The Meaning of Maurice O. Glinton:

By: Gilbert NMO Morris

a. Only What is Due & Necessary:

By an action brought on November 7th, in the Supreme Court of the Bahamas – Bahamian/Turks Islander - Maurice O. Glinton – distinguished Barrister, Legal Scholar and accomplished Privy Council advocate - demonstrated why he is as much regarded as feared by many as the most intellectually acute, effective and demanding lawyer of his generation, not merely at home, but in the English-speaking Caribbean; where he is held in greater esteem for the sheer power of his juridical discernment than he is at home.

Recently, not without controversy, The Prime Minister of the Bahamas, The Rt. Hon. Hubert A. Ingraham, MP, appears to have selected his own choices from a list of lawyers recommended by the Attorney General (AG), elevating 8 lawyers to answer a conferment of "Queen's Counsel" or QC. Amongst the recommended names was that of Mr. Glinton's, who was invited to put his name forward by the Attorney General. It was not that he so wanted the title QC itself and did not get it that has given rise to this legal action. Rather it is that passing his name over could result in an impression that lawyers either junior to him or who have never argued a major question of law, or

defended a principle the contributes to the rule of law, or who lack the international prestige, won as result of his complex distinguished advocacy over the years, can now command priority in the courts over him, absent any evidence that they deserve such a privilege. Also, to an outside observer, suddenly, such persons will be assumed to have, not merely expertise, but expertise recognized by the State and the Bar Association itself, as superior to Mr. Glinton's; whose learning, skill and experience in every aspect of law indicates a repugnancy on its face that such a presumption could be allowed; or worse, assented to by the Bahamas government, confirmed by a Bar Association of which he is a member.

Glinton is also saying that in respect of recommendations for QC made by the AG, a Prime Minister has no power or even perspective to alter such recommendations. This is a critical idea which Glinton has sought to teach us over the years through a number of cases; that Prime Ministers in our law are not all powerful; and where the law requires a Prime Minister to be advised, it is often mistaken that a Prime Minister can either ignore or replace that advice with his own thinking. That is not the case in law at all; since, as I have argued, the very existence of a constitution means there can be no power in the Executive that is unlimited, even of there is no limit expressed in the constitution itself.

In practical terms, through no failure of theirs, those deserving lawyers who were passed over, may also find their earning power reduced compared to those upon whom QCs were conferred; even after having been recommended by the AG; the nation's Senior Legal Officer, who would have a greater command of which lawyers are deserving.

A further implication is that - whether intended or not – conferments of "Queen's Council" could become forever tarnished, not because it was given to those who may not have met the traditional criteria of having mastered and moved some area of law to a higher plane. Rather, the honorific becomes politicized, rendering it meaningless, rather than as a title conferred wholly without partisanship upon those for whom the practice of law is more than fee-earning work, but a calling that is an inspiration to those within and without the legal profession.

Queen's Counsel (**QC**), are lawyers appointed by Letters Patent to be one of Her Majesty's Counsel "learned in laws". It is important that the tile is conferred by the Crown, but more importantly, it is recognised by courts; and so affects the lawyers upon whom it is conferred by granting them special privileges in court; suggesting to the world that such lawyers have demonstrated deep, publically trusted learning and expertise in the law.

b. Let the Work I've Done Speak…:

The body of work amassed by Maurice O. Glinton since 1980 - for nearly 30-years at the Bahamas Bar – can speak more eloquently than any philippic written on his behalf.

Perhaps Glinton's greatest legal achievement came in 2005, when the Privy Council acknowledged that they had been wrong for 10-years on the Death Penalty question; which was researched, defined and refined by Maurice O. Glinton in the Bahamas, and so constitutes a recognition that profound new thinking can come from a post-Colonial Bar Association and can instruct English judges on the very laws that has been their tradition for 800 years.

Glinton's position on the Death Penalty (essentially that extended time served on Death Row, amounts to "Cruel and Unusual Punishment", which the Constitution forbids), has dominated judicial thinking for a decade now. The issue is not whether or not one agrees with Glinton. Rather it is to recognize the boldness and temerity to have carved out of the words and phrases of laws, deeper meanings and consistencies with sufficient intellectual depth that it becomes instructive to the rest of the world. Indeed, all over the world, Human Rights organisations have adopted the "Glinton

Principle". For any Bahamian, such an accomplishment is both on par and more enduring than the Gold Medals of athletes (though we are so rightly proud of that); for it says that the best of intellectual contributions to a system of rules we did not create can be made by a person or persons who come from amongst us. There is no point in speaking about 'Bahamian pride' if such excellence, rightly regarded, does not quicken one's spirit.

