



# **The Atomised Individual The Social Individual & The COVID Vaccine**



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## THE ISSUE

The socio-political concept of the “atomised individual” has been borrowed from the notion of “atomism” in the natural sciences which holds that all matter in the universe comprises basic indivisible components or “atoms”. In socio-political theory “atomism” is taken to mean that “the individual” is the basic unit of analysis for the totality of the socio-political condition without reference to the society or polity, the socio-political arrangements therein, or the social solidarity generated by real flesh-and-blood persons in life, living, and production.

One contemporary political theorist, Andrew Haywood, in his book *Global Politics*, contends that the socio-political manifestation of “atomism” — “social atomism” — in ideational or practical terms, is “the tendency for society to be made up of a collection of self-interested and largely self-sufficient individuals, operating as separate atoms.” Thus, social values, socio-political institutions, economic arrangements, law and regulations, processes and methods of conflict resolution all evolve from, and, according to the advocates of socio-political atomism, ought to revolve around the interests and actions of the individuals who occupy the geographic space of a nation-state.

Indeed, right-wing or conservative political personalities, such as Margaret Thatcher of Britain and her acolytes, go as far to assert that there is truly nothing called “society”, given that the nation is but merely an aggregation of “atomised individuals” who have evolved in particular ways over time.

Interestingly, neo-liberal, libertarian and infantile, left-wing personages or commentators, who rail against the COVID vaccine (“the anti-vaxxers”) and those who embrace, permanently, vaccine hesitance, draw abundantly from the well-spring of “the atomised individual”, nurtured by political/ideological (not necessarily social) conservatives, in theory and practice (“praxis”). Thus, for example, the inane incantation by those in the chorus line of anti-vaxxers and the permanently vaccine hesitant of “my body, my choice”, without reference to the public interest of the society as a whole. Peculiarly, the right-wingers, the doctrinaire neo-liberals, and the infantile leftists find themselves, objectively, in identical company on this vital issue of our times. Invariably, those assorted types, superficially divergent, end up at the same place of anti-social inanity.

In contrast to the concept of the “atomised individual” stands that of the “social individual”. At the core of the “social individual” is social solidarity, the public interest, and a thorough-going embrace of the collectives of family, our society, our civilisation, our nation, without denying the role and importance of the individual, but not in a veritable splendid isolation or absurd



separateness. Surely, it is self-evident that the individual and the society cannot, reasonably, fashion a suicide pact.

The contrasting conceptual duality of the atomised individual/social individual can be interrogated on at least three levels: (i) The ideational and theoretical; (ii) the practical reality and future implications; and (iii) the legal and constitutional. I shall attempt to link these three levels of interrogation and their respective connections to the taking of the COVID vaccine in St. Vincent and the Grenadines and elsewhere.

## **THE ATOMISED INDIVIDUAL**

In its most pristine form the “atomised individual” insists that the interests of the individual should take precedence always over the public interest, the society and the social groups therein, the nation, and the State. The “atomised individual” extols selfishness, his or her own individual interest, personal self-reliance bordering on autarky, and his or her own personal independence with little or no regard for others. These ideas and perspectives of the “atomised individual” lead him or her to proclaim absolute, or near absolute, individual rights with little or no limitation or restraint, without a sufficiency of regard for the public interest or anyone else’s individual interest or rights.

As such, the “atomised individual” advocates total or near total freedom from government regulation in the pursuit of his or her economic goals, personal agendas, or interests, including little or no regulation of the right or freedom relating to his/her person, expression, assembly, property, religion, the right to bear arms (in the context of the USA), and so forth, or of any subject in which the community or public has an interest reasonably required to be protected and advanced.

The atomising forces of global capitalism, the increasing homogenisation of modern culture, the glorification of individual personalities, and the revolution in information communication technology have so mesmerised large swathes of our population that many hanker, uncritically, for what they mistakenly believe to be “the good life” of the atomised individual. Paradoxically, these very persons consider that this atomised individualism delivers unto them the largest possible expanse of personal liberty or freedom and personal acquisition of material things, when in fact it does nothing but enthralls them to, and subjugates them under, the impersonal forces such as global capitalism and intelligence-gathering by monolithic corporations, such as Facebook, Instagram, and Twitter. Such atomised individuals, unwittingly, become easily manipulated in the social laboratory of life, living, and production by their impersonal masters in very much a similar way as the scientist manipulates the atoms in the scientific laboratories. If one doubts this socio-political manipulation in the social laboratory, please look at the nefarious work of Donald Trump and his Republicans in the USA, Cambridge Analytica, Strategic Communications Laboratories, (inclusive of its activities on behalf of the opposition New Democratic Party in St. Vincent and the Grenadines), and imperialism’s “Deep State”.

In a fascinating essay entitled, The Death of Community and the Rise of Individualism (July 16, 2018 – The Internet), a political scientist Sami Omais, aptly explores the phenomenon of “social atomisation” as follows:



*"One ----phenomenon that we often fail to reflect on is the disintegration of our social fabric, namely, social atomisation, or the basic unit of society being broken down into smaller parts ----. Today, the joint effects of technology, the principles of modern citizenship, and relatively open borders give people the ability to decide where to live, with which nation to align, and what lands to call home. As individuals become accustomed to frequently moving and breaking ties with their community of birth, communal identification becomes transient. People lack deep links to any singular culture; globalisation makes the individual a sponge that soaks up the norms and beliefs of whichever locale they find themselves in. The result is the absence of a clear and permanent identity, without which the individual cannot truly/fully belong to any community. Without community, they have no culture to provide shared customs and understandings that create common links and trust between a people. Overall, ties of community dissipate and the individual becomes the basic unit of society." [My Emphasis]*

As Omais correctly observes:

*"The underlying cause of this atomisation and the overall ideology that encourages this development in the western world is liberalism; a classical philosophy that posits individual autonomy and equality between individuals as the two ultimate moral values ----- . Liberalism's unit of analysis is the individual, caring neither for the community nor any collective. As such, economic, political, moral, and legal questions are resolved with the individual in mind, making it unsurprising that it was in liberal parts of the world, namely the United States [of America] and Europe, that extreme individualism first emerged."*

To be sure, the notion of "the individual" in the "Age of Enlightenment" contributed immensely to humanity's progress in the dissolution of despotic monarchical regimes, feudalism, religious dogmas of Catholicism, and unscientific follies, and in giving rise to worthy achievements, hitherto unrealized, such as representative government, individual liberties, capitalism, religious diversity and tolerance, advanced science and technology, and democratic governance. These very accomplishments, however, contain multiple contradictions which, if unresolved or left in an unbalanced condition, engender unacceptably high social costs and/or debilitating personal consequences.

Unbridled or pristine individualism has engendered huge socio-economic contradictions in free-enterprise capitalism, the decay of community and social solidarity, the persistence of poverty and inequality amidst material abundance for a small minority, a resurgence of religious intolerance, the misuse and abuse of aspects of modern science and technology, the undermining of a system of public order and the democratic state based on aggregated community or public interests, and the assault on the quality of life, personally.

From the beginning, it was the genuine quest of liberalism to balance carefully individual interests and public interests. Constitutions and laws were accordingly so framed. However, this balance has been put under immense strain with the emergence and consolidation of a parallelogram of



forces which have exalted an atomised individualism over the public good or the public interest. This imbalance is destructive of the very society and the individuals themselves therein.

This reality, and prospect, is evidently manifest among those who claim a jaundiced, pristine or atomised individualism which retards and undermines the fight against the novel coronavirus by their opposition to any effective roll-out of the vaccine, which is the best, and safest, tool in the tool box to defeat COVID-19. Those who embrace an atomised individualism rail against the profound social solidarity manifested by its practitioners. And the established, mainstream science and the governments of the 193 member-states of the United Nations accept and conclude, after careful study and analysis that the vaccine is safe, with its use overwhelmingly beneficial to the individual and society. In St. Vincent and the Grenadines, the vaccine is available, and free, to the public, but the anti-vaxxers and the permanently vaccine hesitant deploy every specious, unfounded argument against taking the anti-COVID vaccine, including seductive, but wrong, reasoning grounded in a philosophy of atomised individualism.

