

# TheParliamentarian



Journal of the Parliaments of the Commonwealth

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## Democracy and Pluralism



### PLUS ►

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## STATEMENT OF PURPOSE

The Commonwealth Parliamentary Association (CPA) exists to connect, develop, promote and support Parliamentarians and their staff to identify benchmarks of good governance, and implement the enduring values of the Commonwealth.

## Calendar of Forthcoming Events

Confirmed at 20 November 2015

### 2015

#### November

- |                |  |
|----------------|--|
| 23-24 November | Commonwealth Women's Forum 2015 – Valetta, Malta   |
| 24-26 November | 33 <sup>rd</sup> Australia and Pacific Regional Conference - Darwin, Northern Territory, Australia |
| 27-29 November | Commonwealth Heads of Government Meeting (CHOGM) 2015 – Valetta, Malta                             |

#### December

- |                |  |
|----------------|--|
| 8-10 December  | Parliaments and Extractive Industries with World Bank Group - London, United Kingdom |
| 14-17 December | Asia, India and South East Asia Region Benchmarks Assessment - Perak, Malaysia       |

### 2016

#### February

- |              |  |
|--------------|--|
| 1-3 February | Asia Regional Seminar on the Role of Parliamentarians in the Promotion and Protection of Human Rights - Colombo, Sri Lanka |
|--------------|--|

The publication of a Calendar of Commonwealth Parliamentary Association (CPA) events is a service intended to foster the exchange of events and activities between Regions and Branches and the encouragement of new ideas and participation. Further information may be obtained from the Branches concerned or the CPA Secretariat. Branch Secretaries are requested to send notice of events and conferences to [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org) in advance of the publication deadline to ensure the Calendar is accurate.

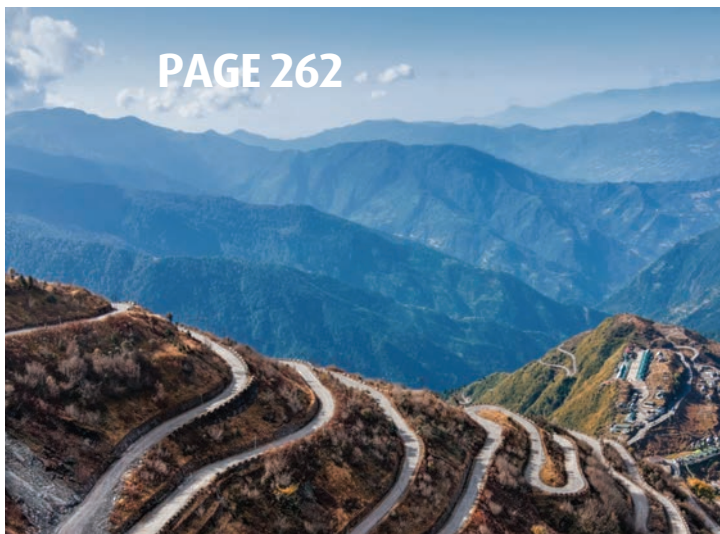
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# DEMOCRACY AND PLURALISM IN THE COMMONWEALTH

## The Editor's Note

The overall theme of the Commonwealth Parliamentary Conference this year was due to be '*Pluralism and Inclusive Democracy*' and it is a theme that will remain for some time as Commonwealth Parliamentarians examine how the Commonwealth can remain relevant in today's society.

This issue of *The Parliamentary* features two detailed examinations of this theme from two different regions of the CPA.

**Hon. Amna Ally MP** (Guyana) looks at how Parliamentarians can renew the commitment to pluralism and inclusive democracy in the Commonwealth with a unique view from the only country in the Commonwealth in South America; **Hon. K. N. Rai**, Speaker of the Sikkim Legislative Assembly (Sikkim, India) examines pluralism and democracy from the region of India sandwiched high in the Himalayas where India meets China.

On the theme of Parliament and the Media, the Speaker of the UK Parliament, **Rt Hon. John Bercow MP** (United Kingdom) shares the findings of the *Speaker's Commission on Digital Democracy* and how democracy can be enhanced through digital media. **Hon. Barry House MLC** (Western Australia) looks at the relationship between Parliament, the Member and the Media.

Following the recent elections in Canada, retiring Parliamentarian **Russ Hiebert** (Canada) looks at how the Reform Act, passed in the last Canadian Parliament, will affect the relationship between Members and the party caucuses in Canada.

Corruption, in many different forms, is an ever present and difficult problem to tackle across the Commonwealth. Former Parliamentarian and Secretary to the Global Organization of Parliamentarians Against Corruption (GOPAC), **John Hyde** (Western Australia) outlines the anti-corruption practices being established in the Pacific Region to help tackle these issues.

The Chairperson of the Commonwealth Women Parliamentarians, **Rt Hon. Rebecca Kadaga, MP** (Uganda) shares her View on the Consequences of Corruption on Women.

**Hon. Rick Nelson Houenipwela MP** (Solomon Islands)



**Jeffrey Hyland, Editor**  
*The Parliamentary*,  
Commonwealth  
Parliamentary Association

reports on the recent Meeting of Public Accounts Committees of the Pacific Region in New Zealand and the establishment of the Pacific Network of Public Accounts Committees (PaNPAC).

**Hon. Rob Pyne MP** (Queensland, Australia) provides an opinion piece on questions of conscience for Members and how the party system doesn't always allow for freedom of expression for Members.

**Dr Chris Bourke MLA** (Australian Capital Territory) examines the recent developments concerning Codes of Conduct for Members and their impact on Members in the Legislative Assembly.

**Shri Satya Narayana Sahu** (India) studies the Indian Economy and how its growth has impacted on both India itself and on the world economy.

The Chairperson of the CPA Executive Committee, **Hon. Dr Shirin Sharmin Chaudhury MP** (Bangladesh) shares her speech at the 46<sup>th</sup> CPA Africa Regional Conference in Nairobi, Kenya and the Acting Secretary-General of the CPA, **Mr Joe Omorodion** outlines how democracy and pluralism is linked to Parliaments across the Commonwealth.

This issue of *The Parliamentary* also includes a report on the CPA 61<sup>st</sup> General Assembly and Executive Committee meetings which took place in London, UK and a report on the appointment of the new Secretary-General of the Commonwealth Parliamentary Association.

The *Parliamentary Report* in this issue includes parliamentary and legislative news from Canada, British Columbia, India, New Zealand and Australia as well as a book review from the Parliament of India.

I look forward to hearing your feedback and comments on the publication as we move into 2016 and if you would like to suggest any future themes or contributions to the Journal then do please get in contact.

**Jeffrey Hyland**  
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editor@cpahq.org





Justin Trudeau MP speaking at an election rally of the Liberal Party of Canada in October 2015 in Brampton, Canada ahead of his election as the new Prime Minister of Canada - see page 298 for report.





# CHAIRPERSON'S AFRICA SPEECH

## View from the Chairperson of the CPA Executive Committee

### Chairperson's Speech at the 46<sup>th</sup> CPA Africa Regional Conference, Nairobi, Kenya, August 2015

KARIBU! It is a great honor to be here, on the occasion of the 46<sup>th</sup> African Regional Conference. It is also a great honor to be in this beautiful city, Nairobi in Kenya.

I have a vision for the CPA. A unique platform of Parliamentarians of Commonwealth countries, it has great potential to effect innovative changes in addressing the common concern for ensuring the welfare of the people, building stronger democratic institutions, advocating for good governance and accountability and sharing good practice.

#### Supporting Youth

Promoting 'Young Commonwealth' is the theme of the Commonwealth. CPA is working to facilitate young parliamentarians and also the youth to give young people a platform to raise a range of issues that impact their lives. Only last year, the CPA in collaboration with the North-West Provincial Legislature in South Africa, held the 6<sup>th</sup> Commonwealth Youth Parliament in November 2014. This year, in November 2015, the 7<sup>th</sup> Youth Parliament will be held in the Northern Territories of Australia. I know that already, there has been enormous interest by our young people to be involved in this endeavor. We also look forward to welcoming two young participants who took part in the 6<sup>th</sup> Commonwealth Youth Parliament to the next Commonwealth Parliamentary Conference. I am sure they will gain a lot from the experience, and we will also gain from them.

#### Supporting Women

I was delighted to be a part of the Commonwealth Women Parliamentarians (CWP) meetings that took place over the last few days. I would like to take this opportunity to pay homage to the CWP Chairperson, Rt Hon. Rebecca Kadaga MP, Speaker of the Parliament of Uganda. Your work supporting the CWP is excellent and I commend you for your initiative in creating the CWP Strategic Plan. Here in the Africa Region, CWP Steering Committee Member, Hon Lucia Witbooi MP, from the Namibia Branch – *thank you for your work in furthering the cause for women in Parliaments.*

Here in Kenya, the CWP convenor, Senator Beatrice Elachi – *thank you for hosting us* – your deliberations on the topic of 'Women and Leadership in Africa 20 years post Beijing platform for action;



**Hon. Dr Shirin Sharmin  
Chaudhury, MP, Chairperson  
of the CPA Executive  
Committee and Speaker of  
the Bangladesh Parliament.**

*challenges, prospects of achieving gender parity' were excellently received. Here in Africa, there are true beacons for gender parity in Parliaments - Rwanda, Cameroon, South Africa, Mozambique, Seychelles, Tanzania and Uganda. Having reached the CHOGM target of 30% representation in Parliaments – you are an example to us all.*

#### Supporting Parliaments

I hope you agree that it goes without saying that a well-resourced Parliament is essential of effective governance. The CPA is committed to providing training opportunities for Parliamentary Staff to enable them to provide the support needed to strengthen the intuition of Parliament. In 2013, the CPA provided a *Parliamentary Staff Development Seminar* in collaboration with Kwazulu Natal, in South Africa. This year, we need a host to come forward, to ensure that the Region can benefit from the training available to better resource Parliament. I know that

there have been Parliamentary staffers who have participated in a joint CPA-McGill University course earlier this year – good luck with your further work and I am proud that the CPA has offered this opportunity to professionally develop staff.

Thank you to the Mauritius Parliament for working with the CPA and the World Trade Organization to support hosting a crucial workshop on Trade which covered issues including trade facilitation, the multilateral trading system and future challenges.

I, for one, attended a Global Economic Challenges conference held in my own region, and I know that the CPA and the IMF are working towards holding a similar workshop for the Africa Region. I urge you to take full advantage of this opportunity to share your experiences, challenges and to make parliament work towards achieving a better budget that will do more for your people.

From making a budget work to scrutinizing government spending, Parliament's role is central. That's why the CPA will be supporting, for the 6<sup>th</sup> year, the West African Association of Public Accounts Committees – a network of PACs and a platform to share information and knowledge. WAAPAC has a lot of potential and will make a very significant contribution to the quest for value for money in public spending, effective scrutiny and oversight and enhancing the assertiveness and power of parliaments in holding government spending to account. We are proud to support this network.

The CPA is also excited to support Parliaments to undertake their key scrutiny functions – we hope that a Branch in the Region will





agree to host the next phase of work on the Extractive Industries and ensuring money trickles down from the extractive industry to the most needy in society.

The CPA will support Agriculture Committees in their quest for ensuring food security. The CPA will support work around Constituency Development Funds, to ensure that the most effective model is in place that brings real benefit to your electorate.

We will support parliamentarians to make use of new information communication technologies to better enhance their work in Parliament, to reach out to constituents and to legislate ICTs, is crucial in a globalized world where the immediacy of information is essential to much of our work.

We will support efforts around Climate Change, where we can ensure policies are in place to tackle the devastating effects, and put in place measures to minimize and mitigate the impact. I am delighted that the Africa Region will be represented at all of these important CPA symposiums.

More generally, I hope the Region has benefited from work the CPA has undertaken around *Benchmarks for Democratic Legislatures* and the *Benchmarks for Codes of Conduct for Parliamentarians*. These tools will undoubtedly help guide your Parliaments in building public trust in the institution and enhancing good practice in your parliaments.

Following elections, the CPA has been proud to deliver Post-Election Seminars in 2014 in Malawi and Swaziland. Building capacity of newly elected members is essential to their performance of their democratic duties.

As Parliamentarians, we are in a phase of transition. Moving away from the *Millennium Development Goals (MDGs)* to the *Sustainable Development Goals (SDGs)*, effectuating a shift in the global

**Above: Hon. Dr Shirin Sharmin Chaudhury, MP, Chairperson of the CPA Executive Committee meets with the President of the CPA Africa Region, Rt. Hon. Justin B. N. Muturi MP at the 46<sup>th</sup> CPA Africa Regional Conference, Nairobi, Kenya, August 2015**

development agenda framework. It is time for Parliamentarians of the Commonwealth to voice the needs and aspirations of the people they represent in this process.

I would therefore, like to propose to the Executive Committee to consider the idea of putting forward a proposal, highlighting the position of the Commonwealth on development issues like food security, climate change, gender equality, eradication of poverty, access to health care, water and sanitation, energy crisis, peace and security etc. before the CHOGM in November, 2015 in Malta. These are all areas in which the CPA has demonstrated a commitment. It is important that the governments making commitment at global level take account of the concerns of the Parliamentarians and our Association is an excellent platform in which to do so.

I would therefore, request all Members to consider the thoughts that I have shared with you. Your valuable suggestions and inputs will further fortify our efforts in promoting democratic governance, rule of law, sustainable, inclusive and equitable development, through proactive parliaments and vigilant Parliamentarians across the Commonwealth.

Let us work together in making CPA proactive, relevant, dynamic and visible in its effort to make a positive difference in the lives of the people of the Commonwealth by materializing their common aspirations.



# CONSEQUENCES OF CORRUPTION ON WOMEN

## View from the Commonwealth Women Parliamentarians (CWP) Chairperson

Dear readers of *The Parliamentarian*, it is always a gratifying opportunity for me to share with you my view on behalf of the Commonwealth Women Parliamentarians (CWP) on contemporary phenomenon that touch on the lives of our people within the Commonwealth and beyond. Sharing experiences and dialoguing on the way forward are, after all, some of the principle tenets of the CWP.

The topic today, the '*Consequences of Corruption*', holds massive relevance in the good governance systems which we, as Parliamentarians strive to promote in our respective jurisdictions. I was therefore quite surprised that it's a topic we hadn't given due credence in some of the recent issues of the Journal. Of course this also reminds us of the various global challenges of our time which we must face and find solutions to, collectively.

The consequences of corruption are negatively immense and devastating. I sometimes get dismayed when some development professionals argue that corruption can have a positive effect by generating parallel and neutral economic flows. Beyond the argument that corruption is necessary to '*grease the wheels*' of the economy, they see corruption as a '*positive*' (economically, socially) and '*redistributive*' force. However, the bottom line is that corruption has a corrosive impact on growth and business operations; it causes inequality and affects income distribution; and also affects the overall governance and business environment.

That is from the economic perspective; our prime concern as the CWP lies with the plight of women. For that reason, the central thesis of my article in this issue will be the consequences of corruption on women.

Corruption is denoted as an inducement to do wrong by improper or unlawful means and exists on all scales through bribes exchanging hands in interpersonal transactions, through to leaking local and national coffers and transnational deals made outside of, or in spite of, regulatory mechanisms and oversight.

While some may assume that corruption is gender-neutral in terms of lack of ethics and resource-depleting impact, research shows that corruption aggravates the discrimination already experienced by women as a marginalized group in society. By and large, this aggravation occurs as women attempt to take part in decision-making processes, seek provision of and protection for their rights and gain control over resources. This is mirrored in the enormous challenges and inequalities suffered by female candidates during electoral processes.

Principally due to their social roles as caretakers, many women may be familiar with petty corruption of the kind that forces them to pay bribes for things like accessing utilities, securing school



**Rt Hon. Rebecca Kadaga, MP  
Chairperson of the  
Commonwealth Women  
Parliamentarians and Speaker  
of the Parliament of Uganda**

enrolment for their children, obtaining a health insurance card or trading license, taking out a loan or getting medicines or an examination by a doctor. Add a layer of corruption to gender-based discrimination and these routine transactions become difficult.

In such situations, poor women often cannot pay bribes and some are forced to pay with sexual services or find a male patron to secure basic rights and services.

Similarly, corruption at the macro-level in the political arena, in public sector contracting, in transnational business transactions and in development aid processes also compounds the discrimination women already face in these spheres.

### **Consequences of Corruption on Women in the Political Arena**

Worldwide, women are underrepresented as voters and candidates in elections. In the histories of most nations, women were legally prevented from casting ballots or standing as candidates. Today, even though these laws have been repealed almost everywhere, women still face barriers in politics due to corruption.

In the absence of strong campaign finance laws or oversight, many candidates receive money from sources that are corrupt or potentially corrupt. Not only are the sources of funding often not disclosed but sitting public officials, the majority of which are men, sometimes abuse government resources like office space, materials, phone and internet access and voter lists in their campaign operations.

Since women are less likely to be tapped into the '*old boys' network*' when they stand as candidates, they have a marked disadvantage against those with money and access.

Similarly, candidates with access to money and power can bribe voters directly with food, cash and clothing or threaten to withhold basic services if people do not vote for them. There is one particular case in Mexico, for example, where voters were threatened with the withdrawal of subsidies under the state poverty-alleviation programme, *Progres*a, if they voted for the opposition.

Many voters also face electoral fraud and vote stuffing when they go to the polls. For instance, in the 2008 national elections in Pakistan, due to power imbalances within the home, men were able to take the identity cards of their female relatives, dress up in burqas, and go to the polling stations to cast extra votes as women. Party-affiliated workers working in concert with these voters oversaw the stations, and they did nothing to prevent or rectify this fraud.

I am proud of the heroines who have resisted the evil of corruption against women in the political arena. In Kenya, political candidates like Green Belt Movement leader, the late Wangari Maathai provided



a counterexample to this '*business as usual*' in politics by building a strong grassroots base of mainly women voters and small donors to succeed in elections.

Corruption, however, is not just confined to elections. The ongoing presence and strength of lobbyists ensures that those with the ability to offer money and gifts gain privileged access and undue influence on policymakers.

Also, once in power, high-level politicians, most of whom are men, often experience immunity from persecution and enjoy immense personal power. For example, many heads of state have not been adequately tried and prosecuted for their part in war crimes, including the use of rape as a weapon of war.

On a day-to-day level, many high-level leaders also cannot be held accountable for their lack of delivering basic goods and services like food, water, electricity and medicine to their citizens. Here, with little access of channels of accountability alongside growing burdens as caretakers, women bear the brunt of providing for such goods and services when governments or their contracted suppliers fail to deliver.

**“While some may assume that corruption is gender-neutral in terms of lack of ethics and resource-depleting impact, research shows that corruption aggravates the discrimination already experienced by women as a marginalized group in society.”**

#### **Consequences of Corruption on Women in Public Sector Contracting**

Research has shown that on average approximately 70% of central government expenditure turns in one-way or another into contracts. Contracts are sources of power to those who give them out, and targets of ambition for those who may receive them, making them particularly prone to abuse at the expense of public need.

Moreover, public contracting is one way in which public policy is implemented, and it is an enormous and lucrative area of business. Think of pharmaceutical companies vying to supply a government vaccination program, the privatization of a government-owned telecommunications company, or the awarding of contracts to reconstruct destroyed infrastructure in Iraq.

Most of the awarding of contracts takes place through the informal meeting spaces of the '*old boys*' network' rather than open and fair bidding processes. Women who, in addition to being shut out of these networks, have a hard time obtaining credit and licenses to start and grow businesses are rarely contenders for these contracts.

Meanwhile, since genuine efforts to serve the public interest and provide accessible, affordable services are often not the foremost criteria for awarding contracts, public funds are misused, fair competition is distorted and basic needs are neglected.

Again, women are often forced to compensate with their time and labour. For example, when private sector leaders with relationships to public officials are brought in to manage water distribution in some countries, water is either not delivered or distributed at exorbitant costs. In addition to mobilizing to resist this, women have to find

other means to get water and ward off ensuing health and sanitation challenges due to lack of clean, potable water.

#### **Consequences of Corruption on Women in Transnational Business Transactions**

Dear readers, before the formulation and adoption of the OECD Anti-Bribery Convention in 1999, not only was it legal for companies to pay bribes to foreign public officials to secure contracts, they received tax breaks from their home governments for doing so. Today this is illegal, but the process of prosecution is so expensive and cumbersome that such bribery continues, often through the smokescreen of intermediaries.

The arms trade and energy sector are particularly vulnerable to this form of corruption. Because of its stealthy set-up, it has been complicated to hold companies accountable for illegally selling arms to public officials, and the flood of arms into many countries has increased civilian violence and overall militarism, in which women and children are often victimized.

In the energy sector, as poor countries discover oil or gas reserves, the proceeds often seep into pockets of public officials and intermediary deal brokers. Artificially high prices for fuel are set, and this, in turn, also inflates costs of fuel-dependent goods such as food. As women are most often the ones to compensate for changes in the cost of living, the burden of corruption's effects bear down on them.

#### **Consequences of Corruption on Women in Development Aid**

Conversely, development aid can fuel corruption. Civil society organizations in countries with weak governance and large influxes of aid have warned that foreign assistance can sometimes present perverse incentives to invest in sectors and projects not prioritized by the receiving governments. Aid can also distort salary structures and create opportunities for corruption by the private sector in countries where regulatory mechanisms are weak.

Gender-differentiated impacts also ensue. For example, in the 1960s and 1970s, donor countries and agencies, and their private sector subsidiaries, including pharmaceutical companies, largely managed population control projects in the developing world. Sterilization and largely untested contraceptives were the primary means used to control population growth - in contrast to investment in sexual and reproductive health education and comprehensive services that accounted for the socio-economic realities of women's lives. In some cases, relatively weak governments were unable to push back on such policies whereas in other cases, public officials in receiving countries were fully cooperative, pocketing some of the aid and profit for themselves.

Nevertheless, aid can also serve as an anti-corruption force not through conditionalities but by building strong transparency, accountability and regulatory systems. Implementing such an agenda takes foresight, skill and cooperation on the part of both donors and recipients and some international donors are taking active steps to implement anti-corruption measures.

As the Commonwealth Women Parliamentarians (CWP), we condemn all these acts of corruption whose consequences not only weigh heavily on the shoulders of women but also carry the potential of putting their lives at risk. We continue to lobby Parliaments within the Commonwealth to carry out strict oversight of government business in order to curtail the evil of corruption.

I wish to stop here but not before I wish all of you our dear readers, a merry forthcoming festive season.



# DEMOCRACY AND PLURALISM

## View from the Acting Secretary-General & Director of Finance and Administration

Inclusive Democracy and Pluralism is defined as *"a conviction that various religious, ethnic, racial, and political groups should be allowed to thrive in a single society."* It is one of the key tenets of the Commonwealth of Nations.

Pluralism as a political philosophy is *"the recognition and affirmation of diversity within a political body, which permits the peaceful coexistence of different interests, convictions and lifestyles. Political pluralists are not inherently liberals (who place equality as their guiding principles) or conservatives (who place liberty and tradition as their guiding principles) but advocate a form of political moderation. Nor are political pluralists necessarily advocates of a democratic plurality, but generally agree that this form of government is often best at moderating discrete values."*<sup>1</sup>

One of the key questions facing Parliamentarians today is *'How can Parliamentarians help to renew the commitment to pluralism and inclusive democracy in the Commonwealth?'*

One of the ways that this can be assured is to implement the recently agreed Sustainable Development Goals (SDGs) of the United Nations which aims to *"ensure responsive, inclusive, participatory and representative decision-making at all levels"* (16.7), *"develop effective, accountable and transparent institutions at all levels"* (16.6) and *"substantially reduce corruption and bribery in all its forms"* (16.5).

A focus of promoting democracy and pluralism is the work being undertaken to tackle corruption across the world.

The first global legally binding international anti-corruption instrument is the United Nations Convention against Corruption (UNCAC, 2003), a multilateral convention negotiated by members of the United Nations which requires that countries implement several anti-corruption measures which may affect their laws, institutions and practices. These measures aim at preventing corruption, including domestic and foreign bribery, embezzlement, trading in influence and money laundering. Furthermore, the UNCAC is intended to strengthen international law enforcement and judicial cooperation, providing effective legal

mechanisms for asset recovery, technical assistance and information exchange, and mechanisms for implementation of the Convention. It was signed by 140 countries and as of November 2015, there are 177 parties, which includes 174 UN member states, the Cook Islands, the State of Palestine and the European Union.

Within the Commonwealth, the Commonwealth Secretariat works with governments and national authorities to help them root out systemic corruption and uphold transparency and accountability. The Commonwealth Africa Anti-Corruption Centre was established in Botswana in February 2013 in partnership with the Government of Botswana, which provides professional learning and capacity

development programmes for anti-corruption agency department heads and officers.

There is clearly a role for Parliamentarians in tackling corruption and ensuring that good governance is a key principle of all countries. Parliaments can ensure that governments are held to account and that legislation is in place that will prevent corruption and ensure transparency. Parliamentarians can also ensure that there is active participation and cooperation between parliaments, government and civil society.

The Commonwealth Parliamentary Association's role in mobilising Parliaments, Legislatures, Members and Parliamentary staff to enhance knowledge and understanding of good democratic governance and the institutional and professional development of its membership builds on the principles of the Commonwealth and helps to advance the commitment to inclusive democracy and pluralism.

The CPA provides a unique means of regular consultation and enabling forums among Members, fostering cooperation and understanding and promoting the study of, and respect for, good parliamentary practice.

In the challenging times ahead for the global community, our commitment to inclusive democracy and pluralism becomes ever more important.



**Mr Joe Omorodion**  
**Acting Secretary-General**  
**& Director of Finance**  
**and Administration of**  
**the Commonwealth**  
**Parliamentary Association**

<sup>1</sup> Pluralism Liberal Democracy' ISBN 080188215X

### 61<sup>st</sup> GENERAL ASSEMBLY AND EXECUTIVE COMMITTEE

In October 2015, the 61<sup>st</sup> General Assembly of the CPA and Executive Committee Meetings took place in London, United Kingdom. Mr Karimulla Akbar Khan was recommended to the 61<sup>st</sup> General Assembly by the Association's International Executive Committee to be appointed as the new Secretary-General of the CPA. Mr Khan will take up his post from January 2016. A report about the 61<sup>st</sup> General Assembly appears from page 252.

On a personal level, the last 15 months as Acting Secretary-General has been both rewarding and privileged. My colleagues and I at the CPA Headquarters Secretariat have not only maintained but strengthened, under the effective direction of the CPA International Executive Committee, the Association's corporate governance, transparency and accountability reporting arrangements and practices. We have moved forward the corporate and business planning practices, and performance measurement routines of the Association. I am humbled to have been in a position to act as a *'strong bridge'* between the 6<sup>th</sup> and 7<sup>th</sup> CPA Secretaries-General, with the strongest levels of reserves being available to continue the funding and implementation of the Association's constitutional and strategic mandates.

We at the CPA Headquarters Secretariat are, therefore, delighted at the appointment of Mr Khan as the 7<sup>th</sup> CPA Secretary-General since 1911. We wish him every success in his role and look forward to working with him from 1 January 2016.



