The Law Association's Comments
on Bill No. 7 of 2018

Amendments to the Supreme Court of Judicature Act Cap. 4:01

The Law Association has no objection to, and indeed welcomes, the increase in the number of judges of the High Court and the Court of Appeal. In order to tackle the increasing backlog in the civil and criminal jurisdictions, one of the necessary measures is plainly an increase in man and womanpower.

The Association, however, has significant reservations with the extension of the eligibility requirements for appointments to the Supreme Court to include members of the bar of any Commonwealth country.

We assume that this amendment is being made in order to increase the pool of persons from which judges are to be selected because of some concern that there will not be sufficient suitable candidates from the bar and bench of Trinidad and Tobago. We can think of no other justification for extending eligibility to persons not already part of the Trinidad and Tobago legal profession. It should follow, therefore, that if there indeed is a sufficient number of suitable local candidates, it will not be necessary to look further afield. We therefore approach the proposed amendment with this in mind.

We also take it as beyond disputation that a suitable local candidate for the High Court and Court of Appeal is preferable to one who is a member of the bar of some other Commonwealth country. This is obviously so since a member of the Trinidad and Tobago bar will be so much more acquainted with the history and culture of Trinidad and Tobago which are very often so important to a just resolution of disputes.

This observation is of far lesser force in relation to members of bars of Commonwealth Caribbean countries which share our history and culture.

It is with these observations in mind that the Law Association takes the position that while members of the bar of Commonwealth countries ought to be eligible to be appointed to the higher judiciary, they ought to be considered only as a last resort, where the Judicial and Legal Services Commission is of the view that there are no suitable candidates firstly, from the Trinidad and Tobago bar, and secondly, from the bars of Commonwealth Caribbean states. Simply put, the law should state that suitable members of the local bar should receive first priority for appointment to the higher judiciary, followed by members of bars of the Commonwealth Caribbean. Appointments from the bars of other Commonwealth

countries should only occur if there are otherwise no other suitable local or regional candidates.

Secondly, we take the position that under no circumstances should there be an appointment from outside of the Commonwealth Caribbean directly to the Court of Appeal.

The Law Association makes this final important point.

Appointments to the proposed expanded higher judiciary will have an impact on the direction of the judiciary for generations to come. It is therefore crucial that the next round of appointments occur as a consequence of a process in which the general public reposes great confidence. Recent events have shattered the public's confidence in the appointments process leading to the establishment by the Law Association of its Judicial Appointments Committee. In any event, after 50 years of independence, and in the light of greater demands on the judiciary, the time was ripe to re-examine current procedures.

The Law Association therefore strongly recommends that reform of the appointments process be given the highest priority with the aim of achieving consensus on the way forward before appointments to the expanded judiciary are considered.

Amendments to the Child Rehabilitation Centre Act

Section 12A(4)

The proposed section 12A, commendably, makes provision for the grant of permission to a resident of a Rehabilitation Centre, to leave the centre for a stated purpose and period. The order is made on application to the High Court by the Commissioner of Prisons. Section 12A(5), quite understandably, empowers the Commissioner to apply to the Court to revoke the permission granted by the Court. It is therefore puzzling that section 12A(4) gives the Commissioner the power, at any time, and for no apparent reason, to rescind the permission granted by the Court. The Association recommends that 12A(4) be deleted. It makes no sense to require a court order for the grant of permission, which will be made on proper judicial grounds, and then to give the Commissioner the power to revoke that permission in his discretion, particularly where provision is made for an application to Court to revoke the permission.

Section 12B(4)

This is a minor point. This proposed section requires the Children's Probation Officer, in preparing a report on a resident, to take into consideration "the voice" of the resident. The

Law Association understands from its enquiries that what is intended is that "the views" of the resident be taken into account. If so, it would not hurt to make that clear by using the time worn and tested phrase.

Part IXA – Child in need of Supervision

The proposed section 50A deals with applications for orders deeming a child to be in need of supervision. The Law Association notes that there is no provision requiring the Court to ensure that the child be afforded separate representation. It may be that this is the intention of the proposed section 50A(1)(b) which requires that the Children Authority be notified, but the section does not require the appearance from someone on behalf of the Children's Authority, far less that that someone should represent the interests of the child.

The Law Association recommends that a provision requiring representation on behalf of the child be inserted.

20th July 2018