### **THE SOCIAL INDIVIDUAL**

For over fifty years of political and professional life, I have been reflecting on the contrasting ideas/notions/concepts of the “atomised individual” and the “social individual”, and their implications for public policy, good governance, and the public interest. One year or so before I became Prime Minister, I delivered, on March 16, 2000, the feature address to the 56<sup>th</sup> Annual Conference of the National Union of Public Workers of Barbados entitled “Ensuring Our Tomorrows”. Among other things, I averred as follows:

*“In effect, members of the ‘new professional class’ who I reiterate are among the principal beneficiaries of their grandparents’ solidarity with one another in collective obligations, now eschew or condemn social solidarity. Instead, they extol ‘individualism’ as the path to self-emancipation without realising that in our history the embrace of that very notion has meant continued servitude for the oppressed, the dispossessed, and the down-trodden. This infantile ‘individualism’ will make us no more than individual atoms akin to those manipulated by the physicist in his laboratory. In the society-at-large, an organised economically-dominant class — and they are almost always united and coherent despite internal differences and contradictions among them — will manipulate us in their sophisticated social laboratory.*

*“-----We must continue our quest to build the social individual, a person in communion with his/her society and his/her natural allies here and elsewhere, as distinct from an atomised individual to be buffeted from pillar to post by the architects and practitioners of neo-liberalism and the slings and arrows of misfortune.”*

Today, the leaderships of the public sector unions in St. Vincent and the Grenadines, who privilege an “atomised individualism” on the issue of taking the COVID vaccine, are themselves undermining the social solidarity necessary and desirable, as requisite “social individuals”, to defeat the novel coronavirus in the interest of the health, the economy, the society (inclusive of



education), and the security of our nation and its people. These union leaders are profoundly mistaken. They ought never to allow their personal agendas and individual interests of whatever kind to take precedence over the overwhelming public interest to defeat, or roll-back, the spread of the coronavirus, and to ensure the sustainable development of St. Vincent and the Grenadines, which is currently convulsed and disrupted, in vital material particulars, as a consequence of COVID-19 and the recent volcanic eruptions.

It is important to note that during the time of COVID-19 (March 11, 2020 up to today, and continuing) and the volcanic eruptions of April 2021, and their continuing aftermath, the employees of the central government (pensionable, non-pensionable, and daily-paid) have been cocooned and protected, relatively, by the government from the more egregious, adverse fall-outs from the coronavirus and the volcanic eruptions. More particularly, none of them was laid off; none suffered any loss of salary or wages, or allowances; none received his or her salary or wages late as has been the case in several neighbouring countries. Meanwhile, workers in the private sector, farmers, and the fisherfolk have suffered real hardship. Further, for several months, large numbers of central government employees, including teachers and public servants, were paid full salaries even though the COVID-related circumstances restricted or prevented their regular attendance at work. At the same time, though, it must be acknowledged that significant numbers of public servants, teachers, nurses, doctors, police officers and other public service employees performed, and continue to perform, heroic work at the time of COVID and the volcanic eruptions.

In the first nine months of 2021 (January to September), some \$293 million have been expended on salaries, wages, allowance, NIS contributions, pension and gratuities, severance and ex-gratia payments for employees of the central government. This sum represents 60 percent of the total recurrent expenditure of \$489 million for the same period in 2021.

Since 2001, the salaries of public servants have increased in real terms by over 40 percent (that is after a discount of the nominal increases for inflation), much above the real (not nominal) increase in national productivity measured in terms of the growth of the Gross Domestic Product (GDP). These salary increases have been occasioned by regular salary enhancements, increases in allowances, a reclassification exercise utilising the most favorable private sector comparators, and an in-built 2 percent annual increment for some one-half of the public servants who are yet to reach at the top of their salary scales. The public servants' real salary enhancements have been buttressed, too, by changes in the rate of taxation for all personal income earners. At the top, the marginal tax rate has been reduced from 40 percent in 2001 to 30 percent today, a decrease in the personal income tax rate of 25 percent; and at the bottom, an increase in the income threshold from \$12,000 in 2001 to \$20,000 annually, below which no personal income tax is assessed to be paid.

Further, the public servants have very generous study leave benefits, maternity and sick leave provisions, 100 percent house mortgages (no down-payment mortgages), scholarships and grants galore for tertiary education, good prospects for advancement, generous retirement benefits, and, generally-speaking, good conditions of work.

Particular categories of public service employees have received especial attention. For example, student nurses have been, and are being, accorded an almost "free" professional training, plus a



monthly stipend of \$1,000; this is exceptional in the Caribbean. And Nursing Assistants, hitherto non-pensionable, were made pensionable from October 27, 2015.

The bulk of the public servants today are the sons and daughters of the lower-strata working class and the peasantry. No one can reasonably begrudge them the material benefits of their jobs or their social status; they deserve all this, and even more if it can be afforded by the State representing the collectivity known as the society. Further, the majority of these public sector employees are progressive, social democratic, and in solidarity with their other “brothers and sisters” among the broad mass of the working people. Moreover, overwhelmingly, they are appreciative of their material benefits, prospects for advancement, and social status. They are also reasonable in their demands for further enhancements to their salaries, allowances, and working conditions. They realise, too, that the current pension arrangements are not sustainable and unfair to their counterparts in the working class who, objectively, will be required to fund these unsustainable pensions as currently configured.

But this is not the whole story in the public service, broadly-defined, as I honestly set out in my book, published in 2019, and entitled The Political Economy of the Labour Movement in St. Vincent and the Grenadines, in part, as follows:

*“But a very small section of the public servants, agitated by partisan opposition politics, by some leaders in the public service unions who are motivated by personal agendas or partisan political preferences, and a profound sense of entitlement grounded in the philosophy or idea of the creation or consolidation of a “labour aristocracy”, pursue wholly selfish aims against the interest of the bulk of public servants, the working people, and the nation. This tiny section of public servants, inclusive of a few in the leadership of public sector trade unions, embrace some of the more backward ideas in the political economy of neo-liberalism and monopoly capitalism. Objectively, in their undeveloped political consciousness, they side with those who are bent on curtailing or reversing the tremendous gains of the social democratic revolution, despite its limitations, spearheaded by successive “labour” political leaderships: Mc Intosh, Joshua, Cato, and Gonsalves. Unwittingly or not, this backward section of the leadership of the public sector unions finds common ground with those who hanker at a renewed counter-revolution against their own interests, against social democracy in St. Vincent and the Grenadines and the region. This is where the reactionary spirits of a “labour aristocracy” find comfort, against the interests of the working class and the nation.”*

The nation as a whole, inclusive of the Unity Labour Party government, has delivered practical solidarity to the employees in the central government and in front-line work places such as at the seaports and airports, in the quest to uplift life, living, and production of these employees in every material particular. Now, more than ever, the nation summons the health workers, the teachers, the Police, the Prison Officers, the workers at the airports and seaports, and all other front-line employees to bind with all of us in solidarity as “social individuals”, not “atomised individuals”,



in our quest to build back better and stronger. Among other things, this demands taking the vaccine subject to any prescribed exemptions.

The requisites of the engendering of “social individualism” — not “atomism” — in a quest of meaningful solidarity with each other in a progressive society, have long been at the core of the political praxis — theory and practice — of all the political organisations to which I have belonged in St. Vincent and the Grenadines: The Youlou United Liberation Movement (YULIMO); the United People’s Movement (UPM); the Movement for National Unity (MNU); and the Unity Labour Party (ULP). This perspective finds resonance in the affirmation of Socialist International, the mainstream international grouping of social democratic and socialist-oriented parties to which the ULP is affiliated, that: *“Solidarity is the noblest human sentiment in the struggle against inequality because it opens doors to new opportunities for education, employment, and the fight against poverty and hunger.”*

This sense of progressive social solidarity between “social individuals” has been movingly sketched by Captain Hugh Mulzac, one of our country’s esteemed historic figures, the first black man in the western hemisphere to gain a mariner’s licence, in his autobiography, A Star to Steer By, thus:

*“When one is young, one is likely to look at the world confidently, thrilling to the surge of blood through youthful veins, and to feel that no problem is too great to be overcome by one’s wit and ingenuity. We disdain cooperative action; we are raised in a competitive society, nursed on the philosophy of rugged individualism, and we rely exclusively upon our individual resources.*

*“In later years one begins to measure one’s performance against one’s goals, and to understand there were problems and obstacles undreamed of. We begin to realise that others, too, had ambitions, and to see ourselves as parts of society, as part of the people. The importance of private goals and selfish dreams diminishes as we understand that our dreams were not really our own, but illusions planted in our heads by a class-dominated educational system, by corrupt newspapers and magazine editors, and foolish prophets to lead us away from the common battle of all people for a life of freedom and plenty. And we discover that only in common cooperative action can all our individual dreams come true.”*

This compelling perspective applies, aptly, to the necessity and desirability of cooperative action by all in the assault on the pandemic of COVID-19, inclusive of the taking of the vaccine by everyone save and except those who have a genuine fact-based medical exemption or a narrowly-circumscribed exemption of a deeply-held religious belief. Anything else is useless sophistry; any other option in a pandemic is a dangerous fallacy grounded on a dog-eat-dog selfishness or atomised individualism, in full disregard of the public interest of the community and nation. It is a reckless abandonment of social solidarity.

Interestingly, among the principal propagandists of the anti-vax and vaccine hesitant crowd are many who oft-times seek social solidarity to address many of their other challenges in life, living,



and production. They opportunistically pick and choose the areas of socio-economic life in which they seek society's refuge, inclusive of privatising all their gains or privileges but socializing all that they may consider burdens, losses or risks. This is the philosophy of modern capitalists and neo-liberal ideologues such as Margaret Thatcher, Ronald Reagan, and their political progeny. This is the political and socio-economic path to damnation and perpetual social misery without any meaningful hope or realistic expectation of escaping the damnation and misery.

