

**IN THE HIGH COURT OF SOLOMON ISLANDS** Civil Case No. 175 of 2015  
(Civil Jurisdiction)

<b>Waeta Ben Tabusasi, Ruth Liloqula, Derick Rawcliff Manu'ari, Anthony Vernon Hughes and Graham Mark -V- Members of Parliament (Entitlements) Commission And The Attorney-General</b>	<b>The Claimants    First Defendant  Second Defendant</b>
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Hearing: 16 – 17 November 2016  
Judgement: 19 April 2016

Mr. Andrew Radclyffe, for the Claimants.  
Mr. John Sullivan QC and Mr. John Katahanas for the First Defendant  
Mr. S. Banuve Solicitor General and Mr. J. Muria Jnr. for the Second Defendant.

Palmer CJ.:

1. The claimants in this case are senior citizens of Solomon Islands apart from the third claimant who is a sitting Member of Parliament. They have come to this court to challenge some decisions of the Members of Parliament (Entitlements) Commission (“MPEC”) as set out in the Members of Parliament (Entitlements) Commission (Amendment) Regulations 2015 (“the 2015 Regulations”), which came into force with effect from 1<sup>st</sup> April 2015. By virtue of section 69B (4), the regulations come into force on the 1<sup>st</sup> April of the year it was made if made before that date, or the year following, on any other date provided that it may specify a date when it shall come into force.
2. They say the First Defendant (MPEC) had failed to comply with section 69B (2) and (3) of the Constitution in relation to Regulations 5, 6, 7, 8, 9, 10, 14, 16, 28, 29, 32, 33, 34 and 36 of the 2015 Regulations.
3. They also allege the following breaches:
  - (i) The First Defendant is in breach of its obligations under section 69B (2)(a) of the Constitution in that the Commission did not call for or consider representations within any specified time.
  - (ii) The First Defendant is in breach of its obligations under section 69B (2)(b) of the Constitution in that the Commission failed to consult or adequately consult the Government, Parliament or any other organization in relation to the matters set out in sub-clauses (i), (ii) and (iii) of section 69B (2)(b).
  - (iii) The First Defendant is in breach of its obligations under section 69B (3)(a) of the Constitution in that the entitlements given to Members of Parliament in the Regulations set out in paragraph 7 (of the Amended Statement of Case filed 7 August

2015) do not facilitate and are not capable of facilitating the discharge of the functions of the Members of Parliament.

- (iv) The First Defendant is in breach of its obligations under section 69B (3)(b) of the Constitution in that the salaries and entitlements in the Regulations set out in paragraph 7 are far more generous than the salaries and entitlements of public officers.
- (v) The Claimants allege that Regulation 2(a) whereby there is a change of title from “Chairman of Parliamentary Caucus” to “Chairman of Government Caucus” is *ultra vires* on the grounds that the First Defendant has no power to grant entitlements to the holder of that position, which is not position recognized in the Constitution or any other law.
- (vi) The Claimants allege that Regulation 3 is contrary to the provisions of the National Parliamentary Electoral Provisions Act on the grounds that a Member of Parliament does not officially take up his/her position until he/she has been declared a member under section 55 of the said Act. The reference to section 33 of the Act in Regulation 3 is in error of law in that section 33 deals with the giving of notice of an election.

4. The relief sought by the Claimant is set out as follows:

- (a) a declaration that Regulations 2(a) to the extent alleged in paragraph 9 of the Amended Statement of Case, 3, 5, 6, 7, 8, 9, 10, 14, 16, 28, 29, 32, 33, 34 and 36 are unconstitutional and null and void;
- (b) a declaration that any payments or tax exemptions made or granted pursuant to the said Regulations are null and void;
- (c) an order restraining the Second Defendant from making tax free payments to Members of Parliament or other payments under the 2015 Regulations that the Court has determined to be unconstitutional;
- (d) such further or other relief as the Court thinks fit;
- (e) costs.

**The MPEC not a Tribunal.**

5. A preliminary argument raised by learned Counsel Mr. Sullivan for the First Defendant is that the MPEC is not a tribunal but an “independent constitutionally established legislature”, like a mini-Parliament and so within its limited legislative arena is superior to Parliament and not subject to any direction or control. To that extent he argues that the Court’s jurisdiction is limited only to determining whether the Commission has performed its functions in accordance with the Constitution. I note this argument is separate and distinct to the provisions in section 137(4) of the Constitution which provides that in the exercise of its functions under the Constitution no such Commission shall be subject to the direction or

control of any other person or authority, except where otherwise provided by the Constitution.

