DEMOCRATIC FUNDAMENTALS IN THE SOLOMON ISLANDS: GUADALCANAL PROVINCIAL ASSEMBLY V THE SPEAKER OF NATIONAL PARLIAMENT[1]

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I INTRODUCTION

In early 1997 the High Court of Solomon Islands[2] handed down a landmark judgment, declaring void the Provincial Government Act 1996,[3] on the basis that several parts of the

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STOP PRESS The appeal against this judgment was allowed by the Court of Appeal on 11 July 1997, on the grounds that the preamble did not fetter Parliament's legislative power. The full text of the Court of Appeal's judgment reached the author too late for inclusion in this note. Given the importance of the issues discussed by the judgment of Palmer J and by the author a decision was made to continue with the publication of the note in the hope that it will be complemented by a later analysis of the Court of Appeal's decision.

1 *Guadalcanal Provincial Assembly v The Speaker of National Parliament and the Minister for Provincial Government* unreported, High Court, Solomon Islands, cc 309/96, 26 February 1997.

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2 The court structure consists of Magistrates Courts, the High Court, and the Court of Appeal. The latter two are provided for in the Constitution. The High Court is constituted by a single judge. Judges are the Chief Justice and such number of puisne judges as are prescribed by Parliament (currently two). It has unlimited jurisdiction in civil and criminal matters. Jurisdiction in constitutional matters is specifically provided for in s 83 which states that, subject to specified exceptions, any interested person, alleging that the Constitution has been contravened, may apply to the High Court for a declaration and for relief. Separate provisions in s 18 confer jurisdiction on the High Court to deal with any alleged breach of the fundamental freedoms laid down by the Constitution in Chapter II.

The Court of Appeal is normally constituted by three members, but may in certain cases be constituted by two (see Court of Appeal Act 1978, s 6). Selection is from amongst the President and other Justices of Appeal. All High Court judges are ex officio members.

Act were unconstitutional. This paper seeks to put that decision in context and to provide a commentary on the approach to constitutional interpretation taken by the High Court.

A The Political Framework

1 Central Government

The Head of State, the British Monarch for the time being, is represented by the Governor-General.[4] The country is governed by a system of parliamentary democracy, a fact of great importance in the current context. The national legislature is unicameral and consists of persons elected in accordance with the Constitution.[5] Qualifications for membership are also set out in the Constitution.[6] There are 47 members, including the Prime Minister, who is elected by and from the body of members.[7] Other Ministers are appointed by the Governor-General, on the Prime Minister's recommendation. General elections are normally held every four years; all citizens over eighteen years of age are entitled to vote.[8]

2 Provincial Government

The role of provincial government is of fundamental importance. This status is enshrined in paragraph (3) of the Preamble to the Constitution which states:

> We shall ensure the participation of our people in the governance of their affairs and provide within the framework of our national unity for the decentralisation of power.

Chapter XII of the Constitution, headed "Provincial Government" pursues this objective by providing:

> **114**
>
> (1) Notwithstanding anything contained in the Solomon Islands Independence Order 1978, Solomon Islands shall be divided into Honiara city and Provinces.
>
> (2) Parliament shall by law -

There are also local courts, dealing with customary land and minor matters, and customary land appeal courts which deal with appeals relating to customary land.

3 No 3 of 1996.

4 The Constitution, ss 1(2) and 27(1).

5 Section 47.

6 Sections 48 and 49.

7 The Constitution, s 33(1) and sch 2.

8 The Constitution, s 55(1).

(a) prescribe the number of provinces, and the boundaries of Honiara city and the provinces after considering the advice of the Constituency Boundaries Commission;

(b) make provision for the government of Honiara city and the provinces and consider the role of traditional chiefs of the provinces.

Pursuant to this section, 7 provinces were originally established by the Provincial Government Act 1981.[9] The number has since been increased to 9.[10] Honiara city is governed by the Town Council under the Local Government Act,[11] and references to provinces and provincial assemblies are intended to include it, unless the context indicates otherwise.

II GUADALCANAL PROVINCIAL ASSEMBLY v THE SPEAKER OF NATIONAL PARLIAMENT AND THE MINISTER FOR PROVINCIAL GOVERNMENT[12]

In early 1996 Parliament passed the Provincial Government Act 1996 which purported to repeal the Provincial Government Act 1981 and replace the existing system of provincial government with a new regime. As a consequence, all existing offices and bodies which were established under the 1981 Act were abolished. In their place, provision was made for 10 Area Assemblies within each province, each constituted half by elected members and half by appointed chiefs and elders. Each province was also to have a Provincial Council, instead of the existing Provincial Assembly, and this was to be constituted by the Chairpersons of all the Area Assemblies in the province. It was therefore possible for the legislature of a province to consist exclusively or predominantly of non-elected members.

