

## **Address by the Hon. Sam Bulgin to the Annual General Meeting of the Cayman Islands Justice of the Peace Association, June 25 2004.**

Ladies and Gentlemen, after one of my discussions with a number of JPs on different occasions, it became clear to me that I should seek to use the first opportunity afforded to me to clarify a few things about the office of Justice of the Peace. I promise you it will not be an exciting time, but you should find it interesting. And for those of you who have been straining under the weight of your civic duties in addition to your regular work duties, I hope you will be re-energized with an even deeper desire to serve your community.

It is against this background that I will attempt, very briefly to put a number of matters into their proper perspective, perhaps beginning with the evolution of the office of a Justice of the Peace.

## Introduction

Historians of Tudor England have for many years acknowledged the importance of the office of Justice of the Peace in the 16<sup>th</sup> Century.

Indeed even prior to then, in the 1360's **Parliament** in the UK had enacted laws that provided that in every county of England shall be assigned for the keeping of the peace, one Lord and with him four or so of the most worthy of the county, and they shall have powers to restrain offenders and rioters and to pursue arrests, take and chastise them according to their trespass offence.

Thereafter, and with the passage of time, a wealth of statutes increased the Justices' powers until the Stuart era in the 17<sup>th</sup> Century, by which time they had truly become what later historians would describe as the "key figures in local administration" and justice.

The concept of the JP arose therefore from this recognition as an office able to provide needed administrative structure and judicial services.

It follows also that conferment of the office of the JP is not merely to bestow an honour on a deserving citizen, but rather a confirmation that the recipient is a person recognised as worthy of serving his community in this capacity.

### **How are JPs Appointed:**

In the Cayman Islands the Summary Jurisdiction Law empowers His Excellency the Governor by warrant under his hand to appoint "any fit and proper person" to be a JP. A JP so appointed holds office during the Governor's pleasure - he cannot be suspended, but instead the Governor can order his name to be removed from the books.

### **Who May Be Appointed:**

Because it is such a revered and jealously guarded office, the question is often asked, who may be appointed as a Justice of the Peace?

In law, His Excellency the Governor can only appoint "fit and proper persons" to be JP's.

Ascertaining the fitness and character of a person to be a JP in Cayman is not a difficult exercise. The Cayman Islands is a jurisdiction of approximately 100 hundred square miles and a population of less than fifty thousand residents and therefore most people are known to each other. In ascertaining the fitness and character of a person to be appointed, His Excellency the Governor relies on input from the JP association, the Hon Chief Justice, the office of the Hon. Chief Secretary, the office of the Attorney General as well as other persons and agencies, e.g. the Police Department where necessary.

This initial screening exercise is very important in order to ensure that only persons with the requisite attributes are appointed. My research, and I stand to be corrected, has failed to turn up any instance in the Cayman Islands, where a JP once appointed has been removed from office. This goes some to providing evidence of the calibre of persons who serve in this capacity.

I said removed from office because under our law as I mentioned earlier, there is no provision for suspending a JP from office. So the only recourse available to the Governor against a JP who has transgressed is removal from the roll.

You will be interested to know that the issue of a JP's fitness of character to hold office was dealt with by the Court of Appeal of Trinidad and Tobago and Her Majesty's Privy Council about four years ago.

In the case of ***Ashook Kumar v. The State of Trinidad and Tobago*** - the Privy Council ruled that in light of charges of

dishonesty and **fraud** pending against a Justice of the Peace Mr. Krishna John, "He might no longer appear to be of the character to be expected of a JP, a responsible member of the community."

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That appeal had to do with the voluntariness of some confessions statements alleged to have been made by Mr. Kumar. Mr. Kumar insisted and maintained that the police had pressured him to make confessions so that it was not done voluntarily. The practice in Trinidad and Tobago and some other countries is such that, a confession statement from an accused to a police officer has to be witnessed and certified by a JP. Mr. John the JP certified the alleged confessions as having been voluntarily given, and he gave evidence to that effect at the trial of Mr. Kumar. He was crossed examined extensively about the charges of fraud and dishonesty against him. So his credibility was questioned and in serious issue.

It came out during the trial that after he had certified the statement, but before the trial took place the President of Trinidad had Mr. John removed from office as a JP. As in Cayman there is no provision in the law of **Trinidad** to suspend him until the outcome of the case against him. The Privy Council had very little difficulty in ruling that because of the allegations of Fraud and dishonesty he might not be considered a fit and proper person to hold office as a JP.

**Still on the question of who may be appointed:**

I should tell you that in most Commonwealth countries JP's are appointed in accordance with the respective statutory frameworks. Yet apart from the generic expression of "fit and proper person" most of the statutes are silent on any other criteria for appointment.

Conventionally however, the following attributes are looked for in a candidate in order to determine his fitness for the office of JP.

