicated that the involvement of the public in the legislative process can have:

> "[Scrutiny] can stimulate and assist public and media debate on a subject. It can provide a mechanism for pressure and lobby groups to campaign on an issue and such bodies may provide evidence to the committee, the house as a whole and to the media."[83]

Parliament was therefore able to open itself up to persons on the outside affected by legislation and use their impetus to influence the drafting of amending legislation which was necessary to suit the change in social times.[84]

Unfortunately, in St. Lucia, although from instances where consultation was undergone there is proof of the positive impact it has on legislation, it is not utilized to achieve its maximum benefit. Too often there is insufficient consultation done on pertinent areas of law prior to the

[81] Modernisation Committee, First Report of Session 2005-2006, The Legislative Process, HC 1097 at para 17.

[82] "The legislative process is not an insulated one. It is important that Parliament is aware of the views of others. Parliamentarians may not themselves be expert or especially well informed about the subject matter of a bill. It is essential that Parliament has the means to hear from experts and informed opinion in order to test whether a bill is fit for purpose. However, input should not be confined to such opinion. Citizens may have strong views on the subject. Parliamentarians should be in a position to know whether a measure is objectionable to citizens on ethical or other grounds. A measure may be technically feasible—and enjoy the assent of those affected by it—but it may not necessarily be desirable in the view of citizens. Parliamentarians do not have to go along with the views expressed to them by individuals, but it is important that citizens have an opportunity to express their views on measures before Parliament. It is then up to MPs and peers to assess the strength of feeling and the extent to which it is persuasive or informed." See House of Lords Select Committee on the Constitution, 14th Report of Session 2003-2004, Parliament and the Legislative Process at p.11.

[83] Supra note 25 at para 17.

[84] In the Report of the Family Law Committee, One of the two policy approaches adopted by the Committee in conducting this consultation, was the Cultural-Action Approach which is "based on the values underlying the development, existence and recognition of a society" The Committee further noted "The objective of this approach is to move away from externally generated legislative standards which, according to the SRR, have had the effect of cultural segmentation in the various Caribbean countries. Such standards have typically been adopted without regard for the cultural reality of the Caribbean and have excluded those who have not conformed to that legislative standard. The task is 'the incorporation, for the first time, of the interests and concerns of all members of the society equally in the rules of family law.' (SRR, 7) The cultural-action approach requires extensive consultation and education." See p. 20.

making of legislation. As to what the reason for the limited use of consultation is, one cannot definitively say. However, the effect which it has on the legislative process can be determined. Even at times when the public is engaged in the legislative process and consultation is used there is often a lack of participation and involvement. Most times however, the blame for this lack of involvement rests solely on the shoulders of the government for a number of reasons. Often the consultations are not properly advertised. If such consultations are published in the local Gazette, there is a small percentage of the population who actually subscribes to the Gazette and as a result gets to read or browse through its contents. Sometimes it may be published in the newspaper and in other cases public awareness is disseminated through television and radio advertisements. Even these would reach only a percentage of the population.

For the legislation where public participation is engaged adequately, the effect is remarkable. One such example in recent times is the Constitutional Reform Program.[85] This initiative began in 1997 under the Labour government at the time, who established the Constitutional Reform Commission, whereby placing the matter of constitution reform high on the agenda of that government as well as successive governments.[86] For this purpose, a campaign was instituted with advertisements in the newspapers, radio, television and the internet. In addition several programs were held via the same medium where the public was informed of the initiative and the role they were expected to play in it.[87] Town Hall meetings were held in various communities as well as one on one interviews in the various communities as persons went from house to house. The Commission also reached out to St. Lucians in the diaspora with visits planned to Barbados, Martinique, Cayenne, St. Croix, New York, Washington, Toronto, Ottawa, and London.[88]

In press releases, groups as well as individuals were invited to submit memoranda clearly enunciating recommendations for change, and the reasoning and support for these recommendations. Persons were then invited to make oral presentations to the Commission, and were given the opportunity to debate their ideas. After five years of diligent work the Commission collated all the information and recommendations received and presented them to the Prime Minister at the time. The Prime Minister, as required under the Statutory Instrument

[85] The Constitution of St. Lucia was handed down to the island by the British in 1979. Virtually the same constitution was given to all the colonies in the Caribbean regardless of the economic and cultural differences. Since 1979 there have been no major alterations to the Constitution. This reform would therefore make the constitution more in keeping with the country and people. See http://www.stlucia.gov.lc/

[86] Commitment to this reform initiative continued under the next government from 2006-1011. See *A Recipe for Change: Constitutional Reform in Saint Lucia* by Amit K. Chhabra and Damian E. Greaves, at p. 5.

[87] One such example is this television advertisement which was run locally and also placed on the internet http://www.youtube.com/watch?v=RmXzF_PjzcI This is one of many videos which were made to enlighten the public on the reform initiative.

[88] See http://www.investstlucia.com/news/view/diaspora-critical-to-constitutional-reform-says-st-lucian-official

which established the Commission[89] is expected to lay the report before Parliament so that the recommendation can be debated.[90]

One of the major reasons for having such an extensive consultation is because of the cry from the populace about the lack of their involvement in the legislative process. Too often do citizens accuse the government of failing to hold any or adequate consultation on laws, particularly pertinent laws before they are passed.

