

Memorandum by
THE GOVERNMENT OF BARBADOS

Barbados Position Paper

1. As noted at page 16 of Professor David McClean's paper on "Reform of the Law of Domicile" (LMM(83)11), Barbados has substantially adopted the New Zealand Domicile Act, 1976. But paradoxically the Barbados legislation came into operation a full year ahead that of New Zealand: 1 January 1980 as opposed to 1 January 1981.

2. The Domicile Reform Act, 1979 has its origins in a recommendation contained in the Report of the National Commission on the Status of Women in Barbados. The recommendation was that "a married woman be given the right to acquire and retain an independent domicile like any other person of full capacity". This in turn arose from the fact that as the law relating to matrimonial causes then stood, the High Court of Barbados only had jurisdiction in divorce matters if both parties were domiciled in Barbados. This meant that a husband could frustrate a divorce sought by a wife but not vice versa. And although there were certain exceptions to this rule there were other actual and potential difficulties respecting the whole concept of a domicile of dependence.

3. The recommendation of the Commission was accepted by the then Attorney-General, and the Law Reform Division of the Chambers having researched the law, jurisprudence and academic comments on the law of domicile in various Commonwealth jurisdictions decided that the New Zealand legislation was best suited to the particular legal requirements of Barbados. For not only were we reforming the law of domicile generally but also the law relating to children and family law in general including maintenance and certain aspects of the law relating to succession.

4. The Domicile Reform Act, 1979 has undoubtedly introduced radical reforms in the determination of the legal status between the individual and the State of Barbados. Thus far there has not been any litigation under the Act and a number of Supreme Court Judges have indicated that they have so far experienced no difficulty with the legislation. So perhaps at this point in time it can be asserted that the legislation has removed the immediate legal impediments. However a law student writing in Vol. 4 of the University of the West Indies Students Law Review has predicted much litigation in respect of section 3 of the Act. This prediction is based on the fact that in order to provide a starting point for the determination of domicile, the section states that "A domicile that a person had at a time before the commencement of this Act shall be determined as if this Act had not been enacted". This means that resort must be had to the common law rules relating to both dependent and independent domicile. And this can be a complex matter.

5. On the more positive side, Mr. Anthony Bland, Senior Lecturer in Law at the Faculty of Law, University of the West Indies in an article entitled "The Reform of the Law of Domicile" in the October, 1982 issue of the West Indian Law Journal notes that "Trinidad and Tobago has now emulated Barbados... and has substantially followed the terms of the Barbados Act". And having analysed the various provisions of the legislation and the relevant jurisprudence thereon, he concludes on a note of qualified optimism as follows:

It must be said that it is an excellent thing to find statutory enactments in the Caribbean in an area which has for some time been in much need of reform, but ... one hopes that the acts have not in some instances, created more problems than they have solved.

6. Regarding the question of the replacement of domicile by habitual residence in the case of Barbados this would require much mature consideration having regard to our recent reforms of the law relating to domicile. And this is in spite of Professor McClean's argument that domicile is "enjoying a very active retirement" and "the case for 'starting again' with the concept of habitual residence is a strong one". But in discarding the concept of domicile we may also have to discard a whole body of jurisprudence thereon, if not in whole, certainly in part.