

# OUR BILLS **SIMPLIFIED**

CONSTITUTION (AMENDMENT) (IMPEACHMENT) ACT



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# THE IMPEACHMENT BILL

## THE BIG PICTURE

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

## HOW CAN AN ELECTED OFFICER BE REMOVED?

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First, the accused official must be found guilty of an impeachable offence. Then, the House of Parliament in which the official sits must vote to sanction him. The Bill establishes a process for determining the guilt of the accused official through a special Impeachment Tribunal but leaves the final decision to sanction the official up to a majority vote in Parliament.

There would be four types of impeachable offences: **(1)** corruption or misappropriation of public resources; **(2)** neglect of duty; **(3)** abuse of official authority; and **(4)** abusing the privileges of Parliament. If found culpable, parliamentarians would be censured, removed from Parliament or their ministerial positions, or disqualified from holding public office in the future.

## GOVERNANCE CONTEXT

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

## WHAT ARE THE BENEFITS OF AN IMPEACHMENT PROCEDURE?

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Presently, there is no general method to remove parliamentarians who commit wrongdoing from their office. The Bill seeks to strengthen Jamaica’s accountability systems by creating the legal framework to punish wrongdoers.

However, the benefits to Jamaican democracy of this legal framework are not limited to just punishing rogue individuals. Instead, simply by creating the legal possibility of impeachment, the law provides a deterrent against wrongdoing and thereby helps regulate the conduct of public officials in a positive way.

## THE IMPEACHMENT PROCEDURE

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### Step 1 - Impeachment Process

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

### Who Can Request Impeachment

The Bill specifies which persons can submit a complaint against an official. Any three members of Parliament could request impeachment. They would have to lodge a petition supported by 1,000 registered voters. In addition, these designated public officials could also request impeachment:

1. The Auditor General
2. The Contractor General
3. The Director of Public Prosecutions
4. The Director of Elections
5. The Public Defender
6. The Political Ombudsman
7. Any member of Parliament's Integrity Commission
8. The Special Anti-Corruption Prosecutor
9. The Chairman of any Commission of Enquiry

### STEP 2: Impeachment Committee & Articles of Impeachment

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

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

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

### WHO MAKES UP THE IMPEACHMENT COMMITTEE?

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

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

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

### STEP 3: IMPEACHMENT TRIBUNAL

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

The Bill requires that the Tribunal’s operations mirror those of a Commission of

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

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

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

#### **STEP 4: FINAL PARLIAMENTARY DECISION**

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

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