Indeed, among the anti-vaxxers and the permanent vaccine hesitants who parrot the imported slogan, masquerading as profound or original thought, of "my body, my choice", are some well-meaning religious types who do not realise that this sloganeering originated from among those who advocate abortion-on-demand, the absolutist benchmark of the "pro-choice" lobby. Similarly, the atomised individualism of those who raise the banner aloft of personal, absolutist sexual freedom, unrestrained by any social consideration whatsoever. Unwittingly, anti-vaxxers give succor and support to absolutist pro-choice advocates on abortion and unbridled sexual freedom.

A clarion call recently by the Anglican Archbishop of the West Indies, the Most Reverend Howard Gregory of Jamaica for "mandatory vaccination in the national interest" emphasised the requisite of social solidarity as against rank individualism. In an article dated September 28, 2021, and entitled "Leadership and the Pursuit of the Common Good", Archbishop Gregory did not mince his words:

*"These are not normal times when every individual can choose to play by their own rules while untold suffering and loss of lives, well-being, the ability to conduct one's daily life and the return to vibrancy in the economy are at stake.*

*"We are in a critical time which requires unusual action and the good of the whole must count at some point. It seems clear that the government, through the leadership, must do what leaders do in times of a crisis and take decisive action.*

*"----While mandating vaccination does not involve physically restraining persons, the government has a responsibility to protect citizens from infection by requiring proof of vaccination from public sector workers, as well as their customers.*

*"-----It is time we assert a greater sense of self-respect and dignity in doing what we know is right and in the public good, rather than await an external agency to enforce what we should do under appropriate national leadership for ourselves."*

In the process, Archbishop Gregory repeated a previous appeal for all Jamaicans, especially Christians, to take the COVID vaccine "as an expression of their duty to care for themselves and their responsibility to their brothers and sisters in Christ."

Profoundly, and with practicality, Archbishop Gregory was echoing the views of Pope Francis expressed a few weeks hitherto on the COVID vaccine. In launching a powerful plea in August 2021 for people to get vaccinated, Pope Francis asserted:



*“Thanks to God’s grace and to the work of many, we now have vaccines to protect us from COVID-19.----The vaccines bring hope to end the pandemic, but only if they are available to all and if we collaborate with all.*

*“----Taking the COVID vaccine authorised by the respective authorities is an act of love. Helping others do the same is an act of love: Love for oneself, love for our families and friends, and love for all peoples. Love is also social and political.”*

Social solidarity, through “social individualism”, manifests itself in different ways at different times. Archbishop Gregory assessed that these pandemic times are sufficiently challenging, critical, and perilous to demand mandatory vaccination. Thank God for a Caribbean religious leader who has the foresight, the personal strength, and divine grace to articulate such a powerful message on the vaccine against COVID. He has not allowed the vicious barbs of the anti-vaxxers and permanently vaccine hesitant to cow him into ignoble silence, an affliction that has affected some of his religious peers.

But how do fundamental Christians view the vaccine from a theological/moral standpoint? A highly persuasive answer has come from two Filipino Professors of Theology, Dr. Joseph Galang and Dr. Justin Galang of De La Salle University of the Philippines in a commentary entitled “A Fundamental Christian Argument for Vaccine Promotion” published in The Journal of Public Health (July 7, 2021), in part, as follows:

*“As the world continues to experience the pandemic, with the more well-off countries seeing the end of it, the main obstacle to reaching the remainder of the pandemic is people’s hesitancy to be vaccinated. In the USA, mostly white born-again and evangelical Christians have been unwilling to get vaccinated. Many Christians have been praying to God for the protection from the virus and think that getting the vaccine is an ultimate act of distrust of God. Some others keep asking, ‘God, where is the answer to all our prayers for the pandemic to end?’ Dr. Francis Collins, Director of the National Institute of Health, presents a response to various faith questions raised by Christians regarding the vaccine. As a Christian himself, Collins believe that God does a lot of his answering through people. Collins says that, coupled with one’s faith in God, it is one’s responsibility to provide protection for oneself. So, anyone who has been praying for answers may see them in the form of the vaccines.*

*“A Christian may see that the vaccines are a gift that needs to be unwrapped by rolling up one’s sleeves and getting vaccinated. Ultimately, a Christian may think that God has worked through science to provide us with this kind of answer.*

*“----The development and reception of the vaccine can be seen as a moment of awe at the wonders of God manifested through science, so that the laboratory becomes as much a place of worship as the church.”*



The faith relationship between an individual and God takes place not simply in the individual's splendid isolation but in his presence in a community of Christians in solidarity with each other and God. The apostle Paul taught this in his many letters in the New Testament.

Further, faith and science are not in opposition to each other; they do not have a suicidal relationship or pact. This is an accepted truth of all the world's major religions.

Moreover, the Book of James (Holy Bible, New International Version), the vital and enduring question is posed:

*"What good is it, my brother, if a man claims to have faith but no deeds?"*

The answer is compellingly provided thus by James:

*"---Faith by itself, if it is not accompanied by action is dead---*

*"Show me your faith without deeds and I will show you my faith by what I do-----*

*"You foolish man, do you want evidence that faith without deeds is useless?"*

James then answers fully this latter question by pointed, and apt, references to our ancestor Abraham and Rahab (*"the prostitute considered righteous for what she did when she gave lodging to the spies and sent them off in a different direction."*) James accordingly concludes summarily: *"As the body without spirit is dead, so faith without deeds is dead."* And deeds are not merely individualistic; they are done in conjunction with others and in communion with God.

The vaccine, and the taking of it, are "works" which are pleasing to God in their community togetherness in fighting COVID.

From ancient times, the Hebrew people acted in social solidarity as "social individuals", not as "atomised" ones, in their handling of infectious diseases. Indeed, Chapter 13 of the Book of Leviticus addresses the issue of the ancient Israelites' handling of infectious diseases among them. In two graphic and telling verses (verses 45 and 46 of Chapter 13 of Leviticus) it is stated thus:

*"The person with such an infectious disease must wear torn clothes, let his hair be unkempt, cover the lower part of his face and cry out, 'Unclean! Unclean!' As long as he has the infection he remains unclean. He must live alone; he must live outside the camp."*

A similar confinement for seven days outside the camp was rendered to Moses' sister, Miriam, who was "leprous", as recounted in Chapter 12 of the Book of Numbers.

These harsh mandatory measures of the ancient Hebrew people, acting in solidarity with one another, in communion with God, have no such exacting place in modern society. However, the simple point is that the treatment was not merely one of choice for the "atomised individual"; it was a matter for the community's social solidarity. The New Testament, too, is replete with this teaching from other examples.



The simple truth is that although the practice of religion and the faith relationship God have always been, and will continue to be intensely personal and individual, they have never been, and will never be, atomistic; they are always communitarian, and are best practiced and endured through a community of pilgrims, a community of saints, and a community of believers. Atomised individualism is, for example, fundamentally anti-Christian because it is selfish by nature, hypocritical in essence, and stands askance from good neighborliness. It is for this reason that the Godly command "*to love thy neighbour as thyself*" is at the core of the belief system and practice of Christianity.

## **THE EXTANT REALITY OF COVID AND THE FUTURE**

In my address to the nation on the COVID-19 situation on March 25, 2020, two weeks after the declaration of the global pandemic and the first reported case of COVID infection in St. Vincent and the Grenadines, I identified the four central elements of the multi-dimensional challenge of the novel coronavirus as touching and concerning Health, the Economic, and the Social (inclusive of Education), and the Security (HESS).

Over the past eighteen months or so, the COVID pandemic has convulsed and disrupted the lives, living, and production of the people of St. Vincent and the Grenadines, the region, and the world, though unevenly, not in equal measure.

Broadly, across the world, the impact of the pandemic has been swift, deep, prolonged, and continuing. Significantly, millions of lives have been lost; many more millions have been infected with the virus and a large number of these have been hospitalised. Economic activity has slowed markedly; jobs have been lost; incomes have been reduced or lost completely; global trade has gone into decline; supply chains of medicines, foods, raw materials of all kinds have been disrupted; prices of various commodities and services, including oil and international transport, have risen sharply; poverty and indigence have increased; hospital and health services have been stretched or have become overwhelmed; face-to-face learning and teaching have had to give way to virtual or blended (face-to-face and on-line) education; psycho-social challenges are acute; and there is much uncertainty about the future.

The fiscal condition of governments across the Caribbean, has deteriorated: The principal items of revenue have fallen; pandemic-related expenditure has increased public spending; public debt has risen sharply; and resources earmarked or budgeted for other vital programmes and services have had to be scaled down or gutted and transferred to COVID-related spending.

The profound socio-economic, health and security challenges regionally and globally have impacted directly, and indirectly, in myriad ways, negatively, on the condition of life, living, and production in St. Vincent and the Grenadines.

