ASSESSING BERMUDA’S PARLIAMENT AGAINST THE CPA BENCHMARKS

In July 2013, a Joint Select Committee on Parliamentary Governance and Reform was established to ensure that Bermuda’s Legislature met the standards detailed in the Commonwealth Parliamentary Association Benchmarks for Democratic Legislatures. A Member of the Committee and Government Whip and House Leader summarizes the recommendations presented to the Parliament of Bermuda, in order for it to be effective and efficient in providing parliamentary services in an information age.

Hon. N.H.Cole Simons, JP, MP

Mr Simons was elected to the House of Assembly in 1998. He has served as the Opposition House Leader, Opposition Whip and Shadow Minister of Government Estates and Information Services, all positions he held until 2012. He has also served as the Deputy Leader of the Opposition, Shadow Minister of Youth, Sports, Cultural and Community Affairs. Mr Simons currently serves as the Government Whip and House Leader.

Hon. N.H. Cole Simons, JP, MP

The former Prime Minister of Barbados, The Right Excellent Errol Walton Barrow, PC, QC, made a simple but profound statement during his term in 1974. He said: The meaning of Parliamentary democracy is that the people themselves because of their preoccupation with such vital matters, as earning a living, lack the time to devote to proper studies to this and other matters. They delegate that exclusive right and duty to pass laws in their Parliament for the good governance of this country and for the betterment and improvement of the society.

He went on to state that Parliament therefore is the only appropriate forum for the introduction, discussion and dissemination of matters affecting the sovereign rights of the people, and those who do not support this point of view are not true Parliamentarians.

Using this as a backdrop, the aforementioned views are encapsulated in the majority of our constitutions. Parliament exists to make laws for the peace, order and good governance of our respective countries. An effective and efficient parliamentary service therefore is one that allows the elected representatives or Senators to carry out that overarching mandate provided to them by their people.

I stand by that for a parliamentary service to achieve the aforementioned objectives, there must be some independence and autonomy.

This view was supported by the 2005 CPA study group on the Financing and Administration of Parliament. The study recommended under the theme “Governance of Parliament”, that Parliaments should either by legislation, or resolution, establish corporate bodies responsible for providing services and funding entitlements for Parliamentary purposes and providing for governance of the parliamentary services.

The Parliament of Bermuda

Bermuda is amongst the world’s oldest Legislatures in the Western Hemisphere. It is a bicameral Legislature, exercising parallel functions to those of the House of Commons and the House of Lords in the United Kingdom. Our Parliament first met in 1620 and is currently housed in a building which began as a simple two-story edifice in 1813. Parliament moved into the building in 1826 and a clock tower and Florentine façade were added in 1893. There have been many additions over the years, the most recent, to provide elevated access to the second story. It is a very attractive building, but wholly inadequate to the current needs of Parliament in terms of infrastructure. The House of Assembly consists of 36 elected Members. 18 Members represent the One Bermuda Alliance Party, with the remaining 18 seats filled by the
BERMUDA: ASSESSING PARLIAMENT

There is a difference between the two Houses: in the House of Assembly, the Speaker can participate in debates and can vote alongside his/her peers. The Speaker, on the other hand, cannot take part in House of Assembly debates, and can only vote in the event of a tie.

Proceedings of both Houses are open to the public, and are also broadcast gavel to gavel on the radio.

The House of Assembly meets once a week on Fridays; while the Legislature meets together only on occasions of great significance such as the convening of Parliament, the twenty-fifth anniversary of Bermuda's Constitution (1993); the 375th anniversary of Bermuda's Parliament (1995); or to pay tribute to significant Members who have died while in office.

In Bermuda, expenditure on Parliament has always been viewed as expenditure on the Members of Parliament, who – it is widely viewed – should serve for free. When the Commonwealth Parliamentary Association (CPA) first began looking at minimum benchmarks for Democratic Legislatures, we were immediately interested because we needed an independent platform on which to base the changes that were needed and in order to educate civil servants and the public about the basic needs and services of Parliament.

Assessing Bermuda's Parliament against Commonwealth parliamentary benchmarks

In 2006, Bermuda hosted a CPA Benchmarks Seminar, and underwent the process of measuring itself against the Benchmarks. The exercise allowed Parliamentarians to see that their parliamentary practices were dated and did not achieve best practices; thus marking the start of a new transition.