6. It appears this position is taken by virtue of the provisions of section 69B 4(b) of the Constitution which provides that regulations made or amended under that section shall have effect as if it were a provision of the Constitution. It follows that the elevation imbues the regulations with constitutional status and cannot be removed save under the provisions of section 83 of the Constitution for any contraventions.
7. While I concur in principal with this argument it is erroneous to take it further and suggest that it imbues the MPEC with legislature powers and turns it into a separate and independent legislature, for it is not and cannot be. The most that can be construed from this is that once the regulations have been validly made, they assume constitutional status and thereby take priority over others. Nothing more can and should be added and construed from that enactment other than that the MPEC has a specific and limited constitutional role, to determine salaries, entitlements and benefits of Parliamentarians (see section 69B (2)(c) and 69B(3)). Within the cocoons of its constitutional mandate any regulations duly and validly made are unassailable.
8. The MPEC cannot usurp the Constitution or any legislative provision in force at the time of enactment of the regulations. Any conflict must be construed subject to those Constitutional and legislative provisions unless otherwise excluded under the constitutional provisions governing the powers of the MPEC.
  - (i) **The First Defendant is in breach of its obligations under section 69B(2)(a) of the Constitution in that the Commission did not call for or consider representations within any specified time.**

9. Section 69B (2)(a) of the Constitution provides:

*“(2) In the exercise of their powers, the Members of Parliament (Entitlements) Commission shall -*

*(a) consider such representations as they may receive from persons or body of persons, within such time as may be notified by them;”*

The first point to note is that there is an inherent obligation to call for or request from relevant persons and bodies who may make meaningful contributions based on their knowledge or expertise. The MPEC cannot take a passive approach and sit back and hope that representations will be made.

10. Did the MPEC call for or ask for representations in this instance? This is a question of fact. In the sworn statement of the Chairman, Mr. Johnson Siapu filed on 9<sup>th</sup> November 2015, he states at paragraph 78:

*“In preparing the 2015 Regulations, the Commission circulated drafts of proposed regulations to and invited consultations from, conducted consultation meetings with, and considered written submissions from the following groups/individuals –*

- a. Central Bank of Solomon Islands (“CBSI”);*
- b. Transparency Solomon Islands (“TSI”);*
- c. The Clerk to the National Parliament;*
- d. Permanent Secretary to the Ministry of Finance;*
- e. The Budget Unit and the Economic Reform Unit of the Ministry of Finance;*
- f. Acting Permanent Secretary of the Ministry of Health and Medical Services;*
- g. Mr. Aloisiou Ma’ahanoa;*
- h. Minister of Finance and Treasury;*
- i. The Chairman of Government Caucus; and*
- j. Parliament Association of Solomon Islands.*

11. I am more than satisfied on the evidence before me, and conceded by Mr. Radclyffe in his written submissions (at paragraph 9), that the MPEC did call for and request for representations to be made on some but not all aspects of the draft 2015 Regulations. The minimum requirement of paragraph 69B (2)(a) is that there is evidence which showed that any representations received were considered. In this instance I am satisfied on the balance of probabilities that the requirements of paragraph (a) were complied with and accordingly any suggestion otherwise cannot be sustained.

**(ii) The First Defendant is in breach of its obligations under section 69B(2)(b) of the Constitution in that the Commission failed to consult or adequately consult the Government, Parliament or any other organisations in relation to the matters set out in sub-clauses (i), (ii) and (iii) of section 69B(2)(b).**

12. Section 69B (2)(b) of the Constitution provides as follows:

*“(2) In the exercise of their powers, the Members of Parliament (Entitlements) Commission shall*

*(b) have regard to such information as may be supplied to them by the Government, Parliament or any other organisation in relation to the following matters –*

- (i) the state of the national economy and the financial position of the Government;*
- (ii) movements in the level of the pay and other entitlements admissible to other persons in employment; and*
- (iii) changes in the retail price index and other relevant indicator showing the cost of maintaining the standard of living that Parliamentarians might reasonably be expected to enjoy.”*

13. The issue raised under paragraph 69B(2)(b) is whether there was consultation and or adequate consultation with Government, Parliament and other organizations in relation to the three

matters - (i) the state of the national economy and the financial position of the Government; (ii) general pay movements; and (iii) price movements.

14. As pointed out in this judgement, I am satisfied it has been established on the evidence before me on the balance of probabilities that broad consultation had been carried out including with relevant authorities on the three matters set out in paragraph 69B(2)(b) of the Constitution.
15. One of the complaints raised during cross examination was that the MPEC did not invite submissions from each individual MP. Mr. Sullivan however pointed out and which I concur with, that there was no obligation to do so. Learned Counsel quite correctly pointed out that Parliament had its own body to consult Members and make representations on its behalf, being the Parliamentary House Committee of which Mr. Manu'ari (one of the Claimants) is Chairman. Under Standing Order 70, its function is stated as follows:

*“(a) to consider and advise appropriate authorities on such matters that are connected with Members’ terms and conditions of service”;*