These problems indubitably affect the benefits reaped. With a different structured form of pre-legislative scrutiny to what currently exists, one which called for consultation with persons outside of Parliament and more innovative ways through which this can be achieved, the process will be far more successful in achieving the maximum benefit of this purpose.

[89] S.I. No. 50 of 2004.

[90] Although the report was completed in March 2011, to date it has not been laid before parliament. The then opposition placed an enormous amount of pressure on the Prime Minister for the failure to lay the report before parliament. See http://caricomnewsnetwork.com/index.php?option=com_content&view=article&id=4403:st-lucia-opposition-wants-report-of-constitution-reform-commission-laid-in-parliament&catid=54:latest-news

Achieving consensus so that the Bill completes its passage through the House more smoothly. It could, and indeed should, lead to less time being needed at later stages of the legislative process.

This is a benefit of scrutiny which, if utilized efficiently can prove to be very beneficial to the legislative process, not only in saving time particularly in the later stages of the Bill but also in ensuring that the entire legislature is fully satisfied with the contents of the Bill.

This benefit however is most effective when a Bill is sent to a Special Select Committee. There is no doubt that in St. Lucia this form of scrutiny is the closest to pre-legislative scrutiny as conducted in the UK. Although it occurs after the Bill has been laid in parliament, there is still prime opportunity for it to attain the intended results as a Bill which has gone through pre-legislative scrutiny under the UK model. Therefore it is arguably the most efficient form - legislative scrutiny which can be conducted in St. Lucia and would therefore be the form that is most beneficial in achieving the abovementioned end.

In Chapter 1 and earlier in this chapter, we saw that Cabinet, in conducting their own pre-legislative scrutiny prior to the Bill being laid before parliament, ensures that consensus is achieved. However this consensus is extended only to members of the Cabinet to guarantee that they are in one accord before the Bill goes to parliament. This is not the consensus to which the Modernization Committee was alluding to in this benefit.

It would be a fair assessment to make that if a different form of pre-legislative scrutiny involving representation from the opposition is undertaken at an early stage, and consensus is achieved, then this would avert some, if not a great amount of the disagreement and controversy which may arise during the debate of the Bill which in many cases, is the only opportunity which the opposition has to air their views on the Bill, given the infrequent use of a Special Select Committee. There could also be a greater chance of achieving consensus if legislative scrutiny through a Special Select Committee occurred at a stage before debate but, as seen before, this is not the case in St Lucia.

In St. Lucia the use of the Special Select Committee can be best described as sporadic. The exact reasoning for this may be purely speculative. My assessment showed that the greatest extent

of pre-legislative scrutiny undertaken in St. Lucia is done on a Cabinet level. In my opinion, this suggests that the government is more interested in the legislation going through in accordance with its desires rather than actually making it a joint effort of members of the House, whether they are in government or opposition. This joint effort however is the whole point of the Legislature and Parliament. Parliament is supreme, but the attitude of the government may seem to suggest that this is more theoretical and in practice it may actually be Cabinet who is supreme.

While some may suggest that the above assertions are bold on my part, an analysis of St. Lucia's legislative system seems to support this reasoning.[91] This attitude of government seems to denote the tension which exists between Parliament and Cabinet. This is not an attitude which is peculiar to St. Lucia but rather exists throughout the territories of the Eastern Caribbean.[92] There is so much power vested in the Cabinet that this often interferes with the ability of Parliament to function as it should. To compound the situation even further, in St. Lucia we predominantly have a two party political system, where the majority of members will be from the government, whereby leaving the country with very little or limited opposition.[93] Parliament needs to play a greater role in the input of legislation and not allow itself to be trampled on or intimidated by Cabinet. It therefore needs to ensure that it regains its full power of supremacy in the legislative process to ensure that the enactment of the highest quality standard of legislation is its priority.[94]

Based on my research, I have deduced that successive governments in St. Lucia have shown a reluctance to embrace outside forces which may not suit their legislative agenda.[95] This may be because they are never certain of the composition of the agencies that will influence the decisions of the Committees. By sending a Bill to a Special Select Committee except when it is absolutely necessary to their purpose, the outcome can be significantly influenced by the members of the Committee, and may even serve to thwart the government's plan for the legislation. So as a precaution, governments usually decide not to pursue that stage unless

[91] As has been shown in this paper.

[92] The reason for this is because the islands share a similar political culture which is evidenced by the manner in which elections and general government politics is conducted.

[93] This has been the case for decades. The elections of 2011 showed an unprecedented number of 5 political parties. However the two main parties were the ones who were victorious at the polls as the other parties retained a very small percentage of the votes cast. See http://www.caribbeanelections.com/lc/parties/default.asp

[94] Parliament must stand up to Cabinet and ensure that its voice is heard and it makes a difference against the intimidation of the government and Cabinet. Matt Korris states that "Ultimately, Parliament needs to rebalance its relationship with the executive; it needs to take greater control of the legislative process, stand up to government more often and make better use of the existing scrutiny tools and procedures available to it." Hansard Society, *Standing up for Scrutiny: How and Why Parliament should make better law*, Parliamentary Affairs Vol. 64 No. 3 2011, 564-574 at page 569.