In 2009/09 Bermuda launched its assessment by reviewing the Rules and Standing Orders. According to the former Premier, Dame Jennifer
Smith, the prime instrument used in this process was the CPA’s Eastern Caribbean template. It was a modernized set of common Standing Orders, produced in 2007 with technical expertise provided by the Ontario Legislative Assembly for use by the nine small Parliaments and Legislatures of the Organization of Eastern Caribbean States.

Our parliamentary Rules and Privileges Committee set up a subcommittee comprised of Opposition Member John Barritt and Dame Jennifer. Thus began a process that had not been undertaken for over 20 years. The new Standing Orders were reviewed, updated and provisionally accepted by the House in 2010, and the final acceptance was approved by Bermuda’s Parliament sometime during July 2013.

In light of, and in continuation of the process, on 19 July 2013, a Joint Select Committee on Parliamentary Governance and Reform was established with the unanimous approval of our House of Assembly.

At that time I moved a motion which read: “In an effort to ensure that Bermuda’s Legislature meets the standards prescribed in the Commonwealth Parliamentary Association benchmarks for democratic Legislatures, be it resolved that this Honourable House establish a Joint Select Committee. The Committee’s mandate is to examine, make recommendations and report to this House its findings on the Legislature’s management structure and governance in order to provide an efficient and effective parliamentary service to the people of Bermuda.”

The Committee recognized that with rapidly developing knowledge-based and technology-driven societies, Legislatures had been placed under intense scrutiny in the areas of transparency, accountability, effectiveness and fairness. It became more evident than ever, that the governance structure for Bermuda’s Legislature was outdated. Our Parliament had to adjust itself to be effective and efficient in providing parliamentary services in today’s information age.

Shortly after the Committee’s first meeting held on 15 August 2013, the Committee Members agreed to break off in groups to gather information and make recommendations on the following themes – “Organization of the Legislature”; the “Function of the Legislature”; and the “Value and Ethics of the Legislature.” Their findings and recommendations formed an integral part of the Joint Select Committee’s report.

The Committee also invited the public to make written submissions via email. In addition, they also extended personal invitations to various community leaders, and retired Premiers, Speakers, Clerks and other statesmen, to make verbal submissions.

The Committee examined the following themes:

- The governance structure of Parliament and support service;
- The function of Parliament; and
- The ethical governance of Parliament.

After much deliberation, the Joint Select Committee presented its final report to Parliament for approval. This approval was granted by Bermuda’s House of Assembly on 23 March 2014. At the same time, our Parliament also agreed that the proposed recommendations ought to be used as a quasi road map forward.

Recommendations and road map forward
The first question presented to our legislators was how can we create a sound structure and maintain a parliamentary service that is capable of achieving the services required by Parliament, together with maximum productivity and minimum expense?

The second question asked was what were the challenges to achieving this result? In response to these questions, the Committee recommended that:

1. A new independent body known as The Management Commission, responsible for the administration of the Legislature, be established.

It was also agreed that the specific Terms of Reference for this Commission should be developed to include the term of office, quorum requirements, responsibilities and powers for the provision of adequate support services for Parliament.

It should also encompass the recruitment and management of parliamentary staff, the determination of an annual budget, to be approved by Parliament, and the monitoring of such annual budget. As is the case in the United Kingdom Legislature, the actual day-to-day management of the parliamentary service should be delegated to the Clerk of the House of Assembly. She will constitute an Administration Committee which will meet on a monthly basis. A monthly activity and management report will be generated by the Clerk, and will be presented to the Management Commission.

It was also agreed that the following House Committees should meet on a regular basis, or as needed, and prepare additional written reports for the Management Commission:

- Regulations Committee
- Public Accounts Committee
- Committee of the Auditor General
- House and Grounds Committee
- Register of Members’ Interests
- Joint Select Committee on Private Bills
- Standing Orders Committee.
It should also be noted that the structure, and enforceability of all House Committees should be regularly reviewed and amendments made as necessary.

Functions of Bermuda’s Parliament

The functions of Bermuda’s Parliament proceeds from its role as the supreme representative body of the Bermudian people, and from that of the single legislative authority of the country.

Our constitution has adopted a parliamentary system of government more commonly understood, or known as “the Westminster model”. Under such a system there is an interesting mixture of the legislative and executive organs of the State. Thus while the Executive is the main driving force in terms of developing legislation to implement its programmes, and stated agenda objectives, it is necessary to ensure accountability and control of the Executive within the Legislature. This aspect of accountability and control should always be borne in mind.

With the above as a precursor, the Joint Select Committee came up with the following recommendations.