16. Under cross examination it was conceded by Mr. Manu'ari that the House Committee did not consult Members on this aspect of its functions and that it did not make any representations to the Commission. But what is also evident in this is that the MPEC did not consult with this body or call for representations either. To that extent while it is not expected that the MPEC may not be required to call for representations from all Members of Parliament, it seems that the Parliamentary House Committee is one of those relevant authorities it should have consulted.
  17. In any event I am not satisfied the omission is fatal to the exercise of its functions for there is sufficient evidence which showed that the MPEC did consult with other relevant authorities.
  18. There is however, an important distinction that must be noted in the way paragraph 69B (2)(b) is worded as opposed to paragraph 69B (2)(a). Paragraph 69B 2(b) uses the words *“have regard to such information”* while paragraph 69B 2(a) uses the words *“consider such representations”* as used in. There is a difference in emphasis in those carefully chosen words and distinction in my view is deliberate and significant. It carries inevitably with it different connotations and emphasis. I concur with submissions of learned Counsel Mr. Radclyffe (paragraph 11 – written submissions), that this phrase carries more weight and stronger emphasis, failing which it raises the possibility that the MPEC may be acting beyond its powers if it fails to take into account what information has been submitted for its consideration.
  19. It is important to keep in mind that the MPEC does not have unlimited power nor does it operate in a vacuum. Its primary role is that of determining, reviewing and varying entitlements of Members of Parliament (section 69B (1)) and by virtue of paragraphs 69 B (2)(a) and 69 B (2)(b) it is obliged to take those matters into account doing so.
- (iii) **The First Defendant is in breach of its obligations under section 69B(3)(a) of the Constitution in that the entitlements given to Members of Parliament in the Regulations set out in paragraph 7 (of the Amended Statement of Case filed 7**

**August 2015) do not facilitate and are not capable of facilitating the discharge of the functions of the Members of Parliament.**

20. Section 69B(2)(c) of the Constitution sets out the purpose for which the consultation is done as follows:

*“(c) make regulations and having made them, amend such regulations, in accordance with section 137 of the Constitution, providing for the following matters –*

- (i) the scales of salaries and other entitlements payable to Parliamentarians;*
- (ii) the terms, conditions and manner of payment of such salaries and entitlements and of loans and advances on such salaries;*
- (iii) exemptions of such salaries and entitlements from taxes and other liabilities;*
- (iv) such other matters, including matters specified in subsection (3) of this section as may facilitate the discharge of their functions as Parliamentarians.”*

21. Subsection 69B(3) of the Constitution in turn provides as follows:

*“(3) In making or amending the regulations, the Members of Parliament (Entitlements) Commission shall -*

*(a) consider, in relation to Parliamentarians and their families the following matters, namely, accommodation during sittings of Parliament, housing, medical treatment, internal transport, external transport, travelling imprest, death and retirement benefits, appointment and terminal grants, advances and loans, additional payment for service in committees of Parliament, insurance and such other matter as may facilitate the discharge of their functions as Parliamentarians;*

*(b) secure that the salaries and other entitlements of Parliamentarians increase at no less a rate than the rate of increase, if any, of salaries and entitlements (taken as a whole) of the public officers.*

22. The complaints or objections taken under paragraph 69B(3)(a) is that the entitlements set out in paragraph 7 (of the Amended Statement of Case filed 7 August 2015) *do not facilitate and are not capable of facilitating the discharge of the functions of the Members of Parliament* (emphasis added). However as pointed out in this judgment, that is only part of the issue for the other part relates to the question whether “adequate consultation”, that is, whether the MPEC did “have regard to the information” that was provided to it under paragraphs 69B (2)(b)(i), (ii) and (iii) before making the entitlements?

23. I will deal with each regulation separately as to whether paragraph 69B(3)(a) of the Constitution had been breached hereafter pursuant to those two grounds, but first, it is pertinent to consider the question of the **role or functions** of a Member of Parliament.

