



*Government of Antigua and Barbuda*

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The Hon. Kelvin Simon MP  
Member of the House of Representatives  
Bolans  
Parish of St. Mary's (South)  
Antigua

Dear MP Simon,

I acknowledge receipt of your letter dated 7<sup>th</sup> June, 2023 informing me of your resignation as "the Member of Parliament for the Constituency of St. Mary's (South) effective today June 7, 2023".

In considering your purported resignation I have paid due attention to a number of matters, including the existence of the electoral petition CASWORTH AARON v. KELVIN SIMON, filed on the 23<sup>rd</sup> January, 2023 and due to be heard on July 3, 2023, the relevant constitutional provisions specifically section 41(1) and 125(1) (a) and (b), and 125(2), and the manner in which resignations are permissible pursuant to Parliamentary Laws in the House of Commons in the United Kingdom and Canada.

Section 41(1):

"Every member of the House shall vacate his, seat in the House-

- a. at the next dissolution of Parliament after he has been elected;
- b. if he ceases to be a citizen;
- c. if he is absent from the sittings of the House for such period or periods and in such circumstances as may be prescribed in the rules of procedure of the House;
- d. subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified from election as such by virtue of section 39(1) of this Constitution;  
or
- e. if, having been elected to the House by virtue of being A MEMBER OF A POLITICAL PARTY, HE RESIGNS HIS PARTY WHIP AND WITHDRAWS HIS ALLEGIANCE FROM THAT PARTY (emphasis mine):

Provided that he shall not be required to vacate his seat so long as he remains an independent member of the House."

I note and draw attention to the fact that your letter fails to indicate that you have taken the necessary steps as mandated by section 41(1) (e) and as a consequence is constitutionally deficient, a nullity, and of no legal effect.

Section 125(1) (a) and (b) and 125(2) reads as follows:

“1. Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority BY WHOM HE WAS APPOINTED OR ELECTED; (emphasis mine)

Provided that-

- a. The resignation of a person from the office of President or Vice-President or from the office of Speaker or Deputy Speaker shall be addressed to the Senate or the House, as the case may be, and
- b. resignation of any person from membership of the Senate or the House shall be addressed to the President or the Speaker, as the case may be.

2. The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it.

A careful reading of section 125(1) (a) and (b) in general indicates clearly that it provides the mechanism by which persons resigning from appointed and elected offices may resign and indicates to whom the letters of resignation ought to be addressed, no more, no less. Nowhere does the section establish any right of resignation in respect of any person appointed or elected to any office. As to section 125(2), this section merely indicates when the resignation takes effect.

Further, section 125 cannot be read and interpreted in isolation it must be read in conjunction with section 41(1)(a)-(e) which deals specifically with the vacating of your seat in the House of Representatives, and specifically states, the manner in which you may do so. The suggestion by some lay persons and attorneys alike that section 125(b) creates a right of resignation, is a seriously flawed interpretation, which I summarily reject.

In arriving at my decision in this matter, I have looked carefully at both sections 41(1) and 125(1) of the Constitution, the learning contained in “Halsbury’s Laws of England vol. 78 (2018)” paragraph 702 (which deals with “retirement from the House of Commons”), the learning contained in the Parliamentary laws applied in the House of Commons in the United Kingdom and Canada, and I have taken note of the fact that the Standing Orders of our House of Representatives do not provide for resignation from the House under any circumstances. The authorities clearly show that resignation of Members of Parliament can only resign under laws and procedures contained in the relevant legislation.

For all of the reasons I have stated, I am of the considered view that your letter of resignation does not conform to section 41(1) (e) of the Constitution, and therefore cannot be accepted. However, there is nothing to prevent you from resubmitting a letter of resignation which conforms with the said section 41(1) (e).

In light of the above, I must inform you that you continue to be the sitting Member for St. Mary's (South), and in this regard, I am by copy of this letter informing the Leaders of both sides of the House and the Attorney General of my decision in this matter, and my supporting reasons. I also hold myself available to meet with you and your attorney to address any concerns you may have in respect of my decision.

Very truly yours

A handwritten signature in black ink, appearing to read 'G. Watt', with a long horizontal flourish extending to the right. The signature is positioned above a dotted line.

Sir Gerald A. Watt KCN, KC

Speaker of the House of Representatives

c.c. Hon. Gaston Browne – Prime Minister  
Hon. Jamale Pringle – Leader of the Opposition  
Hon. Steadroy Benjamin – Attorney General