# The Acting Secretary-General's Commonwealth Photo Gallery



All images above and left: The CPA Acting Secretary-General, Mr Joe Omorodion visited the Parliament of the Republic of Fiji ahead of their re-instatement as a CPA Branch Member in January 2016 and met Hon. Dr Jiko F Luveni, Speaker of Parliament of Fiji (left); Mrs. Viniana Namosimalua, Secretary-General to Parliament and Mrs. Jeanette



Emberson, Deputy Secretary-General (top left); and also held a meeting with Women Parliamentarians. The Acting Secretary-General joined the Speaker and Parliamentary Officials at the swearing-in ceremony of the new President of the Republic of Fiji, Major General (ret'd) Jioji Konousi Konrote (top right and top centre). The CPA Acting Secretary-General met with Mr Roderick Drummond, British High Commissioner and High Commissioners from New Zealand, Australia and Kiribati (above left) and also met with the UNDP Pacific Deputy Resident Representative, Akiko Fujii and Dyfan Jones, Parliamentary Development Specialist (left).

Image credits: Fiji Parliament News and CPA Images.



Above and right: The CPA Acting Secretary-General and Director of Finance & Administration, Mr Joe Omorodion has visited the CPA Cook Islands Branch on a goodwill tour of the Pacific Region. During the visit, the Acting Secretary-General met a number of dignitaries including the Acting Prime Minister of the Cook Islands Government, Hon. Mark Brown MP (right); the Leader of the Opposition, Hon. William Heather Jnr and other Members of Parliament (above) and the Speaker of the Cook Islands Parliament, Hon. Niki Rattle MP (above right) who is also a Regional Representative for the Pacific Region on the Executive Committee of the CPA.





# The Acting Secretary-General's Commonwealth Photo Gallery



Left: Ahead of COP21 Climate Change Conference in Paris, Commonwealth Parliamentarians gathered for the CPA Legislators Expert Workshop and Meetings on Climate Change in London, UK organised by the CPA Secretariat in partnership with the United Nations Environment Programme (UNEP). The Workshop opened with speeches by Mr Joe Omorodion, Acting Secretary-General of the CPA; Elizabeth Maruma Mrema, Director, UNEP; Marianna Balshakova, UNFCCC; and Malini Mehra, Globe International.



Left: Hon. Shirley M. Osborne MLA, Speaker of the Montserrat Legislative Assembly and Ms Judith Baker, Clerk of the Montserrat Legislative Assembly visited the CPA Secretariat and met with the Acting Secretary-General & Director of Finance and Administration, Mr Joe Omorodion during a visit to the UK and Isle of Man Parliaments.



Above and below: Mr Shola Taylor, Secretary-General of the Commonwealth Telecommunications Organisation (CTO) accompanied by Mr Lasantha De Alwis, CTO Director and Head of Operations visited the CPA Secretariat and met with Mr Joe Omorodion, Acting Secretary-General & Director of Finance and Administration and Ms Meenakshi Dhar, Director of Programmes along with other staff members.



Left: Malaysian Member of Parliament, Shamsul Iskandar Akin MP visited the CPA Secretariat and met with Director of Programmes, Ms Meenakshi Dhar to discuss the CPA's work.



Left: The Acting Secretary-General & Director of Finance and Administration, Mr Joe Omorodion welcomed distinguished visitors from the state of Andhra Pradesh, India to the CPA Secretariat led by the Speaker of the Legislative Assembly of Andhra Pradesh, Dr Kodela Siva Prasad Rao and the Clerk of the Legislative Assembly with Honourable Members.



Right: Parliamentarians from India, Jamaica, Kenya, Pakistan and Zambia meet the Acting Secretary-General of the CPA, Mr Joe Omorodion as they attend the CPA Workshop on the Role of Parliamentarians in Constituency Development Funds (CDF) at the CPA Secretariat in London, UK.



Below: The CPA Trustees Meeting was held at the CPA Secretariat attended by Hon. Clare Christian, President of Tynwald, Isle of Man; the CPA Treasurer, Hon. Request Muntanga, MP from Zambia; and Mr Joe Omorodion, CPA Acting Secretary-General & Director of Finance and Administration.



Right: The Acting Secretary-General of the CPA, Mr Joe Omorodion welcomed six clerks from the Legislative Assembly, Uttar Pradesh, India; House of Commons, Canada; Legislative Assembly of Western Australia; Parliament of New Zealand; and Legislative Council Secretariat, Hong Kong to the CPA Secretariat staff to find out about the work of the Association.

Right: The Acting Secretary-General & Director of Finance and Administration, Mr Joe Omorodion met with the Speaker of the Parliament of New Zealand and CPA Branch President, Rt Hon. David Carter MP (far right) together with Hon. Paul Foster-Bell MP (near right), Regional Representative for the Pacific Region and Mr Steve Cutting, Regional Secretary for the Pacific Region.



Below right: The Acting Secretary-General and Director of Finance & Administration, Mr Joe Omorodion welcomes youth delegates to the 7<sup>th</sup> Commonwealth Youth Parliament, hosted by the Legislative Assembly of the Northern Territory in Darwin, Australia.

Below: Hon. Christine Fyffe, MLA from the Parliament of Victoria, Australia visited the CPA Secretariat to discuss her work with Ms Meenakshi Dhar, Director of Programmes.





# Commonwealth Parliamentary Association (CPA) 61<sup>st</sup> General Assembly and Executive Committee Meetings take place in London, United Kingdom



All images: CPA Secretariat

The **61<sup>st</sup> General Assembly and Executive Committee of the Commonwealth Parliamentary Association (CPA)** has been held from 30 September to 6 October 2015 in London, United Kingdom.

The **CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP**, Speaker of the Parliament of Bangladesh chaired the CPA Executive Committee meetings in London with the Executive Committee Members representing the nine regions of the CPA - Africa, Asia, Australia, British Islands & Mediterranean, Canada, Caribbean, Americas & Atlantic, India, Pacific and South East Asia.

Executive Committee Members attended various meetings including the Coordinating Committee, Finance Subcommittee and Planning and Review Subcommittee to review the CPA's Annual Reports, Audited Accounts and Budget Planning and the work of the CPA.

The **Commonwealth Women Parliamentarians (CWP) Chairperson, Hon. Rebecca Kadaga MP**, Speaker of the Parliament of Uganda held a teleconference of the Steering Committee of the Commonwealth Women Parliamentarians (CWP) with Members across the Commonwealth.

Following the main Executive Committee Meeting, the Members were reconstituted as the 61<sup>st</sup> CPA General

Assembly to receive the CPA Annual Reports and to conduct the governance-related matters relating to the Association including the appointment of the new Secretary-General of the Commonwealth Parliamentary Association.

This was followed by the new CPA Executive Committee during which the new **Vice-Chairperson, Hon. Shirley Osborne MLA**, Speaker of the Legislative Assembly of Montserrat and Regional Representative for the Caribbean, Americas and Atlantic Region was elected by Members. The position of Vice-Chairperson is for a term of one year.

Members of the outgoing Executive Committee were thanked for their work and presented with commemorative plaques, provided by the Parliament of Malaysia, by CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP.

The Commonwealth Parliamentary Association connects, develops, promotes and supports Parliamentarians and their staff to identify benchmarks of good governance and the implementation of the enduring values of the Commonwealth.

**For a full list of the new International Executive Committee of the Commonwealth Parliamentary Association (CPA) and the Steering Committee of the Commonwealth Women Parliamentarians (CWP) please turn to page 314.**





Top left: The CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP consults with the CPA Acting Secretary-General & Director of Finance and Administration, Mr Joe Omorodion during proceedings.

Top right: CPA Executive Committee Members from the India Region (India Union and Punjab, India) attend the 61st General Assembly and Executive Committee Meetings.

Left: Executive Committee Members from the Australia Region (Australian Capital Territory, Northern Territory and South Australia) attend the 61<sup>st</sup> General Assembly.





# Commonwealth Parliamentary Association (CPA) 61<sup>st</sup> General Assembly and Executive Committee



All images: CPA Secretariat



Above left: CPA Executive Committee Members from the Pacific Region (Samoa, Tonga, New Zealand and the Cook Islands) attend the 61<sup>st</sup> General Assembly and Executive Committee Meetings.

Left: New CPA Executive Committee Member from the South East Asia Region, Hon. Dato' Noraini Ahmad MP (Malaysia) attending the 61<sup>st</sup> General Assembly.

Above right: New CPA Executive Committee Member from the Africa Region, Hon. Emilia Monjowa Lifaka MP (Cameroon) is welcomed by CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP.

Top of page: CPA Executive Committee Members from the Africa Region (Botswana, Ghana, South Africa) attend the 61<sup>st</sup> General Assembly and Executive Committee Meetings.





Above and above right: The new Vice-Chairperson of the CPA, Hon. Shirley Osborne MLA, Speaker of the Legislative Assembly of Montserrat and Regional Representative for the Caribbean, Americas and Atlantic Region was congratulated on her election to the position by CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP.

Right: CPA Executive Committee Members from India, Bangladesh and Pakistan.

Below: Members from Malaysia and Singapore (South East Asia Region) and from Tonga and the Cook Islands (Pacific Region).





# Commonwealth Parliamentary Association (CPA) 61<sup>st</sup> General Assembly and Executive Committee



Above: Members of the outgoing CPA International Executive Committee were thanked for their work and presented with commemorative plaques, provided by the Parliament of Malaysia (right), by CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP. Presentations included: the outgoing Vice-Chairperson of the CPA, Hon. Datuk Seri Dr Ronald Kiandee MP, Malaysia (top left); Hon. Dr Roberta Blackman-Woods MP, United Kingdom (top right); Hon. Russ Hiebert MP, Canada (centre left); Hon. Alban Sumana Kingsford Bagbin MP, Ghana (centre right); Lord Tu'iavakano MP, Tonga (bottom left); and Hon. Abdulla Shahid MP, Maldives (bottom right).



All images: CPA Secretariat



# New Secretary-General of the Commonwealth Parliamentary Association (CPA) appointed

The **61<sup>st</sup> General Assembly of the Commonwealth Parliamentary Association (CPA)** has appointed a new **Secretary-General for the Association**.

**Mr Karimulla Akbar Khan** was recommended to the 61<sup>st</sup> General Assembly by the Association's International Executive Committee, which is made up of representatives of the nine regions of the CPA – Africa; Asia; Australia; British Islands and Mediterranean; Canada; Caribbean, Americas and Atlantic; India; Pacific; South-East Asia.



The Secretary-General Elect, Mr Karimulla Akbar Khan, is originally from Guyana before moving to the United Kingdom. Mr Khan is an honours graduate in English Law (Bachelor of Law LL.B (Hons)) of the University of Reading. He also holds a Master's in Public International Law (LLM) from Jesus College, University of Cambridge. Mr Khan is a qualified Barrister-at-Law and an Attorney-at-Law. He was admitted to the English Bar in 1990 and the New York Bar (USA) in 2000. Mr Khan has held senior positions with, amongst others, the United Kingdom Foreign and Commonwealth Office (FCO) and at the Commonwealth Secretariat, specialising in International Law.

The new Secretary-General Elect succeeds the late Dr William F. Shija, former Minister and Member of the Parliament of Tanzania, who served as Secretary-General of the CPA from 2007 until his untimely death in October 2014. Since October 2014, Mr Joe Omorodion has been the Acting Secretary-General & Director of Finance and Administration of the CPA, a position that he will continue to hold until the new Secretary-General Elect takes up his new position. The

new Secretary-General Elect is due to take up his appointment from 1 January 2016 for a fixed term of four years.

Following the appointment of Mr Karimulla Akbar Khan by the 61<sup>st</sup> General Assembly, the Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury MP,

welcomed the new Secretary-General Elect and said that the CPA Executive Committee looked forward to working with Mr Khan to further the work of the Association in parliamentary strengthening across the Commonwealth.

Mr Karimulla Akbar Khan will become the 7<sup>th</sup> Secretary-General of one of the oldest established organisations in the Commonwealth.

The CPA, founded in 1911, is a membership association which brings together Members, irrespective of gender, race, religion or culture, who are united by community of interest, respect for the rule of law and individual rights and freedoms, and by the pursuit of the positive ideals of parliamentary democracy. The Association is made up of 180 Branches across the nine regions of the Commonwealth. It offers a vast opportunity for Parliamentarians and parliamentary staff to collaborate on issues of mutual interest and to share good practice.





# INCLUSIVE DEMOCRACY AND PLURALISM: A PERSPECTIVE FROM GUYANA

How can Parliamentarians help to renew the commitment to pluralism and inclusive democracy in the Commonwealth?



**Hon. Amna Ally MP** is the Minister of Social Cohesion and Government Chief Whip in the National Assembly of Guyana. She was first elected to Parliament in 1985 and is currently a Member of the eleventh parliament. Hon. Amna Ally has served as: Shadow Portfolio for Home Affairs; Chairperson of the Social Services Committee, Parliamentary Management Committee, Standing Orders Committee and also as Shadow Minister of Education and Culture.

Parliaments are generally perceived to be a reflection of the character of their state, party systems and political culture. The role of a parliament is to represent the citizens and to reflect their needs and preferences as conveyed through elections.

It is a critical institution in any modern state, and in democratic states, Parliamentarians have the power to influence and guide policy formulation and frameworks whether it be national or international and to lead the country. Therefore, Parliamentarians can use their influence to strengthen democratic norms and practices in their countries and facilitate the promotion of inclusive democracy and pluralism.

Democracy as we are aware was established as the right of everyone to participate in the management of public affairs and entails the existence of representative institution at all levels. Specifically, a democratic Parliament is one in which all constituents within society are represented by Parliamentarians, and which has the essential powers and means to express the will of the people by legislating and overseeing

government action. A politically representative parliament must exemplify society in the diversity of its configuration and must work with due respect for the plurality of opinions.

Therefore, Parliamentarians have a critical role in promoting pluralistic democracy, no matter how challenging it may be. The coexistence of many ideologies, religions and cultural specificities within society is the main characteristic of a pluralistic democracy.

It is essential that parliaments reflect that pluralism within the community. Every Parliamentarian must be cognisant of the fact that every citizen must be able to see that they too can participate in the decisions that affect them. Thus, they should ensure they have access to their representatives and that they too serve in Parliament.

Parliamentarians can renew their commitment to pluralism and inclusive democracy by playing an active role in reaching out to the public on issues that affect their wellbeing.

This sort of inclusive democratic approach can be efficient in promoting an inclusive democratic state.

Parliamentarians should encourage grassroots organisations and other members of civil society to become more involved in discussions and decision making on issues relevant to them.

Working with political leaders, civil servants and members of civil society to strengthen their ability to recognise and advocate for the needs of a wide range of groups — including youth and women, gender and ethnic minorities, and other disadvantaged groups - is essential in promoting inclusive democracy.

Representation of minorities and articulation of their interests in the process of institutionalising inclusive democracy, must be followed by ensuring that such minorities will thereafter participate meaningfully and effectively, in the day-to-day processes of governance. This involves securing the normative framework at the national level through ratification and incorporation of existing international standards; participation in the development of new international standards; and enshrining them in the national constitutional order.





Minority communities, continuing to be excluded from development, and facing increasingly intolerable impoverishment, are responding by asserting their ethnic identity in their struggles against discrimination, for social and economic justice, for self-determination, and ultimately for secession. Therefore, these are important issues that Parliamentarians must address and seek measures to facilitate in resolving them.

We must develop and adopt an attitude of honesty and trust, and promote an open, two-way dialogue. In practice, this involves reaching out to all individuals and groups in the community and allowing them the opportunity to present their interests and priorities.

This means engaging respective community leaders, attending community association meetings, taking part in community events, and actively participating in local forums for discussion throughout the country. In these efforts, however, Parliamentarians must be open to new ideas, new concepts and new values that they themselves may not be interested in, or even agree with and must always be open to criticism.

This duty also involves facilitating a dialogue between converging interests.

Parliamentarians must aim to unite and not divide. It is imperative not to promote any ideology or policy that would incite division among any groups or individuals, but rather to help find common ground and encourage compromises between competing parties. As long as the need to reach out and promote dialogue is established, they must recognise



Right: The Parliament building in Georgetown, Guyana.





Above: A historic building in Georgetown, Guyana.

that not all groups and individuals within a diverse society receive messages in the same way or get their information through the same mediums. In this regard, it is the MP's duty to accommodate these differences and provide equal accessibility to all. This involves such simple actions as taking the time to correspond to others through mechanisms that would facilitate their comprehension of the issue at hand.

Also Parliamentarians must be proactive in discovering what

resources such as newspapers, television and electronic sources that the groups within their constituency, state or region can, and actually do, access. The dialogue must start somewhere and it is up to them to deliver their messages in ways that speak to those they represent. Although promoting pluralism can be challenging it is our duty as elected officials to continue to strive for new opportunities to better represent those who put their trust in us and to renew our commitment to pluralism and inclusive democracy.

If any progress is to be made with regard to encouraging pluralism it has to come through

laws that protect individuals and their basic human rights. Some of these laws in Guyana include *The Prevention of Discrimination Act 1997*, *The Equal Rights Act 1990*, *The Representation of the People (Amendment) Act 2001*, *The Racial Hostility Act 1973 and Amendment Act 2002* and *The Persons with Disabilities Act 2010* as well as other provisions within the Constitution.

Parliamentarians should ensure that these laws are fully implemented and that persons are educated and aware of their rights and freedoms that are provided for within the laws of Guyana. Once they can promote the effective implementation

of these laws it will affirm Parliamentarians' commitment to pluralism in society by supporting our multicultural, multi-ethnic and diverse population while supporting vulnerable groups.

Promoting citizen participation through the Members of Parliaments will demonstrate Parliamentarians' commitment to move away from making central initiatives purely the business of governments, by including all citizens in the processes aimed at integrating them into a system of inclusive democracy and pluralism.

It is vital to ensure that the various features and diversity of a nation are represented,





**“Promoting citizen participation through the Members of Parliaments will demonstrate Parliamentarians’ commitment to move away from making central initiatives purely the business of governments, by including all citizens in the processes aimed at integrating them into a system of inclusive democracy and pluralism.”**

including regional variations, ethnic diversity, gender balance as well as differing political and ideological beliefs. Representation of pluralism means that political power is distributed in a way that gives the full spectrum of society a credible say in decision making.

Parliamentarians’ should ensure that more dialogue, understanding and compromise are evident in Parliament. This will certainly be necessary for these values to become stronger and unite Guyanese of all cultural backgrounds. It is the only way that true pluralism and inclusive democracy can become the ideals of Guyana.

They should also, among each other, promote dialogue

to combat fear, intolerance and extremism. They must promote the fact that Guyanese can learn from each other, making our different traditions and cultures a source of harmony and strength, not discord and weakness. They should promote the idea that there is ‘unity and strength in diversity’.

In addition, Parliamentarians can lobby to ensure that expertise and professional development resources are provided to educators and ministry officials to help them develop school curricula that celebrate Guyana’s diverse society and promote greater tolerance and mutual respect among groups.

They should seek to foster the equal participation of all citizens in the political, economic and socio-cultural life of the state, empowering individuals as well as groups to express their cultural and religious identities within a framework of shared citizenship. Equitable access to the market economy and national prosperity fosters a sense of enhanced wellbeing and a joint stake in the institution of statehood. Therefore, seeking measures to narrow the gaps between haves and have-nots is a critical precursor to pluralism which Parliamentarians must seek to promote. It is through these mechanisms, the tenet and practices of pluralism can foster a more equitable and peaceful human development.

Parliamentarians must be cognisant of the fact that fairness and respect are the principle cornerstones of pluralism as well as mechanisms of balance between the sometimes competing claims of group rights and human rights and the obligations and/or choices implied. Respecting difference depends on a capacity and willingness to acknowledge, negotiate and accommodate alternative or unconventional opinions.

Therefore, respecting differences, valuing diversity as a public good, and seeking collaboration through compromise must become basic principles that Parliamentarians should develop. In addition, continued commitment expressed through political will and leadership is one of the fundamental aspects of achieving a pluralist society.

It is evident that social cohesion is not achieved through the removal of differences, but through recognition that different, legitimately held perspectives do exist.

Parliamentarians should take up the challenge of locating points of balance between competing views and try to compromise with each other to ensure that persons within society are treated equally and not marginalised or discriminated against so that a plural and inclusive democratic nation becomes a reality.

Well-intentioned political leaders can foster inclusive civic spaces through public policy. Shared nationhood depends on the conscious and consistent creation of civic spaces, embodied in states as well as civil society institutions in which citizens of all backgrounds can literally and figuratively gather and exchange different points of view.

It is imperative to note that ethnic politics can be challenging to control once it begins. Thus, the abuse of ethnic competition for partisan political means, impedes the possibility of compromise and intensifies the threat of violence. To foster an inclusive civic identity and involvement in nation building, political parties must become more than ethnic links in Guyana. Political leadership from all Parliamentarians’ and political will are required for such a permanent change.

Establishing Special

**“Parliamentarians should take up the challenge of locating points of balance between competing views and try to compromise with each other to ensure that persons within society are treated equally and not marginalised or discriminated against so that a plural and inclusive democratic nation becomes a reality.”**

Parliamentary Committees that help raise awareness, review and assist in promoting specific issues related to pluralism and inclusive democracy is an excellent mechanism to renew their commitment to such essential aspects of a democratic nation.

There is no global approach or one size fits all formula when seeking to promote inclusive democracy and pluralism. Each nation, is unique and political leaders must ensure that they work collaboratively to formulate strategies, policies and programmes that best fits that specific nation. What may work for one may not work for all.



# INCLUSIVE DEMOCRACY AND PLURALISM: A PERSPECTIVE FROM INDIA

How can Parliamentarians help to renew the commitment to pluralism and inclusive democracy in the Commonwealth?



**Hon. K. N. Rai** is Speaker of the Sikkim Legislative Assembly, India. Previously an Arts Teacher and Headmaster, he entered politics under Shri Pawan Chamling. His official positions included: Minister for Sports & Youth Affairs; Chairman Public Accounts Committee; Government Chief Whip; Minister for Rural Management & Development; Political Secretary to the Chief Minister. He has an MA in Public Administration and is interested in floriculture, reading and playing badminton.

'Democracy' means different things to different countries, different scholars, different groups and different individuals. Beetham *et al.* (2002:11) write, these are the principles that democrats in all times and places have struggled for:

- to make popular control over public decisions both more effective and more inclusive
- to remove an elite monopoly over decision-making and its benefits and
- to overcome obstacles, such as those of gender, ethnicity, religion, language, class, wealth, etc.
- to the equal exercise of citizenship rights

Democracy is thus not an all-or-nothing affair, but a matter of degree – of the degree to which the people can exercise a controlling influence over public policy and policy-makers, enjoy equal treatment at their hands, and have their voices heard equally.

Pluralism is a state of society in which members of diverse ethnic, racial, religious or social groups maintain an autonomous participation in and development of their traditional culture or special interest, within the confines of a common civilization. In a pluralist society, no one group or characteristic totally dominates

a social organisation because all groups have to act as if they value and accept diversity. In other words, pluralism guards against totalitarianism and against tribalism, though not against tribes asserting their separate identities, providing that they accept the equal value of other tribal cultures. The majority of Commonwealth countries are plural societies, where different ethnic, racial cultural and religious groups live peacefully together.

**Concept of 'Inclusive Democracy'**  
Debate on 'Inclusive Democracy' is one of the recent phenomena.

Takis Fotopoulos (2001) finds democracy is incompatible with concentration of power. He writes "*Inclusive democracy is a new conception of democracy, which, using as a starting point the classical definition of it, expresses democracy in terms of direct political democracy, economic democracy (beyond the confines of the market economy and state planning), as well as democracy in the social realm and ecological democracy.*"

Fotopoulos writes further that "*an inclusive democracy, which involves the equal distribution of power at all levels.*"

According to the Human Development Report 2000, the concept of 'Inclusive

*Democracy*' allows distribution of political power to minorities and guarantees full participation by all citizens. United States of America President Abraham Lincoln's widely quoted saying "*Government of the people, by the people, for the people*" itself is a definition of inclusive democracy if we focus on the word *by* rather than *of* and *for*.

In the context of developing, inclusive democracy means sharing of power and authority by all caste/ethnic, gender, linguistic, religious, cultural and regional groups through caste/ethnic, linguistic and regional autonomy and sub-autonomy, proportional representation and special measures under a federal structure of government by using the processes of round table conference, right through to self-determination, referendum and constituent assembly.

**Need for Inclusive Democracy**

The democracies of the world are faced by major challenges. All political systems, include problems related inter alia to sustainable development, climate change, desertification, drought, poverty, energy, food security, water scarcity and quality, decreasing natural resources due to land degradation, population





dynamics, health, gender relations, financial and economic turbulences and crises, organised crime, war and peace, and last but not least human rights and democratisation.

Today the world is witnessing a crisis of democratic governance at all levels: local, national, regional and global. The crisis is not only for the new and restored democracies. It is also important for the old democracies as well.

Indeed all democracies face special challenges in multi-ethnic societies in ensuring representation and participation of minorities, and in protecting, promoting and realising their rights. The challenges posed by ethnic pluralism and minorities to democracies are many. Representation of such minorities and articulation of their interests in the process of institutionalising inclusive democracy must be followed by ensuring that such minorities will thereafter participate meaningfully and effectively, in the day-to-day

processes of governance.

To institutionalise inclusive democracy, Parliamentarians have immense responsibilities and applied methods. Parliamentarians can materialise inclusive democracy by:

- participation in the development of new international standards and enshrining them in the national constitutional order;
- Securing the institutional framework in the parliament and other legislative bodies, the executive, the judiciary, the institutions of law enforcement, national human rights institutions, and civil society organisation;
- Securing the policy framework for protecting minorities, promoting pluralism and preserving cultural diversity;
- Addressing the special problems and obstacles faced by the democratic systems;
- Constituency-building for pluralism, diversity, inter-

ethnic understanding, and peaceful coexistence;

- Confidence-building measures by using processes of constitution-making, electoral reform, law reform and judicial reform to develop an inter-ethnic normative consensus at the national level; and
- Constructive-engagement through encouraging and developing mechanisms for sustained, meaningful and effective participation by all sections of people.

*The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights* convert the above democratic values into legally enforceable rights.

Article 1 of the Covenant unequivocally affirms that: *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and*

**Above: Beautiful buddha park at Ravangla, South Sikkim.**

*cultural development."*

Democracy, therefore not only has a political dimension, but also has economic, social and cultural dimensions, which are closely interrelated with development. As the UNDP Human Development Report 2000 puts it: *"Democracy is the only form of political regime compatible with respecting all five categories of rights - economic, social, political, civil and cultural."*

The ILO Conventions elaborate the concept of democracy in the workplace by affirming basic human rights of freedom of association and equality of opportunity and treatment.

International law thus, has defined democratic governance in relation to values, principles and related human rights; and stresses the interdependence and inter-relatedness of democratic governance, human rights and sustainable human development.