The applicant applied under s 83 of the Constitution for declarations, which can be summarised as follows:

1 That the 1996 Act was inconsistent with the Constitution and therefore void;

2 That the National Parliament, when passing laws pursuant to ss 59(1) and 114(2) of the Constitution, was bound to give "full faith and credit" to certain fundamental principles of law;

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9 Section 3, read with sch 1.

10 Rennell and Bellona Province was added by the Provincial Government (Special Provisions) (Rennell and Bellona Province) Act 1992. Choiseul Province was added by the Provincial Government (Amendment) Act 1991.

11 Section 14.

12 Unreported, High Court, Solomon Islands, cc 309/96, 26 February 1997.

3 That Parliament's power to pass legislation was derived from the people of Solomon Islands;

4 That the executive authority of provincial governments was derived from the Constitution and vested in the Premier and Ministers of the executive government of the provinces, elected from and responsible to each Provincial Assembly elevated according to the Constitution;

5 That the election of provincial members had to be by democratic principles of universal adult suffrage (reflecting the statement of the Agreement and Pledge in the preamble to the Constitution that "our government shall be based on democratic principles of universal suffrage and the responsibility of executive authorities to elected assembles");

6 That legislative, executive and financial power had to be decentralised and vested in provincial governments according to specific heads of power and functions determined by the Constitution read with the report of the Solomon Islands Constitutional Conference 1977 and the Report of the Special Committee on Provincial Government 1979;

7 That Parliament, when passing laws pursuant to ss 59(1) and 114(2) of the Constitution, had to ensure that the principles of equality, social justice and the equitable distribution of incomes were upheld to provide for effective and responsible provincial government and matters incidental.

In its judgment the High Court made a number of pronouncements -

> The establishment of, and conferring of functions on, Provincial Councils under Parts III and IV of the 1996 Act was inconsistent with the underlying constitutional principle of representative and responsible government. This was due to the lack of provision for accountability to an elected assembly. This was particularly objectionable in the light of the fact that the Council exercised both executive and legislative authority.[13]
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> The establishment of, and conferring of functions on, the Area Assemblies under Parts V and VI of the 1996 Act was inconsistent with the underlying constitutional principle of representative and responsible government. There was no accountability, and it did not constitute a representative form of government, as non-elected members might be in a position to control the chairing

[13] See Provincial Government Act 1996 s 16 and sch 3 and 4.

> and the "mind" of the Assembly. Again, this was particularly objectionable in the light of the fact that the Assembly had both executive and legislative authority.[14]
>
> The exercise of the power contained in s 114(2) in such a way as to provide for the possibility of elevation of chiefs to key and/or controlling positions in provincial government was contrary to democratic notions of representative and responsible government. The elevation of elders was also contrary to those notions.

Parts III, IV, V, VI of the 1996 Act were declared void and, severance being impossible, the whole Act was declared void. Accordingly, the first declaration sought was made. No opinion was expressed on the other declarations sought. Costs were awarded to the plaintiffs.

The decision to grant the declaration was made on the basis that the principles of representative and responsible government were an integral part of the fabric on which the written Constitution of Solomon Islands was imposed. Those principles could not be separated or severed unless the Constitution starting with the Preamble was first amended in accordance with section 61.

On the question of constitutional interpretation, the Judge held that implications might be drawn by the court. In this case, he felt that it was not necessary to travel far from the terms of the Constitution itself, to draw the relevant implication. On reviewing the Constitution as a whole in its historical context, Palmer J found that the underlying principles were manifest throughout, being reflected in each chapter of the Constitution and specifically in:

- the opening words;
- the Declaration;
- the Agreement and Pledge in the Preamble;
- section 1;
- sections 46 and 47, which embody the concept of election by universal suffrage and representative government;
- Chapter V, which provides for the Executive, including Cabinet;
- section 35, by virtue of which Cabinet is collectively responsible to Parliament;
- Part II of Chapter VII, which provides for the High Court for Solomon Islands. (The Judge thought this connoted elements of responsibility to the people of Solomon Islands, who collectively held power.)

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[14] See Provincial Government Act 1996 s 42 and sch 6.

The Judge placed particular reliance on the following parts of the Preamble:

The opening words

> We the people of the Solomon Islands, proud of the wisdom and the worthy customs of our ancestors, mindful of our common and diverse heritage and conscious of our common destiny, do now, under the guiding hand of God, establish the sovereign democratic State of Solomon Islands.

