

OUR BILLS **SIMPLIFIED**

CONSTITUTION (AMENDMENT) (IMPEACHMENT) ACT



2021

**JAMAICA ACCOUNTABILITY
METER PORTAL**

Measuring Accountability in Government

THE IMPEACHMENT BILL

THE BIG PICTURE

The Bill proposes a new chapter to the Jamaican Constitution under which parliamentarians could be punished for acts of malfeasance called “impeachable offences” such as corruption or abuse of authority that render them unfit to hold public office, or that bring their office into disrepute.

HOW CAN AN ELECTED OFFICER BE REMOVED?

First, the accused official must be found guilty of an impeachable offence. The Bill establishes a process for determining the guilt of the accused parliamentarian through an Impeachment Committee and an Impeachment Tribunal. The final decision to sanction the official requires up to a majority vote where the official sits – the Senate or the House of Representatives.

There would be five types of impeachable offences: **(1)** corruption or misappropriation of public resources; **(2)** persistent neglect of duty; **(3)** abuse of official authority; **(4)** misleading or intentionally abusing the privileges of Parliament; and egregious behaviour that is not befitting of a parliamentarian.

If found guilty, parliamentarians would either be censured, removed from Parliament and their ministerial positions, or disqualified from holding public office in the future.

GOVERNANCE CONTEXT

Society’s ability to hold officials accountable is in part determined by the legal framework that regulates positions of power. While elections are the ultimate form of democratic accountability, they are not the only form. Impeachment proceedings are part of a suite of tools capable of both constraining state power and punishing misuse of that power.

WHAT ARE THE BENEFITS OF AN IMPEACHMENT PROCEDURE?

Jamaicans vote for their elected representatives every four to five years. Their taxes pay their salaries and they entrust them with huge responsibilities that determine the quality of their lives and the successes of their businesses. However, they do

not have a mechanism to remove them from power when dissatisfied with their behaviour or performance. Rather the citizens have to either depend solely on the decision of a Prime Minister to remove an MP from a Ministry and in the case of a Senator, the citizen would have to rely on the parliamentarian's willingness to resign. The Impeachment Bill therefore, seeks to strengthen Jamaica's accountability systems by creating the legal framework to empower citizens with the right to have a say in holding parliamentarians to account.

It is also reasonable to say that having such a law can provide a deterrent and help regulate the conduct of public officials in a positive way.

THE IMPEACHMENT PROCEDURE

Step 1 - Impeachment Process

According to the Bill, impeachment proceedings would begin when a 'designated' person (or group of persons) makes an impeachment request to the Parliament. This request would describe the complaint against the official and any evidence of wrongdoing. The request would be considered by a newly-established committee of Parliament called the Impeachment Committee.

Who Can Request Impeachment

The Bill specifies which 'designated persons' can submit a complaint against an official. Any three Senators or three Members of Parliament could request impeachment. They would have to lodge a petition supported by 1,000 registered voters. The other 'designated' persons could also request impeachment but without the petition are :

1. The Auditor General
2. The Director of Investigations at the Integrity Commission
3. The Chairman or any member of the Integrity Commission appointed under the Integrity Commission Act
4. The Director of Public Prosecutions
5. Director of Corruption Prosecution at the Integrity Commission
6. The Director of Elections
7. The Public Defender
8. The Political Ombudsman
9. The Chairman of any Commission of Enquiry

STEP 2: Impeachment Committee & Articles of Impeachment

The Bill creates a new committee of Parliament, the Impeachment Committee, to consider all impeachment requests. Their core functions would be to review complaints against accused officials and to determine whether a sufficient case (prima facie case) against them has been established.

If the Impeachment Committee decides that a sufficient case against the elected official exists, then they must prepare Articles of Impeachment that outline the alleged impeachable offence. The Articles of Impeachment would be delivered to the Clerk of the Houses of Parliament for transmission to the Impeachment Tribunal – which would determine the official's guilt or innocence.

Once the Impeachment Committee receives a request, they should conduct public meetings to consider the complaint. Any person or group of persons who requested impeachment would have to present their complaint openly at a meeting of the Impeachment Committee, and the accused official would be entitled to attend and present during meetings.

WHO MAKES UP THE IMPEACHMENT COMMITTEE?

The Bill establishes a six-member committee with members from both the upper and lower houses of Parliament. They are:

1. The President of the Senate (chairman)
2. Four Members of the House of Representatives: two appointed by the Prime Minister and two appointed by Leader of Opposition
3. Two Senators: one appointed by the Prime Minister and one appointed by the Leader of Opposition

The Committee would have to be established within **30 days** of the first sitting of Parliament. If the President of the Senate is accused, then the Deputy President would assume the chairmanship. If any of the other members are accused, then they could be replaced by someone from the same category in which they were appointed.

STEP 3: IMPEACHMENT TRIBUNAL

The Bill would establish a five-member Impeachment Tribunal appointed by the Governor-General. The Tribunal would receive Articles of Impeachment and decide on the official's guilt. In doing so, the Tribunal would be required to stage public proceedings in order to determine if the accused official committed an impeachable offence.

The Bill requires that the Tribunal's operations mirror those of a Commission of Enquiry. It should allow the accused person the ability to defend themselves, be represented by an attorney, and apply the rules of evidence that are applicable in criminal trials. The Bill grants the Tribunal the "same powers as in a court of law" to compel the attendance of persons and the production of evidence.

However, the Tribunal can only recommend a sanction, not enforce one. If the Tribunal determines that an impeachable offence was committed, it could recommend three possible sanctions: **(1)** censure of the official; **(2)** removal of the official from Parliament or from their appointed office (e.g., as a Minister or as Prime Minister); and **(3)** disqualification of the person from holding public office, either for a set period or indefinitely.

Once the Tribunal makes its decision, it submits its findings and a resolution that outlines the recommended penalty to the House of Parliament in which the accused official sits (the House of Representatives or the Senate) within sixty days of its decision. The Bill requires that the resolution from the Tribunal be tabled for consideration in Parliament "as soon as is reasonably possible."

STEP 4: FINAL PARLIAMENTARY DECISION

Under the Bill, once the Tribunal submits its report and the recommended penalty, the Parliament would have the ultimate decision on the official's fate. The House of Representatives or the Senate – depending on the accused – would have final authority to "affirm, modify or override" the recommendation of the Impeachment Tribunal.

Once the Tribunal's resolution is tabled, the House in which the member sits would decide by majority vote whether to affirm, modify or override the Tribunal's recommendation. **Their decision is final.**