[95] This seems logical when examining the legislative process and the little regard which is placed on important aspects of the process, as shown throughout this paper.

when it is a Bill where there is significant public interest, so as to avoid appearing highly inappropriate. Therefore the aim is to obviate as much as possible the negative effect which the composition and findings of a Select Committee can have on their policy. One way in which this is done is by refusing to utilize the Special Select Committee and another would be by making the majority of members of a Committee come from the government side.[96]

Another reason for failing to utilize the Select Committee may be because this may delay the passing of the Bill. Usually government's main aim is to get legislation passed and to get it done quickly. This reasoning however is desperately flawed since this should not be the main aim. the Modernisation Committee noted that "Some bills may enjoy a swifter progress through the two Houses as a result of pre-legislative scrutiny, whilst others may well take longer. If the result is a better Act, then that is a good thing."[97] This is very accurate as the end result is of the utmost importance.

The most delay which opposition members can cause is through debate, and this delay may not be significant. Therefore, since a majority vote is cast in Parliament, the government, in an effort to avoid this delay, places priority on achieving consensus by government members as opposed to consensus by the entire House as this majority will propel a secure and easy passage of the Bill in Parliament. However, the Modernisation Committee, in referring to consensus smoothing the passage of legislation said:

> "Whatever the impact on the passage of legislation, the purpose of pre-legislative scrutiny is not to secure an easy ride for the government's legislative programme, it is to make better laws by improving the scrutiny of bills…"[98]

In my view, the latter part of this statement is instructive. Pre-legislative and legislative scrutiny should ultimately lead to better legislation and this should always be the primary consideration. If parliament is intended to be supreme and responsible for the passage of legislation, and parliament comprises of members elected by the people as well as appointed members, then the passage of legislation must be a combined effort of government members and opposition members. It could not be the intention that the government because of their majority, has the total say in the resulting legislation passed by parliament. Pre-legislative and legislative scrutiny

[96] This is the case in the UK as well. The composition of Public Bill Committees mirrors the makeup of parliament in that there is always a majority in favour of the government. See http://www.parliament.uk/about/how/committees/general/

[97] Modernisation Committee, First Report of Session 2005-2006, The Legislative Process, HC 1097 at para 26.

[98] Ibid.

should therefore assist in providing a thorough inspection and analysis of legislation undertaken by a Committee representing both the government and opposition in parliament.[99]

The situation in St. Lucia can be best described as unfortunate. In parliaments all over the world, the need for reform of the legislative process to include a systematic approach to pre-legislative scrutiny has been welcomed because of the benefit which it can have on legislation. Many parliaments can attest to the positive impact which pre-legislative scrutiny has had on their legislative process. It is unfortunate that in St. Lucia, we too can share in this positive impact if we were keen on doing so. Although the legislative framework to make greater strides possible is in place, our governments choose not to utilize it.

Even in cases where the Special Select Committee is utilized, the procedure in the Standing Orders is apparently not adhered to, whereby somewhat hindering the process from achieving the positive impact and benefits which it actually can.

One primary example is the Insurance Council Bill of 2011. This Bill upon being laid before the House, after the first reading, was committed to a Select Committee.[100] As a result, many amendments were made to this Bill. At the conclusion of the Select Committee's deliberations, instead of a report being submitted to the House for acceptance or otherwise, as expressly stipulated by Standing Order 79, the Bill was sent back to the Drafters to incorporate the recommendations of the Committee. Although the Standing Orders are very clear as to the procedure to be followed when a Bill is sent to a Select Committee, there was clearly a breach on this occasion as the procedure was not followed as it should have been.

If this is an indication of how things are done in St. Lucia then we see clearly that something is very wrong. Our Standing Orders plainly set out a process which is not optional or discretionary but rather mandatory. Parliamentarians however chose not to follow this process as stipulated by the Standing Orders and referred the Bill back to drafters without the Committee of the whole House adopting the report of the Special Select Committee and making a decision from there. It is this blatant disregard for and loose handling of the legislative process which prevents the island from reaping the benefits it should from the legislative process - Benefits which are available to us.

[99] The Hansard Society Commission on the Legislative Process argued that parliament should move away from a partisan approach to bills towards "a more considered approach whereby Members, from all parts of the House, could be enabled better to inform themselves and to look collectively, in a more systematic way, at the Government's legislative proposals." Hansard Society, *Making the Law, the Report of the Hansard Society Commission on the Legislative Process,* 1993, at para 315.

[100] The members of the House were of the opinion that the provisions of the bill needed further clarification before entertained by the whole House.

Our Legislature needs to make a greater effort to want the system we have in place to work efficiently and effectively. For this reason Parliaments around the world have showed keen interest in improving the legislative process in their countries.[101] Our Standing Orders were made law because such an important process must be laid out fully for all to understand as well as to ensure that it is followed to the letter so that the rights and freedoms of every citizen can be protected and upheld. In addition, as circumstances change and new ways of improving the process are discovered, is it incumbent upon the legislature to assess these changes and see the effect which it can have on their own legislative process.