The Judge emphasised the words "sovereign democratic State of Solomon Islands", and stated that representative and responsible government were the hallmarks of a democratic state.

Paragraph (a) of the Declaration

> All power in Solomon Islands belongs to its people and is exercised on their behalf by the legislature, the executive and the judiciary established by this Constitution;

Palmer J regarded this paragraph as merely reiterating the concepts of representative and responsible government. Further, he found that the power of the people was not confined to the nation as a whole, but filtered down to the provincial level, and even to the individual. That power was exercised by the individual by virtue of the right to stand for election to National Parliament and the right to vote.

Paragraph (a) of the Agreement and Pledge

> Our government shall be based on democratic principles of universal suffrage and the responsibility of executive authorities to elect assemblies;

His Lordship regarded this paragraph as echoing the principles of democratic government in "specific and glaring terms". He thought this paragraph alone made it abundantly clear that the bedrock on which the Constitution was built was representative democracy.

The following significant points were also made, obiter, in the course of the judgment:

- It might have been unconstitutional for Parliament to consider the role of elders in provincial government, as s 114(2) only directed it to consider the role of traditional chiefs.
- In nearly all the traditional societies in Solomon Islands there were clearly defined or recognised customary practices on how a chief was chosen. In many instances the general community had no part to play in this. However, the mere fact that a person was a traditional chief did not necessarily imply that he was a chosen representative of any significant majority. Notwithstanding, chiefs clearly played a vital role in the affairs of a tribe, clan, line, or even a community for which they were responsible.

- Part II of the Constitution might usefully be amended, so that at least three judges were required to preside in constitutional cases. Similarly, the Court of Appeal might be constituted by five members when sitting to hear constitutional cases.

III COMMENT

A Interpretation of the Constitution

There is no doubt, and it was not disputed in the case, that s 114(2) gives sole responsibility for legislating for provincial government to Parliament. The Attorney-General argued that as this provision was unambiguous the court was not free to infer any different meaning. Palmer J expressed agreement with this contention, but differed as to whether that was the end of the matter. The Judge felt that clear words did not prevent the court from deciding the real issue, which was whether there was a fundamental principle underlying the Constitution. He appears to have drawn a distinction between:

interpretation of specific words in the Constitution; and

interpretation to ascertain a principle underlying the Constitution.

In a case falling within the first category, no further investigation would be called for if the words in question were clear. Interpretation falling within the second category was not so restricted, as even where clear words conferred a power, that power that to be exercised within the confines of any underlying principle.

One of the sources of law in Solomon Islands is common law and equity. The Court of Appeal has held that this means the common law and equity of England, not the common law and equity as applied in other countries of the Commonwealth.[15] Accordingly, the courts of Solomon Islands have largely looked to English precedents when interpreting statutes.[16] The same has been the case with interpretation of particular sections of the Constitution.[17] However, where that interpretation appertains to a challenge to legislation, on the grounds of unconstitutionality, it is a different matter. The circumstances applying in England are arguably so different as to render some decisions inappropriate to the circumstances of Solomon Islands.[18] Where this is the case, the common law is not binding.[19]

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15 *Cheung v Tanda* [1984] SILR 108.

16 Eg *Maeke v SI National Provident Fund* [1985-6] SILR 244.

17 Eg *Nathaniel Waena v the Attorney-General* [1988-9] SILR 29, citing *Re Cund* (1889) 43 Ch D 12.

18 See Murray Hunt *Using Human Rights Law in English Courts* (1997) for an interesting analysis of constitutional case law, which seeks to demonstrate that the United Kingdom's recognition of the European Court of Human Rights, and membership of the European Union have transformed the approach of English courts to constitutional interpretation.

In *Kenilorea v the Attorney-General*[20] the Court of Appeal cited with approval the words of Lord Pearce in *Liyanage v R*, where the Privy Council was called upon to consider the Constitution of Ceylon:[21]

> During the argument analogies were naturally sought to be drawn from the British Constitution. . . The British Constitution is unwritten whereas in the case of Ceylon their Lordships have to interpret a written document from which alone the legislature derives its legislative power.

Notwithstanding that, White P, in *Kenilorea v the Attorney-General*, considered that the position existing before the adoption of a written Constitution in Solomon Islands had an important bearing. As had been pointed out in *Hinds v R*[22] the constitutions of former British colonies and dependencies were "evolutionary not revolutionary" and:

> provided for continuity of government through successor institutions, legislative, executive and judicial, of which the members were to be selected in a different way, but each institution was to exercise powers which, although enlarged, remained of a similar character to those that had been exercised by the corresponding institution that it had replaced.