In St. Vincent and the Grenadines, the last nine months of 2020 and the whole of 2021, thus far, the health of our people has been severely challenged by COVID; the economy contracted in 2020 by under four percent and a higher level of economic decline, around six percent, is projected, as a result of COVID and the volcanic eruptions, for 2021; on the fiscal side of the central government operations, compared to 2019, there were increased deficits on the current and overall accounts,



and the “primary balance” in the year 2020; in the first nine months (January to September) of 2021, the fiscal condition improved relative to the comparable period in 2020: Current Revenues are up 10 percent; capital revenue and grants increased by 29.7 percent; the recurrent expenditure rose by 2.0 percent; the capital expenditure by 19.2 percent; the current balance improved by 68.5 percent to a reduced deficit on the current account of \$15.6 million; the primary balance improved by 26 percent to a primary deficit of \$45 million, and the overall deficit improved by 20.3 percent yet stood at \$84.5 million. Please note that this overall deficit is in the context of overall expenditure (current and capital) for the first nine months of 2021 of \$614.2 million. A further fact to note is that the annual GDP stood, pre-COVID, at \$2.2 billion.

Unemployment and under-employment have increased especially in the dominant tourism sector, though the situation in this regard is getting better due to: Increased construction; many more jobs at the Clear Harbour Call Centre; recruitment of 500 Vincentians for Sandals Hotel Group regionally; the start-up of recruitment of approximately 900 construction workers for the Sandals-Beaches Hotel at Buccament; the employment of workers at Rainforest Sea Foods at Calliaqua; jobs vested in the Medicinal Cannabis Industry; and workers in the recovering industries of agriculture, fisheries, air transportation, and manufacturing.

Regionally and globally, the supply chain problems and scarcity of certain commodities and services have pushed up the prices of imports, including energy products. Thus, consumers in St. Vincent and the Grenadines, and elsewhere, have been facing increased prices across a range of goods and services, and a scarce supply of others.

The net effect of all this in St. Vincent and the Grenadines is a fall in living standards of the poor and sections of the working people; farmers, and fisherfolk. In response, the ULP government has put in place since April 2020 an extensive, and unprecedented, array of social safety initiatives for numerous categories of displaced workers, farmers, fisherfolk, and small-scale vendors, among other persons. There have been, too, a range of supportive fiscal policies and a measure of temporary relief on electricity, water, and internet services.

The socio-economic fall-out from the pandemic has been exacerbated by the volcanic eruptions of April 2021 and their consequences, including lahars and mudflows. Twenty thousand persons were evacuated; 87 temporary shelters, most of them schools, were set up; extensive damage to houses, bridges, and other physical infrastructure especially in the north east and north west of the island of St. Vincent; the devastation of agriculture and fisheries in the affected areas, which hitherto produced some one-third of those two industries; the costly removal of the extensive and destructive coverage of volcanic ash across St. Vincent; the closure of all educational institutions and the pursuance of online teaching and learning; and generally, the immense disruption of central government services in every material particular.

Additional challenges arise from the active Atlantic Hurricane season since June 1, 2021. In the era of adverse climate change, hurricanes and storms are more frequent and intense; the hurricane season runs until the end of December 2021. Already, St. Vincent and the Grenadines has suffered excessive rainfall, lahars, mudflows, landslides and land degradation, deforestation, breach of river defences, coastal damage due to sea surges, and floods. Production and productivity have diminished accordingly.



The COVID situation is getting worse particularly during a “third wave” since around late August-early September 2021. The numbers have spiked alarmingly; the positivity rate of infections has averaged around 17 percent in the period September to mid-October 2021. From below 20 active cases in early August, the number has jumped to over 1,400 by mid-October. Deaths have increased from 12 to 38 in one month since early September 2021; by October 19<sup>th</sup> there were 55 deaths; by October 26<sup>th</sup> the number of deaths had risen to 63; and so it goes! Hospitalisations have sky-rocketed: The Argyle Isolation Centre’s capacity of 23 persons is stretched; the Female Medical Ward and the Pediatric Ward at the main Milton Cato Memorial Hospital (48 beds in those two Wards) have been evacuated to make way for COVID patients. Normal health care has been adversely affected nation-wide. And the end is not yet in sight.

Currently, there is a sufficiency of AstraZeneca, Sputnik V, and Pfizer vaccines but the uptake has been quite modest, although there has been a marked pick-up recently due to several factors: Better understanding by the public; the requisite, actual or impending, of the vaccine for travellers to several countries, including Canada and the USA; the increasing tendency of employers to urge all employees to vaccinate and to require vaccination for all new employees; and the decision of the government to require vaccination for “front-line” and strategic employees of the central government and various State agencies. Still, the full vaccination rate is at a low-level of close to 15 percent of the population; 20 percent of the population additionally have taken the first dose of a two-dose vaccine.

All the persons who have died are unvaccinated; and over 98 percent of those who are hospitalised are unvaccinated. In short, St. Vincent and the Grenadines, like other countries globally, the pandemic is increasingly one of the unvaccinated. The anti-vax and the permanently vaccine hesitant propagate falsehoods on the various internet platforms that impact negatively on the vaccination campaign; so, too, the misinformation and follies against the COVID vaccines propagated by some fundamentalist Christians in the USA who have much influence on a few like-minded churches in St. Vincent and the Grenadines.

It is a huge task in the extant, and prospective socio-economic circumstances to keep the fiscal wheels turning with reasonable stability, balance, and certainty. For example, at the end of January 2021, the first month of the fiscal year, current revenues dropped by a whopping \$13 million, over one-quarter of the current revenue collection for January 2021. If this level of decline had held at a monthly average of that magnitude for the remainder of 2021, it would have been well-nigh impossible for the government to meet its monthly recurrent commitments, inclusive of over \$31 million monthly to pay salaries, wages, allowances and National Insurance Services (NIS) employer contributions for current employees plus the payment of gratuities and pensions for retired public servants, and severance payments/ex-gratia compensation for severed or retired non-pensionable central government employees.

Fortuitously, between February and September 2021, windfall revenues amounting to some \$61 million were collected for alien land-holding licences and stamp duties on property transfers from property sales in the exclusive tourism “enclave” of Mustique. By the end of September 2021, fees for alien land-holding licences jumped by a massive 427 percent over the comparable period in 2020; a similar comparison in relation to stamp duties on property sales shows an increase of



214 percent. Peculiarly, the COVID pandemic occasioned a huge hike in the market prices of real estate on Mustique; rich people justifiably consider Mustique to be healthy, safe, and secure. It is unlikely that a windfall of this magnitude will extend into 2022. By contrast, the performance in the developed north of Canouan has been underwhelming.

Prudent fiscal policy has helped our country in at least four vital ways: (i) The pursuance of a “Fiscal Responsibility” framework; (ii) available monies from the Contingencies Fund established three years earlier; (iii) the decision to place a US \$20 million soft-loan from the World Bank (International Development Association-IDA-mechanism) in the Catastrophic Deferred Draw-Down Option (CAT-DDO) which was used to fund some COVID and volcano-related expenditure; and (iv) A relative/comparative economic sustainability as a consequence of the government’s decision, during the pandemic, not to lock-down the country or to impose curfews or a state of emergency; or to initiate any “draconian Chinese measures”, as advocated last year by the Opposition New Democratic Party.

Still, without the windfall revenues from land sales from Mustique, the revenues from the Contingency Fund, the soft loan in the CAT-DDO, some grants from overseas, the fiscal condition would have been terrible, indeed. The other main revenue items have showed declines or have slowed in the first nine months of 2021, compared to a similar period of 2020: Taxes on Incomes and Profits fell by 2 percent; and Taxes on Goods and Services dropped by almost 6 percent; Taxes on International Trade rose by 2 percent. Regulatory Taxes on Goods and Services increased by a commendable 8.9 percent; this latter tax category, in absolute terms, is, however, relatively quite small compared to the other principal items of current revenue.

Unless the country returns to normalcy through a widespread uptake of the COVID vaccines amounting to some 90 percent of the population so as to achieve “population immunity”, the health, economic, social, and security challenges, precipitated by the novel coronavirus (and later compounded by the volcanic eruptions), would not be able to be efficaciously addressed. Unless population immunity is achieved, tourism, agriculture, fisheries, manufacturing, and assorted services would not return to pre-pandemic levels; thus, economic rebound is unlikely, fully, to occur. The defeat of the anti-vax and the permanently vaccine hesitant stances of significant sections of the population, and a corresponding lift-off of vaccination, are necessary and desirable for sustainable lives, livelihoods, and development.

In a similar vein, the Education Revolution would continue to be dealt a severe body blow with adverse educational consequences for students and debilitating social effects and shocks to the society as a whole, if there is no significant uptake in the vaccination programme. Always, we must be reminded that Delta and Gamma variants of COVID are more easily transmissible and more dangerous to the health of individuals and families than the initial virus.

Across the society, too, psychological and psycho-social deficiencies are growing exponentially. Vulnerability and social fragility are likely to increase massively. The matter is in the hands of our people: Take the vaccine now!



## **RELEVANT CONSTITUTIONAL AND LEGAL ISSUES**

There is a bundle of relevant constitutional and legal issues that comes to the fore in addressing COVID-19 in St. Vincent and the Grenadines, particularly the roll-out of the COVID vaccination programme. I shall address these.