In St. Lucia however, as indicated previously, we have seen no change in the legislative process since its inception in 1979 and neither can we see the possibility of change on the horizon. This, I submit, is because each successive legislature is not concerned with this aspect of governance. Their priority is passing legislation, no matter how this is done as long as the end result suits their government's agenda. When we examine the manner in which things are done, this is the picture which is painted.

Another reason, in my opinion, for the failure to utilize Special Select Committees is because the occasions where Parliament's hand is forced to do so have not been many. The majority of these times would be when Private Bills are brought to the House. As seen in Chapter 1, Private Bills, are the only occasion upon which parliament is mandated to refer a Bill to a Special Select Committee.[102] In the history of St. Lucia's legislative process there has never been a Private Bill brought to the House.

I submit that one possible reason why the Standing Orders make provision for a Private Bill to be subjected to scrutiny is because it may be assumed that it has not achieved an adequate measure of scrutiny as governments Bills have. This also implies that the level of scrutiny which government Bills are expected to undergo must be of a systematic form ensuring that every provision is good law which will effectively serve the purpose for which it is passed. Therefore, it stands to reason that if such scrutiny is not conducted for government Bills then the process of pre-legislative and legislative scrutiny is not being done in the manner intended by Parliament when the standing orders were drafted.

The Hansard Society posits that the use of Select Committees improve collegiality as members on most occasions, "put aside party loyalities in pursuit of holding government to account and promote the public interest".[103] By doing what is required of such a Committee it will also assist

[101] The Modernisation Committee in commenting on the development and impact of pre-legislative scrutiny reported that Parliament and government were "committed to expanding the use of pre-legislative scrutiny". See *Pre-Legislative Scrutiny* by Richard Kelly at p.8.
[102] SO 84(7).
[103] Hansard Society Briefing Paper, Issues in Law Making, 2: Standing Committees, July 2003 at pg.5.

in the members' understanding of a Bill, which will lead to more informed and better legislative scrutiny particularly in the form of debate.[104] Consequently the Committee will achieve greater consensus to the Bill upon which they must deliberate.

[104] In speaking of select committees, House of Lords note "The reports of the committees have not only affected the content of the bills brought before Parliament but have also been drawn upon by members if the debates on the bills. … The work of the committees is thus not something conducted in isolation of either House, but contributes to Members' understanding of the issues surrounding the bills. This enhances the quality of the scrutiny during the legislative process itself." See See Hansard Society Briefing Paper, *Issues in Law Making, 5: Pre-Legislative Scrutiny,* London: The Hansard Society, 2004, p. 14.

CHAPTER 4

BETTER LEGISLATION AND LESS LIKELIHOOD OF AMENDMENTS

In Chapter 3, I dealt with the first of the two results mentioned which is the impediment of the country's ability to gain more benefit from the legislative process. To do this I used 3 of the Modernisation Committee's standards of assessment. In this chapter I will deal with the second result which is the impediment of the country's ability to improve the quality of legislation produced. To examine this area I will use the fourth standard of assessment used by the Mordernisation Committee.[105]

It should lead to better legislation and less likelihood of subsequent amending legislation.

As we saw in Chapter 2, one of the main arguments in favour of pre-legislative scrutiny, and one of the main reasons for legislative scrutiny is to produce better laws.[106]

Sir Geoffrey Bowman KCB in speaking of the legislative process stated:

> "The result is that Bills that have gone through pre-legislative scrutiny as well as the normal parliamentary processes end up as better Bills and better Acts. That is a good thing. … I think it does lead to fewer amendments in the House. I can almost certainly say that."[107]

In St. Lucia's case, it is difficult to say for certain that pre-legislative and more efficient legislative scrutiny has led to better legislation but it stands to reason that it could have done so. The sentiments expressed by the Modernisation Committee rings true regarding the situation in St. Lucia:

[105] As noted in the Introduction, this essay sought to prove that parliament's failure, as shown in the hypothesis, has a two-fold result. The first which is hinder St. Lucia's ability to gain more benefit from the legislative process, was addressed in Chapter 3. The second, which is to improve the quality of legislation produced will be addressed in this Chapter. Both results have been assessed using the criteria set out by the Modernisation Committee. This second result will be assessed using the final criteria as mentioned in Chapter 2.

[106] One of the Chairmen of the Joint Committee which considered the Charities Bill in draft said "I remain a real convert to the pre-legislative process. ... That process is far less partisan and far more open to analysis and debate, and, as a consequence, makes, where it is possible, for far better law." See Select Committee on Modernization of the House of Commons, (1997-1998), The Legislative Process, HC 190 at para. 12.

[107] Constitution Committee, Parliament and the Legislative Process, 29 October 2004, HL 173 2003-2004, Q354, page 106.

