OPENING REMARKS

by

Senator the Hon. Kathy Lynn Simmons, JP
Attorney-General and Minister of Legal Affairs

Commonwealth Parliamentary Strengthening Seminar 2019
Parliament of Bermuda

Wednesday, 1st May, 2019

Honourable Speaker of the House of Assembly, Secretary-General, distinguished guests, parliamentarians. I bring greetings on behalf of the Premier of Bermuda, the Honourable E. David Burt JP, MP, who is regrettably unable to be with us this morning.

The Commonwealth Parliamentary Association is an organization that works to support democracy, good governance and human rights. These principles serve as benchmarks for assessing the effectiveness of our
parliament and our legislative framework and define our roles within it.

A democracy is defined in the Merriam-Webster dictionary as a “Government in which supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.”

In his keynote address at the 59th Commonwealth Parliamentary Conference in South Africa in 2013, former Commonwealth Secretary-General Kamalesh Sharma, stated and I quote:

“Parliament is the primary forum where the voice of the people, especially the poor and marginalized has to be heard with absolute clarity. Confidence that Parliament truly understands, and is able to address the aspirations and interests of the people, is a
paramount guarantee of social peace and stability.

Such confidence is secured when parliamentarians - of both the majority and minority parties - show a common purpose in representing the interests and concerns of their electorate as a whole.”

The principle underlying the Secretary-General’s narrative is that of service to the public, which is the foundation for the discharge of our responsibilities as parliamentarians. The concept of public service demands that as legislators we enact law that is in the public interest and does not serve our private interests. This fundamental principle is reinforced by the CPA benchmarks for Codes of Conduct applying to Members of Parliament which will be discussed tomorrow.

Democracy in Bermuda exists inside the framework of a written constitution that describes and prescribes the relationships between the component parts of Government and protects the fundamental rights of our citizens. A
seminar that aims to strengthen Parliament must, as is planned during our sessions, examine these relationships and critically review whether they properly serve the rapidly evolving needs of a modern democracy in 2019.

As the Attorney-General and Minister of Legal Affairs, I am particularly interested in the seminar on the separation of powers which will examine the relationship between the Legislature and the Judiciary. The seminar, by its very nature, raises the issue of the sovereignty of Parliament, viewed in the context of Bermuda’s constitutional relationship with the United Kingdom, which is based on the premise that Acts passed by both Houses of Parliament and consented to by the Governor are the highest form of law. However, this time-honored doctrine has been sorely tested by recent judgments of the Supreme Court and Court of Appeal, challenging the constitutionality of laws enacted by our Legislature.

The CPA principles of democracy, good governance and the protection of human rights are intended to characterize
Commonwealth Parliaments. The doctrine of parliamentary sovereignty ensures that our laws are determined by elected representatives who exercise their powers in the interests of their constituents and the general public. However, where a judgment of the Court overturns laws enacted by the Legislature, it is arguable that the Court is effectively acting contrary to this doctrine. It is equally arguable that in the performance of its constitutional function, the Judiciary may also be viewed as a check on the power of the Government against the infringement of human rights, thereby ensuring good governance indirectly. A positive consequence of this judicial oversight is that it enables the elected representatives to address unforeseen outcomes or flaws in its own legislation.

Notwithstanding this perceived conflict between the Legislature and the Judiciary, it is arguable that as Parliament retains its right to amend the law to render it compatible with the Constitution or to embark upon constitutional reform, a right that cannot be usurped by the Judiciary, parliamentary sovereignty is retained. Against
the backdrop of these competing arguments, I look forward to a fulsome discussion of the respective roles during the seminar.

As we examine the separation of powers; practice and procedure; parliamentary committees and codes of conduct over the course of the seminar, I am guided once again by the words of former Secretary-General Sharma that:

“Representation and respect for diversity and differing opinions, with inclusivity and equity, are indispensable to our Commonwealth understanding of what is needed if we are to take strides as societies that are more just, and a world order that is more fair.”

In closing, I applaud the Speaker of the House of Assembly, the Clerk to the Legislature, the Secretary-General and the eminently efficient resource team for affording us this invaluable opportunity to commune and share our respective views.

Thank you.