### **“Democratic governance becomes all the more challenging in societies where the need is for inclusive democracy, not only for majority groups, but also, importantly, for minorities and for vulnerable and disadvantaged groups as well.”**

Such an approach is also reflected in regional human rights charters (such as the Inter-American, European and African Charters) and in the national constitutions of most independent member states of the UN. All of these bodies of law reaffirm three key elements of democracy:

- **Inclusion and participation.** International human rights law recognises several aspects of participation: political, economic, civil, social and cultural. In the context of development, participation is affirmed as an inter-dependent means and end of development and must be “active free and meaningful” (UN Declaration on the Right to Development);
- **Equality and non-discrimination.** It is important to note that all the key human rights instruments prohibit discrimination “of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Universal Declaration, Article 2)
- **Transparency, accountability and access to effective**

*remedies.* This element has been primarily developed under national constitutions and laws which affirm freedom of information, the right to know, and the power to act upon such knowledge through exercising the right to an effective remedy from competent national tribunals (Universal Declaration, Article 8).

Thus, existing international law prescribes the normative content of democratic governance through articulating the key values and core principles that constitute democratic governance.

The challenge of democratic governance lies in the implementation and enforcement of such values, principles and rights. There is usually a huge gap between laws, their implementation and their enforcement. The challenge of democracy is to develop and sustain governance institutions, notably parliament, the executive, the judiciary, electoral bodies, the police, national human rights institutions, and civil society organizations which provide effective, institutionalized and sustained implementation of policies and decisions and enforcement of the law.

Democratic governance becomes all the more challenging in societies where the need is for inclusive democracy, not only for majority groups, but also, importantly, for minorities and for vulnerable and disadvantaged groups as well.

Inclusive Democracy should:

- Effectively protect such vulnerable groups against denial or abuse of their rights;
- Work towards reducing and eliminating the causes of such vulnerability; and
- Ensure capacity-building of such groups to enable their effective participation.

Today's world ethnic identity is increasingly viewed as negative and undesirable by governments. Ethnic identity is increasingly being viewed by them as something to be controlled, co-opted and homogenized. In many societies, minority communities, continuing to be excluded from development, and facing increasingly intolerable impoverishment, are responding by asserting their ethnic identity in their struggles against discriminations, for social and economic justice, for self-determination, and ultimately for secession. Democratic governance must respond to the challenges of ethnicity and pluralism by becoming more and more inclusive.

#### **Role and responsibilities of democratic Parliaments and their members towards pluralism and inclusive democracy**

Democracy, the political order of freedom, is based on free, fair and regular elections enabling the change of government, separation of powers, respect, protection and fulfilment of human rights. Democracy is realised through a complex set of institutions and practices, which have evolved over time and continue to do so. These include: a guaranteed framework of citizen rights; effective, accountable institutions of government; an active citizen body or civil society; and a number of mediating institutions between government and citizens, among which political parties and free media are very important.

The Universal Declaration on Democracy, adopted by the Inter Parliamentary Union (IPU) in 1997, is a very important Declaration which emphasizes: “*Democracy is a universally recognised ideal as well as a goal ... It is thus a basic right of citizenship to be exercised under conditions of freedom, equality,*

*transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity.*”

As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.

Traditionally, a state's power is exercised by three separate institutions which exist largely independent of each other and which are supposed to monitor one another thus limiting the power of a state: the legislative, the executive, the judiciary. Legislative power is exercised by a (bi- or unicameral) parliament. Parliaments are the central institution, the ‘heart’ of democracy; democratic parliaments reflect democratic societies. Every parliament should be representative, transparent, accessible, accountable and effective.

*At the national level the main roles, functions and powers of Parliaments and Parliamentarians include:*

1. Making laws, including constitutional changes (legislative power);
2. Allocating financial resources and deciding on budget and taxation (power of the purse);
3. Holding governments accountable and exercising control of executive actions, policy and personnel (power of oversight)
4. Debating issues of national and international interest and democratic representation of the people (power of discourse);
5. Electing the parliamentary officers and – in the case of parliamentary democracies – the executive (elective power);
6. Influencing foreign policy as well as international relations and institutions by ratification of treaties, decisions on peace and war, allocation of financial resources to





organisations and funds, parliamentary diplomacy, mediation between the public and international organisations and institutions, etc. (international power).

### **Areas in which Parliaments and Parliamentarians can actively contribute to the implementation of Inclusive Democracy**

In general terms, Parliaments and Parliamentarians should commit to

1. Renew the political commitment of countries to sustainable human development, taking into consideration four main dimensions (economic growth, environmental protection, social justice as well as the political dimension: democracy, good governance and the rule of law);
2. Strengthen governance and institutions for sustainable development at the international, regional, national and local levels;
3. Increase the engagement on public policy on sustainable development issues;
4. Push for and support poverty eradication;
5. Enact an enabling legislation for inclusive democracy;
6. Adopt laws or appropriate actions that encourage the mainstreaming of action of inclusive democracy

**“Parliamentarians are, above all, representatives of the people who have elected them and in their various activities, they always seek to represent their interests.”**

- and combat hindrances to achievement of inclusive democracy;
7. Give higher priority to social justice;
8. Push governments for a coherent country-wide response to collective rights;
9. Create specific budget lines for combating social menace.

Parliaments have the responsibility of holding the executive to account by overseeing its work and making sure that it does not infringe on the rights of citizens or waste state resources and that is consistent with the public interest. Parliaments perform this oversight role in a number of ways:

- Request regular reports from the executive on its activities
- Evaluate measures taken by governments to implement the inclusive democracy
- Monitor executive actions and enquire whether anti-social issues are included in overall government agendas (by means of oral and written questions to the executive, motions, establishment of special commissions or ad hoc committees, hearings, field visits and so on).

Parliaments and Parliamentarians should be actively involved in this participatory process starting from the local level, and should require regular reviews of progress reports on the implementation successive democracy. Parliamentarians are, above all, representatives of the people who have elected them and in their various activities, they always seek to represent their interests. Parliaments and MPs can promote public discourse and serve as channels for conveying the vision of inclusive democracy to the public and grassroots communities.

Parliamentarians can foster the participation of all

stakeholders, in particular civil society, NGOs, youth and women's associations and the private sector, and build partnerships between policymakers, the academic community, the business sector, NGOs and community-based organisations. They ensure the establishment of national, regional and/or local awards, which include five possible levels: political leadership, civil servants, civil society, the private sector and the media.

Parliaments must be autonomous regarding their own organisational structures. They can elect competent and committed personalities for parliamentary leadership, relevant committees and rapporteur roles and ensure continuous advocacy on inclusive democracy.

Parliamentarians can be more active in transnational collaboration, so as to provide more effective parliamentary inputs in regional and international organizations.

### **Inclusive Society**

While talking about inclusive democracy we also mean inclusive society. Inclusive society subsequently leads to inclusive democracy. To create and sustain inclusive societies, it is critical that all members of society are able and motivated to participate in civic, social, economic and political activities, both at the local and national levels. A society where most members are provided with the opportunity to participate in decision-making processes that affect their lives is a society that will best foster principles of inclusiveness. It fosters a respect for the rights, dignity and privileges of all people. In order to encourage all-inclusive participation, there must be universal access to public infrastructure and facilities (such as community centers, recreational facilities, public

libraries, resource centers with internet facilities, well maintained public schools, clinics, water supplies and sanitations.

Similarly, equal access to public information plays an important role in creating an inclusive society and inclusive democracy as it will make popular participation possible with well-informed members of society. Collective participation, through accepted representations of all classes and backgrounds, in the planning, implementation and evaluation of community activities should be sought after.

Equity in the distribution of wealth and resources is another critical element of inclusive democracy. Another dimension of inclusive societies is tolerance for and appreciation of cultural diversity. Effective leadership is crucial to the development of an inclusive society. Leadership here includes Parliamentarians. Parliamentarians must have a vision for the future of society. Societies that maintain a unity of purpose, or a shared vision embraced by the community, and encourage broad-based stakeholder participation in the formulation of that goal, will be more inclusive.

Social inclusion touches almost all dimensions of life, both individual and societal.

However, the challenge lies at the core: how to apply the concept in real life situations, and how to operationalize it through mobilizing all actors in society, at the local, regional, national, and international levels.

There are numerous ways to promote social inclusion and remove impeding obstacles. Important are protection and empowerment of the vulnerable and marginalized, proclaiming the right to differ, and eliminating discrimination based on attributes, such as gender, age and ethnicity.



### **Inclusive Policy Framework**

Once policies have determined and prescribed an outline of action to be taken, the institutional mechanisms at the national level must take on the responsibility of implementation. To promote social inclusion, the legal systems and security forces must be impartial and uphold the most basic rights for all members of society. Schools, universities and governments must ensure the access and accessibility to education for every individual. Social institutions must develop and create housing and welfare systems, training programmes and promote knowledge, information and community responsibility.

Governance and policy-making processes need to become more transparent and inclusive in their functioning and also uphold social inclusion principles. Policy must be tailored and rewritten to reflect the needs, concerns, languages and cultures of a diverse population. If the aim is to have an inclusive society, where everyone participates and engages with societal and governmental processes, then it is necessary to encourage or create a system where socially excluded groups become stakeholders in the social, political and economic process and the success of a society. Simply writing a policy which includes them will not create this. If people feel that they have a voice then they will be encouraged to include themselves. The chance to use this voice must be offered and members of society must be engaged. Finally, it is important to understand that inclusive policies apply to everyone, and should not be understood as a special treatment for certain groups, which often exacerbate the existing division rather than create unity in society.

Social inclusion is an overarching concept that aims at transforming our thinking,

process, policies, strategies and programmes. While there is a need to target our efforts to empower those who are excluded, it is also important to make the mainstreaming society more inclusive. And this will require the efforts of not only government, but also every individual, community, local authorities, civil society organisations, faith-based organisations, the private sector, as well as the very people and groups who are disadvantaged and marginalised. Everyone has a stake and responsibility in achieving an inclusive society.

Based on the overall framework established at the international level, national governments need to identify their own social inclusion goals and objectives, incorporating their specific needs and context. The broad social inclusion goals or objectives need to be connected to the particular vision people have for their society – a positive image of an inclusive society of the future. This vision needs to be framed in the parliaments and Parliamentarians should take the initiative in effective monitoring and analysis. In addition to objectives, Parliamentarians need to set a couple of principles to make social inclusion goals more explicit.

Social inclusion is a multi-dimensional and cross-sectional concept, which needs to be mainstreamed into various areas, at national, regional and local levels. It lies not only within one tier or section of society, nor does it rely on only one area of policy to exact changes. There is a larger and infinitely more comprehensive aim to social inclusion that encompasses many areas of society and humanity. If a vision can be created which is communicable to the masses and stems from a collective agreement that promotes diversity, tolerance,

empowerment, inclusion, participation and community-minded action, then important steps can be made. Fostering a common purpose in all members of society which has input from all sectors is crucial.

### **Parliamentarian actions to reduce obstacles for social inclusion**

In order to reduce obstacles for social inclusion and promote respect for human dignity, the following actions were proposed:

- Set clear and targeted social inclusion, cohesion and well-being goals, with the appropriate strategies to achieve these goals, including the implementation of policies that will further social inclusion. Suggested policy goals include:
  - Promote social inclusion, social cohesion
  - Promote gender equality
  - Ensure equal opportunity for all, including on the labor market
- Promote equal access to basic quality social services (education, health, transport, shelter etc.)
- Ensure access for all to the resources (including land), rights and services, that are necessary for a true participation in society
- Prevent and address social exclusion, and eliminate all forms of discrimination
- Recognize the dignity and respect for each and every individual regardless of background, as a moral and legal principle/instrument
- Overcome spatial components of exclusion (e.g. land policy)
- Create safety and sense of security; and
- Establish well-being of people as a policy objective.

In order to achieve the above policy goals, there is a need to strengthen capacities and develop tools in the following areas:

- Formulate social inclusion

policies that are adequate, accessible, financially sustainable, adaptable and efficient

- Provide support to and strengthen capacities of institutions that are working of justice and social inclusion
- Enhance access to knowledge and information (including ICTs)
- Empower people to participate in the design, implementation and monitoring of policies, as well as in the planning, budgeting, and resource mobilisation (including civil society, the private sector, academia and various social groups)
- Invest in social capital - building trust amongst people and between institutions
- Invest in and enhance capacities of key social welfare institutions that can create effective linkages between existing sectoral indicators and expertise with inclusive goals (For example, public health and public mental health infrastructures and their use of, and responses to, measures implicated in inclusion/exclusion such as wellbeing and social trust through population-level interventions)
- Build effective partnerships, recognising the complementary responsibilities of different sectors within society
- Create an open space for dialogue to explore policy options, common values and identity, bringing communities together, and ensuring that the excluded and marginalised are heard
- Build capacity in good governance, accountability and transparency at national and sub-national levels.

### **Mechanisms or processes most productive in creating and sustaining an Inclusive Society**

For the articulation and execution of inclusive democracy and social





inclusion as a foundation for inclusive policies, Parliament and the legislatures should:

- clearly state the right/opportunity to be different while also being included and actively participate in processes, spaces and institutions.
- Differentiate the concept of 'social inclusion' from merely 'reducing disparity among people', which were common indicators in the past.

Social inclusion is a much wider concept, incorporating distinctive and relevant dimensions such as: alienation; social mobility; access to space; sense of ownership; trust among people and institutions, being part of society; and well-being of individuals. Social inclusion indicators should go beyond traditional disparity indicators, and should not rely on a single indicator alone. As such, the following components should be further explored and considered to be an integral part of social inclusion:

- Social capital: linking the relationship between the state, government and public services, and citizens, focusing on the interface
- Social mobility: effective public transportation system, walkways to increase access for marginalised communities to social and economic life, including the labor market
- Well-being: capture how people experience their lives (how people think and feel about their lives).
- Formulate policies that promote a sense of belonging
- Redefine collective pride and identity in an inclusive and participatory manner
- Define a shared future with accommodating diversity
- Create a mechanism for envisioning processes at local, regional and national levels
- Develop resilient and accessible dispute resolution mechanisms such as,

facilitation, consultation, participatory dialogue, public hearing to enable reasonable accommodations of different views, values and cultures, etc.

- Invest in measuring strategies that capture this dimension
- Identify indicators on inclusiveness of a society, and monitor the effectiveness of the inclusive policies and strategies.

### Promoting social inclusion at the local level

As the issue of social integration and social inclusion has become a reality of local governments, Parliamentarians and Legislatures must recognise that the diverse nature of the challenge and the initiatives to promote social inclusion need to take place in various fronts at multiple levels. A social inclusion strategy should be the starting point for identifying a series of practical objectives and actions that can positively impact processes to decrease the levels of social exclusion, and poverty, and improve the quality of life of every member of society. Local government should formulate an effective local solution involving all residents within a participatory framework devising, promoting and monitoring initiatives that

will achieve measurable positive change.

Political inclusion of all members of society, in the form of popular participation in decision making processes and policy formulation, is a central aspect of social inclusion and should be sought for in all aspects of local governance (Kliksberg on Participation). Research shows that as societies modernise, people increasingly want to have a say in the decisions which affect their lives. (Halman, 2008, Inglehart and Welzel, 2005). Political inclusion entails that each individual has a say in decisions that affect his/her life.

Another aspect of political inclusion is access to information so that each individual can make an informed decision. An effort must be made to achieve equal access to transparent and accountable public information. Local governments can do a lot to promote a vision of political inclusion through their own functioning.

### Conclusion

Parliamentarians, planners and policy-makers have the clear responsibility to foster unity among diverse populations and create a vision for a common future that pivots on the acceptance

Above: Old silk road between Sikkim, India and China.



of difference and animation of societies with a view to harnessing the strengths that are inherent in diverse societies. A key challenge will inevitably rest with the need to ensure that all people are able to engage with society and benefit from the possibilities inherent in contemporary life and therefore that all people are included, irrespective of their social attributes.

Parliamentarians have a critical role in promoting social inclusion and programmes and policies need to be tailored to address specific local needs. Today, increasing numbers of people do not have access to the political process (except as voters), to the economic process (except as consumers) or to the environment (except as conditioned by their roles in the economic and political process, defined by the market economy and the parliamentary system respectively). Thus, at the political level, it is Parliamentarians who take all significant political decisions. Similarly, at the economic level, what is produced in a country is not determined by the democratic decisions of its citizens but by property relations and the income distribution pattern.

# DIGITISING DEMOCRACY

The Speaker of the UK Parliament explains how the Speaker's Commission on Digital Democracy is changing the way the UK Parliament interacts with the latest digital technology.



**Rt Hon. John Bercow MP** is the 157<sup>th</sup> Speaker of the House of Commons in the UK. John Bercow was elected to Parliament in May 1997 and has served on several Parliamentary Select Committees. He presided over Public Bill Committees and Westminster Hall debates. As part of his commitment to making Parliament more accessible, he has embarked on an extensive outreach programme, travelling across the UK to schools, universities and community groups to talk about his role and that of Parliament.

In the last twelve months, the UK Parliament and others across the world that share our democratic tradition have been celebrating a series of anniversaries of great significance. The signing of the Magna Carta took place 800 years ago and, recently, we remembered the death of the rebel baron, Simon de Montford, who died 750 years ago at the Battle of Evesham.

King John's signature on the Magna Carta and Simon de Montford's baronial rebellion were key points in the long struggle for the rights and representations that so many of us enjoy today. However, the orchestrators of these two events could not have imagined that their actions would end up paving the way for this democratic outcome. The Magna Carta enshrined, for the first time, the basic liberties and freedoms that form the basis of Parliamentary sovereignty and the rule of law. Yet 800 years ago, it was designed for a different purpose: to open negotiations for a peaceful settlement between a King who felt that he was above the law, and the barons who neither shared this view nor were happy at his insistence that they should bankroll it.

Similarly, Simon de Montford and his followers were perpetrating a power-grab against the King, who many felt showed unjust favouritism towards his continental relatives over themselves. It is true that as a result of de Montford's victory against the King at the Battle of Lewes, his second Parliament contained, for the first time, ordinary citizens, elected by their boroughs, and it is from this that representative democracy derives. Yet one would struggle to argue that it was with this ultimate outcome in mind that he took on the massed ranks of the monarchists.

There is a tendency, when looking at the history of democracy, to conclude with the words, "... *rights and representations we enjoy today*", add a full-stop and think: democratic job done.

Indeed, I have used this form of words myself already in this article, although not as a 'full-stop' but as a waypoint. Parliamentary democracy is a legacy stretching back to de Montford, and one which we all have a responsibility to shape in order for it to survive for future generations.

For things to remain the same, as the saying goes, everything must change, and Parliament today is very different

to the one that de Montford would have recognised: a gathering that was still very much in thrall to the monarch and led by the barons. Today, the executive branch of government is more likely to find itself scrutinised by an elected Select Committee, or called to appear in the Chamber to answer an Urgent Question, than it is removing the heads of its detractors. Through the expansion of the franchise and

**"For things to remain the same, as the saying goes, everything must change, and Parliament today is very different to the one that de Montford would have recognised: a gathering that was still very much in thrall to the monarch and led by the barons."**



improvements in communication technology, Members of Parliament receive many hundreds of representations per week in the form of letters, telephone calls, surgery appointments, emails, tweets and Facebook messages. The electorate is more demanding and less deferential, and better able to communicate their concerns through a greater range of channels.

This immediacy is something that voters have come to expect as normal service. People shop online, share with their friends and families via Twitter and Facebook, and use video technology to facilitate meetings between colleagues in different countries. By contrast, politics in the UK seems a far slower world. Until January 2003 there was inevitably a gap of some weeks between tabling of parliamentary questions and the date for answer. By the time the relevant Minister took his or her position at the Dispatch Box, many of the questions were out of date. Worse than that, a contentious issue could have blown up in the intervening period, and Members could find themselves in the invidious position of having a policy elephant in the Chamber that they were unable to discuss.

Since then, we have reformed parliamentary tabling and make far greater use of Urgent Questions. This has – amongst other improvements – helped assuage this problem in the UK to an extent. Yet there remains a disconnect between the debates that we are having in Parliament and the conversations that are going on up and down the country. As Speaker, I consider it to be part of my role to be an ambassador for Parliament; I spend a good deal of time engaged in outreach activities at schools, universities, and faith groups. However, there is always more that can be done to ensure that Parliament is not just talking



to itself, but part of a wider conversation with the people we are elected to serve.

It was with this in mind that I established the **Speaker's Commission on Digital Democracy**, which reported earlier this year.

The aim was to look into ways that we could use digital technologies to encourage understanding of, and

participation in, representative democracy. For over a year, members of the Commission were involved in extensive consultation with a wide range of experts and members of the public from different communities, ethnicities, ages and income brackets.

The Commission published its report in January this year. Understandably, perhaps, the

most interest was generated by the recommendation that online voting be available by 2020 for all citizens. This proposal has sparked a fascinating and ongoing debate. Young people, in particular, saw the requirement to vote in person as an inconvenient anachronism and feel it discourages many from doing so. Furthermore, people with disabilities, military





personnel serving overseas and those living abroad would undoubtedly benefit from a secure online voting system. On the other hand, several experts were concerned about cyber-attacks and the potential for hacking, especially given the possibility that voter impersonation and similar fraud becomes far easier when voting online rather than in a polling station. I am clear, however, that the bottom line is that protecting the integrity of the ballot box has to be of the utmost importance.

The report was, however, far more than that single recommendation. As the participants told the Commissioners about their

experience of voting, contacting their MP or finding out about Parliament, it became clear that there are a number of perceived barriers to information on how the institution works and access to the decision-making process. Clearly, one feeds into the other. For this reason, the report placed a strong emphasis on education, with one of its key targets to ensure that by 2020 everyone can understand what Parliament does in order to enhance public engagement.

How this is turned into a practical reality was another challenge the Commissioners faced in drafting their report. They found that whilst the public were, in general, turned off by party politics in the traditional sense, they were interested in policy discussions that had a direct impact on their lives. With this in mind, the Commission

decided to explore new ways in which digital technologies could be used to encourage people to get involved in policy discussions, such as the ones that take place in Westminster Hall. Since 1999, Westminster Hall is the second Chamber of the House of Commons; MPs are able to ballot for debates on issues of their choosing, and the relevant Minister will respond.

The idea of the '*Cyber Chamber*' was a particularly innovative one. The Commission recommended that a discussion, using a dedicated hashtag, could take place on Twitter a day before a Westminster Hall debate, thus allowing those with an interest in the subject or a specialism in it to inform the subsequent deliberations of Members of Parliament. The sponsoring MP and those

planning to speak could also get involved with the online debate – to pose questions and ask for further information, as well as to explore directly with those taking part potential outcomes.

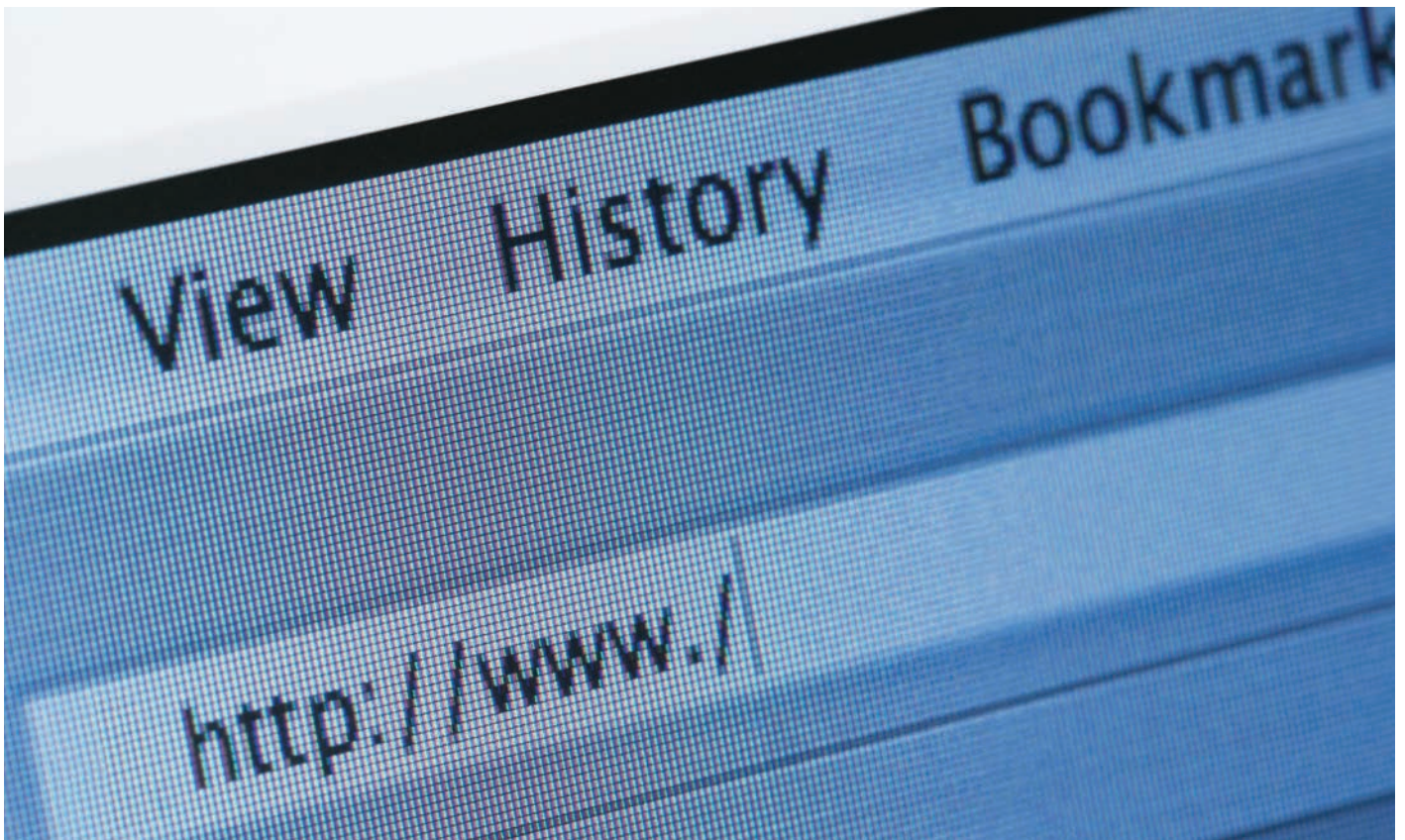
There have already been three successful pilots of the '*Cyber Chamber*' in the new Parliament, and I am confident it will become a regular feature. Allowing MPs to contribute to the discussion, or simply observe it, would at least start to fuse the two parts of the body politic. This suggestion was part of a wider desire to open up the law-making process.

Currently, opportunities for the British public to take part in law-making are limited. Should a member of the public want to make a contribution, he or she has the option of contacting the local MP and asking them

**Below: The Houses of Parliament in Westminster, London, seat of the UK Parliament.**







to make representations on his or her behalf. Whilst it would be wonderful if this sort of engagement could take place at all stages of the legislative

**“In this year of anniversaries, it is right to look forward as well as back. Parliamentary democracy is constantly evolving: it is not a monolith, but a legacy gifted to us by past generations for which us politicians, fleetingly, have responsibility.”**

process, in reality by the time policy ideas have been written into draft laws this becomes far more difficult to achieve. Although the Commission recommended that the language of Parliament needs to be less archaic and jargon-heavy, it remains true that good legislation needs to be tightly and appropriately worded. This does not always lead to gleams of comprehension in the eyes of those outside of the Commons Clerks’ Department.