**The role or functions of a Member of Parliament.**

24. In seeking to identify what the role or functions of a Member of Parliament is, it is relevant to determine in the first instance what the primary role and functions of Parliament are.
25. In the United Kingdom Parliament ("UK Parliament"), four identifiable **functions of Parliament** can be noted as follows:
- (i) Check and challenge the work of the Government (scrutiny);
  - (ii) Make and change laws (legislation);
  - (iii) Debate the important issues of the day (debating);
  - (iv) Check and approve Government spending (budget/taxes).
26. Under item (i) above, a Member of Parliament can scrutinize the work of government by examining and challenging the work of the government of the day through questioning ministers, debate and discussion and committee work.
27. Under item (ii) (legislation), this is the more common understood and recognised role of Parliamentarians, to debate, amend and vote on the proposals relating to new laws, amendments or changes to existing laws that have been put to it during Parliament meetings. Law making is the basic function of Parliament and considered to be the most important. Under section 59 of the Solomon Islands Constitution, Parliament is vested with legislative power to be exercised in accordance with the Constitution, to "... *make laws for the peace and, order and good government of Solomon Islands*".
28. Under item (iii) (debating), an important function of Parliamentarians is to be able to contribute meaningfully to debates etc., in which Members discuss government policy, proposed new laws and topical issues of the day, including question time when Ministers are asked questions about major Government projects and activities.
29. The fourth main function of the UK Parliament is in debating Government spending and proposals, and scrutinizing Finance and Appropriation Bills.
30. The Constitution of Solomon Islands vests Parliament with power under *Chapter X of the Constitution* to determine Government Finance and expenditures including the imposition of tax which cannot be done without an Act of Parliament (see section 106 of the Constitution). No tax can be levied and no expenditure incurred by the government except with the approval of Parliament. Parliament maintains control over the executive in matters of Finance by Budgetary control and the setup of financial committees to scrutinize Government spending.
31. Those core functions may also be summarized as follows:
- Legislative;
  - Financial powers;
  - Oversight of the executive;
  - Representational; and
  - Deliberative.

32. Those core functions equate *in tandem* to that of the Solomon Islands Parliament for our Parliamentary rules, Standing Orders, practices, conventions and precedents originate in principal from the Westminster System of Parliamentary Government with some fundamental differences; one of which is that in the UK system, Parliament is supreme while in Solomon Islands which has a written Constitution, Parliament is obliged to enact legislation that is not inconsistent with the Constitution. To the extent therefore any legislation enacted is inconsistent with the Constitution, the provisions of the Constitution shall prevail.
33. What is however of more direct relevance in this judgement is the representational roles or functions of a Member of Parliament. Parliament being the supreme forum for the ventilation of grievances and concerns aimed at seeking redress and attention, the Member of Parliament is the essential link between his constituents and Government. Through normal parliamentary processes such as Question Time, Statements, Motions, debate on policy/bills, among others, a Member has the opportunity to draw attention to developments, projects, potential activities in his constituency and ventilate these in Parliament on behalf of his constituency.
34. As a representative institution and often described as “*government of the people, by the people and for the people*”, it is not only “the people” in a defined geographical area that is necessarily represented but may also include others such as political parties, ideologies, states or provinces, business interests, unions and other interest groups etc.
35. To that extent the Member, as an elected representative of his constituents, is an agent for the realisation of the aspirations of his people and the nation at large. As stated in the Code of Conduct for Members of Parliament adopted by Resolution of the British House of Commons, 1995: “*Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.*”
36. Those roles or functions find their expression in terms of his duties in basically three areas:
- first to the nation;
  - second to his constituents; and
  - third to his Party.
37. It is in this arena of representational capacity to its constituents and others where discontentment, disagreement and dissatisfaction has arisen over the entitlements conferred whether they facilitate the discharge of their functions as Parliamentarians.
38. It is important therefore to try and answer the question as to what **the duties and functions of the Members of Parliament** are. In answering that relevant question we should in turn be able to decipher what they are not and in turn be able to answer the overarching question as to whether the entitlements conferred upon Members of Parliament by the MPEC *facilitate the discharge of their functions as Parliamentarians* or not and failing which that too will result in having its awards declared invalid as *ultra vires* its powers.



39. I do not think it can be denied that the role of a Member of Parliament is a multi-functional one. I have outlined to some extent their core functions of legislator, scrutinizer of Government business and representational. The list however is not exhaustive.
40. He is expected to find time to meet and interact with his constituents on a regular basis and to provide assistance, advice, information where necessary. He is expected to monitor projects and programs that have been initiated in his constituency and at times to facilitate these for and on behalf of his constituency. He is also expected to give assistance and advice to those in difficulty, act as a lobbyist for local interest groups and assist in his party's policies and activities and to continue to play an active community role.
41. In section 69C(2) of the Constitution, the word "entitlements" is defined as follows:
- "(a) "entitlements" include salaries, allowances and such other benefits, services or facilities, whether in cash or otherwise, as the Members of Parliament (Entitlements) Commission may consider it necessary to be provided to the Parliamentarians *to enable them to maintain the dignity of their office;*" (emphasis added).
42. In essence the definition of entitlements reiterates what is already commonly accepted that whatever entitlement is granted should assist Members of Parliament to maintain the integrity, discipline, decorum and respect that should be accorded to Parliament as the third arm of Government and as occupying a very important role in the governance of the country.
43. I will now consider in turn the specific breaches that have been alleged to have occurred under the 2015 Regulations.