The liberal-democratic constitutional framework of St. Vincent and the Grenadines balances individual rights with the public interests; it does not extol any individual right in isolation of the public interest; it affirms individual rights but subjects them to the limitation of public interest considerations. In so doing, the Constitution stands askance from pristine or atomised individualism and it embraces the concerns for the rights of others and the public interest of the society; it frames its provisions under the conceptual umbrella of the social individual.

Chapter 1 of the Constitution of St. Vincent and the Grenadines is set out under the rubric “Protection of Fundamental Rights and Freedoms.” In Section 1 thereof, a preambular provision of core constitutional principles declare, thus:

*“Whereas every person in Saint Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:*

- (a) life, liberty, security of the person and the protection of the law;*
- (b) freedom of conscience, of expression and of assembly and association; and*
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,*

*the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.”*

*[My Emphasis]*

In the following Sections 2 to 13 of the Constitution are detailed a series of individuals rights and their limitations, under respective rubrics, namely:

- 2. Protection of right to life.
- 3. Protection of right to personal liberty.
- 4. Protection from slavery and forced labor.



5. Protection from inhuman treatment.
6. Protection from deprivation of property.
7. Protection from arbitrary search or entry.
8. Provisions to secure protection of law.
9. Protection of freedom of conscience.
10. Protection of freedom of expression.
11. Protection of freedom of assembly and association.
12. Protection of freedom of movement.
13. Protection from discrimination on the grounds of race, etc.

The remaining five provisions of Chapter 1 of the Constitution concern: Derogations from Sections 3 or 13 under emergency powers (Section 14); Protection of persons detained under emergency laws (Section 15); Enforcement of protective provisions (Section 16); Declaration of emergency (Section 17); Interpretation and Savings (Section 18).

In the public discussion on the roll-out of the COVID vaccines, the focus has been on the following constitutional protections: Protection of right to personal liberty; protection of freedom of conscience; protection of freedom of assembly and association; protection of freedom of movement; and protection of freedom of expressions; protection from discrimination. Accordingly, I shall briefly explore each of these in turn.

### **PROTECTION OF RIGHT TO PERSONAL LIBERTY**

Section 3(1) of the Constitution addresses the right to personal liberty and lists ten limitations, one of which is of relevance to COVID and the vaccines, in the following terms:

*“No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say —*

*-----(g) for the purpose of preventing the spread of an infectious disease.” [My Emphasis].*

Not every constitution in our region specifically limits the “right to personal liberty” for the purpose of preventing the spread of an infectious disease; but the Constitution of St. Vincent and the Grenadines does! And as we all know, COVID019 is “an infectious”, “contagious disease.”

### **PROTECTION OF FREEDOM OF CONSCIENCE**

Section 9 of the Constitution of St. Vincent and the Grenadines states in regard to the protection of freedom of conscience the following relevant provisions:



*“(i) Except with his or own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, including freedom of thought and religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.*

*“----- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required — (a) in the interests of defence, public safety, public order, public morality or public health;*

*(b) for the purpose of protecting the rights and freedoms of others including the right to observe and practice any religion without the unsolicited intervention of members of any other religion; or*

*(c) for the purpose of regulating educational institutions in the interests of the persons who receive or may receive instruction in them,*

*and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”*

*[My Emphasis]*

Thus, an individual's right to freedom of conscience, including freedom of religion, is not absolute. The very Constitution itself limits that right to the extent that a law or anything done under that law, for example in relation to COVID, is “reasonably required” in the interests of public safety, public order, or public health and that law or thing done under the law is “reasonably justifiable in a democratic society”. The provisions of the Public Health Act and the Regulations made thereunder, and the acts of the State flowing therefrom in respect of the controlling or preventing of the spread of COVID-19 and the roll-out of the vaccine, to the extent of any inconsistency, with or in contravention of, the right to freedom of conscience, religion, are certainly reasonably required in the public interest (as stated above) and reasonably justifiable in a democratic society. Abundant “case law” from decisions of the Courts in the Caribbean, the Commonwealth, the USA, and Europe support all this that has been done by the State in respect of COVID and the vaccines.

## **PROTECTION OF FREEDOM OF EXPRESSION**

Section 10 of the Constitution in regard to the protection of freedom of expression, makes relevant provision as follows:

*“(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to*



any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision —

a. That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

b. That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

c. That imposes restrictions upon public officers that are reasonably required for the performance of their functions,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.” [My Emphasis]

For the past 20 or so years, the ULP government has never passed any law or done anything under any law which has been inconsistent with or in contravention of the individual’s freedom of expression as provided for in the Constitution of St. Vincent and the Grenadines. On the contrary, the government has ensured an enlargement of freedom of expression in practice. Further, I urge readers to study carefully not only Section 10 (1) but also Section 10 (2) as reproduced above.

## **PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION**

Similarly, the ULP government, over the past 20 or so years, has never in any way infringed upon the constitutional protection of an individual’s right to assembly and association. Indeed, there has been no such infringement, for example, in respect of the protests against the government’s measures to control or prevent the spread of the novel coronavirus. It is regrettable that the reasonable, and very light, policing of disorderly and even violent protests by some persons against the measured and perfectly constitutional public health provisions, has been criticised by the Leader of the Opposition as evidence of “an emerging police state.” His assertion is patently false and represents scare-mongering gone wild.

Section 11 of the Constitution of St. Vincent and the Grenadines makes provision for the protection of freedom of assembly and association as follows:-



*“(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.*

*(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision —*

- a. that is reasonably required in the interests of defence, public safety, public order, public morality or public health;*
- b. that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or*
- c. that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,*

*and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.*  
*[My Emphasis]*

## **PROTECTION OF FREEDOM OF MOVEMENT**

To the extent that any law or anything done under it restricts the freedom of movement of any individual in the fight against COVID, it is perfectly permissible within the relevant provisions of the Constitution.

Section 12 of the Constitution of St. Vincent and the Grenadines makes provision for the protection of freedom of movement, and lists the eight limitations or restrictions thereon which are permissible. In the context of the subject at hand, that is to say, the control of the spread of COVID, the relevant provisions are as follows:-

*“(1) A person shall not be deprived of his freedom of movement that is to say, the right to move freely through Saint Vincent and the Grenadines, the right to reside in any part of Saint Vincent and the Grenadines, the right to enter Saint Vincent and the Grenadines, the right to leave Saint Vincent and the Grenadines and immunity from expulsion from Saint Vincent and the Grenadines .*

*“-----(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-*

*-----(b) for the imposition of restrictions on the movement or residence within Saint Vincent and the Grenadines or on the right to leave Saint Vincent and the Grenadines of persons generally or any class of persons in the interests of defence, public safety, public order, public health ----- and except so far as that*



provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society. [My Emphasis].

## **PROTECTION FROM DISCRIMINATION**

The critics of the vaccination programme against COVID-19 generally, or more specifically of measures designed to require of any person to be appointed to or act in any office or employment, a standard or qualification of being vaccinated against COVID, are wrong when they assert that such requirement is discriminatory against the unvaccinated. A reading of Section 13 of the Constitution of St. Vincent and the Grenadines makes clear the wrong-headedness of the critics in this regard.

First, Section 13(3) of the Constitution defines what is discriminatory. Discrimination relates to particular categories: Sex, race, place of origin, political opinions, colour or creed. Outside of these explicit categories there is no constitutional discrimination. Section 13 (3) provides as follows:-

*“In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, color or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”*

Section 13(1) specifies that subject to particular sub-sections of Section 13, “no law shall make any provision that is discriminatory either of itself or in its effect”. One of these sub-sections which is specified as limiting the “discriminatory” provision is sub-section (5) of Section 13. This sub-section (5) reads as follows:

“Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to sex, race, place of origin, political opinions, color or creed) to be required of any person who is appointed to or to act in any office or employment.” [My Emphasis]

## **“REASONABLY REQUIRED” AND “REASONABLY JUSTIFIABLE”**

The constitutional limitations on fundamental freedoms are replete with the formulations “reasonably required” in the public interest for purposes such as public safety, public order, and public health, and are “reasonably justifiable in a democratic society.” Law Courts in the Caribbean, the Commonwealth, and other common law jurisdictions have repeatedly pronounced on these. Some core considerations have been accepted as settled.



Among the central, core considerations distilled from the decided cases for the test of “reasonableness” includes:

- (i) The test of reasonableness should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases.
- (ii) In the specificity of each impugned statute, among the factors to be considered include: The nature of the right infringed; the underlying purpose of the restrictions or limitations; the extent and urgency of the evil or wrong sought to be remedied thereby; the proportionality/disposition or otherwise of the imposition/restriction; and the prevailing condition or context of the time. Among other things, a limitation is reasonable if it is a proportionate means to attain the purpose of the law.
- (iii) The Court only very rarely yields to the temptation of too readily substituting its opinion for that of the legislature. The Court tends to accept the authorising imposition of the restrictions by the legislature or regulations made thereunder to be reasonable, unless the restrictions can be seen to be plainly unreasonable.
- (iv) The Court tends to rely on evidence from sources of established science or authoritative sources to ground its evidential assessments in arriving at the conclusions on the reasonableness of restrictions or impositions. Fanciful or conspiratorial evidence from marginal or non-authoritative sources are usually accorded little or no weight.