For this reason, if Parliament could encourage people to get involved in the early life of a Bill by allowing them to feed in technical or personal input, then this could be a practical way of influencing the eventual outcome.

There could be opportunities for the public to contribute later, and the Commission’s report recommended that Parliament look into how this could be done. However, I do think that when a Bill is at the ‘*mooted as a possibility*’ stage, a Parliament-led drive to solicit the views of a

wider range of people outside Westminster would not only engage the public with the law-making process, but also lead to better legislation.

These are, in my view, all good, practical approaches to use the power of digital technology to enhance democracy in the UK. However, the Commission was very clear that the use of technology is one of many tools to be used to encourage public participation in politics and the law-making process. We have to be mindful that not everyone has access to or the ability to use such technology. In seeking to be more inclusive, we must not accidentally end up excluding those without digital tools at their fingertips, not least because they represent a demographic that is likely to contain the most vulnerable. However, as one weapon in the armoury of those of us keen to involve the public more fully in the workings of Parliament, I am confident that it will prove effective, and I am very much looking forward to

participating in the ongoing debate surrounding the report of the Digital Democracy Commission.

In this year of anniversaries, it is right to look forward as well as back. Parliamentary democracy is constantly evolving: it is not a monolith, but a legacy gifted to us by past generations for which us politicians, fleetingly, have responsibility.

It is up to us, as citizens afforded the privilege of working for our constituents in Parliament, to open it up more fully to those outside its walls in order that our legacy to the next generation is a democracy that we left more vibrant than we found it. I would recommend the report to my Commonwealth colleagues and encourage them to join me in seeking new ways to involve their citizens in representative democracy.

**To view the report on Digital Democracy visit  
[www.digitaldemocracy.parliament.uk](http://www.digitaldemocracy.parliament.uk)**



# PARLIAMENT, THE MEMBER AND THE MEDIA: A HARMONIOUS OR HARMFUL RELATIONSHIP?



**Hon. Barry House MLC** is President of the Legislative Council of Western Australia since 2009. He served on many Parliamentary Committees and held roles both in Government and Opposition. Elected to the Legislative Council at a by-election in 1987, he is now the longest serving current Parliamentarian. He holds a Bachelor of Economics and prior to entering Parliament was a Teacher. He was an Australian Regional Representative on the CPA Executive Committee for three years (2011-14) and has contributed to numerous CPA events.

## Media: The Fourth Estate?

Parliament, Members and the Media have a long history of mixed tensions and interaction that can likely trace their origins back to the press gallery at the Palace of Westminster. The presence of the media in Parliament has often been likened to the idea regarding the creation of a so-called fourth branch of government known as *The Fourth Estate*.

In an 1840 lecture, Thomas Carlyle attributed the notion of a Fourth Estate to the eighteenth century philosopher and MP Edmund Burke when he remarked: "*Burke said there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important far than they all.*"

Burke's remarks were a mocking commentary on the contribution of the media in their scrutiny of the activities of government and as a conduit for the relay of information to the people. The idea of the media operating as a fourth branch of government relies on the notion that the media shares a responsibility to act in the public interest as a watchdog or overseer on the activities of government. This purpose immediately exposes the potential for conflict as the information relayed by the media may not be in the interests of the government; individual members, or indeed the institution of Parliament.

There is no doubt that the media influences public opinion and hence the political fortunes of governments. Modern media, particularly the rise of social media where a particular matter may go '*viral*' poses particular problems to governments in managing its message to the electorate.

Parliaments and members often depend on the media to inform the general public about their actions and decisions. The relationship could be described as a symbiotic association that is simultaneously beneficial and complex. It is beneficial in that it operates as a powerful medium in providing parliaments, government and members with the opportunity to broadcast a message to the general public. However its complexity lies in the lack of a mutual obligation to present the '*preferred*' view or the message of a government or member.

Members of Parliament should be mindful of this complexity as a free media in an open democracy, can wield significant influence as it decides the issues, angles and content of the '*stories*' they wish to publicise.

## Parliament, the Member and the Media: A Harmonious or Harmful Relationship?

Transparency and accountability are two important inter-related concepts that are essentially about access to information and responsibility for decision making.

In a modern democracy

a free media is consistently acknowledged as an important element of the democratic system. Arguably, the media performs an independent scrutiny function by conveying information to the public in the form of reporting facts and providing informed commentary upon the proceedings, operations and decisions of governments and oppositions. Media activity may expose information which may not otherwise come to light and therefore supports the transparency function. Media pressures may also encourage governments to explain their decisions to the public and as a result support the accountability function.

Tensions between the media and the parliament or a member may arise due to the way in which the media exercises its transparency function and thereby holds a member or the parliament to account. In Australia, the media is not solely a reporter of parliamentary or government news, but a participant in public debate through the *selective* process of highlighting decisions and activities of interest to their consumers.

While a description of a '*harmonious relationship*' is probably not quite accurate, the media and the parliaments generally form a collegiate relationship that, on balance, is beneficial to both sides. Instances have, however, arisen





from time to time that have played out in the courts and even led to the High Court of Australia identifying an 'implied' right of free speech on political matters in the Australian Constitution.<sup>2</sup>

In *Australian Capital Television Pty Ltd v Commonwealth of Australia*, the High Court of Australia ruled that there is an implied freedom of communication in relation to political affairs that flowed from the representative democracy created by the Constitution of Australia. This freedom was also identified to flow to discussions on State political and public affairs in *Stephens v West Australian Newspapers Ltd*.<sup>3</sup> The basis of this freedom of communication was that the vote of electors required an *informed* vote which necessitated a freedom of communication.

These adversarial proceedings in the courts may appear to be harmful to the relationships between the media and parliament. However, it could be argued that the more likely result is that they clarified certain aspects of legal contention between these two bodies.

## Relationships with the Media in Australia<sup>4</sup>

### The "Free" Press

In September 2000, the then Prime Minister of Australia, Hon. John Howard, in an interview with an ABC political reporter Kerry O'Brien made reference to the importance Australians placed on a free press by commenting that Australia had a "gold-plated democracy with a gold plated free press".

What the then Prime Minister was alluding to was the political freedom afforded to the press in Australia, particularly in relation to its ability to comment and pass judgement on the activities of government. Political journalism in Australia is an inherent part of the political environment and has been openly acknowledged



Above: Parliament House, Perth, Western Australia.

as an important accountability mechanism as it provides an avenue for transparency that reaches into the very homes of the electors.

The Australian press operates in a largely unfettered manner. The various press bodies themselves are careful to minimise their liability to various pieces of legislation such as defamation legislation, but relies, for the most part, on a self-regulation model. Paul Chadwick, a noted Australian journalist and lawyer, in his 1999 lecture<sup>5</sup> to the University of Melbourne made the following observations about the role and accountability of the media:

- media help civil society cohere, lubricate democracy, make and mix culture and facilitate commerce;
- media must be both financially independent and free of statutory regulation of their content;
- media wields public power and that public power must be accountable if it is to be legitimate; and
- accountability depends on media self-regulation.

On 14 September 2011, the Australian government commissioned an inquiry into aspects of the media and media regulation, which the media instantly linked to its reporting on the government's carbon tax policy and the events

surrounding the phone hacking scandals in the United Kingdom.

The report<sup>6</sup> was presented to the Communications Minister on 28 February 2012 and recommended the establishment of a News Media Council which would replace the Australian Press Council. Essentially, the new body would be a government-funded, statutory body that would require compulsory membership for every broadcaster, newspaper and online publisher.

In some cases these media bodies rely on public exposure and sensationalism (particularly in relation to politician-bashing) for a connection back to the political arena and legitimacy with their audience regarding their role in the scrutiny of government activities. In this instance the howls of interference from the media fulfilled its sensationalist role and immediately vilified the report and the motivations for the establishment of the inquiry.

The media vehemently argued that the proposed government body would limit or regulate 'fair reporting' and create an avenue for the government to regulate content and warned that the report threatened the freedom of the press and free speech.

### Western Australian Protections for the Media

Despite the occasional tendencies of the press to be overly critical of

the government, the relationship with government is an important transparency mechanism. In further strengthening this 'transparency relationship' with the media, the Western Australian parliament recently passed, with great difficulty, protectionist legislation for journalists known as 'shield laws'.

### The Proposed Shield Laws<sup>7</sup>

On Thursday 20 October 2011, the Parliamentary Secretary to the Attorney General introduced into the Western Australian Legislative Council the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011*.

The then Attorney General, Hon. Christian Porter advised the media that the Bill would introduce the most comprehensive shield laws for journalists and whistle-blower protections in the country.<sup>8</sup> The proposed shield laws aspects of the Bill were designed to operate on a default position, or presumption, that a journalist may keep their sources confidential unless ordered to do so by a "person acting judicially" who has first taken into account a series of factors including the probative value of the evidence, the importance of the evidence, the availability of other evidence and the risk to national security.



It was noted that the Bill differed from federal shield laws by extending the proceedings that it applied to beyond court hearings. The Attorney General, in fact, specifically stated that the Government wanted journalists to have the protection of shield laws not just in court proceedings, but also when appearing before Parliamentary Committees.<sup>9</sup>

The Attorney General advised that extending the journalist's 'privilege' beyond the courts to other legal settings such as tribunals, the Corruption and Crime Commission and parliamentary committees was one of the things that the journalist profession had asked of the Government.<sup>10</sup>

The Attorney General told the West Australian newspaper that:

*"We as a Government took the view that if you are going to say to courts 'you have to be subject to this protection for journalists', then you have to extend that to bodies like the [Corruption and Crime Commission], which we did – and no other jurisdiction did that – and Parliamentary Committees have to be subject to the same rules."*<sup>11</sup>

Media, Entertainment and Arts Alliance Communications Director, Mr Jonathan Este was quoted as saying that Western Australia was leading the nation in extending journalists' privilege to "extra-judicial bodies" such as Parliamentary Committees.<sup>12</sup> The Law Society of Western Australia President, Mr Hylton Quail, however, expressed concern at "the level of privilege afforded to journalists".<sup>13</sup>

In August 2012, the 'shield laws' passed the House following extensive debate and amendment of the legislation in response to concerns regarding the potential encroachment on parliamentary sovereignty and the privileges of the House. Parliamentary Committees were expressly excluded in the legislation from the protection afforded to other

bodies by the new shield laws.

## **Amendment to Legislative Council and Legislative Assembly Standing Orders**

Following the passage of the Bill, the Legislative Council adopted in a new Standing Order, the proposed legislated protections for journalists that were omitted from the Bill by amendment in the Council. The new Standing Order provided a 'shield law' type protection for journalists when journalists appear before Committees or the House. The Standing Order is as follows:

### **201. Protection of the Identity of Journalists' Informants**

1. Where a journalist is examined before a Committee or the Council and, in the course of such examination, is asked to disclose the identity of the journalist's informant and refuses, the Council shall consider whether to excuse the answering of the question pursuant to section 7 of the *Parliamentary Privileges Act 1891*.
2. In considering a matter under (1), the Council shall only order the disclosure of the identity of a journalist's informant if the Council is satisfied that, having regard to the issues to be determined in the proceeding, the public interest in the disclosure of the identity of the informant outweighs:
  - (a) any likely adverse effect of the disclosure of the identity on the informant or any other person; and
  - (b) the public interest in the communication of facts and opinions to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

3. Without limiting the matters that the Council may have regard to for the purposes of this Standing Order, the Council must have regard to the following matters:

- (a) the probative value of the identifying evidence in the proceeding;
- (b) the importance of the identifying evidence in the proceeding;
- (c) the nature and gravity of the subject matter of the proceeding;
- (d) the availability of any other evidence concerning the matters to which the identifying evidence relates;
- (e) the likely effect of the identifying evidence, including the likelihood of harm, and the nature and extent of harm that would be caused to the informant or any other person;
- (f) the means available to the Council to limit the harm or extent of the harm that is likely to be caused if the identifying evidence is given;
- (g) the likely effect of the identifying evidence in relation to:
  - (i) a prosecution that has commenced but has not been finalised; or
  - (ii) an investigation, of which the Council is aware, into whether or not an offence has been committed;
- (h) whether the substance of the identifying evidence has already been disclosed by the informant or any other person;
- (i) the risk to national security or to the security of the State;
- (j) whether or not there was misconduct on the part of the informant or

the journalist in relation to obtaining, using, giving or receiving information.

The Legislative Assembly likewise adopted a simplified version of the Standing Order as follows:

### **Disclosure of the Identity of Journalists' Informants 314.**

*If the Assembly is considering whether to require a journalist to disclose an informant's identity it shall have regard to the public interest of having a free press when it does so.*

It may be debatable whether the protection afforded by the new Standing Order to journalists appearing as witnesses was required. The Parliament, in its previous treatment of journalists as witnesses, had recognised the importance to the maintenance of a free press of the need for journalists to protect their sources of information. This recognition has been evident by the Parliament not insisting on answers to questions asked of journalists that would reveal their confidential sources. A recent example of this is the report of the Select Committee into the Police Raid on *The Sunday Times*.

### **Police Raid on The Sunday Times Newspaper**

On 30 April 2008, the Western Australian Police conducted a raid on the offices of *The Sunday Times* newspaper following the publication of an article that disclosed certain information that was believed to have been leaked by a person or persons unknown to *The Sunday Times*. The police were searching for evidence of the alleged disclosure of confidential State Government Cabinet documents that formed the basis of the article. Subsequent speculation reported in the media also suggested that the State Government may have been involved in the decision to undertake the raid.





Due to the nature of the event and the link with confidential State Government documents, the Legislative Council subsequently established a Select Committee to inquire into and report on all circumstances surrounding the police raid on *The Sunday Times*.

During the Committee's inquiry into the circumstances surrounding the raid, the police investigators gave evidence that the journalist would not voluntarily disclose the source of the leaked information and that the police investigation had proceeded on that basis. The Committee decided to test the police assumption regarding the journalist's willingness to reveal his source, and subsequently asked the journalist questions relating to the source of the leaked cabinet information.

The Committee noted that when giving his evidence, the journalist was polite and sought to assist the Committee as best he could. However, the journalist indicated that he was bound by his profession's code of ethics to maintain the confidentiality of the identity of the source and would not provide this information to the Committee.

The Select Committee reported to the Legislative Council that the witness had refused to answer the

question. The Legislative Council was then required to consider the effect of the witness's failure to answer and whether that failure constituted a contempt of the House.

In determining whether or not to insist on an answer from the journalist, the Legislative Council considered several factors. These included:

- the maxim that parliamentary privilege should be used as a shield rather than a sword
- the practice of the United Kingdom House of Commons where it is recommended that the Commons exercise its penal jurisdiction sparingly and only when satisfied that to do so is essential to provide reasonable protection for the House, its members or its officers from such improper obstruction or attempt at or threat of obstruction causing or likely to cause substantial interference; and
- the Select Committee's finding that the failure of the witness to answer the questions put to him did not obstruct, impede or cause substantial interference to its functioning.

The Select Committee considered at length the situation of the refusal of *The Sunday Times* journalist to answer the question. Having regard to all the issues that the Committee considered in respect of the refusal of the journalist to answer the question and the fact that the journalist sought to assist the Committee where possible, the Select Committee recommended to the Legislative Council that in this instance it excuse the answering of the question asked of the journalist by the Committee. The House accepted this recommendation.

## Conclusions

As noted by the recent events in Western Australia, there is a clear recognition by Australian jurisdictions of the importance of the relationships between the media, Members and Parliaments.

Not only is the media a valuable resource to 'sell' the view of a member or government, but is also plays a significant scrutiny role as the 'fourth estate'. The media acts as an important transparency mechanism that encourages accountability and bridges the divide between the public and their elected representatives.

Parliaments and Members depend on the media to inform the general public about their actions and decisions. The media can also expose matters that governments or Members would like to remain confidential. A free press is one of the key elements in ensuring the free flow of information and therefore transparency and accountability of governments and their bureaucracies. Media activity may not always be welcomed by elected officials or bureaucrats. However, the presence in a society of a robust, responsible and independent media and a good working relationship between elected representatives and the media can help maintain confidence in our democratic systems of government.

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# REFORM ACT COMES INTO FORCE IN CANADA

A former Member of the Canadian Parliament explains how the Reform Act will affect the relationship between Parliament and the party system.



**Russ Hiebert** was a Member of the Federal Parliament of Canada from 2004 until 2015 when he stepped down to pursue his interests as a lawyer and in business. During his parliamentary career, he served on several Committees including: Defence; Ethics, Privacy and Access to Information; Finance; Natural Resources; and International Human Rights. He served as Chair of the CPA Canadian Branch and also served two, three-year terms as Canadian representative on the International Executive Committee of the CPA.

October 19th 2015 was Federal Election Day in Canada. And, while seats have changed hands as they always do, each of Canada's new MPs will have an individually strengthened hand entering this Parliament.

This is because of a Bill passed in the last Parliament: *The Reform Act, 2014*. The Act came into force one week after the election.

This Bill was introduced and successfully enacted by a fellow Government MP, Michael Chong. Michael says, "*The Reform Act is an effort to strengthen Canada's democratic institutions by restoring the role of elected Members of Parliament in the House of Commons.*"

My eleven year experience in the House of Commons representing a Vancouver, British Columbia-area riding have certainly convinced me of the need for this new law.

The Reform Act, like so many over the centuries before it, is an initiative to provide greater democratic accountability in our parliamentary system. And, it reinforces the principle of responsible government which has existed in Canada for over 170 years.

It will make the cabinet and Prime Minister more accountable to MPs and ensure that each party leader maintains

the confidence of their caucus.

The new law contains three main reforms.

The first reform seeks to restore local control over candidate nominations. In the past the party leader had individual authority over who could and couldn't seek a nomination to be a party's candidate in any riding.

The new law contains an amendment to the *Canada Elections Act* that replaces the party leader with a person designated by the party to be tasked with this responsibility. Each party will have to come up with mechanisms in its constitution and by-laws to determine how this person is chosen.

The next reform aims to strengthen each party caucus in Parliament as decision-making bodies by re-claiming for them the power to elect their caucus chairperson and to decide on the membership of individuals in the caucus by secret ballot majority vote. Amendments to the *Parliament of Canada Act* formally define the structure and governance of party caucuses, going forward. In recent decades, in the absence of written rules, the Prime Minister and other party leaders have held by convention the exclusive power to appoint the

caucus chairperson, and have unilaterally expelled MPs from the caucus.

The final reform provides the caucus with a mechanism for removing a party leader.

In Canada, unlike other Commonwealth nations such as Great Britain, Australia and New Zealand, the political

**"In Canada, unlike other Commonwealth nations such as Great Britain, Australia and New Zealand, the political parties have displaced the role of caucus in leadership reviews in recent decades. The process is lengthy and party by-laws make it challenging to even hold a review."**





parties have displaced the role of caucus in leadership reviews in recent decades. The process is lengthy and party by-laws make it challenging to even hold a review.

*The Reform Act* has amended the *Parliament of Canada Act* to provide the caucus with a formal and efficient process for a leadership review. In this process, 20% of caucus members must publicly submit a formal request to the caucus chairperson and a majority must agree by secret ballot to remove the leader. Such a vote must

be followed immediately by a second round of balloting to choose an interim leader who will serve until such time as the political party can select a permanent leader.

None of these reforms are really new. In fact, Canada's parliamentary democracy operated along these lines by convention for most of the first century of its existence.

However the 1970s saw a massive trend towards the centralizing of power in the office of the Prime Minister and, by default, the other party

leaders, as well. The diminished role of Parliamentarians was scornfully noted by the Prime Minister of the time, Pierre Trudeau, who off-handedly commented that MPs were "*nobodies*." This trend, known as '*executive federalism*', was defended by many who saw a greatly empowered executive as a necessary counter-balance to the separatist forces in Quebec attempting to rend the nation.

Necessary or not at the time, the separatist threat is greatly diminished now and a re-balancing of powers between

**Above: The Canadian Federal Parliament in the national capital, Ottawa, Ontario.**

the branches is certainly in order. And, while any new law can have unforeseen consequences, the Reform Act poses little risk to Canadian democratic institutions as we've operated with these '*new*' rules for much of our past history.

Canadian democracy is improved today because of *The Reform Act* we passed in the previous Parliament.



# ESTABLISHING ANTI-CORRUPTION PRACTICES IN THE PACIFIC REGION

A former Parliamentarian and Secretary to the Global Organization of Parliamentarians Against Corruption (GOPAC) outlines the anti-corruption practices being established in the Pacific Region.



**John Hyde** was an MLA for Perth in the Western Australia Legislative Assembly (2001 to 2013). He is Secretary to the Global Organization of Parliamentarians Against Corruption (GOPAC) and consultant to the UN Pacific Regional Anti-Corruption (UN-PRAC) Project. He was Chair of the Joint Standing Committee on Corruption and Crime Commission and he was involved in drafting legislation to establish Western Australia's modern Corruption and Crime Commission.

Parliamentarians on Nauru – the world's smallest island state with approximately 10,000 residents – are fully embracing community consultation to establish their nation's first Leadership Code.

In the 15 Pacific Island nations, many of the Parliaments have adopted ethical conduct regimes, often termed Leadership Codes, as one of the vehicles to realise their commitments made in signing and embracing the UN Convention Against Corruption (UNCAC).

The Nauru Parliament, guided by the Speaker (and former President) Ludwig Scotty, established a Standing Committee on the Leadership Code earlier in 2015, chaired by Hon. Russ Kun MP.

Hon. Russ Kun is a member of the Global Organization of Parliamentarians Against Corruption (GOPAC) and, joined by his Deputy Speaker and other Pacific Parliamentarians, attended a major workshop on anti-corruption in Nadi, Fiji, in July 2015, conducted by the UN Pacific Regional Anti-Corruption (UN-PRAC) Project and GOPAC.

The Parliament of Nauru then invited the UN-PRAC team and GOPAC Oceania to come to their Parliament in late October 2015 to undertake a workshop briefing on best

practice anti-corruption with the Parliamentary Committee, Ministers, the Speaker and President – together with 31 local community 'integrity champions' who have been selected to canvas the views of every household on the island as the unicameral Parliament builds its Leadership Code from the grassroots up.

The UN Office on Drugs and Crime (UNODC), in partnership with UNDP, is implementing the UN-PRAC Project. This is a four-year initiative in the Pacific that aims to help Pacific Island countries fight corruption by

1. supporting ratification of UNCAC
2. implementing UNCAC through the strengthening of anti-corruption policies, laws, measures and institutional frameworks and
3. enhancing Pacific Islands States' active participation in the UNCAC processes, including the UNCAC Review Mechanism.

Since UNCAC came into force on 14 December 2005, there are now 177 State parties to the Convention. To date, there are 11 States parties in the Pacific (Papua New Guinea in 2007, Fiji in 2008, Palau in 2009, Vanuatu, Cook Islands and the Republic of the Marshall

Islands in 2011, Solomon Islands, Federated States of Micronesia and Nauru in 2012, Kiribati in 2013 and Tuvalu in 2015).

The focus in the Nauru workshop was an appreciation of the commitments that nations like Nauru, which acceded to UNCAC in 2012, have made and the important role that Parliamentarians have in the overseeing progress towards implementation.

Nauru President Baron Waqa attended the UN-PRAC-GOPAC workshop on day two and reinforced his Government's commitment to introducing a Leadership Code that was a product of genuine consultation with the community.

"We do not have a pre-conceived Leadership Code – we want to first hear from the Nauru people about what they expect of their leaders before we start drafting legislation," President Waqa told the workshop.

Leadership Code Chair, Hon. Russ Kun, encouraged the community information collectors to allow Nauru's citizens to canvas the whole range of expectations that they had of their leaders.

"In simple terms, we are creating 'table manners' for leaders – how do you expect your leaders to act at all times,"





he told the workshop.

Pacific Islands Forum Secretariat (PIFS) Governance Officer, Mr. Sione Tekiteki, who is the former Clerk of the Parliament of the Kingdom of Tonga, helped put the community consultation into a Pacific focus, briefing the Members of Parliament (MPs) and community on the PIFS 'Guiding Principles on Leadership', which have been agreed to by Member States.

*"It was very encouraging to see the community representatives stress that they must be objective and welcoming to their fellow citizens to make sure people can freely and honestly share their views."*

Community participants at the workshop, who aim to visit every Nauru household during the month of November, encouraged each other during the interviewing training to make sure they made people feel comfortable to express their real views and not be guided by any of the participants' opinions.

President Waqa used the analogy of the Great Wall of China to stress to the workshop how Nauru must embrace zero tolerance for corruption. *"Despite the Great Wall of China being one of mankind's most effective constructions, invaders could still enter and invade China by bribing just one gatekeeper to open a small entranceway,"* the President said.

Community members had already been invited to submit written suggestions on Nauru's Leadership Code. These suggestions were discussed at the workshop along with input from the integrity champions and Parliamentarians.

Issues canvassed, that Nauruans want addressed in the Code, include gift-giving, definition of a leader, an assets register, adherence to traditional cultural morals, penalties and a system of external oversight.

There was also discussion



of one of the most omnipresent corruption issues hanging over the Pacific – the charging, trial and conviction in 14 October of Vanuatu MPs for bribery, including the Deputy Prime Minister, the Speaker, a former Prime Minister and Foreign Minister.

The sentencing judge, Justice Mary Sey, cited the Melanesian Island nation's Leadership Code in her deliberations. She ruled that payments in 2014 by the now Deputy Prime Minister to other Opposition MPs while in Opposition were designed to influence MPs in their capacity as public officials. Of the 14 MPs who went to trial, only one, Finance Minister Willie Jimmy, pleaded guilty from the outset. The MPs were convicted on Friday 9 October 2015, with the judge having cited their failures to adhere to the strong standards within Vanuatu's recently reviewed Leadership Code. They were due to be sentenced the following week. However, on Sunday 11 October 2015, the Speaker, who was one of the convicted MPs himself, exercised his Constitutional role to serve as Acting President during the Vanuatu President Baldwin Lonsdale's official visit to Samoa. As Acting President, he cited the President's

Constitutional right to grant pardons, to grant himself and the other MPs a pardon for their bribery conviction.

The Vanuatu community were dismayed and the President was incensed. Upon his return from overseas, he rescinded the Acting President's pardons ruling they were unconstitutional. The Vanuatu Supreme Court judge then sentenced 15 of the MPs to prison terms of around three years. The judge issued a suspended sentence to Willie Jimmy in recognition of his early guilty plea. This act of justice has also sent a strong message throughout the Pacific on the need for Leadership Code transgressors to show leadership by admitting guilt.

Two key messages have come out of Vanuatu's experience for people in Nauru (and elsewhere in the Pacific). Firstly, there is very little support for the indiscriminate use of pardon powers by Parliaments and the Executive. Secondly, there is a heightened awareness of the importance of an independent judiciary and a strong separation of powers. Both of these issues are also core issues contained with UNCAC.

With the high turnovers of MPs at Pacific elections and with many of the Parliaments

**Above: The Parliament of Nauru invited the UN-PRAC and GOPAC October 2015 to undertake a workshop briefing. Image courtesy: GOPAC.**

young democracies, it also reinforces the need for ongoing professional development and capacity building of MPs. The UN Pacific Regional Anti-Corruption (UN-PRAC) Project has built a close partnership with GOPAC Oceania to work with Parliamentarians.