**Regulations 5 and 36 of the 2015 Regulations.**

44. Regulations 5 and 36 relate to the existence of a Member's Discretionary Fund. I note what is challenged is the increase from \$300,000.00 to \$500,000.00 and not so much the validity or existence of the benefit. The MPEC submits that the proposed increase is justified as a consequence of the increasing demands by voters for assistance and evidence has been led to support the view that much of their time is also spent in attending to individual constituent's needs and demands ranging from school fees to assistance with weddings, deaths and funeral expenses etc.
45. It is pertinent however to note that the original objective and purpose for the establishment of such benefit was noble and consistent with the duties and responsibilities of a Member of Parliament in his representational capacity, to provide advice and assistance particularly to those in difficulty and primarily for charitable purposes and assistance towards the setup of micro projects.
46. The original regulations capture the accurately in my view, the purpose and intention of this entitlement or benefit. Under the Parliamentary (Entitlements) Regulations 1988, at regulation 9(3), these were originally described as "Micro-projects & Charities allowances" and their disbursement was controlled and regulated. For instance, Members were to obtain the prior approval *in writing* of the Minister responsible for the Province in which the micro-

project or charity is established; in the case of Honiara members, the Minister responsible for Honiara before committing funds to the support of any micro-project or charity [sub-subparagraph 9(3)(b)(ii)]; payments were not made in advance, only on reimbursement of expenditure actually incurred by a Member or in the alternative, payment was to be made in anticipation of the actual expenditure upon the signature by not less than one of the specified community leaders, a Minister of religion, an Area Constable or the Traditional Leader of the community where the project will be of benefit [sub-subparagraph 9(3)(b)(iii)]; and claims for reimbursement were to be in the prescribed forms (Appendix B) and supported by relevant receipts [sub-subparagraph 9(3)(b)(iv)]. The amount then was \$2,000.00 per annum.

47. What is pertinent to note is that it appears funds could not be accessed without strict compliance with the conditions attached and rightly so to reflect the dignity, integrity and honesty attached to the work of Parliamentarians.
48. Under the Members of Parliamentary (Entitlements) Commission (Amendment) Regulations 2010 however, a few subtle changes were effected which further whittled away it seems the safeguards of transparency and accountability mechanisms that had been put in place earlier. Under regulation 2, the phrase "*the purpose of encouraging micro-projects and charities established*" were deleted and replaced with a more general description and subject to the discretion of the Member of Parliament as follows "*for charitable purposes at the discretion of the Member*". As well, sub-subparagraphs (ii) and (iii) were revoked and substituted with a loosely worded substitute: "(ii) *A Member is entitled to claim the whole or part of the financial allocation by applying in writing to the Clerk setting out the charitable purposes and other information relevant to the allocation.*"
49. It appears thereafter the fund came to be known as the "Discretionary Fund" and the last increase raised the amount available to \$300,000.00 per annum.
50. There appears to be no dispute that the original purpose and intentions for the existence of this fund were justifiable and reasonable in the circumstances taking into account the representational duties and obligations of a Member of Parliament. It seems that after the controls and accountable mechanisms were removed the use and purpose to which the fund could be used, as adduced in evidence before me could more accurately be described as now subject to the whims of the Member of Parliament as to what he considers is appropriate for the occasion, for it appears there is no longer any guideline or control as to what purposes and use such fund could now be applied to. It is not surprising the use of this fund has also attracted bad publicity and criticism and may even be a source of corruption and corrupt practices.
51. The reason given to justify the increase in my view cannot be sustained when the noble goals and intentions for the setup of the fund are noted. Of significance is the clear advice given against any increases and which has been ignored.
52. Those guidelines exist to facilitate the work of a Member of Parliament in his representational capacity and performance of other duties towards his constituents. It does not give him/her a blanket right to dispense cash or money willy-nilly or for any sort of reason. If it is for charitable purposes and to assist with the setup of micro-projects etc., then it cannot be seen

as a means to facilitate the payment of just any need. These are not private funds to be dispensed with at will and pleasure! These are people's money and must be accounted for in a plain, transparent and responsible manner. The Member of Parliament must not lower the standards, requirements and obligation imposed upon him by virtue of his office. He must always seek to maintain the integrity, honour and decorum of such respectable position and calling and ensure he/she does not bring it into disrepute and contempt by engaging in seemingly legitimate activities but which demean his status and office in the country.

53. The increase is not only unreasonable and totally unjustified but also fails to take into account the advice given by other authorities and in terms of the matters specified in section 69B(2)(b) of the Constitution and must be struck out as well as unconstitutional.

**Regulations 6, 7 and 8 of the 2015 Regulations.**

54. Regulations 6, 7 and 8 relate to meal and subsistence allowances being extended to cover weekends and public holidays during sittings. The challenge has been misconceived and should be dismissed. While the concern is noted and appears reasonable in the circumstances, I note that the definition set out in regulation 2 of the word "Parliament meetings" is qualified by the addition of the words "*whole duration of sitting of Parliament...*". That qualification limits claims for those allowances only during the sittings of Parliament in that Parliament meeting and not when Parliament is **not sitting**. The objection is therefore dismissed.