Recommendations for the functions of Parliament

1. The Legislature should provide each elected Member with adequate and appropriate resources within his or her constituency, to enable him/her to fulfill their representational functions.

2. Members and staff of Parliament must have the authority to receive technical and advisory assistance from legitimate and reputable institutions or organizations. They should also have the ability to network and exchange experience with individuals from other Legislatures.

3. The Legislature should provide adequate mechanisms to encourage wider consultations and public submissions on Bills introduced.

4. Historically, from a community outreach perspective, Bermuda’s Parliament is seen to be somewhat staid, and detached from the community. This must change.

Going forward, Bermuda’s Parliament must be an integral part of the Community, and this committee wants the community to fully understand the role of Parliament, and what Parliament is doing for them. Parliament must use all forms of media to achieve this end.

5. Information must be provided to the public in a timely manner regarding matters under consideration by the Legislature.

6. The Legislature must have mechanisms in place to obtain information from the Executive that is sufficient to exercise its oversight function, in a meaningful and timely manner.

7. The oversight authority of the Legislature could include:

   - Meaningful and timely oversight of state owned enterprises;
   - Meaningful and timely oversight of compliance with international treaties and obligations; and
   - Meaningful and timely oversight of accountability institutions, such as Elections Commissions, Human Rights commissions, Anti-corruption Commissions, Ombudsmen, information commissions and office of Auditor General.

8. These oversight committees must also provide meaningful opportunities for minority, or Opposition Members and Independents to engage in effective oversight of government expenditures. The Public Accounts Committee and other oversight committees should be chaired by a Member of the Opposition or an Independent.

9. Oversight committees should also have access to financial records and related documentation sufficient to be able to meaningfully review the accuracy of Executive Branch reporting on its revenues and expenditures.

10. There should be a parliamentary calendar produced annually that shows the dates for sessions of Parliament, including the expected recess dates.

11. The Standing Orders Committee should continually review and make recommendations for amendments to the Standing Orders.

Recommendations for an ethical governance of Parliament

As Parliamentarians have one of the worst reputations from a professional perspective, we must address this stigma and practice ethical governance. This should be an important requirement for any elected body. As stated in the 2011 CPA report on “Recommended Benchmarks for the CPA Caribbean, Americas, and Atlantic Region Democratic Legislators”:

“Members should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters. *The Legislature shall approve and enforce a code of conduct, including rules on conflicts of interest, and the acceptance of gifts.*

With the above in mind, Bermuda’s Joint Select Committee on Parliamentary Governance and Reform made the following recommendations:

- 1. An Ethics Committee should be established. This Committee should consist of Members from all political parties, and Independent Members. Members from both Houses should be appointed to oversee the application of the Code.

- Members will be required to fully comply to any requests from the Ethics Committee, when an investigation into a Member’s conduct is undertaken.

- The Committee report must include findings and recommendations to be submitted to the Speaker of the House.

- The House may also impose a sanction on a Member where it is considered necessary.

2. A Member’s Code of Conduct should be established and as paraphrased from the UK Code of Conduct for Members of Parliament, its general principles should include for consideration:

   a) Selflessness;
   b) Integrity;
   c) Objectivity;
   d) Accountability;
   e) Openness;
   f) Honesty and transparency; and
   g) Leadership.

Conclusion

Given the current information and technology driven age, and the popularity of social media, worldwide parliamentary standards are continuously evolving and all Parliaments can be sources of valuable innovations regardless of their size or age.

For the Parliament of Bermuda, it was important to develop benchmarks based on the unique traditions and parliamentary practices of our region. It was also noted that although Bermuda’s Parliament has some distance to go towards meeting the recommended benchmarks, its Parliamentarians recognize that they must make gradual steps toward reaching the ultimate goal.

In closing it should be noted that Bermuda’s Joint Select Committee on Parliamentary Governance and Reform report is currently being used as a road map forward. In addition, the Premier of Bermuda at the beginning of August presented a Cabinet Memorandum to Cabinet advising them that the Bermuda Parliament is moving forward in meeting the standards prescribed in the CPA’s parliamentary Benchmarks. Moreover, on behalf of the Joint Select Committee, and Bermuda’s Parliament, I will be presenting amendments to Bermuda’s parliamentary act to include the establishment and operations of a new Parliamentary Management Commission.

The legislation should be tabled and approved when Parliament reconvenes after the summer recess this autumn. This action should bring more independence to Parliament, and ultimately provide better and more effective parliamentary services to the people of Bermuda.