**The Global Organization of Parliamentarians Against Corruption (GOPAC) was founded in October 2002 as a result of a Global Conference in Ottawa, Canada, which brought together over 170 Parliamentarians and 400 observers dedicated to fighting corruption and improving good governance. GOPAC is unique in that it is the only international network of Parliamentarians focused solely on combating corruption. Its members represent more than 50 countries in all regions of the world. They are current or former legislators. John Hyde moderated the two-day GOPAC-UN-PRAC Parliamentarians and Community workshop in Nauru in the Pacific Region in October 2015.**



# QUESTIONS OF CONSCIENCE FOR MEMBERS OF PARLIAMENT

A Member of the Queensland Legislative Assembly questions the freedoms that Parliamentarians have to vote with their conscience.



**Hon. Rob Pyne**  
**MP** is an Australian politician and Australian Labor Party Member of the Legislative Assembly of Queensland since January 2015, representing Cairns. He serves on the Communities, Disability Services and Domestic and Family Violence Prevention Committee. Previously a two-term councillor for the Cairns Regional Council, he has also volunteered many community disability bodies. Mr Pyne is Australia's first quadriplegic Member of Parliament.

The last state election in Queensland, Australia delivered numbers in the Legislative Assembly of Queensland which mean that every vote matters. Forty-five is a number firmly in all our minds in Parliament, but sometimes 44 is enough, with the Speaker's casting vote. It is my hope that, through collaboration and good will, the close numbers we must live with, could be used to lessen the shackles of the party room and allow members more freedom to vote according to their conscience on matters of conviction.

A finely balanced Parliament offers unique opportunities for legislators to seize the moment and take an activist role. Indeed the Legislative Assembly of Queensland is the one state Parliament that needs bold and active members in the legislature. This need arises from the abolition of the Upper House in 1922 which put more power in the hands of a powerful Executive Government and has resulted in a history of the Executive abusing this power.

The concept of acting collectively is central to the Australian Labor Party (ALP), something that originated from the union movement from which we sprung. The ALP has not

been forgiving of members who '*step outside the square*'. We are a pretty '*straight-speaking mob*' on our side of politics, hence the term '*scab*' for a worker who crosses a picket line. It is a term consistent with a culture based on mateship and unity. Crossing the floor of parliament has likewise earned the endearing moniker of '*rat*'.

Thus far, as a Member of Parliament, I cannot think of any legislation or issue that would cause me to cross the floor to vote with the Liberal/National Party. The values divide makes it highly unlikely, but surely one earns oneself greater merit, by having the opportunity and refusing to take it, rather than by ruling out any real opportunity to dissent?

In a state that seeks to foster creativity and innovation, is it smart to '*punish*' anyone who wanders from the herd? I would think not.

Greater freedom on whether or not to support legislation is for me a more obvious need, when matters of conscience are concerned. It should not be '*news*' when members determine they will cast their vote according to their conscience. This means casting your vote in a way that allows one to be at ease with our conscience and

to sleep each night at peace with ourselves. It is my hope we can conduct business in a way that will see those 85 of us, who belong to the major parties, able to cast our votes in a way that maintains our commitment to the core values, sacred our respected parties

It is always good to see how other jurisdictions conduct their business. While the United States demonstrates many practices I would not like to see in our parliament, one thing they do have is a greater flexibility that allows elected representatives to vote with their conscience. At one extreme this has led to terms such '*blue dog democrat*' or DINO '*Democrat In Name Only*'.

In the Australian political context, a close tally at the polls meant that the Gillard Government had changed the way the ALP did business. This was articulated by Chris Oakshot in his insightful (if long) speech following the 2010 federal election, when he said of that new parliament "*It's going to be ugly, but it's going to be beautiful in its ugliness*." I suspect he understood the politics would be painful, but the policy outcomes would be nothing short of best practice. I believe history will show this to have been the case.





There is a real opportunity to more fully engage individual members by increasing their freedom to initiate legislation. For Labor members, initiating legislation by introducing a Private Members Bill is likely to have one expelled or pre-selection threatened. This must be re-examined, in the knowledge most MPs are not members of the Executive Government, but are members of the legislature. There is no cause to fear members taking on their legislative role, with numerous checks on any possibility of creating '*bad law*'. These checks include parliamentary processes, such as the requirement to comply with fundamental legal principles, the committee system and the ever-present gaze of public advocacy groups and the media. An additional check could be imposed by a convention that members never initiate legislation inconsistent with their party's platform.

I am fortunate to be part of

the Parliamentary Labor Party (PLP) during the term of this Palaszczuk Labor Government (Annastacia Palaszczuk is the current Premier of Queensland taking over from Anna Bligh). I am not sure how I would have rationalized my caucus membership under a Bligh Government that I felt lacked reformist zeal and implemented some policies, such as sale of government assets, with which I never could have agreed.

Clearly the union background so many of us share has ensured solidarity among members of the PLP and I for one feel that bond with Labor MPs as I do with colleagues in the Queensland Council of Unions. In terms of our Liberal/National Party opponents, I cannot see how a party based on individual liberty can impose such '*group thinking*' on Members. Their strict party discipline has been an eye opener to me, and is a real shame to observe when they collectively lunge to the right of some of their MP's values.

In presenting this argument, I draw on the reformist history of the ALP. Let us say no to '*business as usual*'. This Parliament has already made history in appointing Peter Wellington as Queensland's first independent Speaker in more than 130 years. Peter is a man of unquestionable character and ethics whose slogan is, '*The people's voice, not a party puppet.*'

Is his appointment as Speaker symbolic of a parliament that will allow more freedom from party control, returning more power to the people, expressed directly through their MP? I for one am hopeful, because democracy is a fragile thing and at the moment public opinion is damaging its continued wellbeing. A commitment to support labour values and not to act in a manner '*inconsistent with the party platform*' should be enough to prove one's '*party loyalty*', while still leaving MPs great opportunity to advance issues

**Above: An aerial view of the lush Whitsunday Islands off the coast of Queensland, Australia.**

that are important to them and their party's rank and file.

The 2015 election changed our parliament and I hope MPs may change it even more. There is no chance I will ever become known as a LINO representative (Labor in Name Only) but who among us know what moral tests the future holds?

What I do know is politicians are now regarded with more of contempt than ever before with '*chopper gate*' and other indulgences just adding fuel to a blazing inferno. Party apparatchiks must realise that it is not a '*win*' to simply observe one's own side is marginally less hated than one's opponents. In light of this, a '*steady and straight*' approach to navigating this ship of state, may see us heading straight over a waterfall of public discontent.



# RULES FOR PARLIAMENTARIANS: RECENT DEVELOPMENTS CONCERNING THE CODES OF CONDUCT FOR MEMBERS



## **Dr Chris Bourke MLA**

is a Member of the Legislative Assembly of the Australian Capital Territory. He is a Government Whip, Assistant Speaker and Chair of the Standing Committee on Health, Ageing, Community and Social Services. First elected in 2011, he has served as ACT Minister for Education and Training, Industrial Relations, Corrections, and Aboriginal & Torres Strait Islander Affairs. Prior to entering politics, he ran a successful dental practice and graduated from Melbourne University as the first Aboriginal to complete a dental degree.

### **Purpose**

The purpose of this paper is to discuss the recent Review of the Code of Conduct for Members of the Australian Capital Territory (ACT) Legislative Assembly, the circumstances which led to the Review, and the outcomes of the Review.

### **History**

Since 1995 there have been four inquiries and proposals to adopt a Code of Conduct for Members. The Code that was eventually adopted in 2005, and later amended in 2006, was the result of an inquiry conducted by the Standing Committee on Administration and Procedure, on the recommendation of a previous Select Committee on Privileges.

In a recent review of the Code of Conduct the Assembly's Ethics and Integrity Adviser, Mr Stephen Skehill, noted that the Code did not rate particularly well for commitment, content or compliance which he considered to be the essentials of any Parliamentary Code of Conduct.<sup>1</sup> His specific criticisms were:

*"The opening passage of its Preamble is, by comparison to Codes of Conduct in other jurisdictions, a relatively shallow statement of principle;*

*The second paragraph of the Preamble and the following statement of Duties as Members of the Assembly express important*

*principles, but are not stated to be part of the Code itself;*

*The sections of the Resolution expressly stated to be the Code generally deal only with "rules" rather than principles;*

*The language of the Code is internally inconsistent but generally that of imposition rather than voluntary commitment;*

*The passage on conflict of interest is expressed in terms of "personal conflicts of interest" rather than conflicts between public duty and private life;*

*The obligation on non-employment of family members is stated in terms that would extend to a Member's private business ventures;*

*While the Code requires professional courtesy and respect to be shown to Assembly staff, it is silent on Members' treatment of others such as constituents or public servants and others appearing as witnesses before Assembly Committees; and*

*While the section on Use of Entitlements requires that "appropriate" use be made of entitlements and resources, it does not extend to complying with the conditions on which such are made available, such as periodic reporting and acquittal."*

### **Investigation of a possible breach of the code**

In February 2012, a Member was alleged to have breached

the Code of Conduct.<sup>2</sup> The essence of the allegations were that the Member's staff had not lodged fortnightly records of their working hours over several years and therefore any accrued time-of-in-lieu could not be calculated. The Member's staff were active in the 2010 Federal election when, under Assembly rules, they should have been on properly approved leave whilst undertaking electioneering. Furthermore one staff member was president of his party's ACT branch and, it was alleged, rarely attended his designated workplace at the ACT Legislative Assembly.<sup>3</sup>

On Tuesday 14 February 2012, the 'Motion of Grave Concern - Order to Provide Written Statement - Reference to Independent Auditor' was moved in the Assembly (see opposite page).

Subsequent to this motion a team was appointed by the Speaker to conduct an independent workplace audit, which came to be known as the McLeod Review.

This Review examined staffing arrangements and whether or not appropriate payments to staff were made in the office of the Leader of the Opposition for the period 2009-12.<sup>5</sup>

The Speaker said that "In selecting the audit team I have taken the time to seek the views





**LEADER OF THE OPPOSITION - MOTION OF GRAVE CONCERN - ORDER TO PROVIDE WRITTEN STATEMENT - REFERENCE TO INDEPENDENT AUDITOR**

That this Assembly:

1. notes with grave concern allegations that the Leader of the Opposition has failed to adhere to the Members Code of Conduct and the Enterprise Agreement under the LAMS Act 1989, section B6, Record Keeping, clauses B6.1 and B6.2 in relation to the proper acquittal of payments to and acquisition of time off in lieu (TOIL) entitlements for staff employed by him under the LAMS Act 1989;
2. expresses its grave concern that despite repeated exhortations from the Clerk and Deputy Clerk, this pattern of behaviour continued over an extended period of nearly of two years;
3. expresses its concern that attendance records can be compiled and submitted in bulk after nearly two years of non-compliance and that those bulk records have been certified as correct by the Leader of the Opposition;
4. notes that:
  - (a) the Canberra Liberals have previously been forced to repay \$10 000 in ACT Grant funding to support volunteer organisations; and
  - (b) Opposition Legislative Assembly staff have been counselled previously about the use of Assembly resources for party political purposes;
5. directs the Leader of the Opposition to provide a written statement to the Assembly by close of business Thursday 16 February 2012, answering the following questions:
  - (a) why did the Leader of the Opposition fail to observe his responsibilities under the Members Code of Conduct, paragraph 8 to ensure, in relation to the acquittal of work hours by staff employed by him under the LAMS Act 1989, by allowing periods of up to 22 months to elapse without staff in his office submitting appropriate documentation in relation to attendance, TOIL and overtime;
  - (b) how did the Leader of the Opposition satisfy himself that recollections of attendance up to 22 months earlier were the correct recollection of attendance when he certified those records to be correct;
  - (c) what documentary evidence has been relied upon for the retrospective approvals for unpaid leave and attendance at work during the extensive periods in question;
  - (d) does the Director of Electorate Services in the office of the Leader of the Opposition work in the Leader's Legislative Assembly office in a full-time capacity;
  - (e) if so, does the Director of Electorate Services have written approval to work off-site away from the office of the Leader of the Opposition in accordance with clause E8 of the Enterprise Agreement;
  - (f) has there been consultation with Corporate Services in accordance with clause E8.2 of the Enterprise Agreement and if so, when was that consultation and with whom;
  - (g) does the Director of Electorate Services in the office of the Leader of the Opposition currently occupy the position of the President of the Canberra Liberals;
  - (h) does this person work in the latter capacity from Level 5, 221 London Circuit, Canberra City;
  - (i) if so, has the holder of these positions sought and received unpaid leave from the Leader of the Opposition's employment prior to any work as President of the Canberra Liberals, during normal working hours;
  - (j) have any other staff of the Leader of the Opposition have written approval to work off-site; if so, in what capacity and for what periods;
  - (k) have any staff employed by the Leader of the Opposition undertaken party political campaigning or related activities without having received prior approval for unpaid leave from the Leader of the Opposition; and
  - (l) if so, have these periods of political campaigning been declared as gifts or gifts in kind under relevant ACT and/or Federal electoral campaign finance laws; if not, why not; and
6. directs the Speaker to:
  - (a) commission an independent workplace audit of staffing arrangements and whether or not inappropriate payments to staff were made in the office of the Leader of the Opposition for the period 2009 to 2012; and
  - (b) provide the Independent Auditor with all relevant records including relevant building access records and ICT information for the relevant period.<sup>4</sup>

*On Tuesday 14 February 2012, the above motion was moved in the Legislative Assembly of the Australian Capital Territory.*



## CODES OF CONDUCT FOR MEMBERS

of the leaders of the three political parties on the appointment.”<sup>6</sup>

The Review team was led by Mr Ron McLeod AM, former Commonwealth Ombudsman, assisted by Mr Gary Champion a Principal of HBA Consulting. The McLeod Review was tabled in the Assembly on 1 May 2012.<sup>6</sup>

### McLeod Review

In the Review, Mr McLeod considered the Code of Conduct and stated: *“In the course of the Review it became apparent that the Assembly’s Code of Conduct, which is the principal source of guidance on ethical standards of behaviour expected of Assembly Members and their staff, offers extremely limited guidance on the question of the appropriateness or otherwise of staff involvement in party political activity while on duty. A review of the Code is recommended.”*<sup>7</sup>

This recommendation was formally agreed to by the ACT Chief Minister in a letter to the Speaker after the tabling of the McLeod Review.

### Review of Code of Conduct

The Speaker wrote to the Ethics and Integrity Adviser and commissioned a review of the Code of Conduct. In his letter the Speaker also advised that *“he had requested the Assembly Secretariat to develop a draft Code of Conduct for the personal staff of Members, upon which he would consult with the Standing Committee on Administration and Procedure.”*<sup>8</sup> The review was therefore confined to Members’ conduct.

### Why have a Code of Conduct?

Mr Skehill’s review first focussed on whether a Code of Conduct was needed. He found that a 2011 Discussion Paper by the Australian House of Representatives’ Standing Committee of Privileges and Member’s Interests cogently set out the arguments for and against implementing a Code of Conduct.

The arguments presented *against* a Code of Conduct can be summarised as:

1. There are too many rules
2. A Code will unnecessarily restrict Members
3. A Code will not improve behaviour
4. Complaints will be ‘Political’
5. Parliamentarians are fundamentally different

The arguments presented *for* a Code of Conduct can be summarised as:

1. Sets a standard
2. Community expectations
3. Builds trust
4. Confidence in the institution of Parliament
5. Codes of Conduct are widespread for public officials

In Mr Skehill’s view the arguments for a Code overwhelm the arguments against, and he recommended that the Assembly continue to have a Code of Conduct.<sup>1</sup>

This view is shared by Ms Kathryn Hudson, UK Parliamentary Commissioner for Standards. In her recent annual report she stated: *“Codes of conduct and defined standards of behaviour are now widespread, particularly across professional bodies and public services. The contents of these codes and the expectations placed upon those who are subject to them change gradually over time with changes in the attitudes of society.”*

She then stated that *“The expectations set out by the codes provide one of the foundations for the trust which people have in those who are given power over their lives. Without this trust democracy is threatened. Being a Member of Parliament is not a profession. Nevertheless, as representatives elected by their constituents, Members have a responsibility to safeguard their own integrity and reputation as*

*individuals and the integrity of the House as a whole.”*

She concluded that *“Ultimately, it is important that the rules are upheld. Trust will be restored by individual Members considering not only their personal integrity but also how their behaviour, whatever their intentions, is perceived by the external world. This is a high standard and also an aspiration which cannot be defined by specific rules.”*<sup>8</sup>

Dr David Solomon at the 2012 Australasian Study of Parliaments Group (ASPG) Conference in Darwin agreed with Nicholas Allen who points out that *“more extensive and active regulation has institutionalised ethics as a feature of political contest and helped to institutionalise negative media coverage.”*<sup>10</sup>

Mr Skehill reports that all MLAs consider that the Assembly should have a Code of Conduct.<sup>1</sup> This sentiment is supported by Dr Solomon, who said *“My view from close by is that on the whole individual MPs are very conscious of ethical issues – I talk to them and remind them of what is required of them – and that they try to observe the standards that have been set. Almost all of them, anyway.”*<sup>9</sup>

### Essentials for an effective Code of Conduct

As stated earlier, there are three essential elements to a Code of Conduct according to Mr Skehill – *commitment, content and compliance.*<sup>1</sup>

Commitment is taken to mean that all Members should express their personal commitment to the Code. Not only should the Code be a Continuing Resolution of the Assembly but that at each new Assembly all current Members should have the opportunity to consider, and amend as needed, before expressing their commitment or re-commitment to the Code.

**“Codes of conduct and defined standards of behaviour are now widespread, particularly across professional bodies and public services. The contents of these codes and the expectations placed upon those who are subject to them change gradually over time with changes in the attitudes of society.”**

The content of the Code must be appropriate or Members will not commit and furthermore the Code will not attract community support.

Compliance with the Code must be supported by an effective complaints process.

### Content of an effective Code of Conduct

The Code of Conduct, argues Skehill, should be *“a statement by Members of the way in which they commit to conduct themselves as a Member. I recommend that the language of the Code should be expressed in terms of what Members will do rather than what they should or must do.”*<sup>11</sup> He recommends that a Code should not *“descend into administrative minutiae”* but that it should be a statement of principles to guide Members in their conduct as Members. The Code should not intrude unnecessarily into Members’ lives as private citizens nor their membership of political parties. The important seven principles





enunciated by the Nolan Committee, the UK Committee on Standards in Public Life, ought to be central to any Code of Conduct according to Skehill.<sup>1</sup> They are:

1. *Selflessness*: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
2. *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
3. *Objectivity*: In carrying out public business,

including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

4. *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5. *Openness*: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
6. *Honesty*: Holders of public office have a duty to declare

any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7. *Leadership*: Holders of public office should promote and support these principles by leadership and example.

### **Compliance**

Mr Skehill recommends that compliance ought to be managed through proper familiarisation with the Code of Conduct during the induction of newly elected Members.<sup>1</sup>

An Ethics and Integrity Adviser should continue to be a resource for Members to seek advice, and should continue to report annually to the Assembly's Standing Committee on Administration and Procedure through the Speaker. To facilitate the timely and effective

**Above: The main chamber of the Australian Capital Territory Legislative Assembly.**

handling of alleged breaches of the Code of Conduct, Skehill concurs with the proposal by the Speaker, put forward in a motion on 5 June 2012, to appoint a Commissioner for Standards to investigate and report on complaints.<sup>14</sup> Mr Skehill recommended that the Speaker, or Deputy Speaker in the event of a complaint about the Speaker, should determine which complaints are referred to the Commissioner for Standards, and which complaints are frivolous and mischievous.

A commitment within the Code of Conduct by Members to co-operate with the Commissioner's investigations was also recommended.<sup>1</sup>



## CODES OF CONDUCT FOR MEMBERS

The Assembly has limited sanctions against Members found to have breached the Code of Conduct by the Commissioner for Standards. *The Australian Capital Territory (Self-Government) Act 1988 (Cth) (the Self-Government Act)* establishes the legislative and constitutional framework of the Territory.

**Below: Parliament House in Canberra, the seat of the Federal Parliament of Australia.**

A Code of Conduct and the management of non-compliance must be consistent with the Act. Skehill's opinion<sup>1</sup> is that *"the Self-Government Act would allow non-compliance with a Code of Conduct to be dealt with in a manner short of disqualification of a Member and the cessation of their term as a Member, the relevant power to impose a sanction vests in the Assembly itself and could not be delegated to a Committee or an officer of the Assembly such as the Speaker."*<sup>1</sup>

In the United Kingdom reports

of Code of Conduct breaches include:<sup>9</sup>

- A Member sub-leased office accommodation from a company in which he had a substantial interest, as did his sister-in-law to a smaller degree. The Member accepted he had breached the rule, albeit not deliberately or knowingly and apologised. No further action recommended.
- Claims made by a Member for research and translation services. Invoices were

prepared on headed paper from a policy institute and signed by its general manager - at the time the institute did not exist and had no general manager. Essentially the Member was sending the invoice to himself and signing his own cheque. The Committee found that this was the gravest case it had adjudicated. It was recommended that the Member be suspended for 12 months but the Member resigned before the House could debate the recommendation.

- A Member used House of Commons stationery and prepaid envelopes to send constituent letters that contained some party political matters. The Member recognised and accepted the mistake, apologised, retrained his staff and repaid the full cost of sending the letters.

### Conclusion

The Code of Conduct proposed by the Ethics and Integrity Advisor was adopted by a motion of the Assembly with minor amendments, on 24 October 2013.<sup>12</sup>

In addition to adopting the Code of Conduct, a motion to commit to the Code was passed on 24 October 2013 with all three leaders of the parties represented in the Legislative Assembly giving their respective parties' agreement to abide by the code.

A motion establishing the Commissioner for Standards was passed by the Assembly on 31 October 2013.<sup>13</sup>

The role of the Commissioner for Standards is to investigate specific matters referred to the Commissioner by the Speaker, or by the Deputy Speaker if the matter relates to the Speaker, and report to the Standing Committee on Administration and Procedure. Citizens, ACT Public Servants or Members







**“In addition to adopting the Code of Conduct, a motion to commit to the Code was passed with all three leaders of the parties represented in the Legislative Assembly giving their respective parties’ agreement to abide by the code.”**

of the Assembly may make a complaint to the Speaker who will determine on reasonable grounds that there is sufficient evidence to justify investigating the matter and that the complaint

is not frivolous, vexatious or only for political advantage.

In 2015 the first complaint against a Member under the new system was referred to the Commissioner for Standards who, after investigation, recommended to the Standing Committee on Administration and Procedure that the complaint be dismissed.<sup>14</sup>

Another complaint was determined by the Speaker to not warrant further investigation by the Commissioner.

Discussions for a Code of Conduct for Members’ staff began in 2015 but have not yet been resolved.

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**The Commonwealth Parliamentary Association (CPA) produces a number of documents and booklets for Parliamentarians and Parliamentary staff including the *Recommended Benchmarks for Codes of Conduct for Members of Parliament*.**

Please contact [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org) for further information or visit [www.cpahq.org](http://www.cpahq.org) to download a copy.



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# PARLIAMENT AND THE INDIAN ECONOMY: YESTERDAY, TODAY AND TOMORROW



## Shri Satya Narayana Sahu is

Joint Secretary in the Rajya Sabha Secretariat. He served as an Officer on Special Duty to the late President of India, Shri K.R. Narayanan and as a Director in the Prime Minister's Office.

*The views expressed are personal views of author and are not of the Rajya Sabha Secretariat.*

The Indian economy has received worldwide attention primarily due to the upsurge of our growth rate following the adoption of the full-fledged economic reforms in 1990s.

It is widely accepted that Dr. Manmohan Singh, the Prime Minister of our country is the architect of those reforms which he introduced during his tenure as the Finance Minister when Mr. Narasimha Rao was Prime Minister. But it was Shrimati Indira Gandhi, who as the Prime Minister of India between 1980 and 1984, commenced the liberalization of exports and imports and which heralded the age of reforms for Indian economy.

The growth rate of Indian GDP, which hovered around 3 to 4%, was often described as Hindu rate of growth due to the painfully slow pace at which the economic progress of the country took place. The consistent rate of growth of Indian economy beyond 6% and even in some years catching up to 9% is considered unprecedented by economists and developmental theorists. The buoyancy of the Indian economy has stunned the world.

The financial crisis,

originating in the United States of America and gravely affecting the world economy, could not cripple the onward growth process in India. The world marveled at our resilience to withstand the arresting impact of the financial crisis. We grew at more than six per cent in spite of the collapse in the economy of some developed economies.

## Centre of Gravity of World Economy Shifting to Asia

We must be mindful of the fact that the centre of gravity of the world economy is irreversibly shifting to Asia. In fact, the engine of the world economy in the 21<sup>st</sup> century is going to be India and China. Therefore, the entire world is attracted to India as a major centre for investment, trade and commerce. This is the status of the Indian economy in the world in the 21<sup>st</sup> century and in the foreseeable future, India is going to play a major role determining the contours of world economy.

## Mahatma Gandhi's Economic Constitution

To understand the *today* and *tomorrow* of the Indian economy as indicated above, we need to peep into history and recapture

the vision of the founding fathers of our Republic and the builders of modern India.

Mahatma Gandhi, the Father of our Nation, wrote about the economic constitution of India on 15 November 1928. He stated "*According to me, the economic constitution of India... should be such that no one under it should suffer from want*

**"We must be mindful of the fact that the centre of gravity of the world economy is irreversibly shifting to Asia. In fact, the engine of the world economy in the 21<sup>st</sup> century is going to be India and China. Therefore, the entire world is attracted to India as a major centre for investment, trade and commerce."**





of food and clothing. In other words everybody should be able to get sufficient work to enable him to make the two ends meet. And this ideal can be universally realized only if the means of production of the elementary necessities of life remain in the control of the masses. These

should be freely available to all as God's air and water are or ought to be; they should not be made a vehicle of traffic for the exploitation of others. Their monopolization by any country, nation or group of persons would be unjust. The neglect of this simple principle is the cause of

the destitution that we witness today not only in this unhappy land, but in other parts of the world."

#### **Socialistic Pattern of Society and Mixed Economy**

After we attained independence our challenging vision was to

**Above: Ceremonial gates in New Dehli, India.**

realize in practice the vision of Mahatma Gandhi. The entire planning process and wide range of activities to rebuild our economy, which suffered



colonial exploitation, aimed at unleashing entrepreneurial spirit for greater productivity and the removal of poverty and hunger. The structure of the mixed economy we adopted was part of the strategy to uplift India from backwardness and make it a leading player in the world economy.

Today, we are talking about multiplying our growth and increasing national wealth manifold. These pronouncements are seen as the idiom of liberalized and globalised India.