**Regulation 9 of the 2015 Regulations.**

55. This amendment has the effect of exempting the terminal grant of a Member of Parliament who is medically certified to be wholly dependent and incapacitated from having his outstanding debt deducted. I am satisfied the purported exercise of this power has been misconceived. A debt is recoverable at law and illness or ill health whether medically certified or not is no impediment to recovery. The only person who can dispense with this is the creditor or the debtee. There is simply no basis or justification as to why the Government should not be able to recover debts in such instance. By conceding that the Government may recover the debt by going to court only strengthens the Claimant's argument that the amendment is misconceived and must be struck out as *ultra vires* the powers of the MPEC.

**Regulation 10 of the 2015 Regulations.**

56. Regulation 10 has the effect of removing the minimum aggregate period which a Member of Parliament must serve before becoming eligible for a life pension and secondly increases the percentage of the current basic salaries of Members of Parliament for calculation of the pension amount.
57. As per the recent amendments made under the Members of Parliament (Entitlements) Commission (Amendment) Regulations 2013, the minimum period to be served was up to 8 years with pension benefits fixed at 30% and in the upper scale above 24 years, 85%. The table provided sets these rates out in detail as follows:

Table

Aggregate period of years served in Parliament Column (1)	Percentage of salary for life pensions Column (2)
Up to 8 years	30%
Up to 16 years	40%
Up to 20 years	50%
Up to 24 years	75%
Above 24 years	85%

58. Under the new Regulations, the minimum limit was removed so that first time Parliamentarians were entitled to receive 35% pension entitlement and at the upper end those above 24 years were entitled to receive 95% of pension entitlements.
59. In carrying out consultations on this issue, the MPEC received a fairly comprehensive 6 page analysis report dated January 2015 from the Central Bank of Solomon Islands ("CBSI"), of the economic environment with clear conclusions and recommendations at page 6 as follows:

*"E. CONCLUSION 7 RECOMMENDATION*

*21. Costs of providing pensions for former MPs have risen over the years as more MPs exit parliament and become eligible for pension. About 95% of the former MPs are in the lowest two categories i.e. 54% in the four years category and 41% in the eight years category. Amendments to include members serving four years could raise pension costs by more than double to \$6.7 million per annum. The increase is not a one off jump in the first year of implementation but a permanent payment obligation for the government going forward.*

*22. Most of the former MPs that exited parliament are still in their productive years and can still work to sustain themselves before reaching the legal retirement working age of 55 years. There should be an age trigger for pensioners to become eligible.*

*23. Government finances deteriorated in 2014 and still in recovery mode. The revenue base of the government is narrowly based on a few commodities especially logging and susceptible to external shocks. Often statutory payments are not flexible to unfavourable revenue fluctuations in times of fiscal distress. Therefore uncontrollable increases to statutory obligations without due consideration for the government's weak revenue outlook can contribute to unnecessary fiscal stress in the future.*

24. *Enacting pensions for politicians just because they are former MPs without considering any other factors such as age trigger, government revenue trends, fairness to other government workers, MPs productivities in parliament, etc may not go down well with tax payers. The PEC should really weigh the different options properly before endorsing such a move.*

*Recommendation*

25. *Based on the foregoing analysis, the Bank made these recommendations:*

- a. *The proposed increase should be delayed.*
- b. *PEC should do a comprehensive review of politicians' pensions and gratuities instead of making piece meal reviews of the politicians' entitlements.*
- c. *PEC should also consider how pension policies in other similar jurisdictions are designed and managed.*
- d. *MPs should start contributing towards their own life pensions and should not rely solely on the government."*

60. The analysis, conclusions and recommendations couldn't be clearer. I am satisfied on the evidence before me that the MPEC failed to take at least this one important report into account amongst others, in terms of the overall effect and capacity of the Government in the current economic climate to afford the increases and to sustain them in the long term as required under section 69B 2(b) and thereby acted beyond its powers by proceeding in spite of and despite the contrary advice given not to increase and or change the pension schemes. The increases accordingly must be set aside herewith as well.

**Regulation 14 of the 2015 Regulations.**

61. The amendment increases the death benefit payable to the surviving spouse of a Member of Parliament who dies in office from \$100,000.00 to \$150,000.00 after a period of only 5 years. The original amount granted was \$10,000.00 (regulation 12(1) of the Parliamentary (Entitlements) Regulations 1988 ("PER 1988"). It was increased to \$15,000.00 in 2000 some 12 years later (regulation 12(1), PER 2000). After some 6 years later in 2006, it was increased to \$50,000.00 (regulation 12(1) PER 2006) and in 2010, 4 years later it was increased to \$100,000.00 (regulation 13(1) PER 2010).