> "There is little doubt that pre-legislative scrutiny produces better laws. As the law society told us, 'it would probably be difficult to prove scientifically that more pre-legislative scrutiny has improved legislation, but it would seem unarguable in practice that it has'."[108]

Jennifer Smookler, in referring to the effect of the relatively recent phenomenon of pre-legislative scrutiny noted that while its value remains something of an unknown quantity, the desired outcome is to produce better law.[109]

I too share the opinion that the effective use of pre-legislative scrutiny could lead to fewer amendments.[110] In St. Lucia in many cases the majority of the Bills which are laid before the House are amendments.[111] To compound the situation further, the majority of these amendments are to relatively recently passed legislation. This poses the question as to why there is this occurrence. I am of the view that it is as a result of the deficiency of pre-legislative scrutiny and legislative scrutiny in the legislative process. This would be proved best by an analysis of some of the legislation passed.

While there are many statutes which can be used to make the point, I will choose three relevant ones to do so. The first will be the Legal Profession Act 2000, most provisions of which came into force on 1st April 2001.[112] Since enactment, there have been 3 subsequent amendments in the years 2001, 2006 and 2007 respectively.[113] An examination of the contents of the amendments reveal that the 2001 amendment corrected provisions which in reality were not practical, including restricting the definition of "practitioner members"[114] and "practicing certificate",[115] deleting, among other things, that an attorney remains a member of the Bar Association as long as his or her practicing certificate is valid and that a practicing certificate ceases to be valid where the attorney fails to pay his or her annual subscription fee. Since it is not mandatory that an attorney be a member of the Bar Association and be required to pay

[108] Mordernisation Committee, The Legislative Process, 2005-2006, HC 1097 at para. 20.
[109] Smookler, Jennifer; Making a Difference? The effectiveness of Pre-Legislative Scrutiny, Parliamentary affairs, Vol. 59 No. 3, 2006, 522-535 at page 522.
[110] Select Committee on Modernization of the House of Commons, (1997-1998), the Legislative Process, HC 190 at para 20.
[111] Statistics show that for the year 2000, out of the 31 Acts passed, 14 of these were amendments; In 2003 out of the 36 Acts passed, 18 of these were amendments; In 2006 out of the 48 Acts passed, 32 of these were amendments; In 2009 out of the 10 Acts passed, 7 were amendments.
[112] All provisions came into force on 1st April 2001, except for S. 61 which took effect from 1st April 2002.
[113] Legal Profession (Amendment) Act, No. 18 of 2001; Legal Profession (Amendment) Act, No. 24 of 2006; Legal Profession (Amendment) Act, No. 8 of 2007. There was also yet another amendment proposed to S 61in 2009 but to date this has not been enacted.
[114] Section 6, Legal Profession Act, Chap 2.04, Revised Laws of St. Lucia.
[115] Ibid section 23.

annual subscription fees one could see how this provision would create a stir within the legal fraternity.[116]

The 2006 amendment was to section 21 of the principal act which deals with prohibition on practice. Subsection (3) of the principal act stipulates that an attorney-at-law employed in the government service should not perform any notarial duties or accept payment for any services rendered to any party in a proceeding. The amendment simply appended to this subsection "except where the attorney-at-law is acting on behalf of the government".

The 2007 amendment was to sections 2, 15 and 16 of the principal act. Section 2 was amended to delete the definition of "agreement" and subsections (2) and (3) to give a broader definition for the term "Council of Legal Education". Section 15 was amended to widen the criteria of citizens to be admitted to practice to include persons who studied and attained professional legal qualification in the UK. Section 16 which deals with the admission of non-nationals to practice in St. Lucia was amended to include that the requirements of subsections (1) and (2) of section 15 must be satisfied.

All of the abovementioned amendments did not make the adjustment because of a new policy initiative or to incorporate in the act new provisions which were recently made. They were all circumstances which existed at the time the principal act was enacted which were flagged by a subsequent review of the recently enacted principal legislation. There is no doubt that had adequate scrutiny been done on the principal legislation the above would have been picked up. Undoubtedly adequate pre-legislative scrutiny would have included sufficient consultation with major stakeholders which in this case would have been the Bar Association, as this was not done efficiently. The Bar Association after enactment stood in solidarity to set the wheels of amendment in motion to ensure that better legislation was achieved.

It is understandable that after a statute is enacted and it begins to work, that amendments may be necessary as the life of the statute progresses. However in St. Lucia this is not always the case. Although the mischief which the amendments were aimed at curing in fact existed at the time the principal act was passed, for some reason it was not picked up. The mischief which the 2007 amendment in particular aimed at curing is one which existed for a number of years and had posed a problem even under the older regime which was used for admission into practice. From 1997 when the government changed hands there was much discussion on what now

[116] The 2001 amendment also expressly gave the disciplinary committee the power to discipline (s. 36), inserted a provision on the exemption of attorneys in Public Office and members of Cabinet who are attorneys from paying for a practising certificate and Bar association fees (s. 26) and made the provision on mandatory insurance a bit more broad (s.61) although in 2011 there was a proposed amendment to this amended provision as seen in Chapter 3.

forms the contents of the 2007 amendment as in many other OECS territories attorneys who were trained in the UK were required to complete a conversion course at the University of the West Indies before being admitted to practice in the territory. St. Lucia was one of the few islands where this conversion course was not necessary. There were repeated assurances by the government at the time that this would not pose a threat to the island. Therefore, in 2000 when the principal act was enacted this should have been a major provision of the act, but somehow it was not.