In the case of *Kenilorea v the Attorney-General* the court came to the conclusion that the Constitution made a clear separation of powers between the legislature, the executive and the judicature, and held that the judicial power could not be usurped or infringed by the legislature or executive without the Constitution being amended. However, this conclusion was not reached on the basis that the separation of powers was an underlying principle, but rather that the terms of the Constitution specifically provided for it. In the words of Pratt JA[23] "the people have chosen to put it down quite in black and white that there shall be such separation".

In *Guadalcanal Provincial Assembly v The Speaker of National Parliament*, Palmer J said he was departing from what he regarded as the English stance, as expressed in *Hinds v R*,[24] that a written constitution must be construed like any other written document. He referred to Viscount Dilhorne and Lord Fraser as having given a dissenting judgment, but as having formed part of the majority with regard to the proper approach to statutory interpretation.

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19 The Constitution, sch 3, para 2(1)(b).

20 [1984] SILR179.

21 [1967] AC 259, 288.

22 [1977] AC 195, 212.

23 [1984] SILR 179, 200.

24 Above n 22, 238.

In that dissenting judgment their Lordships expressed the view that, whilst effect was to be given to the intentions of the framers of the Constitution, those intentions had to be deduced from the words used in the Constitution, not from some preconceived ideas or by searching for necessary implications.

With respect, it is hard to see how those views could be said to form part of the approach favoured by the majority. Certainly, Lord Diplock, who delivered the majority judgment, stated that written constitutions must be read like any other instrument to the extent that regard must be had to subject matter and surrounding circumstances. However, he made it quite clear that he regarded constitutions as differing:[25]

> fundamentally in their nature from ordinary legislation passed by the parliament of a sovereign state. They embody what is in substance an agreement reached between representatives of the various shades of political opinion in the state as to the structure of the organs of government though which the plenitude of the sovereign power of the state is to be exercised in future... Because of this a great deal can be, and in drafting practice often is, left to necessary implication for the adoption... To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would ... be misleading.

Express support for a similar approach in Solomon Islands can be found in *Kenilorea v the Attorney-General*, where Pratt JA referred to the "now established principle that one does not limit the interpretation of the Constitution of a country by applying the ordinary legal canons but rather a broader and more liberal approach".[26] This approach has also been adopted in other countries of the South Pacific region.[27]

This broad approach involves an interpretation which seeks to give effect to the purpose of the Constitution. In the case of a Constitution, such as that of Solomon Islands, which expressly sets out its purpose in the Preamble, that is obviously a good starting point for interpretation. In *John Wesley Talasasa v Attorney-General, the Commissioner of Lands*,[28] Muria CJ stated that when he was called upon to consider the right of ownership over

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[25] Above n 22, 211.

[26] [1984] SILR 179, 197.

[27] Eg in Western Samoa in the case of *Attorney-General v Olomalu*, (Court of Appeal, Western Samoa, 5895/1981), reported in (1984) 14 VUWLR 275, in the Cook Islands in *Henry v the Attorney-General* (Unreported, Court of Appeal, Cook Islands, 1/83), and *Reference by the Queen's Representative* [1985] LRC (Const) 56, and in Tonga in *Finau v Alafoki and Minister of Lands* (Unreported, Supreme Court, Tonga LC10/1989), and *Tu'itavake v Porter and Government of Australia* (Unreported, Supreme Court, Tonga cc24/1989).

[28] Unreported, High Court, Solomon Islands, CC43/95, 15 May 1995.

water flowing through customary land he would bear in mind the guiding principles declared in the Preamble to the Constitution. Again, there is similar authority in other South Pacific countries.[29]

In the present case, Palmer J went beyond the broad approach available to him in the English and South Pacific authorities. As urged by Australian counsel for the applicant, Palmer J adopted the modern Australian approach, and placed particular reliance on the views expressed in *Australian Television Pty Ltd v The Commonwealth.*[30] That case reflects the dramatic change in emphasis which has taken place in constitutional interpretation in Australia within the last twenty years.

The earlier and later approaches can be summed up as follows in the phrase:[31]

> the era of literalism and legalism, and the era of liberalism and realism.

The former lays emphasis on a Constitution being an ordinary legal document which should be read in its natural sense. The latter approach was expressed in the words of Higgins J in *Attorney-General (NSW) v Brewery Employees' Union of New South Wales*:[32]

> remember that it is a Constitution, a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be.