In fact it would be extremely misleading to say that greater productivity and acceleration of economic growth is inseparable from the new liberal policies. The architect of modern India and the first Prime Minister of our country, Pandit Jawaharlal Nehru delivered his famous speech at the 60<sup>th</sup> Session of the Indian National Congress at Avadi on 22 January 1955. It was a speech of historic importance. That speech will be forever remembered for proclaiming the enduring idea of *"socialistic pattern of society."*

It formed an integral part of the mixed economy giving importance to the public and private sectors for rebuilding our nation. While public sector enterprises were hailed as the commanding heights of our economy for generating impulses and productive forces

for growth and development, the private sector was to use its business skill and expertise to take the country forward. Socialistic patterns of society was not reduced to a control regime or a regime where the economy was stagnant and inward looking. Nehru in that famous speech boldly said that our economic policy would lead to considerable increase in national income and it would aim at plenty and equitable distribution.

### **Social Responsibilities of Business and Open and Caring Economy**

Today, the Indian economy is counted as a vibrant economy even though, over the years, our growth rate has been between 5% and 6%. We may safely say that we have reached a reasonable stage for achieving greater productivity in spite of a decline in growth rate. It is evident from the scale of economic activities within the country and the manner in which some Indian companies are acquiring the world renowned plants and factories across the world. Such accomplishments must be accompanied by equitable distribution and inclusive growth which is the central theme of our economic progress. The last man or woman in the street must benefit from economic growth.

When Prime Minister Dr. Manmohan Singh assumed office in 2004, he stressed on an open and caring economy.

We need to be mindful of the fact that today the growth of the Indian economy is primarily due to the growth of the private and corporate sectors. In the Planning Commission documents, it is made very clear that the future trajectory of Indian economic growth would be determined by the expanding economic activities of the private and corporate sectors.

### **Parliamentary Standing Committee on Finance and Corporate Social Responsibility (CSR)**

Therefore, today there is increasing talk about corporate social responsibility and the need to make corporate social responsibility mandatory for the private players in our economy. There is resistance from such players to have a legally mandated architecture for corporate social responsibility. The Parliamentary Standing Committee on Finance, while examining the Companies Bill 2011, reported to Parliament through its 57<sup>th</sup> Report in June 2012 that companies would make every endeavour to spend 2% of the average net profit of their company on CSR activities.

The Committee also recommended that in cases where the company failed to spend such an amount on CSR, the Board of the Company would disclose the reasons for such failure. Such recommendations of a Parliamentary Committee underline the point that social responsibilities of companies are

necessary in an economy which is driven by the corporate and private sectors.

However, it is extremely important to bear in mind that greater growth unaccompanied by the sensitivity of entrepreneurs for larger social issues will spell trouble for society. Mahatma Gandhi wrote a constructive programme in 1943 with eighteen points. He had the grand vision to transform India through that constructive programme. One of the points in the constructive programmes was on Economic Equality. Dilating on the subject of Economic Equality, he warned that *"a violent and bloody revolution is a certainty one day unless there is a voluntary abdication of riches and the power that riches give and sharing them for the common good."*

Today when our riches have multiplied, it is important to share them to stem the tide of bloody and violent activities in many parts of our country which suffered due to poverty, hunger, unemployment and above all due to poor governance and delivery of essential services.

### **Resilience of Public Sector Enterprises (PSEs) have enabled India to withstand financial crisis**

Prime Minister Nehru's vision so eloquently articulated in 1955 for producing plenty and distributing the produce equally, bears enormous significance. To achieve that goal we have

to have a balance between regulation and deregulation. Professor Joseph Stiglitz, who wrote the famous book *'Making Globalization Work'*, has stated that the absence of balance between regulation and deregulation has, in most of the economies of the developed

**Below: The Parliament building in India.**







countries, contributed to their fall. We could withstand the financial crisis due to the regulation of our economy particularly the banking sector.

Our Prime Minister, Dr. Manmohan Singh has said that the resilience of public sector enterprises particularly the resilience of the public sector banks helped us to overcome the financial crisis.

### **Parliamentary Standing Committee on Industry and Public Sector Enterprises (PSEs)**

The Department-related Parliamentary Standing Committee on Industry toured several parts of the country, examined numerous public sector enterprises (PSEs) and understood that many of our PSEs are as productive and competitive in the open economy as private sector companies.

The Committee firmly concluded that the revival and restructuring of many of these enterprises will make them more vibrant and profit

**“Along with the growth and expansion of the corporate sector, our micro, small and medium enterprises have to grow because they are creating employment opportunities for people and remain close to the grass roots of our economy.”**

making. Through the activities of the Committee and through its numerous reports, the Government has been made aware that the revival and restructuring of the public sector enterprises are achievable objectives.

The then Secretary of the Department of Heavy Industries, Shri Sundaresan had said that liberalization does not mean reversion to a *laissez faire* economy or loss of space for the State. The State will play a key role in shaping our economy and taking care of the people who are mired in poverty, illiteracy and ill health. Recently Professor Amartya Sen had stated that the role of the State is very critical in taking forward the cause of the Indian economy.

### **Indian Economy is largely decoupled from the world economy**

The economy of tomorrow will take birth from the womb of the economy of today. We are fortunate that our economy is to a great extent decoupled from the rest of the world. 1.2 billion people of India constitute a huge reservoir of human resource. The very consumption level of 1.2 billion people will sustain our economy. It is a very big market which is the envy of the world. In the age of geo-economics, following the declining significance of geo-politics, India assumes significance for its vast population which is the strength of our economy and nation. The economic growth, based on inclusion and distributive justice, is the economy which is required today and which will have to be a reality tomorrow.

Prime Minister Jawaharlal Nehru in his speech at the Avadi Session, where he spoke about the socialistic pattern of society, observed that planning has to balance heavy industry, light industry, village industry and cottage industry. He also said

that planning must take note of the need to provide more purchasing power by way of wages, salaries and so on. The economy of today and tomorrow thus has to grow at a faster pace and at the same time strengthen our people by augmenting their purchasing power. To achieve this we need to make our growth process more inclusive.

### **Parliamentary Committee on Industry advanced the cause of Micro, Small and Medium Enterprises (MSME)**

Along with the growth and expansion of the corporate sector, our micro, small and medium enterprises have to grow because they are creating employment opportunities for people and remain close to the grass roots of our economy. The architecture of credit for such enterprises has to be as vibrant and accessible to entrepreneurs as it is to the corporate sector. The Department related Parliamentary Standing Committee on Industry studied the credit flow to the MSME sector and submitted a report to Parliament in which it recommended a host of measures for greater access of the MSMEs to institutional finance. The Committee also recently reviewed the implementation of the MSMED Act 2006 and presented a report to the Chairman of Rajya Sabha. It contains recommendations to further empower the MSMEs of India for economic growth and development.

By augmenting our manufacturing activities and increasing investment in the social sector, these employment generation activities would contribute to creating a caring economy. Any departure from such processes will breed violent tendencies.

### **Mahatma Gandhi's Vision for a Caring Economy**

When Mahatma Gandhi went to South Africa in 1893, he understood that many Indians were reaping better profits than the white population by engaging themselves in business activities. He observed that they were subjected to discrimination in a calculated manner so that they could not pursue their business interests. The British settlers in South Africa stated that Indians did not have any right to do business and, therefore, withdrew that right which was enjoyed by them.

Mahatma Gandhi proclaimed that “*Indians are born traders.*” One of the objectives of his first Satyagraha was to restore the rights of Indians to do business. More than a hundred years after that Satyagraha, Indians have emerged as world class entrepreneurs and India is hailed as a key business centre of the world. Before the commencement of the first Satyagraha in South Africa, Mahatma Gandhi famously wrote in his autobiography ‘*My Experiments with Truth*’ that he saw truth in the sufferings of Indians. He wanted to remove their sufferings and achieve truth. He did so when Indians lost their right to do business.

When the economy of India is flourishing and growing at an impressive rate, our business people must see, like Mahatma Gandhi, truth in the suffering of their fellow countrymen.

This vision of Gandhi must be integrated to all our economic activities to generate an economy which would eradicate poverty, empower people and make us prosperous. These must be the defining features of our economy.

The economy of today must remain tuned to those features to make India a happy country.



# THE ROLE OF PUBLIC ACCOUNTS COMMITTEES IN THE PACIFIC REGION

The Meeting of Public Accounts Committees of the Pacific Region in New Zealand in August 2015 established the Pacific Network of Public Accounts Committees (PaNPAC). The Chairman of the Public Accounts Committee of the Solomon Islands reports.



**Hon. Rick Nelson Houdenipwela MP** is the Member of Parliament for Small Malaita Constituency and Chairman of the Public Accounts Committee at the National Parliament of the Solomon Islands. He served as the Governor of the Central Bank of the Solomon Islands and was a Senior Advisor to the World Bank before going into Politics. He was Minister for Public Service and Finance Minister in the last government (2010–2014).

During the Meeting of Public Accounts Committees of the Pacific Region in Wellington, New Zealand from 26 to 27 August 2015, the **Pacific Network of Public Accounts Committees (PaNPAC)** was established.

Eight Pacific legislatures namely the Cook Islands, Fiji, New Zealand, Niue, Samoa, Solomon Islands, Tonga and Vanuatu inaugurated its formation.

The network is the newest to have joined other Public Accounts Committee (PAC) Networks and Associations amongst Commonwealth Parliaments around the world.

The aim of the network is to improve the capacity of Parliaments in the Pacific Region to hold governments to account for their use and management of public finances.

The network aims to set a platform whereby the Pacific community of PACs and their stakeholders such as the Supreme Audit Institutions, can share information and draw on best practices for financial scrutiny and Parliamentary oversight that will enhance public administration efficiency and greater public confidence in the

institutions of government.

Reflecting on the experience, I would say that the meeting has enlightened me more on the role of PAC and what it can do to ensure an effective oversight role by Parliament. The meeting provided the opportunity for those of us representing Pacific legislatures, to discuss our common challenges and experiences in performing our parliamentary scrutiny roles.

Another very important outcome of the meeting was that we discussed ways and means of enhancing information sharing as well as learning from each other's experiences.

These include regular conferences and meetings that will focus on identified activities. Such activities would include;

- peer-to-peer knowledge transfer and skills development (potentially evolving to peer-exchange and peer-assistance support);
- discussions on common challenges; development of work practices, including publications of templates for review and reporting;
- practical research on PAC mandates, powers and
- Membership with a view to

setting Pacific benchmarks and advocacy for accountability, transparency and anti-corruption issues.

The initiative is geared at strengthening financial scrutiny and improving performances, by setting standards and mobilizing support for financial oversight committees in the Pacific. It is also to ensure better understanding of the important role of PACs and to strengthen the capacity of PAC members and their support staff. This is also aimed to fine-tune the relationships between PACs and the Offices of the Auditor General.

In many ways this meeting has increased my understanding of the important role the PAC plays in the overall scheme of things, more particularly in Parliamentary oversight on public finances. It has enabled me to appreciate the role I play in ensuring the effectiveness of the PAC. Indeed the work that my Committee does can be best described as “... an extension of Parliament...”

That to me is an apt description to reflect the significance of the job requirement of my Committee, or any Finance Committee for that matter, in performing the important role of financial





scrutiny and oversight, as delegated by Parliament on behalf of the people.

I served most of my professional life with the Central Bank of Solomon Islands. Fifteen of those years I served as the Governor, during which time I have had my moments tussling

**“This level of cooperation, apart from the variety and wealth of experience that we have on the Committee – is key to the success in our Committee operations and outcomes.”**

with the Solomon Islands politics and politicians. That experience itself made politics a ‘no-go-zone’ for me! In fact the family had already resolved on that well before my retirement from the Bank in 2008 and I hence never envisaged becoming a politician. However, due to an unwavering persistence from our community leaders throughout the constituency I agreed to run for the Small Malaita Seat in 2010.

During my first term in the 9<sup>th</sup> Parliament, I served both as Minister for Public Service and as the Finance Minister. Following the last general elections, and upon returning to the 10<sup>th</sup> Parliament, my party is on the Opposition Bench of the House. Earlier this year I was appointed as the Chairman of the Public Accounts Committee by the Speaker of the National Parliament of Solomon Islands,

Hon. Ajilon Nasiau.

Needless to add, my professional experience has assisted me well in my role as PAC Chairman. In particular, my experience as former Governor of the Central Bank and Finance Minister are a very powerful tool in my current role as the PAC Chairman, as it provides an excellent overview of public finances and the national accounts more generally.

In the last nine months I believe my Committee has fulfilled its functions well and performed its role as expected of it, because I have received strong support from my Committee members. Attendances to Committee deliberations and Committee hearings have eventuated and we have always cooperated well on projects. This level of cooperation, apart from the variety and wealth of experience that we have

**Above: The Chairman of the Public Accounts Committee at the National Parliament of the Solomon Islands, Hon. Rick Houenipwela MP (centre) with PAC Committee Member and the Leader of the Official Opposition, Hon. Jeremiah Manela (left) and the Auditor General (Acting) Mr. Robert Cohen (right).**

on the Committee – is key to the success in our Committee operations and outcomes.

During one of our major projects since our appointment, the Committee inquiry into the 2015 Appropriation Bill, invitations to stakeholders such as senior public officers from our government ministries are received well and taken seriously, a process that previous Committees have had difficulties with.

My Committee has also



developed a generic template which guides witnesses for Committee inquiries such as public officers, to produce relevant information that the Committee members would need for the inquiry and also to assist in informing well its reports to Parliament. This is the first of its kind. The initiative has brought about stronger mutual understanding between the Committee and our senior government officers, as well as other witnesses more generally.

This year my Committee also took the Inquiry to a higher scale when we invited International Financial Institutions to give their views on the state of the Solomon Islands economy and State Owned Enterprise, and for their views on the current environment for carrying on business and for the potential for doing business in the Solomon Islands.

The advantage from this process was that it provided a wider scope of and balanced commentary on the economic

background when deliberating on the government's proposed budget.

In the Solomon Islands, the PAC would not function effectively without the exceptional support from its secretarial team. One unique feature of the National Parliament of Solomon Islands is having the Auditor General as the substantive Secretary to the PAC. Apart from that, the PAC also has its own Clerk of the Committee. Hence we were able to deploy administrative support and accounting advice when necessary.

It is worth emphasizing that the excellent support from the Committee secretariat is a very important reason for the effective work of the PAC and its outcomes since our appointment.

The Secretariat's initiative to run Information Workshops for potential stakeholders to our 10 Parliamentary Committees, has also redefined public misperceptions on the

procedures of Committee proceedings, for which a cooperative relationship has been established to liaise with the Committee Secretariat and Parliament.

My Committee welcomes collaboration within the spheres of parliament and beyond. We are optimistic of our joint sessions with the Public Expenditures Committee and grateful for our audiences so far with the Pacific Media Assistance Scheme (PACMAS), International and Local Government Departments and the Pacific Association for Supreme Audit Institutions.

I concur with the Speaker of the New Zealand House of Representatives, Rt. Hon David Carter in saying that Pacific Legislatures face challenges specific to their size, capacity and geographic isolations. However, the exchange of ideas and professional development is necessary for building an effective PAC and ultimately a stronger and an effective

Parliament, which ensures better policy and budget outcome that will benefit the public.

I am assured that is what PaNPAC is all about for us in the Pacific. It is an avenue for us to share and learn from each other because we acknowledge that Parliamentary Finance Committees do play an important role in our legislatures. If we are effective and perform our role with the best of our abilities, we can make impacts that ensure better policy outcomes for our people. It is therefore essential that we ensure our Committee Secretariats are adequately resourced so that in return we can benefit from the efficient services they provide.

**Below: A view of the the National Parliament of Solomon Islands.  
Photo credit: Synexe**





# Commonwealth Parliamentary Association Conferences, Seminars and Events



Top left: The Asian Regional Association of Public Accounts Committees (ARAPAC) Annual General meeting took place in Kathmandu, Nepal in partnership with the CPA and the World Bank Group. The meeting was opened by Hon. Abdulla Shahid MP, CPA Executive Committee Member, speaking on behalf of the CPA Secretariat.

Above and top right: The CPA collaborated with the World Bank Group and the African Centre for Parliamentary Affairs on the delivery of the West Africa Association of Public Accounts Committees (WAAPAC) 6<sup>th</sup> Annual Meeting and Accountability Conference which was held in Lomé, Togo. The CPA sponsored the participation of Members of Parliament, Auditors General and Public Accounts Committee (PAC) Clerks from Sierra Leone and Nigeria, and the CPA was represented by Hon. Alban S.K. Bagbin MP, Majority Leader of the Parliament of Ghana and Member of the CPA Executive Committee.

Right: Parliamentarians attend a meeting of Public Accounts Committees in the Pacific Region hosted by the Speaker and Parliament of New Zealand in Wellington, organised by the World Bank Group in partnership with the CPA. The event saw the launch and inaugural meeting of the Pacific Network of Public Accounts Committees (PaNPAC). Members of Parliament from the CPA Branches of the Cook Islands, New Zealand, Niue, Samoa, Solomon Islands and Tonga attended, as well as Members from Vanuatu and Fiji and PAC Clerks from Fiji, New Zealand, Niue, Solomon Islands and Vanuatu.





# Commonwealth Parliamentary Association Conferences, Seminars and Events



**CPA** COMMONWEALTH  
PARLIAMENTARY  
ASSOCIATION



Left: Parliamentarians from India, Jamaica, Kenya, Pakistan and Zambia met for the CPA Workshop on the Role of Parliamentarians in Constituency Development Funds (CDF) at the CPA Secretariat in London, UK., in partnership with the State University of New York Centre for International Development.

Below: Participants in the CPA Parliamentary Staff Development Seminar for the Africa Region which took place in Kampala, Uganda, hosted by the CPA Uganda Branch. The Parliamentary Staff Development Seminar Africa was opened by the Clerk of the Uganda Parliament.



Above: Commonwealth Parliamentarians gathered for the CPA Legislators Expert Workshop on Climate Change in London, UK organised by the CPA Secretariat in partnership with the United Nations Environment Programme (UNEP).



Above right: 22 Parliamentary staff from Lok Sabha Secretariat, India, the Parliament of Kenya and the National Assembly of Nigeria visited the CPA Secretariat to discuss the CPA's work in parliamentary strengthening and development programmes as part of a RIPA Parliamentary Administration visit: *Benchmarking against the UK Parliament.*

Right: The 7<sup>th</sup> Commonwealth Youth Parliament, hosted by the Legislative Assembly of the Northern Territory in Darwin, Australia in partnership with the CPA, saw the participation of 50 young people and mentors from across the Commonwealth. Participants were welcomed by the Speaker of the Legislative Assembly of the Northern Territory, Hon. Kezia Purick MLA.





# Parliamentary Report

NEWS AND LEGISLATION FROM COMMONWEALTH PARLIAMENTS



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With thanks to Parliamentary Report and Third Reading contributors: Stephen Boyd (Parliament of Australia); Ravindra Garimella (Parliament of India); Michael Dewing (Parliament of Canada); Luke Harris (Parliament of New Zealand); Ron Wall (Legislative Assembly of British Columbia).

# 42<sup>ND</sup> GENERAL ELECTION AND THE NEW PARLIAMENT

## 42<sup>nd</sup> General Election

On 19 October 2015, the Conservative Party under **Rt. Hon. Stephen Harper, MP**, was defeated in the general election.

The Liberal Party, led by **Rt. Hon. Justin Trudeau, MP**, won a clear majority in the House of Commons. The Conservative Party, which had been in power since 2006, became the Official Opposition. The New Democratic Party (NDP), which had been the Official Opposition, became the third party in the House.

As happens after each decennial census, the number of seats in the House of Commons has been adjusted to take into account population changes. For the 42<sup>nd</sup> Parliament, there are 338 seats, up from 308.

The Liberal Party won 184 seats, up from 36 at dissolution. The Conservative Party took 99 seats, down from 159. The NDP, under **Hon. Thomas Mulcair, MP**, won 44 seats, down from 95. The Bloc Québécois (BQ), led by former MP **Gilles Duceppe**, won 10 seats, just shy of the 12 seats needed for recognition as party in the House. The Green Party took one seat, that of its leader, **Elizabeth May, MP**.

Voter turnout was 68.5%, which was up 7.4 percentage points over the turnout in the 2011 election. In fact, it was the highest level since 1993.

Mr. Trudeau is no stranger to public life. The son of former **Prime Minister Rt. Hon. Pierre Elliott Trudeau** - who served as MP for a Montreal riding

from 1965 to 1980 - he is also the grandson of another former MP, **Hon. James Sinclair**, who represented a British Columbia riding from 1940 to 1948. Mr. Trudeau was first elected in 2008 and became leader of the Liberal Party in 2013.

Following the election, Mr. Harper resigned as leader of the Conservative Party, but said he would continue to sit as MP. The Conservative Party said the elected House of Commons caucus would elect an interim leader. Meanwhile, the Party will create a Committee to set out the rules for selecting a new leader.

Mr. Duceppe, who had come out of retirement to lead the BQ, was defeated in his riding. He stepped down as leader and retired from public life for good. Newly elected member **Rhéal Fortin, MP**, was chosen to lead the BQ in the House of Commons.

## Regional results

With the exception of Atlantic Canada and the far North, the three main political parties now hold seats in every region of the country. The BQ ran candidates only in Québec.

In Atlantic Canada (New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island), the Liberal Party took all 32 seats, the first ever sweep of the region.

In Québec, the Liberal Party took 40 seats of the 78 seats, up from seven in 2011, while the NDP went from 59 seats to 16. The Conservative Party went from five seats to 12 and the BQ increased its

number of seats from four to 10.

Of the 121 seats in Ontario, 80 went to the Liberal Party, 33 to the Conservatives and eight to the NDP. In 2011, the parties took 11, 73 and 22 seats respectively.

In Western Canada (Alberta, British Columbia, Manitoba and Saskatchewan), the Liberal Party increased its seats from four in 2011 to 32, the NDP went from 16 seats to 20 and the Conservative Party dropped from 74 seats to 54.

The three northern ridings (Northwest Territories, Nunavut and Yukon) went to the Liberal Party. In 2011, two were held by the Conservatives and one by the NDP.

## The make-up of the new Parliament

In terms of gender balance, 88 women were elected. At dissolution, there were 77 female MPs. Because there are now more seats in the House, however, the percentage of female MPs increased by only one percentage point to 26%.

The proportion of first-time MPs in the new Parliament is the highest since 1993, when 199 first-time MPs were elected. This year, 197 MPs were elected for the first time - 58% of the total. In comparison, in 2011 108 MPs were elected for the first time, a proportion of 35%. In addition, while 17 of the MPs elected this year had not sat in the previous Parliament, they had served in earlier Parliaments.

In terms of ethnic diversity, a record number



**Rt. Hon Justin Trudeau, MP**  
**Prime Minister of Canada**

of 10 indigenous MPs were elected, up from seven in the 2011 election. As well, the new Parliament includes Canada's first MPs of Somali, Afghan and Iranian descent.

## The Reform Act, 2014 takes effect

As mentioned in the previous issue of *The Parliamentarian*, in June 2015, Parliament passed The Reform Act, 2014, and it came into force seven days after the general election. Under the Act, at the first caucus meeting of each recognized party following a general election, the caucus must decide whether caucus members will be able to vote on calling leadership reviews, electing and reviewing the caucus chair, expelling or readmitting a caucus member, or electing an interim leader. It is noteworthy that under these amendments, caucus refers to only the members of the House of Commons who are members of the same party.

For further information about the new Reform Act please turn to page 276.



### Party Standings in the Senate

On Election Day, there were 22 vacancies in the 105-seat upper house. Of sitting senators, 47 were Conservative. The Senate Liberals held 29 seats. (Although identified as Liberals, ever since Mr. Trudeau announced that they would sit as independents in January 2014, they are not part of the Liberal parliamentary caucus.) There were also seven independent Senators.

Faced with obstacles in his attempts to reform the Senate and the way senators are appointed, Prime Minister Harper had said he would not appoint any more Senators until the provinces decided on meaningful reform. In his electoral platform, Mr. Trudeau said he would create a non-partisan, merit-based process to advise him on Senate appointments.

Senators serve until age 75. During 2016, four Senators will reach retirement age.

Following the election, a group of about 40 senators met to discuss the future of the Senate. They debated items such as question period in the Senate, the size of Senate Committees and the election of the Speaker. At present, the Constitution requires the Senate Speaker to be appointed by the Governor General on the advice of the Prime Minister.

### Fixed Election Day

The 42<sup>nd</sup> General Election was the first to be held on a fixed day. Fixed election days were established in 2007 through amendments to the *Canada Elections Act*. These amendments explicitly did not limit the power of the Governor General to dissolve Parliament, however, and in both 2008 and 2011 the Governor General

did just that at the request of the Prime Minister. Both times, the Conservative government held a minority of the seats in the House. In 2011, the Conservative Party gained a majority, and the election took place, as provided by the *Canada Elections Act*, on the third Monday in October in the fourth year following the last general election. With the Liberal Party holding a majority, the next fixed Election Day is 21 October 2019.

### Senator's trial

On 28 October, **Senator Hon. Patrick Brazeau** was given an absolute discharge after he pleaded guilty to charges of assault and possession of cocaine. He is still charged with fraud and breach of trust and his criminal trial on these charges is expected to take place in March 2016.

### Panel on institutional reform

On 28 October 2015, Canada's Public Policy Forum, an independent organization that works to improve the quality of government, issued a report entitled '*Time for a Reboot: Nine Ways to Restore Trust in Canada's Public Institutions*.'

It was written by a panel that was chaired by **Jim Dinning**, former Treasurer of Alberta, and which also included **Hon. Jean Charest**, former federal cabinet minister and former Premier of Québec, and **Hon. Kevin Lynch**, former Clerk of the Privy Council.

The report identified the centralization of decision-making in the hands of unelected officials as one of the main threats to good governance. To counter this tendency, the panel made a number of recommendations for restoring the balance between the executive and legislative branches.

These recommendations focused on strengthening Parliamentary Committees. To this end, the panel recommended that Committee Chairs should be elected by secret ballot and that they and Committee Members should retain their positions for Parliament's full four-year term.

The panel also recommended that Committees should be able to set their own meeting schedules and to meet during periods of recess. The panel recommended there be fewer Committees, that these be provided with effective resources and that new technologies be used to improve engagement with the public. Finally, the panel recommended that Ministers and deputy Ministers appear regularly before the Committees.

The panel's other recommendations dealt with

cabinet government, the role of the public service and the accountability of political staffers.

### First Anniversary of the Attack on Parliament

On 22 October 2015, a solemn ceremony was held at the National War Memorial to commemorate the first anniversary of the attack on Parliament Hill and the deaths of Corporal Nathan Cirillo, who was gunned down as he stood guard at the Tomb of the Unknown Soldier, and of Warrant Officer Patrice Vincent, who was deliberately run down in Saint-Jean-sur-Richelieu, Québec two days earlier. **Governor General His Excellency Rt. Hon. David Johnston** attended the ceremony, and **Prime Minister Stephen Harper** and **Mr. Justin Trudeau** laid a wreath together.



## THIRD READING: BRITISH COLUMBIA, CANADA

### Auditor General for Local Government Amendment Act, 2015

The *Auditor General for Local Government Amendment Act, 2015* strengthens and clarifies governance and accountability mechanisms for the Auditor General for Local Government (AGLG). The *Auditor General for Local Government Act* was adopted in 2011 to establish an AGLG with a mandate to conduct performance audits of the operations of local governments. The Act also created an Audit Council comprised of no less than five members appointed by the Lieutenant Governor in Council, which is responsible for recommending an individual to be appointed as AGLG, and reviewing and monitoring the performance of the AGLG.