In my view had there been effective pre-legislative and legislative scrutiny, the possibility of the provisions of the amendments being included in the principal act would have been greater. This is because scrutiny can make a valuable contribution to the legislative process, as has been shown in the UK.[117]

The occurrence where numerous amendments are made to principal acts in a very short space of time is very frequent in St. Lucia. While in some cases there is no doubt that amendments can be warranted as the law changes, this is not often the case.

Another example is the Criminal Code of St. Lucia.[118] Since its enactment, there have been amendments made in 2006, 2008 and 2010.[119] This 2004 Criminal Code revision was one which went on for a number of years. There were many consultations as to how the old code could be revised and the new code enacted. This new Code was also the subject of lengthy debate in both Parliament and the Senate. Although it was such a significant piece of legislation it was not subjected to scrutiny by a Special Select Committee. From the enactment of the code it was realized that there were significant problems with a number of provisions which had apparently slipped through the cracks, one can say, as a result of inadequate pre-legislative and legislative scrutiny. This led to the abovementioned amendments. There are also still many provisions which still need amending since in practice they are not working very well.

A similar situation occurred with the Motor Vehicle and Road Traffic Act[120]. Amendments were made twice in 2005[121], and another major amendment was made in 2006.[122] The first

[117] Supra note 106 where The Modernisation Committee noted this at paras. 22-23 when they assessed the Draft Corruption Bill. They also gave examples of The Draft Communications Bill and the disability Discrimination Bill at para 21.
[118] Act No. 9 of 2004, Laws of St. Lucia. This act amended the 1994 Criminal Code of St. Lucia.
[119] Criminal Code (Amendment) Act, No. 38 of 2006 Laws of Saint Lucia; Criminal Code (Amendment) Act, No. 11 of 2008 Laws of Saint Lucia; Criminal Code (Amendment) Act, No. 2 of 2010 Laws of Saint Lucia.
[120] No. 10 of 2003, Laws of Saint Lucia.
[121] Motor Vehicle and Road Traffic (Amendment) Act, No. 1 of 2005 Laws of Saint Lucia and Motor Vehicle and Road Traffic (Amendment) Act, No. 12 of 2005.
[122] Motor Vehicle and Road Traffic (Amendment) Act, No. 10 of 2006 Laws of Saint Lucia.

amendment of 2005 introduced the service of a "tourism Taxi" and the "tourism taxi driver's licence"[123]. It also made the "tourism taxi permit" more specific to tourism and added two provisions relating to the renewal of the permit[124], inserted the date of commencement of operation when a permit has been granted[125] and also made the permit non transferable.[126] The amendment also sought to include the category of offence to section 82(2)[127]. Lastly the amendment sought to adjust the fixed penalty for proceedings commenced by a ticket by including the minimum penalty where no maximum was provided for.[128] The second amendment made in 2005 was a further amendment to section 82(2)[129] to decrease the fine from $2000.00 to $400.00 and also to reduce the term of imprisonment from one year to 21 days. The subsequent amendment of 2006 brought major amendments to over 93 sections of the principal act. [130]

The amendments of 2005, all with the exception of the provisions relating to the tourism taxi which was something new, could have been picked up with more diligent scrutiny. The section 95 amendment in 2005 bolsters this point because adequate and efficient scrutiny would have picked up on the anomaly that the section, while covering all proceedings commenced by a ticket, only made provision for the penalty to be half the maximum penalty. This did not take into consideration legislation for proceedings commenced by a ticket where no maximum penalty is stated, as these do exist. To have failed to include these was a gross error.

Additionally two amendments within a 6 month period, to the same section further proves this point. This is not an infrequent occurrence as many other acts have suffered a similar fate of where the mischief which sought to be cured existed at the time of enactment. Further, such a revamp of the principal statute took place only 3 years after its passing, with many of the provisions merely fixing things which were missed on the first occasion rather than establishing new policies. I remain convinced that had adequate and efficient scrutiny been done in the manner discussed in this discourse, much more of these would have been uncovered.

[123] S. 2 was amended by adding definitions of these terms.
[124] S. 55(4).
[125] S. 55(5).
[126] S. 55(7).
[127] Expressly stating that an offender would be liable on summary conviction.
[128] S.95. The section in the principal act only made provision for the fixed penalty in respect of proceedings commenced by a ticket to be half the maximum penalty for the offence in respect of which the proceedings were brought.
[129] As seen above this same section was amended in the first amendment of 2005.
[130] One of these amendments included another amendment to s. 55 as discussed above to insert the word "tourism taxi" before the word "permit" anywhere it appears in the section. It also amended s. 55(6) strengthening the provision on renewing a permit, in a manner which should have been clearly expressed when the section was first amended in 2005.