“Reasonably justifiable in a democratic society” points also to the reasonableness of the restriction and the method of carrying out this restriction or limitation. Forcibly restraining someone and administering a vaccine against a person’s will with force is unlikely to satisfy the requisite of being reasonably justifiable in a democratic society. However, affording an individual choice in respect of a requirement of taking the vaccine as a standard or qualification for a job during a public health emergency of a pandemic is reasonably justifiable.

Across jurisdictions, mandatory vaccination passes constitutional muster before Law Courts. In St. Vincent and the Grenadines, a choice is offered in respect of the job or the job to front-line and other strategic employees of the government and its agencies/ bodies/corporations; it is surely not compulsion or coercion. Such a choice has been approved by law courts across the world. The public interest considerations of a real kind, in a pandemic, trump any abstract individual rights; the social individual at the time of COVID is privileged over that of an atomised individual; social solidarity during a public health emergency is prioritised ahead of pristine individualism. At a time of a galloping increase of COVID infections especially from the horrific Delta and Gamma variants and surging deaths from the coronavirus, reasonableness in pursuit of a specified public purpose, in tandem with that which is reasonably justifiable in a democratic society, hold centre-stage in our nation’s alive constitutionalism. The Sabbath was made for man; not man for the Sabbath; if an ox falls into the ditch on the Holy Sabbath we must take it out in order to protect and preserve it. The purity of a pristine individualism must give way to the public interests, just like the absolutist holiness of the Sabbath must accommodate the saving of the proverbial ox.



It is interesting to note that long before the time of COVID, Section 291 of the Criminal Code criminalised “negligent acts to spread disease” in the following terms: “*Any person who unlawfully or negligently does any act which he knows, or has reason to believe, to be likely to cause the spread of infectious or contagious disease, is guilty of an offence and liable to imprisonment for one year.*”

No serious scholar or practitioner has ever considered such a criminal offence to be unconstitutional!

A brilliantly insightful “Brief to the OECS Heads of Government: The Legal Dimensions of Mandatory/Compulsory Requirements for COVID-19 Vaccinations”, was prepared and delivered in August 2021, by Sir Charles Michael Dennis Byron, former President of the Caribbean Court of Justice (CCJ) and Professor Rose-Marie Belle Antoine, Professor of Labour and International Legal Consultant. This Brief has made its way to the Internet and has become a public document.

This Brief, in summation, advances the following reasoned legal principles and conclusions:

(a) **General**

1. The Legal Framework Supports Compulsory COVID-19 Vaccination. The Brief asserts: “We are of the view that a compulsory requirement for COVID-19 vaccine is generally justifiable in law — whether constitutional [public law], or in the private sector. The current legal framework, including jurisprudence, be it by analogy, or from the fast emerging specific case-law, does support it.”
2. Two key principles ground the identification of compulsory vaccination: (i) Reasonableness; and (ii) Proportionality.
3. Established science on COVID-19 will be instrumental: “In considering both reasonableness and proportionality, the law and the Courts will examine the established science that supports the vaccine and the current status of the pandemic and not myths, stigma, conspiracy theories and the like. This is consistent with case-law on the HIV pandemic, disability, etc.

(b) **Public Sector Dimensions**

1. Public Sector Dimensions on Rights and Protections are here considered:
  - (i) The issue is not so much a denial of individual rights but a balancing of conflicting rights: “On examining the parameters for limiting rights in our Constitutions, as well as past precedents, it is likely that a State will have a wide discretion, or margin of appreciation, in enacting mandatory COVID-19 law -----”



- (ii) Mandatory vaccination is already a part of the legal status quo.
- (iii) The current judicial trend leans in favour of public health/collective rights imperatives and does not prioritise individual rights.
- (iv) The fluid context and the emergence of the deadlier Delta strain of the virus increases risk. This is simply factual.
- (v) There is a soft law or indirect approach to compulsion. Many countries pursue this option.
- (vi) The experimental vaccine counter-agreement has been easily rebutted on the facts.
- (vii) Any law or policy must accommodate certain exemptions, for example, medical reasons and religious reasons for not taking the vaccine.

(c) **Private Sector Issues**

1. In the PRIVATE SECTOR, compulsory vaccine is permissible in the absence of mandatory law:
  - (i) *“Similar elements discussed above in terms of reasonableness and proportionality will be relevant to the private law context, applicable for example to employers, universities, landlords, airlines. However, these must be assessed not under the doctrine of human rights, but under different principles associated with labour, administrative law, etc.”*
  - (ii) Human rights: The Constitution is inapplicable to the private sector sphere in contrast to that of public law.
  - (iii) An absence of mandatory vaccination laws does not preclude unilateral action by employers.
  - (iv) There are general duties to health and safety and care at the workplace to support compulsory vaccines there.
  - (v) The duty to maintain health and safety extends to co-workers.
  - (vi) Refusal to work due to COVID-19: *“Just as there are competing rights in public law, there are competing interests in the private sphere. While there are workers who are reluctant to be vaccinated, there are also those who would feel at increased risk if their coworkers and themselves are not vaccinated, regardless of PPE or COVID-19 protocols. This provides another justification for employers to take steps to maintain vaccination. Competing interests of the anti-vaxxers and pro-*



*vaxxers are therefore to be considered and must be part of the overall risk-assessment to be made in seeking to protect workers' health, safety, or even life."*

- (vii) An option may be mandatory vaccination only for certain categories of high-risk workers. Vaccination may be necessary because of the nature of the job itself or industry.
- (viii) Dismissal is legitimate and permissible in circumstances of a worker not accepting mandatory vaccination. Dismissal should be seen as the last resort and due process is important.
- (ix) Exemptions may be available on medical grounds and on religious grounds with appropriate accommodation.

(d) **Conclusion to the Brief**

1. Conclusion of the Brief: *"There is ample provision in OECS Constitutions, corresponding jurisprudence and medical data to support mandatory vaccinations laws even in the face of counter-arguments alleging violation of rights.*

*"Having demonstrated above that mandatory vaccination is constitutionally appropriate given the leeway granted in favour of public health imperatives, it is submitted that employers could justify a requirement in a pandemic context, at minimum where the workplace is a high-risk environment, such as health-care, or essential services, or for workers more at risk at the workplace, such as frontline workers interacting with the public. It is unlikely that employers would be held to a higher standard than a constitutional standard. This is reasonable both to protect other employees, the interacting public and even the employee himself or herself.*

*"Increasingly, the enduring state of the pandemic and the science is pointing to even more liberal rationales for compelling vaccines at the workplace.*

*"Ultimately, all actions [and] toward compulsory vaccination must be grounded in a firm belief that they are being done in the interest and sustainability of the economy and enterprise, in the public interest, the interests of ALL workers and as a last resort, necessity. Those core principles will be what justifies actions as being reasonable and proportionate as required, and what will ultimately persuade a Court."*

**PUBLIC HEALTH (PUBLIC BODIES SPECIAL MEASURES) RULES, (Statutory Rules and Order, No. 28 of 2021) of St. Vincent and the Grenadines)**

The Public Health (Public Bodies Special Measures) Rules were made on October 19, 2021, and published in the Official Gazette on the said date as "Statutory Rules and Order No. 28 of 2021".



These Rules were made pursuant to particular provisions of the Public Health Act (Chapter 300 of the Laws of St. Vincent and the Grenadines) against the backdrop of the Public Health Emergency (Declaration) Notice, No. 38 of 2020, and in the context of the declaration by the World Health Organisation (WHO) on March 11, 2020, that a worldwide outbreak of COVID-19 exists and of the advice of the Chief Medical Officer of St. Vincent and the Grenadines on the implementation of measures to mitigate or remedy the public health emergency, inclusive of the terrible health consequences of the spread of COVID-19.

These Rules are attached hereto as an Appendix.

These Rules are concerned with certain scheduled categories of employees (front-line and other strategic employees) employed in the central government, its agencies, statutory entities, and public enterprises. The Rules provide for these employees to be vaccinated, and for the other public sector employees to be PCR-tested on a periodic basis. There are two exemptions to the taking of the vaccines: Medical grounds or a good faith religious belief; in the latter case the employer may make an accommodation for the employee to work elsewhere. There is, too, “extreme exemptional circumstances” to ground an exemption for testing.

The Rules further provide that if an employee without reasonable excuse fails to comply with the requirement for testing or vaccination as the case may be, he/she must not enter the workplace and is to be treated as being absent from work without leave. If the relevant employee is absent from work for ten days on this account, he/she would be treated as having abandoned his/her work, within the terms of the Public Service Regulations; if the employee within that ten-day period takes the first dose of the vaccine, the period of his/her absence (without reasonable excuse) amounts to misconduct; accordingly, he/she may be liable to be disciplined in accord with the Public Service Regulations or any other relevant written law or other source of law.

The disciplinary process for police officers under the Police Act and regulations made thereunder is different to that for the other scheduled Central Government employees. Other relevant law also applies to employees at the SVG Port Authority and the Argyle International Airport Company Limited.