In his advocacy, one can point to a legacy of cases where Glinton's aim was both to advance and protect the legal profession in the Bahamas by forcing our legal institutions to answer rule of law questions. These include Worker Compensation cases, with more than a dozen brought on a variety of grounds, against the Pindling Administration undercutting absolute exercises of political power. Yet, Glinton essentially shut down the Commissions of Inquiry after the 1992 elections before which Mr. Pindling appeared; whilst lawyers whom Mr. Pindling made important stood aside. Note also – as an example of personal prestige with regard for both the lettre and spirit of the law -that in Freeport, it is legend that for years the Grand Bahamas Port Authority retained nearly every major firm in the country, effectively preventing legal action against themselves; except one: Maurice O. Glinton & Co. After 1992 - Glinton who has no political party affiliation and does not vote – brought The Methodist Church cases and a set of cases with which this writer was intimately involved on Financial Services called the Glinton-Esfakis Cases. Again, neither Glinton nor Esfakis had as much to lose as the larger firms that ran financial services operations, mostly Funds. Yet, no lawyer from any of those firms came forward to defend their own business or the legal profession from legislation enacted to capitulate to the OECD or the unconstitutional Tax Information Exchange Agreements (TIEA) still being signed (supported by PLP and FNM); even though they run afoul of Legal and Professional Privilege, leaving lawyers in 'double jeopardy' and clearly offend ARTICLES I & II & 23, (ii) ii, 27 & 47 and ARTICLE 52, ii of the Bahamas Constitution.

We were confirmed in the rightness of these positions by the Supreme Court of Canada (*The Law Society of Canada vs. The Attorney General of Canada* (2001) and *Regina v Special Commissioner and Another, Ex P Morgan Grenfell & Co Ltd* (2002), where the House of Lords in the UK confirmed the very arguments Glinton-Esfakis were introducing in the Bahamas from our research.

Glinton has long been a lone voice on Judicial Appointments in the Bahamas; arguing 20 years ago with Rawle Maynard – also a distinguished legal mind – that Magistrates ought not to exercise judicial authority, since that is the preserve of the Supreme Court and they are appointed by the Public Services Commission and not the Judicial and Legal Services Commission, called for by the Constitution. Additionally, Glinton called for an end to the cynical appointment of foreign judges who have no history at the Bahamas Bar, again defending the Bahamas legal profession and the possibility of a native jurisculture.

The Maynard-Glinton view on Magistrates moved from theory to practice when three years ago, Glinton was faced with Extradition cases, and by-passed the Magistrate's courts, where extraditions seemed on auto-pilot and moved the cases to the Supreme Court; where by virtue of his legal argument he redefined the approach to extradition, inducing Mr. Justice John Isaacs' to produce one of the finest legal judgments ever rendered in the Bahamas.

Glinton has other accomplishments that sets him apart at the Bahamas Bar: during the 1980s he was invited to sit as a judge in the most prestigious moot court competition in International Law, the Jessup Moot Court Competition at University of Chicago. He has been an Observer at elections in the Caribbean and has written dozens of technical legal research articles for numerous publications; also recently having presented a brilliant lecture at The Nassau Institute on the Judiciary in the Bahamas; which stems from an essay he wrote 20 years ago called: "*The Provenance and Promise of the Judiciary in the Bahamas*".

When I first encountered Mr. Glinton, what was special, amongst everything discussed here are two things which together demonstrate the intellectual confidence, fearlessness and personal independence of his South Caicos/Freeport spirit: first Glinton – with a one man law practice - has a library larger than any firm in the Bahamas. This, of course, comes at great expense, but shows an intention never to have to say in response to the most remote legal question: "I don't know". Second, the library, the unrelenting legal scholarship driven by fierce independence leads to just the sort of rigor in practice, evidenced in the depth and quality of his legal pleadings and submissions, that the title QC is meant to recognise and honour. Whilst many lawyers in the Bahamas (and the region) retain English QCs to provide answers to legal questions, whenever there is a QC involved with Mr. Glinton, that QC is usually dependent on Mr. Glinton's research. That is, he does not go to them for answers, as is usually the case. In most instances, as in the recent extradition cases, he rescues the QCs, introducing them to the Glinton brand of law practice.

c. Conclusion:

Let's end this way: It is critical to understand that Maurice Glinton's action in the courts is not saying, "I want a QC." What it is saying if you use the appointment of QCs in a way that causes independent observers to regard my expertise as less than those who receive the title, I cannot allow my work of 30 years to be so diminished, in fact I refuse to allow it. Glinton is saying, I rendered a service to this Bar Association, defending it when it failed to defend itself or recognize that it needed defending. I will not now allow it to confer any honour on anyone that makes lawyers who are junior to me, with less experience, and not a single contribution in legal thought, understanding or any noticeable demonstration of mastery to be presented to the world as senior to me. That would be a travesty.

When you consider what little I have shared as the composite picture Glinton's more comprehensive legal life, rich in juridical imagination, applied for the benefit, and even the grace of his profession: Be it asked, if such a man can be passed over for QC, what is the worth or value of the honour?