62. Again the issue is not whether the MPEC had jurisdiction in this case so much as to whether the increase was justifiable in the circumstances, *vis-à-vis*, whether the MPEC also took into account the matters set out in section 69B 2(b) before imposing the increase? Again the evidence adduced supports the contention of the Claimants in this case that any such advice to the contrary was ignored. I am satisfied it has been increased without taking into account a relevant matter in this case and therefore must also be set aside.

**Regulation 16 of the 2015 Regulations**

63. The proposed regulation repeals regulation 31 and inserts a new regulation as follows:

“(a) “Regulation 30(A) – When a Member vacates his seat in Parliament, the amount outstanding on an advance or guaranteed loan may be recovered from any pay, terminal grants or pension payments for which the Member or his legal personal representative are eligible and any additional sum due shall be recoverable from any collateral or security held by the Member of his estate.”

(b) Regulation 30(b) – When a Member dies, the amount outstanding on a guaranteed loan shall be paid off by the Guarantor.”

64. The objection taken to the amendment in paragraph 16(b) is that when a Member of Parliament dies in office, it seems to exclude recovery of any amount outstanding on any advance or guaranteed loan from his pay, terminal grants or pension payments etc. If that were the intention whether deliberate or not, I accept it would be going too far on the basis that there is simply no legal and reasonable basis for it. While the loan or advance may be paid off by the Guarantor there can be no impediment for recovery of that from the other entitlements of the Member of Parliament as set out in paragraph (a) of regulation 16. I accept submissions of learned counsel Mr. Radclyffe and order that the offending paragraph be struck out as *ultra vires* the powers of the MPEC.

**Regulation 28 of the 2015 Regulations.**

65. The amendment seeks to set up a Health and Medical Care Scheme for Members of Parliament and their families with a reputable insurer within or outside of Solomon Islands. What is clear from the evidence before this court however is that this is yet to be set up. The Claimants object to this entitlement as being quite expensive and failing to take into account the salient issues of affordability and effect on the economy.

66. I am satisfied the evidence shows that little or no consultation and consideration had been undertaken and where representations may have been received these were ignored and accordingly breached the requirements of section 69B(2)(a) and (b) and should also be dismissed.

**Regulation 29 of the 2015 Regulations.**

67. This new amendment also seeks to set up a new life insurance scheme for Members of Parliament and their families. The evidence adduced is also similar to the set up of the Health and Medical Care Scheme. It was set up without taking into account all relevant factors and information that it entails. The MPEC is yet to commission a study to work out the details of how the insurance is to operate. It is clear no proper study has been done, for instance on how the scheme is to work, its likely costs etc.

68. For the same reason given under Regulation 28 of the 2015 Regulations above I am also satisfied this new benefit had been done in breach of the same provisions and should also be dismissed.

**Regulation 32 of the 2015 Regulations.**

69. The proposed amendments operate to increase acting allowances on a daily basis from about \$35.71 per day (\$1,000 per month at an average of 28 days per month) for supervising Minister; \$71.42 per day (\$2,000 per month) to \$400 per day as Acting Prime Minister; and \$35.71 per day (\$1,000 per month) as acting Chairman of a Committee to \$200 per day.
70. Again the issue is not so much that the MPEC did not have jurisdiction as the increases being unjustified and unreasonable in the circumstances.
71. I am satisfied as well on the evidence before me that the increases must be struck out again for the same reasons that the MPEC as a transparent and accountable institution, vested with distinct regulatory powers for the prescription of salaries, terms and conditions and other entitlements of Parliamentarians etc., to facilitate and equip them in the discharge of their honorable duties and responsibilities as Parliamentarians, bearing in mind the significance and dignity of their office, are equally required to act responsibly and reasonably. It cannot make arbitrary decisions without proper basis and justification. The purpose of such guidelines is to ensure that its decisions stay within what is affordable and sustainable taking into account (i) the state of the national economy and the financial position of the Government; (ii) general pay movements; and (iii) price movements; and failure to comply will take its decisions outside of the strict constitutional mandate and invalid.
72. For a start the acting allowance rates should be considered in the light of the total salary levels of the office for which the acting appointment is intended. For if the rates are exorbitant, which is the case here, when a Parliamentarian acts for instance for up to a month or longer, he/she may be paid much more than what the incumbent receives for doing less. That is the inappropriate effect of such decision. To take this issue further, a possible example or comparison (and this is only one), which perhaps can be used, is the clause for acting appointments for Judges<sup>1</sup> when acting as Chief Justice, which fixes the rate at \$50.00 per day.
73. I am satisfied on the material before this court that the increases were arbitrarily made without proper justification, unreasonable and therefore made beyond the powers of the MPEC and must be struck out as invalid as well.