### **A WORD ON AUGUST 5, 2021, AND AFTER**

On August 5, 2021, two public sector trade unions, the Public Service Union (PSU) and the St. Vincent and the Grenadines Teachers’ Union (SVGTU), supported by the opposition New Democratic Party (NDP) staged a protest on the streets immediately outside the perimeter fence of the Court House at Kingstown, upstairs of which is the meeting-place of the House of Assembly. On that day the House of Assembly was in session. The protest was ostensibly about two Bills before the House.

Among the items on the “Order Paper” of the House for deliberation and action were Bills to amend the Public Health Act and the Medical Officers’ Act. The amendments proposed were designed to tidy-up a few provisions of the statutes so as to remove legal uncertainty and to clarify certain statutory provisions. They did not in any material particular pave the way for “mandatory vaccination” for COVID-19, or to compel vaccination of children, or to take away a person’s right



to attend a medical practitioner of his or her choice. The leaders of the protests from the PSU, SVGTU, and the NDP falsely made these allegations about the Bills before the Parliament.

Indeed, on the critical issue of “mandatory vaccination”, the Public Health Act of 1977 had already enacted such a provision; an amendment to that Act in 2020 had provided for a voluntary regime of vaccination in a particular context but did not repeal or limit in any way the original “mandatory” provision. Moreover, the government had made it abundantly clear that it was not advancing “mandatory vaccination”. It was offering in separate draft regulations, essentially a choice to certain categories of public sector employees — largely “frontline” workers — to take the vaccine or get a different job. Those draft regulations after much public consultations and discussions since July 17, 2021, were refined, and subsequently approved by Cabinet, and published on October 19, 2021 as SRO Number 28 of 2021. The draft regulations were widely circulated and memoranda relating thereto were invited from organisations and individuals.

The draft regulations were formally discussed with the business community and workers’ organisations, representing public sector workers, namely, the PSU, SVGTU, the Nurses’ Association, the Police Welfare Association, the Commercial Technical and Allied Workers’ Union (CTAWU), and the National Workers’ Movement (NWM). It was reported to me by the government’s legal team from the Attorney General’s Chambers that the CTAWU and the NWM were broadly satisfied with the draft regulations; the other workers’ bodies were generally not supportive of the method or process for the proposed vaccination of “front-line” and other public sector employees, but were not unsupportive of much of the other provisions of the proposed Rules. All the workers’ representatives acknowledged the seriousness of the COVID pandemic and the devastating effect on the health, the economy, the society, and the security of St. Vincent and the Grenadines.

The protest on August 5<sup>th</sup>, called by the PSU and SVGTU about the proposed amendments to the Public Health Act and the Medical Officers’ Act, had very few public servants and teachers in attendance. The bulk of the 200 or so protesters, at peak, were mobilised by the opposition NDP. The NDP’s focus was “fresh elections”.

Since the NDP lost the general elections for the fifth successive time over a 20-year period (March 2001 to November 2020) on November 5, 2020, it had been agitating for fresh elections. It has no credible basis for such a demand. Indeed, the ruling ULP increased its majority at those elections from a majority of one seat to a majority of three seats in Parliament, although the NDP won the popular vote by a marginal sliver. Every five years since the re-election of the ULP government for its second term in December 2005, the opposition NDP has demonstrated that it is a sore loser. In the aftermath of each of the general elections of 2005, 2010, and 2015, it made the unfounded claim that the elections were stolen. Subsequent to the 2005 and 2010 elections, they did not test their outrageous claims in the Law Courts; after 2015 they did, and lost that legal challenge finally in early 2019; yet they still persisted with their absurd claims despite the “clean bill of health” accorded the elections by reputable elections’ observers and the verdict of the Law Courts.

The protest on August 5<sup>th</sup> was unruly and vile. One leader of the NDP subsequently called it “a peaceful riot” — an oxymoron of monumental proportions. Objective legal observers have concluded that the organisers of the protest, and the protesters themselves, breached several



provisions of the Public Order Act, the House of Assembly (Privileges, Powers and Immunities) Act, the Criminal Code, and the Police Act. These breaches are criminal offences punishable by imprisonment. Several persons have been charged with criminal offences; they are pending before the Magistrates' Court. Nothing is being written here to prejudice those legal proceedings against the individual defendants.

In the afternoon of August 5<sup>th</sup>, members of Parliament from the government side were assaulted, hindered, obstructed, and/or insulted on their way to the House of Assembly. The Prime Minister was struck by a missile to his head as he was walking to Parliament by one of the protesters; he was wounded and was hospitalised. It is the first time in our nation's history that its head of government was wounded on his way to Parliament or at all by any protester. After the spilling of the Prime Minister's blood, the protesters continued in joyous and rowdy celebration unrestrained by the opposition NDP or indeed by the Police Force. The Police did not disband the protest after this act of violence; it continued into the night by a small group of protesters to the accompaniment of the beating of drums — a misuse and abuse of a treasured cultural and musical artifact. The leadership of the NDP had not the inclination, the civility, the requisite leadership sensibility or courage to denounce unequivocally the violence perpetrated against the Prime Minister even while he was hospitalised. The proverbial cat had cut their tongues in this regard.

For weeks, and in prior protests in 2021, the opposition NDP was publicly agitating its members to be disorderly and even riotous. One NDP parliamentarian told the media, at a previous protest, that he had come "to take the peace out of the 'peaceful' protest".

The leaderships of the PSU, SVGU, and the NDP had for several months been opposing PCR-testing and vaccination unless they were purely voluntary; they have asserted that both the test and the vaccination were "invasive". As the novel coronavirus began to claim lives locally and regionally, they dropped, by and large, their spurious opposition to the testing. The facts in the real world about the virus and the vaccine are narrowing the spaces for their opposition, objectively-speaking, to the vaccine. Still, as at the time of writing (mid-October 2021) five out of the eight NDP parliamentarians (six representatives and two appointed Senators) have not yet taken any of the available vaccines — Astrazeneca, Sputnik V, and Pfizer.

Meanwhile, organised calls for withdrawal of service of its members by the leaderships of the PSU and the SVGU have been met with very little support from the employees themselves. The leaderships of these trade unions have been left chastened. By their poor leadership decisions they have put their own organisations in jeopardy bordering on marginalisation, though not irrelevance. In the PSU, the first Vice President, the General Secretary, and another elected member of a nine-member Executive have resigned in protest against the PSU's direction. Two Executive members of the Police Welfare Association have also resigned. Sadly, disunity and recriminations are rampant in these employees' organisations; their leaderships have failed them.

To be sure, there still remains significant vaccine hesitance among public sector workers; they are not so much anti-vaxxers or permanently vaccine hesitant, merely "wait and see" hesitant. But there is clear evidence of an encouraging uptick in vaccination among them — an enhanced trickle, not yet a flood. For example, on August 5<sup>th</sup>, less than one-fifth of the nurses in the hospital services were vaccinated; by mid-October, more than one-half (59 percent of 384 nursing staff) had taken



at least one dose; and in the Community Nursing Services, the comparative numbers have moved from just over one-fifth to 63 percent of a nursing staff of 230. Similarly, among the Police, the number has moved from below one-fifth to one-half over the same period. A similar trend is observable among the teachers.

The leadership of the NDP has come in for scathing criticism, increasingly, from the public. Their opportunism in an earlier period of a vocal anti-vax and permanently vaccine hesitant posture by a section of the population led them, mistakenly, to play “populist” politics of a partisan nature. The real world of COVID, the effectiveness of the vaccine, the firm and clear leadership of the ULP government, the stance of governments around the world, and the decisions of Law Courts regionally and globally, are forcing them to twist and turn in a vain attempt to get out of the political box into which they have imprisoned themselves, metaphorically. As a consequence, there is much dissension in their ranks, as “the crazies” among them (the anti-vaxxers and permanently vaccine hesitant) are looking more and more ridiculous with their untenable positions.

Sir James Mitchell, Founding Father of the NDP and Prime Minister of St. Vincent and the Grenadines from July 1984 to October 2000, has distanced himself publicly from his party’s stance. In the process, he has provided full support for the ULP government’s position. The NDP’s supporters in the business community are also distancing themselves from that party’s wrong-headed stance on the COVID vaccine programme rolled-out by the government. The NDP leadership is now scrambling to confuse the issue further by calling for a united front with the government against COVID. But on what basis would be this unity? They clearly must shift their substantive position of being opposed, objectively, to the vaccination programme to one of unwavering support akin to that of their Party’s Founding Father. They must line up, like Sir James, with the government’s approach — the only credible path and option on the table! And they must, with appropriate apology to the people, distance themselves from the disruption, the violence, and the egregious lawless conduct which their ill-disciplined protests and demagogic language have engendered.

Meanwhile, the government will continue to offer clear leadership on the issue of COVID, the vaccine, and all inter-related matters. Leaders must lead in the public interests in communion with the people. Leaders are required not only to inspire the population to perform mighty deeds; leaders must, more profoundly also, draw out of our people that which is of quality, goodness, and nobility in them and oft-times to draw out the quality, goodness, and nobility which they — the people — may not as yet know that they possess.