Nominees are required to have an adequate standard of

education; a good genuine desire to serve the community, they should be of good standing within the community and should be respected as persons of good sense, character and integrity.

It follows that persons with a criminal record or perhaps as is the case in Trinidad, with allegations of criminal conduct against them will not be considered. Also, generally appointments will only be made where there are not already, sufficient numbers of JP's to meet the requirements of a particular district/community.

Interestingly, in some countries, for example, in New Zealand, nominations for appointments are accepted only from Members of Parliament where the nominees reside.

It is interesting to note that on the issue of whether Members of Parliament should be appointed as JP's there are marked contrasts to be found in different countries. Generally most Commonwealth countries have no statutory prohibition against Members of Parliaments becoming JP's. But if we look for

example, at Bermuda and Anguilla, some differences are readily apparent.

In Anguilla as a matter of convention, elected Members of Parliament are not regarded as fit and proper persons to be appointed JP's. I am told that the reason for this approach has nothing to do with their character, but instead, lies in the observance of the concept of separation of powers. It is conceivable, the argument goes in Anguilla, that JP's could be called upon to exercise judicial, quasi-judicial or law enforcement functions. The Anguilla Magistrate's Code provides that JP's shall have the same powers as the Magistrate and so it is felt that it would be inappropriate for elected Members of Parliament to have the potential to exercise judicial powers.

In Bermuda on the other hand, Government Ministers and Members of Parliament are routinely appointed as JP's. Indeed of the about 400 JP's in Bermuda, 40 of them are Members of Parliament, some current and some past. Bermuda took the view

that in keeping with the **early recognition** that JP's function includes ministerial duties, Members of Parliament should therefore be appointed JP's.

But perhaps even more interesting is the position in the BVI. Their Magistrate's Code of Procedure Law, states that "every elected Member of the Legislative Council shall be an ex officio JP of the Territory." So once elected, an MLA automatically become a JP.

In the Cayman Islands, in law, election to a political office is neither a qualification nor a disqualification for appointment as JP. Indeed, all ministers and members of Cabinet are JP's. So there is a **rebuttable** presumption that members of Cabinet are all fit and proper persons.

And Ladies and Gentlemen, before I am held in contempt, let me proclaim for the record that in law our Chief Justice all Grand Court Judges and our Magistrates are ex-officio JP's.

In closing, permit me to make a few other relevant comments.

One has to do with the distinction or the difference between a JP and a Notary Public.

I am sure that you are aware that it is not unusual for some people to confuse the two offices. However they are in fact very separate and distinct offices. Some of the major differences are as follows:

1. JP's are appointed by the Governor, in his discretion under his hand.

Notaries are appointed on the authorisation of the Governor in Cabinet, Cabinet advises him.

2. Notaries are required to pay a five hundred dollars registration fee, plus an annual fee for their appointment and if they fail to pay this annual fee by the 31/1 of each year their appointment will lapse.

A JP pays no fees and the appointment is for life unless the Governor removes him from office if he has fallen from grace.

3. Notaries are allowed to charge for their services. JP's cannot charge for their services.
4. JP's are Magistrates and can issue warrants, preside over Summary Courts, issue search warrants, warrants of arrest, summonses, admit people to bail, and as happened in a recent case authorise the laying of a complaint against someone who is alleged to have committed an offence.

A Notary Public on the other hand cannot function as a Magistrate. His/Her role is confined generally to vetting and swearing documents, witnessing signatures mostly for overseas use, e.g. in legal proceedings in foreign countries.

5. There is no procedure to apply to become a JP. Someone has to recommend you for appointment. However, a person wishing to be a Notary has to apply for appointment.

These are some very important differences that you should be aware of.

### **Conclusion**

Ladies and gentleman I must not allow myself to indulge in any further remarks. There is one virtue, I am reminded, in after dinner oratory, and that is brevity. The ingredients of after dinner oratory are, the joke, the quotation, and the platitude. A successful platitude requires a high degree of genius, so I will stick to the quote.

Permit me to refer to an extract from a 1961 Criminal Law Review on the subject of the historical perspective of the office of JP.

I think the historical significance of the office of JP is best understood with this quote.

**Quote:**

*“Six hundred years ago, Statute conferred upon 'one Lord and with him three or four more of the most worthy in the country with some learned in the law" definitive functions for the keeping of the peace of their county. From this statute in particular the Magistracy derive their familiar title, now commonly abbreviated to two letters JP, in conformity with the modern practice. The continuity of office and functions of the justice of the peace from that time to this exemplifies the stability of our national institutions as a remarkably long period..."*

In short it would be difficult for civil society as we know it today to function without the office of JP. I close by encouraging you to

continue in the best traditions of your office and in the service of  
your country.

Hon. Samuel Bulgin  
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Cayman Islands

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