There are many more examples of legislation which can be given to make the point.[131] A thorough examination of these would reveal further the points made above. This confirms, in my mind that the neglect of the use of a systematic and efficient form of pre-legislative and legislative scrutiny has brought about legislation which, because of being incompetently drafted and not adequately or sufficiently scrutinized, has led to numerous amendments. It is preposterous that there are cases where legislation can be amended twice in one year, in subsequent amendments on the statute books. This to me shows the situation quite clearly and should be an eye opener for the government and parliament to realize that reform of the legislative process is needed, particularly where scrutiny is concerned.[132]

We have cases of Parliaments in neighbouring OECS islands where the legislative process is utilized in a manner which allows for legislative scrutiny in accordance with the Standing Orders of the island. St. Vincent and the Grenadines is a prime example where the use of Special Select Committees to scrutinize legislation is a frequent occurrence which assists greatly in producing better laws. The Standing Orders of that island are very similar to that of St. Lucia but the grave difference is that these are utilized in the way in which Parliament intended for their use.[133]

One prime example of how better quality legislation can be produced through a more systematic form of scrutiny is the Insurance Council Bill referred to in Chapter 3. When this Bill was introduced to Parliament the Committee of the whole House agreed to send it to a Special Select Committee. After thorough scrutiny which included the hearing of evidence and the examination of witnesses, the Committee prepared a report which contained several amendments to the proposed Bill. As a result of the report, the Bill was returned to the drafters in order to incorporate these amendments into the Bill.

In the same way that this rare use of scrutiny was able to contribute significantly to the making of better legislation, so too could the frequent use of a Special Select Committee enhance the quality of legislation enacted. It is lamentable that the process provided for in the Standing Orders is not utilized as intended.

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[131] *Insurance Act No. 6 of 1995, Chap 12.08, Revised Laws of St. Lucia*. Subsequent to enactment, amendments were made in 2003 (No. 28 of 2003), 2006 (No. 3 of 2006), and 2008, (No. 8 of 2008); Income Tax Act, Chap 15.02, Revised Laws of St. Lucia. Between enactment and 2001, there were 19 amendments made to the principal act; 1 amendment in 1990, 1 in 1991, 2 in 1994, 1 in 1995, 1 in 1996, 3 in 1997, 1 in 1998, 2 in 1999, 4 in 2000 and 3 in 2001. 2 amendments were made in 2003 Nos. 14 and 15 of 2003, 1 in 2007 (Income Tax (Amendment) Act, No. 11 of 2007), 1 in 2009 (Income Tax (Amendment) Act, No. 2 of 2009), and 1 in 2010 (Income Tax (Amendment) Act, No. 1 of 2010).

[132] As noted by Blackburn and Kennon " in many cases the legislative process is really a mechanism for the government of the day to tidy up under-prepared bills"; R. Blackburn and A. Kennon (Eds), Griffith and Ryle on Parliament: Functions, Practices and Procedures, 2nd Edn. Sweet and Maxwell, 2003.

[133] This was confirmed by the Registrar of the High Court in an Interview. She was in a very good position to draw the reference since she is also a former Clerk of Parliament in St. Lucia.

It appears that the government's main objective is to pass legislation in a manner which it deems suitable and considers is in accordance with its mandate, rather than ensuring there is proper quality legislation. This is evidenced even more by the extensive level of scrutiny undertaken by Cabinet prior to the laying of the Bill in Parliament. As indicated before, ensuring that the government has a majority vote on a given Bill in Parliament is of the utmost importance to governments and seems to be the main priority, rather than getting the other members of parliament on board and sincerely considering their valuable contributions on the Bill. Governments feel the need to have a safety net since it is felt that the duty of opposition is to oppose and are truly mostly desirous of getting the legislation passed. In this regard, Matt Korris' statement is fitting here:

> "The way that successive governments have legislated in order to meet explicitly political rather than legal imperatives … has also become an increasing source of complaint. In these circumstances, the quality of the statute they are producing is not always uppermost in ministerial minds; their primary objective is to get the law through to Royal Assent to demonstrate that the government has done something."[134]

The several tiers of scrutiny must be combined in an efficient manner to produce better results which ultimately leads to better laws. Therefore it would be beneficial to the country to not only adopt a systematic method of pre-legislative scrutiny, encompassing the methods of assessment utilized by the Mordernisation Committee to ensure effectiveness, but also to make full use of the provisions of the Standing Orders for legislative scrutiny, particularly where Special Select Committees are concerned. This would undoubtedly include utilizing adequately the processes which are already in place as well as reforming the current legislative procedure.

Former UK Prime Minister Tony Blair in a lecture in 1996 reiterated:

> "we still need to update our legislative procedures to improve the effectiveness of Parliament. There is also a case for effective consultation to produce better quality legislation. And it does not help produce good government when almost every change in every clause of a Bill is interpreted as a defeat for the government."[135]

The above is an indication of the plight faced in St. Lucia. Parliament's main responsibility is to the citizenry. Therefore since the citizens are the ones who will be affected by legislation,

[134] Hansard Society, *Standing up for Scrutiny: How and Why Parliament should make better law*, Parliamentary Affairs Vol. 64 No. 3 2011, 564-574 at page 564.
[135] John Smith Memorial Lecture, 7 Feb 1996.

particularly legislation where there is a great deal of public importance, then it makes sense for the legislature to have adequate consultations to ensure that the views of the citizens are protected by and reflected in legislation. Too often do governments feel the need to hang on to supremacy to ensure that everything is done the way that they desire as opposed to the way in which is best for all concerned. Despite many years of independence there is still too little interest shown by successive governments in pursuing a legislative process that is all embracing of citizens, opposition and the country as a whole.