The first AGLG appointed under the Act was dismissed by government in March 2015 as a result of performance concerns. Based on lessons learned from the functioning of the first AGLG, the legislation removes the requirement that the individual appointed as AGLG be authorized to be an auditor of a company under section 205 of the *Business Corporations Act*, provides that the Minister, as well as the Audit Council, may make a recommendation regarding the suspension or removal of the AGLG, and enables the Lieutenant Governor in Council to suspend or remove the AGLG with or without cause. Other amendments permit the Audit Council to request the AGLG to provide certain records or information, require the AGLG to consider the comments of the Audit Council on performance audit reports and annual reports, and enable the Minister to review the Act and the functioning of the office of the AGLG at any time.

During Second Reading Debate, **Hon. Peter Fassbender**, Minister of Community, Sport and Cultural Development, indicated that the “... *resulting amendments strengthen the legislative authorities of the minister, the audit council and the AGLG as well as support them in the fulfilment of their duties and responsibilities.*”

The Opposition Spokesperson for Local Government and Sports, **Hon. Selina Robinson, MLA**, however, felt that the legislation would “*strip the independence of this office – independence that the previous ministers said was absolutely critical to this office functioning.*”

The Auditor General for Local Government Amendment Act, 2015 received Third Reading on 7 October 2015.

### Motion Picture Amendment Act, 2015

The *Motion Picture Amendment Act, 2015* improves the regulation of the public exhibition of motion pictures in theatres and adult motion pictures

intended for sale or release. Sanctions for licensees who break the rules would now range from a warning letter, to monetary penalties that do not involve the courts, to licence suspension or termination depending on the seriousness of the violation. This will provide more flexibility than the current enforcement options, which only include licence suspension or cancellation, seizure or the levy of a fine that involves the court system. The Act is being modernized to capture changes in the way movies are distributed to theatres in present day, for example, by satellite and digital distribution, and definitions for terms such as ‘film’ and ‘motion picture’ will be updated. The legislation also streamlines licensing requirements for theatre owners and aligns the statute with case law regarding obscenity and child pornography provisions in the Criminal Code of Canada.

The changes reform the Act for the first time since 1986. The legislation was supported by stakeholders, including Consumer Protection BC, a not-for-profit corporation that acts at arm’s length from government and issues licences for the motion picture and video industry based on the requirements of the Act. The legislation was welcomed by Members on all sides, and adopted unanimously. The Act received Third Reading on 6 October 2015.

### Franchises Act

The *Franchises Act* provides legal rights and remedies to business owners who operate or are looking to operate a franchise business in the province. To help open the door for franchising investments in British Columbia, the legislation standardizes franchising arrangements across the province, ensures that franchisees have all the relevant business information they need before making a decision to invest and upholds franchisors’ rights to freely contract to allow for the success of the franchise.

The legislation parallels similar enactments in Alberta, Manitoba, Ontario, New Brunswick and Prince Edward Island. The specific provisions of the legislation were developed in consultation with the British Columbia Law Institute, following work done by the Uniform Law Conference of Canada. An advisory group of franchise law experts in the province also provided advice and feedback in the development of the legislation. During the debate, government and opposition Members expressed support for the legislation as a measure which builds on experience with initiatives across Canada to assist franchising arrangements and which will promote the growth of small businesses in British Columbia.

The Franchises Act was supported unanimously, and received Third Reading on 20 October 2015.





## THIRD READING: NEW ZEALAND

### Health and Safety Reform Bill

The Health and Safety Reform Bill, a Government Bill, was introduced on 10 March 2014 with the aim of reforming New Zealand's workplace health and safety system, partly in response to the royal commission into the coal mine tragedy at Pike River in 2010, in which 29 men were killed. The Bill was subsequently divided into the Accident Compensation Amendment Bill, the Employment Relations Amendment Bill (No 2), the Hazardous Substances and New Organisms Amendment Bill, the Health and Safety at Work Bill, and the WorkSafe New Zealand Amendment Bill.

At the Bills' Third Reading on 27 August 2015, **Jonathan Young MP** (National) said: *"It is important for us to understand that the most important element of this new regime is worker participation. It is the top-down, bottom-up engagement between persons conducting a business or undertaking and the workforce ... that ensures that across the board there is engagement, understanding, discussion, decisions and the identifying of hazards and risks."*

Opposing all five Bills, **Clayton Mitchell MP** (New Zealand First) said: *"The reality is that 30% of people under this new legislation will not have any new safety conditions imposed on them, and there will be no ground-up culture change within those businesses to actually help those businesses look after their workers."*

**Kevin Hague MP** (Green Party) also spoke in opposition to the Health and Safety at Work Bill, as did **Jacinda Ardern MP** (Labour). Mr Hague said: *"[In] smaller workplaces the personal relationships between bosses and workers often create a situation where it is not viable for workers to raise their concerns. In those small workplaces, the principle ... of worker engagement and participation is meaningless if their right to representation on health and safety is not honoured, as it is not in this legislation."*

Ms Ardern said that although Labour had supported the legislation as introduced, *"Essentially, along the way, too many compromises of politics, compromises based on interest groups, and compromises that were ultimately unnecessary and could ultimately lead to harm have all found their way into this piece of legislation, and led us as a Parliament to lose that opportunity that had been borne out of what was an extraordinary tragedy."*

Speaking on behalf of the Minister for Workplace Relations and Safety, the Minister of Commerce and Consumer Affairs, **Hon. Paul Goldsmith MP** (National) said: *"Businesses and workers are free to have practices that work for them. The legislation does not exclude small businesses that are not high risk from having to engage and have worker participation practices. Also, despite some reports to the contrary, it does not exclude these businesses from the main duties."*

All five Bills passed by 109 votes to 12, except for the Health and Safety at Work Bill, which passed by 63 votes to 58.

### The Sale and Supply of Alcohol (Rugby World Cup 2015 Extended Trading Hours) Amendment Bill

The Sale and Supply of Alcohol (Rugby World Cup 2015 Extended Trading Hours) Amendment Bill, a Member's Bill in the name of **David Seymour MP** (Leader, ACT), was passed on 26 July 2015. The Bill provides for extended licensing hours during the 2015 Rugby World Cup, allowing premises covered by the Sale and Supply of Alcohol Act 2012 to serve alcohol during early morning broadcasts of live World Cup games.

The Bill was introduced on 12 July 2015 after the House accepted Mr. Seymour's motion to postpone other Members' orders of the day in order to debate his Bill, despite the Green Party having blocked his attempt to do so on the previous Members' day a fortnight earlier. In order to get the provisions passed in the time for the start of the Rugby World Cup on 18 September, the Justice and Electoral Committee undertook a truncated Select Committee process, meeting at non-standard hours to ensure that submitters' concerns were properly considered.

The Bill's passage was unusual in that it prompted a split-party vote from the Labour Party. Members opposing the Bill spoke mainly of wanting to reduce alcohol-related harm, particularly domestic violence. **Jan Logie MP** (Green Party) told the House that *"33% of all family violence incidents involve alcohol and 50% of all serious violent crime involves alcohol ... There is clear evidence that links the impacts of rugby and drinking and connects it to family violence."* Ms Logie also spoke about wanting to disconnect *"the sense that you need a drink to enjoy a game of rugby and that our national identity and patriotism is dependent on having a drink."*

**Marama Fox MP** (Co-leader, Māori Party) also opposed the Bill, saying: *"We cannot apply these blanket, open-slasher rules that we have done and not expect harm ... We have had all the good scenarios, but, actually, we do this to protect against the worst-case scenarios."*

Speaking in support of the Bill, **Grant Robertson MP** (Labour) acknowledged these concerns, saying: *"They are serious issues that New Zealand needs to get its head around ... I do not believe that opposing this legislation is the way in which we will address those particular issues."* Mr Seymour argued: *"It is a myth that New Zealand is somehow an outlier by international standards and that young New Zealanders have the worst of drinking problems."*

**Jacqui Dean MP** (National) outlined the three brightline conditions with which licence holders will have to comply during the Rugby World Cup, namely *"no dumping bottles in dumpsters in the early hours, no use of outside courtyard facilities, and no broadcasting of loud music."*

The Bill passed by 99 votes to 21.

# 150 YEARS IN WELLINGTON AND THE USE OF SOCIAL MEDIA IN PARLIAMENT

## 150 years in Wellington

In July 2015, Wellington celebrated 150 years as the capital of New Zealand and seat of the New Zealand House of Representatives. **Grant Robertson MP** (Labour) moved a motion without notice in the House recognising the important milestone. *"I move, That this House note that 25 July 2015 marks the 150th anniversary of the day on which Wellington became the capital of New Zealand, and also note that 26 July 2015 is the 150th anniversary of the first official sitting of Parliament in Wellington,"* Mr Robertson said. The motion was agreed to unanimously.

The occasion was marked by a weekend of festivities

organised by the Wellington City Council and hosted within the Parliamentary Precinct. Dubbed *Capital 150*, the celebrations included performances by New Zealand artist Dave Dobbyn, the New Zealand Symphony Orchestra and the New Zealand School of Music, as well as a 20-minute light show that saw archival footage and images projected on to the facade of Parliament House.

Following *Capital 150* came Wellington's inaugural Festival of Parliament. For 10 days, the festival, organised by the Office of the Clerk of the House of Representatives and the Parliamentary Service, gave members of the public a unique opportunity

to learn more about New Zealand's parliamentary democracy through a series of free workshops, tours, and seminars.

*"We can all be proud of our Parliament, which provides a world renowned system of representation. We can also be proud to have had one of the longest continuously running parliamentary democracies in the world,"* said **Rt Hon. David Carter MP** (National), Speaker of the House of Representatives.

Former **Governor-General of New Zealand Rt Hon. Sir Anand Satyanand** also spoke as part of the Festival of Parliament, at a seminar organised by the Wellington chapter of the Australasian Study of Parliament Group

(ASPG). Sir Anand praised New Zealand for being both the first country in the world to give women the vote and the first English-speaking country to appoint an Ombudsman

Named after Arthur Wellesley (1769-1852), the first Duke of Wellington and victor of the Battle of Waterloo, New Zealand's capital city, Wellington, is known in *Te Reo Māori* as *Te Whanga-nui-a-Tara* (The Great Harbour of Tara) and *Pōneke*, a transliteration of Port Nicholson.

Below: Parliament Library, Wellington, New Zealand





### A question of privilege – the use of social media in Parliament

Following a short debate on 16 September 2015, the House formally noted a report of the Privileges Committee on the use of social media by members of Parliament and the press gallery.

In May 2014 the Speaker asked the Committee to consider, as a general matter of privilege, the implications for Parliament of people using social media to report on Parliamentary proceedings and to reflect on members of Parliament, including the Speaker. The Committee focused in particular on whether there should be some restrictions or guidelines applied to Members' use of social media and handheld electronic devices in the Chamber to comment on the proceedings and whether Parliament's rules require modernising.

Speaking to the report, the Chair of the Privileges Committee, **Hon. Christopher Finlayson MP** (National), acknowledged that *"this is not a novel issue in Parliaments around the Commonwealth."* Mr Finlayson said that the Committee had concluded *"that to stand King Canute-like and try to stop the tide coming in would be an exercise in uselessness."*

Indeed, the Committee recognised *"that the use of social media has facilitated much more diverse communication and much better conversations about Parliament, and that is all very much for the betterment of our democracy."*

At the same time, he cautioned Members that *"all Members of Parliament should be aware that anything said on social media may not*



*- not 'will not'; may not - be protected by Parliamentary privilege and could be potentially actionable in the court."*

Mr Finlayson noted that the Committee also considered the improper use of photography and filming by Members, especially where a Member photographs another Member in the House without permission and then uses the photograph for political ends. The Committee concluded that there are occasions when it is appropriate for Members to photograph or film from the floor of the House, such as for special events, swearings-in, maiden and valedictory speeches, and *waiata* [songs] after Treaty settlement legislation. Finally, the Committee considered that it was time to remove rules on *"the prohibition on the use of official television coverage to satire, ridicule, or denigrate."* Mr Finlayson said: *"We have to be big enough and tough*

*enough to take a bit of satire from time to time."*

**Dr Kennedy Graham MP** (Green Party) was a Member of the Privileges Committee and said that the Committee had been *"entirely clear"* on the main issue - that is, *"whether the use of social media from inside the Chamber would enjoy parliamentary immunity."* Mr Graham stated: *"Any such commentary is neither part of Parliamentary proceedings, nor published under the authority of the House. Therefore, it may not be covered by Parliamentary privilege and is potentially actionable in court."*

**Hon. David Parker MP** (Labour) explained that the Committee recognised the increase in the use of platforms such as Twitter and Facebook for the dissemination of information about what is happening in Parliament. Mr Parker agreed that *"we ought not to try to unduly control*

*[the use of social media] in Parliament. We should try to encourage it, but we should do so cognisant of a couple of facts."* He said it was incumbent upon Members *"to try to maintain public confidence in this institution by not denigrating others unduly or by bringing this House into disrepute."* He said that without some minimum standards of conduct, Members would *"bring this institution into disrepute, which, in turn, will undermine public confidence in democracy."* He concluded: *"So we are trying to get that balance right through this report by allowing social media, but not by allowing it to be used from the floor of this House in a way that crosses a boundary that would not be permitted if we were saying these things in a presentation, as I am doing now."*

The motion was agreed to unanimously.

## THIRD READING: AUSTRALIA

### Asian Infrastructure Investment Bank Act 2015

The legislation facilitates Australia's membership of the Asian Infrastructure Investment Bank (AIIB) by providing authority and an appropriation for the payment of Australia's capital contribution to the AIIB. The then Treasurer, **Hon. Joe Hockey MP** noted that "Asia faces a major infrastructure financing gap, estimated to be worth US\$8 trillion over the next decade. That is the funding shortfall for infrastructure that is going to grow the Asian economy."

Mr Hockey commented that "in a significant step to address this challenge, Australia is becoming a founding member of the AIIB."

The Treasurer explained that "the decision to join the bank was made following extensive consultations with key partners inside the Asian region and outside the Asian region. This included participating in negotiations on the bank's design with 56 other prospective founding member countries."

Mr Hockey commented that "the AIIB will have a strong commercial focus. Its goal is not poverty alleviation or development purposes such as that of the Asian Development Bank or even the World Bank. It is simply about funding the infrastructure that is going to grow the Asian economy to our great benefit. Of course, we will work closely with the World Bank and the Asian Development Bank and learn from their long experience in promoting infrastructure in our region."

Mr Hockey advised that "the bank will initially have US\$100 billion of total authorised capital and is expected to start operating by the end of this year. Australia's initial shareholding will be US\$3.7 billion, including US\$738 million in paid-in capital. The remaining US\$2.9 billion is callable capital and will be a contingent liability on the Commonwealth balance sheet."

Mr Hockey noted that "Australia's contribution will have a zero direct impact on the underlying cash balance, fiscal balance and net debt, as we are purchasing a shareholding in the bank." The Treasurer concluded that "if we build up Asia, as a middle-class emerges, they are going to

want our food, education and health services. They are going to want to travel to Australia and invest in our services. This is the way to go. Prosperity in the Asian region is to our enormous benefit because, ultimately, it will mean more jobs in Australia. It is not pie-in-the-sky stuff. This is real, tangible, meaningful, actual policy being implemented that is a game changer. That is why we are joining the Asian infrastructure bank."

**Senator Carol Brown** indicated that the opposition supports the legislation noting that Labor had consistently argued to join the AIIB. Senator Brown commented that "the government dithered; the government could not make its mind up. The Foreign Minister said we should not join for reasons known only to herself. The Treasurer, to give him credit, knew that we should join, but he could not carry the day in Cabinet. On the other hand, the Leader of the Opposition, Mr Shorten; the Deputy Leader of the Opposition and our shadow minister for foreign affairs, Ms Plibersek; and our shadow Treasurer, Mr Bowen, were of one mind immediately - this was an easy decision. This is a great opportunity for Australia. It is a good opportunity for the world to come together to deal with the infrastructure gap in Asia and to work together on the development of Asia. But, no, while the Labor Party was lending bipartisan support to this from last October the government could not make up its mind."

The Independent Senator for Tasmania, **Senator Jacqui Lambi** was opposed to the legislation and Australia's membership of the AIIB noting that the "financial organisation will be controlled and heavily influenced by the communist government of China." Senator Lambi commented that "this bank will be an arm of the Chinese communist government just like its military, whose purpose will be to protect, expand and spread the influence of communist, not democratic, culture. The influence of the Chinese government is being felt in this Parliament today through at least \$5.5 million in political donations from people linked to the Chinese government, so it is little wonder that there will be little or no resistance to this legislation which the Australian bankers are all supporting. The Australian banking

industry is another group of people who have considerable influence in this Parliament due to the amount of political donations they give to political parties and the people who have come from the banking industry and now occupy high positions of authority in our political system."

Senator Lambi noted that Japan and the US have refused to join, and "there are still doubts surrounding the AIIB's transparency and governance standards, even though Australia waited for those to be improved before joining."

### Australian Small Business and Family Enterprise Ombudsman Act 2015

The legislation establishes the position of Australian Small Business and Family Enterprise Ombudsman to advocate for, and give assistance to, small business and family enterprises. The then Minister for Small Business, **Hon. Bruce Billson MP** noted that "there are more than two million actively trading small businesses in Australia. Ninety-six per cent of all Australian businesses are small businesses. Combined, small businesses produce more than \$330 billion of total economic national output, and employ over 4.5 million people. Many small businesses are also family enterprises, which represent 70% of all Australian businesses. These businesses and their enterprising women and men are the foundation on which Australia's economy is built and our future prosperity will be realised."

The Ombudsman will have two key functions, an advocacy function and an assistance function. Mr Billson commented that "the advocacy function will allow the Ombudsman to advocate for small businesses and family enterprises in relation to relevant legislation, policies and practices. The Ombudsman, with an expanded advocacy role, will listen to small businesses and family enterprises and work with the Treasury portfolio to ensure small business perspectives and views are front of mind and embedded in bureaucratic, consultative and policy and program development, analysis and review processes across the Commonwealth." Mr Billson explained



that under the “assistance function, the Ombudsman will fulfil an important alternative dispute resolution role, providing improved access to justice for small businesses at the Commonwealth level. The Ombudsman assistance function requires the Ombudsman to give assistance in relation to relevant actions if requested to do so, and will comprise two parts - a concierge role and an outsourced alternative dispute resolution service.”

Mr Billson noted that “when used effectively, alternative dispute resolution services help improve business productivity, preserve business relationships, and avoid expensive litigation. It is important that the ombudsman facilitate, and not hinder, the timely resolution of disputes. The outsourced

alternative dispute resolution service has been designed so that the Ombudsman can help parties understand their options, but that any alternative dispute resolution process is conducted by an independent practitioner chosen by the parties.”

**Senator Jacinta Collins** indicated that the Labor Opposition supports the legislation but not without raising the concerns of stakeholders who submitted to the Senate Legal and Constitutional Affairs Legislation Committee review of the Bill. Senator Collins noted that “these concerns are specifically in reference to the use of the title ‘Ombudsman’ for this role, its defined powers and its degree of independence. Questions were raised in the inquiry as to the appropriateness of the use of the term Ombudsman in

this context.” Senator Collins stated that “Labor Senators note the strong opposition expressed by numerous expert groups and peak organisations in the six submissions that expressed a view about the use of the term Ombudsman in the title. The Commonwealth Ombudsman identified concerns with the suitability of the title of Ombudsman for this role, and the Australian and New Zealand Ombudsman Association noted that the office proposed is not an Ombudsman, and should not be called one. The Commonwealth Ombudsman expressed strong concerns that use of the term Ombudsman in this context is misleading and has the potential to damage the Ombudsman brand that has been developed by Ombudsman offices throughout Australia over the last 40 years.”



# LEADERSHIP CHANGES

## Prime Minister Abbott replaced by Malcolm Turnbull

On 14 September 2015, Prime Minister, **Hon. Tony Abbott MP** lost the support of the Liberal Party and was replaced as Leader by **Hon. Malcolm Turnbull MP**.

Mr Abbott's defeat followed party unrest in February when certain members of the Liberal Party moved a spill motion against Mr Abbott. On that occasion Mr Abbott survived but his leadership was wounded and he was effectively on notice to improve or be replaced.

On the afternoon of 14 September, Mr Turnbull advised Mr Abbott that he would be challenging him for the leadership and sought a leadership spill. Mr Turnbull in a press conference indicated that as Prime Minister he would engage with the Australian public and explain more effectively the challenges ahead and the possible solutions. Mr Abbott in response cautioned the Liberal Party not to go down the path of the Labor Party in changing its leaders midstream. Mr Abbott called a party room meeting for 9.15pm. When the result was announced Mr Turnbull was victorious by 54 votes to 44.



Hon. Tony Abbott MP

Mr Turnbull, 61, becomes the 29<sup>th</sup> Prime Minister of Australia. He attended Sydney University and was a Rhodes Scholar in 1978. Between 1975 and 1979 he was a journalist but it is as a barrister that he achieved notable achievements. In 1983 he was successful in representing former MI5 officer Peter Wright, author of the book *Spycatcher*, against the British government's attempts to suppress the publication of the book. Mr Turnbull made a successful career and generated significant wealth as a merchant banker. He entered Parliament in 2004 as the member for the seat of Wentworth in Sydney. In 2007, he became Minister for Environment and Water Resources in the last year of the Howard Government. In addition, he was Minister for Communications from September 2013 to September 2015. He is married to Lucy Turnbull and has a daughter.

On 15 September 2015, Mr Turnbull addressed the House of Representatives for the first time as Prime Minister. In relation to Mr Abbott, Mr Turnbull commented that "our nation, our parliament, our government and our coalition parties owe Tony Abbott an enormous debt of gratitude for his leadership and his service over many, many years. He led us out of opposition, back into government. The challenges of leadership are very considerable. The pressures are enormous. As Tony Abbott has often said himself, very profoundly, all of us here are volunteers; it is our families who are conscripts. We should acknowledge today, of course, the debt we also owe to his wife, Margie, and their daughters.

*Tony has discharged his role as Prime Minister—indeed, as Leader of the Opposition—with enormous distinction and achievement. The free trade agreements alone, which have been negotiated under his leadership, represent some of the most significant foundations for our future prosperity. Of course, under his leadership our government restored the integrity of our borders, with the consequence that we have been enabled to make the increased and very generous arrangements for Syrian refugees last week."*

The Leader of the Opposition, **Hon. Bill Shorten MP** commented that "I want to add my remarks to the events and the departure of Mr Abbott as Prime Minister. It is a privilege to serve here and it is a vocation, but, as we know, politics can be very hard as well. It is part of the Australian spirit not to score points when someone is down, so I just want to say that public life is hard on people who serve and it is hard on their families. It is not for me to be partisan about Mr Abbott's record, but he certainly led the Liberal Party formidably for well in excess of five years. He is a fierce and formidable proponent of his views and a ruthless advocate for what he believes in. From his first victory in 2009 to become the Leader of the Liberal Party, right through to last night, he has been a fighter—a formidable fighter."

Mr Shorten congratulated Mr Turnbull noting that "to become Prime Minister of Australia. It is a signal honour. It is one which is afforded to very few Australians. You have sought an active role in public life and this is the highest position which can

*be awarded. We on the Labor side congratulate you. We also recognise that you have a unique opportunity to make this country more modern, more adaptive and more responsible. It may be a genuine chance for this nation. This chance is not defined by you or me but by the coalition's policies and Labor's policies and what we can do for this country. That is the real test. For us, it will be about the ideas you put forward and the ideas we put forward. It will be a genuine choice and a genuine chance for this country. It will be up to this country, between now and the next election, to select who has the best ideas to advance Australia."*

## New Turnbull Government Ministry

On 20 September 2015, the new Prime Minister, **Hon. Malcolm Turnbull MP** announced his new look Ministry which included extensive changes. Some of the key changes include the appointment of **Hon. Scott Morrison MP** as Treasurer replacing **Hon. Joe Hockey MP** who later resigned from Parliament on 23 October.

**Senator Hon. Marise Payne** was appointed Minister for Defence becoming the first female in that role in the



Hon. Malcolm Turnbull MP



nation's history. Mr Turnbull noted that *"Marise is one of our most experienced and capable Senators. She has spent two years in the Human Services portfolio and has done an outstanding job in modernising Government service delivery. She will release the Defence White Paper later this year, defining our key national security priorities and she will of course join the National Security Committee of the Cabinet."*

**Senator Hon. Michaelia Cash** was promoted to the Cabinet as Minister for Employment, Minister for Women and Minister assisting the Prime Minister for the Public Service. Mr Turnbull noted that *"she has led the Government's policy development on women's issues especially in regards to our response to the scourge of domestic violence."*

In addition, **Hon. Kelly O'Dwyer MP** enters the Cabinet as the Minister for Small Business and the Assistant Treasurer.

**Senator Hon. Arthur Sinodinos** was appointed Cabinet Secretary. In relation to this appointment, Mr Turnbull noted that *"I said a few days ago that it was critical that we restore traditional Cabinet Government. The gold standard of good Coalition Cabinet Government was during the Howard Government and as you all know, Arthur was at the centre of that as John Howard's chief of staff for over a decade."*

**Senator Hon. Simon Birmingham** was appointed the Minister for Education and Training and **Senator Hon. Mitch Fifield** takes over Mr Turnbull's previous position as Minister for Communications and the Arts.

**Hon. Christian Porter MP** was appointed Minister for Social Services. Mr Turnbull noted that *"he is a former*

*Treasurer and Attorney-General for the State of Western Australia. He is a formidable lawyer with strong public finance experience. He has got a strong record of managing large Budgets and making service delivery much more efficient."*

**Senator Hon. George Brandis** remains the Attorney-General, and was appointed Leader of the Government in the Senate replacing **Senator Hon. Eric Abetz** who was not reappointed to the Ministry.

Mr Turnbull concluded by noting that *"there are some very big changes in the Cabinet, there are now five women in the Cabinet. But renewal of course, the introduction of new talent that exists, means that others have to leave. One of the great challenges for any leader is to ensure that there is renewal. That we do - we are able to bring up new talent, new faces, into leadership positions over time and that often means, that invariably means in fact, that very capable people have to move on, stand aside, so that others can come through. And that's tough for everybody concerned."*

### Senate Privileges Committee Report

On 12 August 2015, the Senate Standing Committee of Privileges (the Committee) tabled a report entitled *Possible imposition of a penalty on a witness before the Rural and Regional Affairs Transport References Committee*.

The inquiry dealt with the matter of whether an employee of the Civil Aviation Safety Authority (CASA), Mr Rogers, who gave in-camera evidence to the Rural and Regional Affairs Transport Reference Committee was later subject to code of conduct proceedings by CASA as a consequence of giving evidence to a Parliamentary Committee.