COVID-19 and the volcanic eruptions create a fresh bundle of challenging circumstances to which stronger, clear-sighted leadership must respond creatively with fresh initiatives and corresponding fresh actions, in the public interests! We must build back better and stronger!

### **FINAL COMMENT**

Any of the COVID vaccines currently available is safe with little down-side risk. The taking of it is far more beneficial to the individual and the society than not taking it. The novel coronavirus is very dangerous to an individual’s health and societal well-being; the vaccine is the best tool in the toolbox to fight the virus.



Our society, our economy, our very living will not return to a reasonable level of normalcy unless some 90 percent of our eligible population (persons over 12 years old) take the vaccine so as to achieve population immunity. Accordingly, the praxis of social solidarity is vital; always the social individual is to be privileged, and the atomised individual is to be effectively discouraged. The highly infectious Gamma and Delta variants are wreaking havoc in our blessed land.

It is constitutionally and legally permissible to offer the choice to workers, in both the private and public sectors, to take the jab or find another job. As social individuals we must protect ourselves in communion with the society as a whole; we are not atomised individuals.







## **APPENDIX**

### **SAINT VINCENT AND THE GRENADINES STATUTORY RULES AND ORDERS**

2021 NO.

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(Gazetted 19<sup>TH</sup> October, 2021)

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**WHEREAS** on 11<sup>th</sup> of March 2020, the World Health Organisation declared a worldwide outbreak of COVID-19 (Coronavirus Disease-2019);

**AND WHEREAS**, by the Public Health Emergency (Declaration) Notice 2020, No. 38 of 2020, a public health emergency for the pandemic caused by COVID-19 was declared for Saint Vincent and the Grenadines;

**AND WHEREAS**, under section 43B of the Public Health Act, Chapter 300, the Minister may on the advice of the Chief Medical Officer implement special measures to mitigate or remedy a public health emergency;

**NOW THEREFORE, IN EXERCISE** of the powers conferred by sections 43B and 147 of the Public Health Act, Chapter 300, the Minister makes the following Rules –

#### **PUBLIC HEALTH (PUBLIC BODIES SPECIAL MEASURES) RULES 2021**

##### **Citation and commencement**

1. (1) These Rules may be cited as the Public Health (Public Bodies Special Measures) Rules 2021.

(2) These Rules commence at the end of thirty days beginning on the day on which the Rules are published in the *Gazette*.

##### **Interpretation**

2. In these Rules –

“assisted private school” has the meaning assigned under the Education Act;

“coronavirus disease-2019” means the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“employee” means an employee of a public body;

“health care employee” –

(a) means –

(i) an employee performing services (whether clinical or non-clinical) at the Milton Cato Memorial Hospital or a health service including administrative



staff, security guards, cooks, cleaners, attendants or any other ancillary staff; and

(ii) a home helper providing care for the elderly under the programme operated by the Ministry of social development; and

(b) includes a person engaged to perform services (whether clinical or non-clinical) at the Milton Cato Memorial Hospital or a health service as an independent contractor including –

(i) contractors and consultants; or

(ii) visiting medical practitioners.

“health service” includes –

(a) a district clinic;

(b) a health centre;

(c) a district hospital;

(d) a polyclinic;

(e) a golden age home;

(f) the Modern Medical and Diagnostic Centre;

(g) the Lewis Punnett Home; and

(h) the Mental Health and Rehabilitation Centre;

“PCR test” means a test that detects the presence of the coronavirus disease-2019 in an infected person’s body;

“public body” means –

(a) the Government, and a department, institution or undertaking of the Government;

(b) a local authority; and

(c) an authority, a board, commission, committee or other body, including a statutory body or state-owned enterprise, whether permanent or temporary, paid or unpaid, which is owned or controlled by the Government;

“public educational institution” or “public school” has the meaning assigned under the Education Act;

“rapid test” means a test for the rapid, qualitative detection of the nucleocapsid protein antigen from the coronavirus disease-2019 in human nasal swab or throat swab specimen;

“workplace” means a place or premises where an employee needs to be or go by reason of his work.



## **Purpose of Rules**

3. The purpose of these Rules is to –

- (a) prevent, control, contain and suppress the risk of the spread of the coronavirus-disease 2019 in public bodies; and
- (b) protect the health and safety of employees.

## **Requirement for coronavirus testing of employee**

4. (1) Subject to rule 6, every employee must, at the times or periods as may be determined by the Chief Medical Officer and notified in writing to the employee by his employer, present to his employer a negative rapid test or PCR test on reporting to work.

(2) A determination by the Chief Medical Officer under sub-rule (1) may be made in relation to different categories of employees.

(3) A test referred to in sub-rule (1) may be taken at a health service or at any other place appointed or approved by the Chief Medical Officer for this purpose.

(4) If the test is taken at a health service –

- (a) the first two tests for every employee are to be administered free of charge; and
- (b) for every test after the first two tests, a fee of twenty-five dollars is payable for every test.

(5) A notification under sub-rule (1) may be given by general circular or memoranda to different categories of employees.

(6) Rule 4 (b) does not apply to an employee entitled to free medical aid or free services under a written law.

## **Requirement for vaccination of employees specified in Schedule**

5. (1) Subject to rule 7, every employee specified in the Schedule must be vaccinated against the coronavirus-disease 2019.

(2) If on or before the commencement of these Rules an employee subject to this rule has taken one dose of a vaccine that requires two doses, the employee must–

- (a) be treated as being vaccinated; and
- (b) take the second dose within the period approved by the manufacturer of the particular vaccine for the taking of the second dose.

(3) An employee must provide proof of vaccination by submitting his vaccination card to his employer.

(4) In this rule and rule 6 (1), “vaccine” means a vaccine approved under the Public Health (Emergency Authorisation of Covid-19 Vaccine) Rules 2021.



### **Exemption from requirement for coronavirus testing**

6. (1) Rule 4 does not apply to an employee who has been vaccinated against the coronavirus-disease 2019 (with at least the first dose in the case of a vaccine that requires two doses).

(2) Despite sub-rule (1), an employer may, on the advice the Chief Medical Officer, exempt an employee from rule 4 on the basis of extreme exceptional circumstances.

(3) An exemption may be given on conditions and if so, the person given the exemption must comply with the conditions.

### **Exemption from requirement for vaccination**

7. (1) An employer may exempt an employee to whom rule 5 applies from the requirement for vaccination –

(a) if the employee provides a written certificate from a medical practitioner approved by the Medical Officer of Health certifying that vaccination is not advisable on the medical ground stipulated in the certificate; or

(b) on religious grounds if the employer is able to make alternative arrangements to accommodate the employee.

(2) In determining whether to grant an exemption under sub-rule (1) (a), an employer may submit a request for exemption to the Chief Medical Officer for review and advice and for this purpose the Chief Medical Officer may seek the advice of one or more medical practitioners.

(3) An employee who is exempted under this rule must comply with rule 4.

(4) An exemption may be given on conditions and if so, the person given the exemption must comply with the conditions.

(5) The written certificate referred to in sub-rule 7 (1) (a) must be in a form approved by the Chief Medical Officer.

(6) The application for exemption on religious grounds must be in a form approved by the Cabinet.

### **Failure to comply with Rules**

8. (1) An employee who without reasonable excuse fails to comply with rule 4 or 5 must not enter the workplace and is to be treated as being absent from duty without leave.

(2) Regulation 31 of the Public Service Commission Regulations applies to a public officer who is absent from duty without leave under sub-rule (1).

(3) An employee who enters the workplace in contravention of sub-rule (1) commits an act of misconduct and is liable to be disciplined in accordance with the –



- (a) Public Service Commission Regulations or any other relevant written law, in the case of a public officer; or
- (b) relevant laws that regulate the service of the employee, in the case of every other employee.

### **Expiration of Rules**

- 9. These Rules expire on the day the Minister declares that the public health emergency has ended.

### **SCHEDULE**

(rule 5)

#### **EMPLOYEES TO BE VACCINATED AGAINST COVID-19**

- 1. Health care employees
- 2. Permanent Secretaries and Heads of Departments
- 3. Teachers appointed to public educational institutions, assisted private schools or public schools
- 4. Ancillary staff employed within public educational institutions or public schools
- 5. Employees of the Saint Vincent and the Grenadines Community College
- 6. Members of the Royal Saint Vincent and the Grenadines Police Force
- 7. Prison staff within the meaning of the Prisons Act, Cap. 393
- 8. Public officers within the Passport and Immigration Services Department
- 9. Public officers within the Customs and Excise Department
- 10. Public officers within the House of Assembly
- 11. Public officers within the Environmental Health Division of the Public Health Department
- 12. Employees employed by the Saint Vincent and the Grenadines Port Authority, Argyle International Airport Company Ltd or employed to perform duties at an airport or a seaport

Made this 19<sup>th</sup> day of October, 2021.

**ST. CLAIR PRINCE**

Minister of Health, Wellness and the Environment