It is unfortunate that the government of St. Lucia does not have the foresight to use legislative scrutiny to their benefit and profit the opportunity to place parliament in a position to realize the benefit as succinctly put by the Mordernisation Committee - to lead to better legislation and fewer amendments.

CONCLUSION

An examination of the workings of pre-legislative scrutiny in the UK has shown that it has been a significant development in the legislative process.[136] Even before the introduction of pre-legislative scrutiny legislative scrutiny was an integral part of the process, and still is.

To achieve success in the process, a systematic and structured form of scrutiny is essential as the quality of law is greatly influenced by the level of scrutiny it receives in Parliament. We are aware of how vital laws are to the functioning of any society and as a result there is no doubt how important this mechanism is. Despite this however, our legislative process in St. Lucia is severely deficient and, regrettably its improvement in operation or even reform is not a major priority for Parliament or government.

This dissertation has proven that there is a deficiency in St. Lucia's pre-legislative and legislative scrutiny processes which has been brought about by Parliament's failure to (i) utilize the Standing Orders in the manner in which they were intended and (ii) develop and follow a more systematic scrutiny process, which includes pre-legislative scrutiny as intended by the Modernization Committee and legislative scrutiny as intended under the Standing Orders.

Although the Standing Orders were legislated to govern the legislative process, in St. Lucia they are not being used in the manner intended where scrutiny is concerned. Parliament often chooses not to utilize some options available for scrutiny, and even when they do, fail to utilize these options as has been intended. Additionally, despite the changes made by so many parliaments over the world, after recognizing the difference a more developed and structured scrutiny process can make, our Parliament has failed to reform the scrutiny process to ensure that the mechanism works as it has been intended to. These in turn affect not only the way in which the scrutiny process is carried out but also the end result that is achieved.

This deficiency has resulted in two main problems, and these have been examined using the standard of assessment given by the Modernisation Committee.[137] The first problem is that it has hindered the island's potential to gain more benefit from the legislative process. We see the merit of Parliament as a whole being involved in pre-legislative scrutiny and not simply government members who make up the cabinet.[138] Further, our laws have made provision for a legislative process that can work, if only it were utilized in the manner intended by Parliament

[136] Hansard Society notes that "PLS has been an extremely positive development." See Hansard Society Briefing Paper, *Issues in Law Making, 5: Pre-Legislative Scrutiny,* London: The Hansard Society, 2004, p. 5.
[137] Select Committee on Modernization of the House of Commons, (1997-1998), The Legislative Process, HC 190 at para 20.
[138] First standard of assessment; (a) *Provides an opportunity for the House as a whole, including the Opposition, to have a real input into the form of the actual legislation.*

when these laws were enacted. The legislative scrutiny processes in the House is an example of an improperly and under-utilized legislated processes. To these processes other tools, which have not been legislated, such as explanatory notes, can be utilized on a regular basis so as to enhance the legislated process.[139]

We have also seen the importance of the involvement of more persons in the legislative process through consultation.[140] This would assist greatly in assessing the potential consequences of the legislation against a background of persons who will be affected as this can influence legislation at an early stage, whereby making better legislation.

Finally the legislative process as a whole can achieve greater success if the Special Select Committee is utilized on a regular basis as it will not only in save time particularly in the later stages of the Bill but also in ensure that the entire legislature is fully satisfied with the contents of the Bill.[141]

The second problem caused is that the scrutiny process has hampered the country's ability to improve the quality of legislation produced. Applying the standard of assessment[142] revealed that if the scrutiny process is developed and followed in a more systematic way, there is no doubt that the quality of legislation produced would improve and this would greatly decrease the need for subsequent amending.

While control of the winds of change lies in the hand of the government and parliament, these entities must show a willingness to want to improve our legislative scrutiny process, if for nothing else, because of the benefits which such improvement can provide and the improvement which can be made to the quality of legislation produced. Two major improvements which will go a long way lie in the bosom of a more structured and developed system of pre-legislative scrutiny and in the proper use and reform of legislative scrutiny. St. Lucia stands on the brink of reaping comparable success to that of the UK and other countries who have tested the waters and proven the worth of the process. However, the step must be made towards sowing the seeds of development where pre-legislative and legislative scrutiny is concerned. Then and only then will we gain more benefit from the legislative process and improve the quality of legislation produced with less likelihood of amendments.

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[139] This would include as shown in Chapter 3 more informed debate with assistance from adequately prepared explanatory notes, possibly even Keeling Schedules, more time for perusal of bills in preparation for debate, the government's consideration of very often the valuable contribution made by members of the Opposition on Bills.

[140] Second standard of assessment; "*(b) Connecting with the public by involving outside bodies and individuals in the legislative process. It therefore opens Parliament up to those outside affected by legislation."*

[141] Third standard of assessment; *"(c) Achieving consensus so that the Bill completes its passage through the house more smoothly. It could, and indeed should, lead to less time being needed at later stages of the legislative process."* As shown, this tool which is provided for in the Standing Orders can be very effective were it used adequately.

[142] Fourth standard; "*(d) It should lead to better legislation and less likelihood of subsequent amending legislation."*

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