#### **Regulations 33 and 34 of the 2015 Regulations.**

74. The amendment not only makes Members of Parliament salaries tax free but makes the final inclusion it seems so that almost everything that Members of Parliament now receive are tax free, including allowances. Exemption of entitlements other than salaries was introduced under the 2011 Regulations.
75. Since 1990 however, other benefits such as appointment grants, constituency allowances and terminal grants, and the value of any benefit accruing on a Member of Parliament holding office (such as a Minister) from his entitlements to housing, utilities and domestic servants, have been exempt from income tax by virtue of paragraph 21 of the Third Schedule to the Income Tax Act.

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<sup>1</sup> See regulation 24 of the Constitutional Office (Terms and Conditions of Service)(Puisne Judges) Regulations 2015.

76. The overall effect of the amendment is that it basically makes all salaries and entitlements received by Members of Parliament almost 100% exempt from tax.
77. It is not in dispute that the MPEC has power under section 69B 2(c)(iii) to make salaries and entitlements exempt from tax and other liabilities. The Claimants do not deny this in their submissions. What they find offensive and aggrieved about is the lack of proper consultation, dialogue and discussion from relevant authorities, including as pointed out by learned Counsel, Mr. Radclyffe in his written submissions at page 16, top of the page, that in the very least the MPEC should have invited submissions from officers in the Ministry responsible for income tax, consider these and ensure that any proposed new tax exemption for Members of Parliament is in line with the Act and other budgetary considerations. I am satisfied on the evidence that this was not done.
78. In essence the issue here is that the MPEC again failed to comply with section 69B (2) of the Constitution to consult broadly but more important with relevant authorities on this important subject and where it did, the evidence adduced was that the amendment should not be made.
79. I am again satisfied on the evidence adduced before me on the balance of probabilities that the MPEC failed to consult with relevant authorities on this important matter in particular, submissions from relevant offices within Government that handle taxation matters so that any tax exemption granted is duly catered for under taxation laws and processes, bearing in mind that no tax may be imposed except by an Act of Parliament (section 106 of the Constitution). In the case of Income tax this is imposed by the Income Tax Act (cap. 123) and so any exemption needs to be reflected in the Third Schedule to that Act.
80. I am also satisfied on the evidence before me that MPEC failed to take such materials as it had before it into account for had it done so it would not have made the salaries exempted from tax and thereby acted *ultra vires* its powers as provided for under section 69 B (2) of the Constitution. This award should also be struck out.
- (iv) **The Claimants allege that Regulation 2(a) whereby there is a change of title from "Chairman of Parliamentary Caucus" to "Chairman of Government Caucus" is *ultra vires* on the grounds that the First Defendant has no power to grant entitlements to the holder of that position, which is not position recognized in the Constitution or any other law.**
81. The position or status of a parliamentary caucus is a creature of party politics, consisting of members of the same political party or coalition of parties as is often the case in Solomon Islands within Parliament. It is supposedly separate and distinct from Parliament in terms of its roles and functions, being tied more to a political party or coalition of parties of the day. It is not accountable to Parliament per se and has no direct role in parliamentary business.
82. No such position is catered for in the Constitution, in any other law or, Parliament and accordingly I am satisfied it's inclusion by the MPEC is misconceived, without authority and also *ultra vires*.



- (v) **The Claimants allege that Regulation 3 is contrary to the provisions of the National Parliamentary Electoral Provisions Act on the grounds that a Member of Parliament does not officially take up his/her position until he/she has been declared a member under section 55 of the said Act. The reference to section 33 of the Act in Regulation 3 is in error of law in that section 33 deals with the giving of notice of an election.**

83. This challenge can be shortly dealt with. The issue as to when a Member of Parliament is deemed elected is a question of law, which has been determined under section 55 of the National Parliament (Electoral Provisions) Act (cap. 87). It follows that for purposes of calculating the commencement of payment of salaries and entitlements, these should be made effective from that date when the results are declared by the Returning Officer under section 55.

84. It could not be any other date or time and in seeking to extend the commencement date to the date of election as specified in section 33 of the National Parliament (Electoral Provisions) Act, the MPEC acted outside of its powers and ultra vires as well. This clause should also be struck out as unconstitutional and invalid.

**Orders of the Court:**

- (i) **Grant orders as sought as follows:**

- (a) **Grant declaration that Regulations 5 and 36, 9, 10, 14, 16, 28, 29, 32, 33, and 34 are unconstitutional and null and void;**
- (b) **Dismiss declaration sought in respect of regulations 6, 7, and 8;**
- (c) **Grant declaration that Regulations 2(a) and 3 are unconstitutional and null and void;**
- (d) **Grant declaration that any payments or tax exemptions made or granted pursuant to the said Regulations are null and void;**

- (ii) **Costs of the Claimants to be paid by the 1<sup>st</sup> Defendant.**

**SIR ALBERT R. PALMER CBE**

**The Court.**