The code of conduct proceedings, which related to the employee's use of IT systems, resulted in a recommendation that the officer's employment be terminated. The Senate Procedural Information Bulletin (SPIB) noted that *"improper interference with a witness ranks among the most serious of all possible contempts."* The Senate's Privilege Resolution 6 (11) states that *"a person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a Committee."*

The Committee stated that *"the Senate has long regarded the intimidation of, or imposition of penalties on, witnesses as the most serious of all possible contempts. Committees rely upon the integrity of the evidence presented to them, so conduct which deters witnesses from giving evidence, or penalises them for doing so, can compromise the inquiry process and interfere with the performance by Committees of their functions."*

In this particular inquiry, the SPIB noted that *"in this case, it was not disputed that action was taken against the employee. What was at issue was whether that action was taken as a result of his giving evidence."*

The Committee noted that *"on 9 October 2013 CASA informed Mr Rogers it had undertaken an audit of access to its files, and alleged that he had used CASA's IT system to access documents which CASA says he had no legitimate business need to access."*

The Committee further noted that *"CASA maintains that it had no knowledge when it undertook the audit of files that Mr Rogers had given evidence, nor of the evidence he had given; nothing in the material before*

*the Committee contradicts this. CASA accordingly invites the conclusion that its action could not have occurred on account of the evidence he gave."*

The Committee concluded that *"without cogent evidence of an improper motive for initiating the code of conduct proceedings, the Committee is unable to conclude that there was a causal connection between the disciplinary action and the giving of evidence, particularly given that CASA had no knowledge of the in-camera hearing. This conclusion is also warranted because CASA's initial actions were, in the Committee's view, reasonable in the circumstances, and because CASA was subsequently entitled to proceed on the basis that its assurances to the References Committee about its treatment of the witness had been accepted."* Accordingly, the Committee could not recommend that a contempt be found.

The Committee discussed the preferred action by Parliamentary Committee when dealing with concerns that a witness may suffer adverse actions on account of giving evidence.

The Committee stated that *"committees may take whatever steps they consider necessary, and may resolve such matters themselves or report them to the Senate. Individual Committees will often be best-placed to assess the risk of interference and determine what preventive or remedial action to take. Experience has shown that the effective intervention of Committees while their proceedings are in train generally provides a better remedy than recourse to the Senate's formal contempt powers, although Committees should always consider referring serious matters to the Senate."*



### The Constitution (One Hundredth) Amendment Bill, 2015

India and Bangladesh have a common land boundary of approximately 4,096.7 kms. The India-East Pakistan land boundary was determined as per the Radcliffe Award of 1947. Disputes arose out of some provisions in the Radcliffe award, which were sought to be resolved through the Bagge Award of 1950. Another effort was made to settle these disputes by the Nehru-Noon Agreement of 1958. However, the issue relating to the division of Berubari Union was challenged before the Supreme Court of India. To comply with the opinion rendered by the Supreme Court, the *Constitution (Ninth Amendment) Act, 1960* was passed by the Parliament. Due to the continuous litigation and other political developments at that time, the *Constitution (Ninth Amendment) Act, 1960* could not be notified in respect of territories in former East Pakistan (presently Bangladesh).

On 16 May 1974, the Agreement between India and Bangladesh concerning the demarcation of the land boundary and related matters was signed between both the countries to find a solution to the complex nature of the border demarcation involved. This Agreement was not ratified as it involved, inter alia, transfer of territory which requires a Constitutional Amendment. In this connection, it was also required to identify the precise area on the ground which would be transferred. Subsequently, the issues relating to demarcation of un-demarcated boundary; the territories in adverse possession; and exchange of enclaves were identified and resolved by signing a Protocol on 6 September 2011, which forms an integral part of the Land Boundary Agreement between India and Bangladesh, 1974. The Protocol was prepared with support and concurrence of the concerned State Governments of Assam, Meghalaya, Tripura and West Bengal, in India.

Accordingly, the Government brought forward the *Constitution (One Hundred and Nineteenth Amendment) Bill, 2013* which proposes to amend the First Schedule to the Constitution, for the purpose of giving effect to the acquiring of territories by India and transfer of territories to Bangladesh through retaining of adverse possession and exchange of enclaves, in pursuance of the aforesaid Agreement of 1974 and its Protocol entered between the Governments of India and Bangladesh.

### Salient Features of the Bill:

- '*acquired territory*' has been defined to mean so much of the territories comprised in the India-Bangladesh agreement and its protocol and referred to in the First Schedule as are demarcated for the purpose of being acquired by India from Bangladesh in pursuance of the agreement and its protocol;
- '*India-Bangladesh agreement*' means the agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters dated 16 May 1974, Exchange of Letters dated 26 December 1974, 30 December 1974, 7 October 1982, 26 March 1992 and protocol to the said agreement dated 6 September 2011, entered into between the Governments of India and Bangladesh, the relevant extracts of which are set out in the Third Schedule;
- '*transferred territory*' means so much of the territories comprised in the India-Bangladesh agreement and its protocol and referred to in the Second Schedule as are demarcated for the purpose of being transferred by India to Bangladesh in pursuance of the agreements and its protocol.

*First Schedule to the Constitution of India* details the States and the Union Territories of the Indian Union.

*Second Schedule to the Constitution* inter alia comprise agreement between India and Bangladesh entered on 16 May 1974 and protocol dated 6 September 2011 between the two countries in terms of provisions of articles 2 and 3 of the Constitution of India.

Requisite amendments had accordingly been made to the First and Second Schedules to the Constitution of India for giving effect to the acquiring of territories by India and transfer of certain territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh.

**Debate:** This Constitution Amending Bill was unanimously hailed as a landmark enactment and got wholehearted and full support from all sections of both Houses of Parliament.

The Minister in-charge of the Bill (Minister of External Affairs and Minister of Overseas Affairs) briefly traced the history of the Bill. Referring to an agreement signed in 1974 between the then Prime Minister of India, late Smt. Indira Gandhi and Sheikh



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Mujibur Rehman (popularly known as the Indira-Mujib Agreement), the Minister observed that though this agreement was ratified by the Parliament of Bangladesh, the Parliament of India could not ratify the same and no discussion took place on this matter for past 37 years. The ratification could not be done due to non-demarcation of land boundary.

In 2011, the then Prime Minister took the initiative when he visited Bangladesh and the protocol in this regard was signed on 6 September 2011.

The Minister took this as her first priority on assuming office (when the new Government took over in May 2014). After completion of the requisite detailed groundwork, the Minister has now brought forward this Bill.

The Minister also stated that the Bill would benefit in three ways: -

- the demarcation of the land boundary which is yet incomplete would be completed.
- the fate of the people living in enclaves was hanging in balance and this issue would also be resolved.
- the parcels of land which are in adverse population would also turn into adverse occupation.

Further, India could also go ahead in the matters of trade and transit, etc. and the entire nation can also get closely connected with the North-East.

The Bill was introduced in Rajya Sabha as the *Constitution (One Hundred and Nineteenth Amendment) Bill, 2013* and was passed as such on 6 May 2015. Lok Sabha while passing the Bill unanimously on 7 May 2015 passed this with an amendment changing the short title of the Bill to the *Constitution (One Hundredth Amendment) Bill, 2015*. This amendment was agreed to by Rajya Sabha on 11 May, 2015.

The Bill as passed by both Houses of Parliament was assented to by the President of India on 28 May, 2015.

### The Delhi High Court (Amendment) Bill, 2015

Under sub-section (2) of section 5 of the *Delhi High Court Act, 1966*, the High Court of Delhi has ordinary original civil jurisdiction in respect

of suits, the value of which exceeds rupees twenty lakhs. The pecuniary jurisdiction of the High Court of Delhi and District Courts of Delhi was last revised in the year 2003 from rupees five lakhs to twenty lakhs by the *Delhi High Court (Amendment) Act, 2003*.

As the situation prevailed, cases involving even a small property are required to be filed before Delhi High Court as the Delhi High Court had ordinary original civil jurisdiction of the civil suits involving value of rupees twenty lakhs and above. This had increased the work load of the Delhi High Court and on the other hand, poor people living in Delhi had to cover considerable distance to approach Delhi-High Court to seek justice in their cases.

The Coordination Committee of the Bar Associations of Delhi at various forums had requested the enhancement of pecuniary jurisdiction of District Courts in Delhi. The Government of the National Capital Territory of Delhi had considered the request of the Bar Associations of Delhi and requested the Central Government for enhancement of pecuniary jurisdiction of ordinary original jurisdiction of the High Court of Delhi from the existing rupees twenty lakhs to rupees two crore.

Accordingly, it had been decided to increase pecuniary jurisdiction of the High Court of Delhi from rupees twenty lakhs to two crore by amending the *Delhi High Court Act, 1966* and the *Punjab Courts Act, 1918*, as in force in the National Capital Territory of Delhi.

The Amending Bill was first brought in February 2014, by the previous Government. The Departmentally Related Standing Committee of Law and Justice to which the matter was referred in the first instance after due examination in their Report had recommended increasing of original pecuniary jurisdiction of the High Court of Delhi, as well as District Courts under the jurisdiction. Subsequently, the new Government which assumed office in May 2015 also brought forward the Amending Bill before the Parliament.

### Salient Features of the Bill:

- Sub-section (2) of section 5 of the Principal Act, i.e., the *Delhi High Court Act, 1966* for the existing amount 'rupees

twenty lakhs', the words 'rupees two crore' has been substituted.

- A consequential amendment had also been made in section 25 of the *Punjab Courts Act, 1918*, as it is in force in the National Capital Territory of Delhi.
- Further, the Chief Justice of the High Court of Delhi had been empowered to transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate court in the National Capital Territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement.

**Debate:** During discussion on the Bill in both Houses of Parliament, the measure met with a broad consensus, terming it as progressive, salutary and a good initiative to fast track the judicial process.

Members felt that this move would help litigants to be heard in one of the District Courts across the city of Delhi. Members, however, came up with some suggestions:-

1. It had been noted appreciably that when judiciary in all the States is heavily laden with disputes and long lasting litigations, Delhi has had the good fortune that the Central Government had constituted no less than fourteen subordinate courts to lighten the load of the Delhi High Court. It was hoped that the Government would consider setting up more courts in the country with the avowed aim of a civilised society that justice be meted out as quickly as possible;
2. It was also enquired whether the Government proposed to bring about a system of taking punitive action on the false and flimsy cases that are filed by people;
3. A suggestion also came up that a system has to be worked out whereby the proceedings in cases must take place only when the applicant or the litigant (the one who had filed the cases), or the prosecution, if it is compelled to, supply all relevant papers at all different stages, free of cost, to the accused or to the other side;
4. It was also suggested that in the long run, the power of the original jurisdiction of the

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civil cases might be taken away from the High Court and given to the district courts so that the High Court could focus on the appeals and writ jurisdiction; and

5. Finally the pecuniary jurisdiction should be uniform throughout the country.

The Minister in-charge of the Bill while replying to the debate in Parliament observed that in so far as the Amending Bill under discussion was concerned (i.e. pecuniary jurisdiction of Delhi High Court), the Coordination Committee of the Bar Association of Delhi had been representing at various fora to enhance the pecuniary jurisdiction of the Delhi Court from the existing amount of Rs. 20 lakhs to Rs. 2 crores. The Minister also placed on record that in December 2014, a Mega Lok Adalat was held in almost all the courts across the country and nearly 44 lakh pending cases were disposed of.

The Minister also stated that he had addressed letters to the Chief Ministers and Chief Justices of various High Courts to see that all necessary steps are taken for filling up of the vacancies of judges and disposal of cases.

In so far as fixation of pecuniary jurisdiction is concerned, the Minister observed that it comes under the prerogative powers of the State Governments after due consultation with the concerned High Court.

The Bill was passed by Rajya Sabha on 6 May 2015 and by Lok Sabha on 5 August 2015.

The Bill as passed by both Houses of Parliament was assented to by the President of India on 10 August 2015. The *Delhi High Court Act, 1966*, accordingly stood amended.

### The Repealing and Amending Bill, 2015

The Bill is one of the periodical measures by which enactments which have ceased to be in force or have become obsolete or the retention whereof as separate Acts is unnecessary are repealed or by which the formal defects detected in enactments are corrected.

Way back in 1998, a Commission named the Jain Commission had examined around 2,500 Central Laws in the Statute Book and recommended that more than 1,300 laws be repealed. The Repealing and Amendment Bill, 2014 had initiated the process of clearing these laws from the Statute Book.

### Salient Features of the Amending Bill:

- This Bill has two schedules. The First Schedule proposed repeal of 35 enactments while the Second Schedule proposed amendments to certain enactments.
- Precautionary provision as contained in clause 4 of the Bill provided that this measure –
  - would not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;
  - nor it would affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;
  - further it would not repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

The First Schedule repealed the following 35 Acts/Amending Acts:-

- The Indian Fisheries Act, 1897
- The Foreign Jurisdiction Act, 1947
- The Sugar Undertakings (Taking Over of Management) Act, 1978
- The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
- The Representation of the People (Amendment) Act, 1999
- The Indian Majority (Amendment) Act, 1999
- The Administrators-General (Amendment) Act, 1999
- The Notaries (Amendment) Act, 1999
- The Marriage Laws (Amendment) Act, 1999
- The Repealing and Amending Act, 2001
- The Marriage Laws (Amendment) Act, 2001
- The Indian Divorce (Amendment) Act, 2001
- The Indian Succession (Amendment) Act, 2002

- The Legal Services Authorities (Amendment) Act, 2002
- The Representation of the People (Third Amendment) Act, 2002
- The Transfer of Property (Amendment) Act, 2002
- The Indian Evidence (Amendment) Act, 2002
- The Representation of the People (Second Amendment) Act, 2002
- The Representation of the People (Amendment) Act, 2002
- The Election Laws (Amendment) Act, 2003
- The Representation of the People (Amendment) Act, 2003
- The Marriage Laws (Amendment) Act, 2003
- The Representation of the People (Second Amendment) Act, 2003
- The Delimitation (Amendment) Act, 2003
- The Delegated Legislation Provisions (Amendment) Act, 2004
- The Hindu Succession (Amendment) Act, 2005
- The Parliament (Prevention of Disqualification) Amendment Act, 2006
- The Delimitation (Amendment) Act, 2008
- The Representation of the People (Amendment) Act, 2008
- The Representation of the People (Amendment) Act, 2009
- The Personal Laws (Amendment) Act, 2010
- The Representation of the People (Amendment) Act, 2010
- The Anand Marriage (Amendment) Act, 2012
- The Administrators-General (Amendment) Act, 2012
- The Parliament (Prevention of Disqualification) Amendment Act, 2013

The Second Schedule proposed amendments in preliminary clauses of two Acts as per details given below:

1. *The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.*  
In the proviso to sub-section (3) of section 1, for the words 'the notification', the words 'the said notification' shall be substituted.
2. *The Whistle Blowers Protection Act, 2011*  
- (a) In the Enacting Formula, for the words 'Sixty-second Year', the words 'Sixty-fifth Year' shall be substituted; and (b) in sub-section (1) of section 1, for the figures '2011', the figures '2014' shall be substituted.

**Debate:** The Bill found support from all sections of the House. The general



observation which emerged was that while certain Acts when enacted sought to address and did address issues pertinent to people at large or sections of society at that particular point of time, with the passage of time these enactments became redundant. This periodic exercise of Repealing and Amending of certain enactments was a long time in coming and hence was required.

The Bill was passed by Lok Sabha on 18 March 2015 and by Rajya Sabha on 5 May 2015. The Bill as passed by both Houses of Parliament was assented to by the President of India on 13 May 2015.

### **The Warehousing Corporations (Amendment) Bill, 2015**

*The Warehousing Corporations Act, 1962* was enacted to provide for the incorporation and regulation of corporations for the purpose of warehousing of agricultural produce and certain other commodities as may be notified by the Central Government and for matters connected therewith.

The Central Warehousing Corporation established under the said Act is a profit earning Public Sector Enterprise under the administrative control of the Department of Food and Public Distribution and a Mini-Ratna Public Sector Enterprise as declared by the Department of Public Enterprises, Government of India. One of the essential criteria for award of Mini-Ratna status to a Central Public Sector Enterprise is that no financial support or contingent liability on the part of the Government should be involved in respect of that enterprise and that it should also not depend upon any budgetary support or Government guarantee.

The Central Warehousing Corporation had consistently paid dividend to the Government of India since 1957-58. The net worth of the Corporation had been positive from 2003 onwards. The Corporation had not taken any loan from the Central Government. Further, it is also not dependent upon budgetary support of the Government. Moreover, the Government had given no other guarantee to the Corporation except for the payment of minimum guaranteed dividend as required under sub-section (1) of section 5 of the Warehousing Corporations

Act, 1962. Hence, section 5 of the said Act was proposed to be suitably amended with consequential amendments in sections 27, 30, 31 and 39 thereof. The guarantee referred to in the said sub-section (1) of section 5 would be withdrawn and the Central Government would be absolved of its responsibility of being guarantor.

The Government accordingly brought forward the *Warehousing Corporations (Amendment) Bill, 2015*.

### **Salient Features of the Amending Bill:**

In the principal Act (*The Warehousing Corporations Act, 1962*), existing section 5 had been substituted by a new section providing for: Shares of the Central Warehousing Corporation would be deemed to be -

- a) included among other securities enumerated in section 20 of the Indian Trusts Act, 1882; and
- b) the approved securities for the purpose of the Insurance Act, 1938 and the Banking Regulation Act, 1949.

In the principal Act, in section 27, for sub-section (4), a new sub-section has been substituted providing that the bonds and debentures of a State Warehousing Corporation may be guaranteed by the appropriate Government on the recommendation of the Board of Directors of the State Warehousing Corporation at the time such bonds or debentures are issued.

Further, in the principal Act, proviso to sub-section (2) of section 30, proviso to sub-section (8) of section 31 and both provisos to section 39, had been omitted, since the same were not required in view of the Amending Bill.

**Debate:** The Amending Bill met with acceptance from Members of the Houses of Parliament. The Members observed that Central Warehousing Corporation (CWC) has been functioning on a profitable basis, hence it does not depend on any financial support or contingent liability as the part of the Government.

Hence, it was but natural that Government would be absolved of its responsibility of being the guarantor any longer. Some Members expressed apprehension regarding privatisation of warehousing. The Members, however, put forth broadly the following suggestions:-

1. It is necessary to upgrade the existing bulk handling infrastructure through enabling

Government policies like focussing on mechanical harvesting, construction of a series of silos to rail heads and to destinations through specially designed tracks and railway wagons;

2. At present the storage capacity available is 108 million metric tonnes. The total of warehousing gap is to the tune of 350 lakh tonnes. So, there is need for more godowns, warehouses and better technologies;
3. There is urgent requirement of warehouses in the country because millions of tonnes of food grains, vegetables and fruits require immediate and appropriate storage to obviate perishing of said food items; and
4. The Government should seriously think about as to how the farming can be made a profitable venture. This can only be done when the cost is brought down and adequate storage facility is created so that the farmers could get the right price for their produce.

The Amending Bill was discussed in depth in both Houses of Parliament. The Minister in-charge of the Bill while replying assuaged some Members' apprehension about privatisation of Warehousing. The Minister observed that when the Government would hold 55% share, the shareholders need not have any fear. Further, when an enterprise is given a mini ratna and grade one status then the Government support has to be withdrawn.

The Minister assured that it is the responsibility of the Government of India to transport the food grains up to the godowns. The destination where the food grains go from the FCI godowns, is the responsibility of the State Governments. The capacity of the godowns is shared by the Union Government and the State Government, at 50% each. The Union Government had strictly conveyed that the rice and wheat should not be stored for more than a half year as they have two years life. Necessary orders had been issued in that regard. Further, Government is also promoting silos.

The Bill was passed by Lok Sabha on 18 March 2015 and by Rajya Sabha on 28 April 2015. The Bill as passed by both Houses of Parliament was assented to by the President of India on 13 May 2015. *The Warehousing Corporations (Amendment) Act, 1962* accordingly stood amended.



## The Parliamentarian: Book Review

### Question Time India

Title: ***Parliamentary Questions: Glorious Beginning to an Uncertain Future***

Author: Devender Singh

Published by Orange Books International, New Delhi.

Price: Rs 595/-

India's democracy - the largest in the world - is perhaps the most vibrant. What has given it life is the power the people have under the Constitution to elect their representatives by universal adult franchise. The Constitution makes the Executive accountable to Parliament and through it to the people.

In Parliament and State elections, they ask the candidates critical questions about their promises and performance when they come to seek votes. After Parliament and State Assemblies are elected, MPs and MLAs daily subject ministers to questions in what has come to be known as the Question Hour with which the House begins its day's proceedings. It is considered a sacred hour and the 60 minutes of questioning make the Ministers accountable for their policies and decisions, and their implementation. In this way through questions, MPs bring the rulers under their critical gaze and assess their performance, adequate or otherwise, under public scrutiny.

By nature, Indians like to ask questions and demand answers from their rulers for their acts of omission and commission. The Ministers have got to work hard to prepare their answers and often a cleverly-worded, probing and off-the-cuff supplementary forces a reluctant Minister to

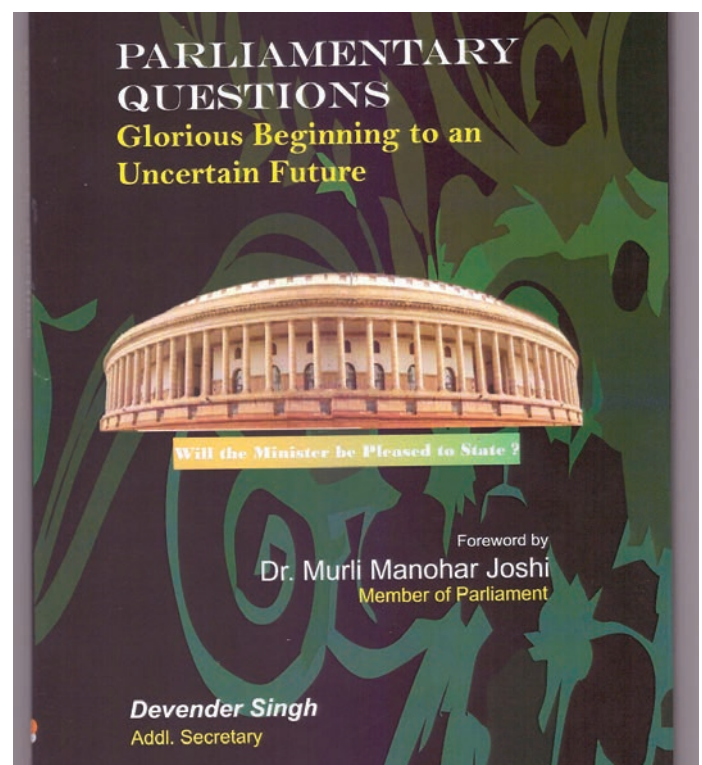
come out with an inconvenient truth lying buried somewhere in the bureaucrat's files being kept away from public light.

Devender Singh, who has spent a life time in the Lok Sabha Secretariat, after painstaking research has come out with an excellent book on the evolution of parliamentary questions in India as an effective means of promoting transparency in the Government's functioning and enforcing its accountability.

The volume gives a remarkable insight from the first question that was asked way back in 1893 when a sort of executive council had formed, although with limited powers under the British Raj. This was a mild attempt to make the powerful executive somewhat accountable in a few areas of administration. Over the years the Question Hour has bloomed.

What is required for a question and supplementary to be effective in making the executive accountable is the Members' vigilance and sense of responsibility required for their work. A false answer given by the Minister can become an embarrassment for him or her.

Often Ministerial answers are vague and woven in language which says nothing about the real answer demanded by a Member. Often the 'fluff' surrounding the answers is deliberate as the Ministers and the bureaucrats working under them, don't want to be transparent about their work. In such cases, the Members can seek the Chair's protection and insist on a complete answer. A Minister who cannot answer a question by a Member generally



looks silly in the House. Often an unsatisfactory response can lead to a half-hour discussion, which the Speaker might permit if the issue raised by the question is of wider public interest.

Essentially, the Question Hour in Parliament links the elected to their electors — which is important for a democracy to be more effective. Often, those who come to power get alienated from the people and the realities on the ground. Questions in India's Parliament can be about a wide range of issues like: shortage of drinking water and toilets in the rural areas, prospects of the monsoon, condition of roads and government's promises to create more jobs, frequent delays of running of trains or flights, or the latest border skirmishes between India and Pakistan, or what is

happening on the Sino-Indian border. The 1893 Question was about the condition of poor farmers living in deprivation.

Considering the enormous size of the population, Parliament, however, can get overburdened with questions. So to tackle the problem, a selection is made by ballot.

Only 20 starred questions are allowed on which lucky members can ask supplementary questions. To unstarred questions the Minister has to give a written answer. Often a written answer becomes a lead story in the next day's newspaper; both starred and unstarred questions have their uses. A capable MP can use a question not only to seek an answer but through this device can draw the attention of the government and the people to





an issue requiring an urgent solution.

The Question Hour in a way is a very important event of the day's proceedings, however, it is lately under threat from the Members themselves. The fractious nature of Parliamentary Democracy often derails the day's proceedings. If not part of the day's legislative business, the Question Hour, certainly becomes a casualty in case of disruption and adjournment. The loser in the game are the Members, Parliament and the people. Hopefully some solution will be possible to ensure that Parliament functions in an orderly manner.

Devender Singh's book is useful reading for all those who have a stake in the funding of

parliamentary democracy. But he is worried about the future of the Question Hour and rightly so.

**Book Review by H. K. Dua, MP,** a Member of the Upper House, Rajya Sabha of India, having been nominated by the President and former Prime Minister, Dr Manmohan Singh. Most of his career, he has been a journalist, having been Editor of national dailies like the Hindustan Times, the Indian Express and the Tribune. He was also the editorial adviser to the Times of India. He has interviewed several world leaders including Mrs Margaret Thatcher, Prime Minister Li Peng, Israeli Prime Minister Rabin and Iranian President Rafsanjani. He was Media Adviser to the two Prime Ministers of two different political parties and was the Indian Ambassador to Denmark.

**Author Devinder Singh** is Additional Secretary, Lok Sabha Secretariat in the Parliament of India. He joined the Lok Sabha Secretariat as Examiner of Questions in 1985 and over time, serviced the Public Accounts Committee, the Estimates Committee and many other Standing Committees. He became Joint Secretary in 2007 and Additional Secretary in 2014 and has written extensively on contemporary constitutional and parliamentary issues. As the principal draftsman of some of the most widely publicized reports of the Public Accounts Committee and many other Parliamentary Committees, he has made a distinct contribution and earned adulation from Chairmen and Committee Members for his professional competence. A scholar of constitutional and parliamentary

studies having had a long term ring side view of the workings of the Indian Parliament, he has been a faculty member of the Bureau of Parliamentary Studies and Training and the Institute of Constitutional and Parliamentary Studies, New Delhi. He has delivered numerous lectures on almost all aspects of the functioning of Indian Parliament and its Committees to legislators and parliamentary officials from various jurisdictions across the world, probationers of All India Services, university teachers and journalists. Widely travelled, he has also served as Secretary to many parliamentary delegations and his articles have appeared in many national dailies, journals and magazines.

**Below: The Central Hall in the Parliament of India.**



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