Whilst both approaches have been classified as "liberal", the recent High Court of Australia decisions go much further than those of the English courts. Implications have been drawn, not merely from the express words used and the subject matter and structure of the Constitution, but also from the historical and legal context, and the circumstances prevailing in Australia.[33]

Just as the English constitutional system differs from that in Solomon Islands, thus rendering many precedents inapplicable, the Australian system is also different. It is a federal system, and most of the case law has arisen in the context of questions about the division of powers. The Solomon Islands does not have a federal system. It does have both central and provincial government, but there is no question of an entrenched division of powers. Just as Parliament has given powers to the provincial bodies, it may also take them away. What the High Court of Australia has been called on to do is to interpret the limits of

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29 *Attorney-General v Olomalu* Misc 5895/1981 (Samoa).

30 (1992) 177 CLR 107.

31 See further, PH Lane *A Manual of Australian Constitutional Law* (6th ed) (Law Book Co, North Ryde (NSW) 1995) 37.

32 (1908) 6 CLR 469, 612.

33 See eg *The Wik Peoples v Queensland* (1997) 71 ALJR 173.

Federal and State legislative powers, and the validity of laws passed pursuant to those powers.

The need to exercise caution in applying authorities from jurisdictions with a federal system was stressed in *Hinds v R* where Lord Diplock said:[34]

> other constitutions differ in their express provisions from the Constitution of Jamaica, sometimes widely where, as in the case of Canada and Australia, they provide for a federal structure, but much less significantly in the case of unitary constitutions of those states which have attained full independence in the course of the last two decades. In seeking to apply to the interpretation of the Constitution of Jamaica what has been said in particular cases about other constitutions, care must be taken to distinguish between judicial reasoning which depended on the express words used in the particular constitution under consideration and reasoning which depended on what, though not expressed, is none the less a necessary implication from the subject matter and structure of the constitution and the circumstances in which it had been made. Such caution is particularly necessary in cases dealing with a federal constitution in which the question immediately in issue may have depended in part upon the separation of the judicial power from the legislative or executive power of the federation or of one of its component states and in part upon the division of judicial power between the federation and a component state.

It is one thing to limit legislative power of constitutional origin, as a necessary step in giving full force to a competing legislative power with the same origin. It is quite another to limit the only existing power to legislate conferred by the Constitution by virtue of implied principles, such as democracy, which arguably defy definition.

The definition of democracy takes on additional complexity when it is sought to ascertain its meaning in the context of Solomon Islands. Democracy in the sense of responsible and representative government is, after all, a western concept. Is its meaning the same when transported to the South Pacific? It has been pointed out that South Pacific islands tend to view democracy as culturally laden (for example, with British culture)[35] and there has also been debate about whether South Pacific island nations have pre-existing democratic traditions that can provide a better basis for contemporary political institutions than those imported from the West.

Apart from uncertainty, one of the main problems in treating a constitution as a manifesto rather than a legal document, is that it allows for unfettered judicial law-making.

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34 Above n 22, 211.

35 A Davidson *European Democracy and the Pacific Way* (paper presented to the conference of the Pacific Islands Political Studies Association, Rarotonga, Cook Islands) (1993) 5, cited in S Lawson *Tradition Versus Democracy in the South Pacific* (Cambridge University Press, Melbourne, 1996) 27.

For some this may be seen as an advantage, allowing the judiciary to interpret the Constitution by reference to current community values, and thus serving as a bulwark against threats to democracy. However, to speak of democracy in this context is to ignore the fact that judges are unelected, political appointees, whose functions should largely be separate from those of the law-makers.

It is interesting that this adoption by the Solomon Islands of the High Court of Australia's approach to constitutional law comes at a time when judicial law-making is the subject of fierce debate in Australia itself. The catalysts for that debate are the decisions in *Mabo v Queensland (No 2)*[36] and *The Wik Peoples v Queensland*,[37] which have been regarded by some as going beyond the boundaries of judicial power.[38]

B The Role of Chiefs and Elders

Whilst urging a liberal interpretation of the Constitution, and recognising that it was necessary to give effect to implications, Palmer J, favoured a restrictive interpretation of s 114(2)(b). As this paragraph refers only to "traditional chiefs" he suggested that Parliament was bound by "the express and specific words of the Constitution" and was not allowed to provide for the role of "elders" in provincial government.

This argument appears to support the second respondent's argument in the present case. If Parliament is restricted to considering the role of traditional chiefs, then where does it find the power to consider the role of elected representatives, and that of the People, when exercising their power under the Constitution. Certainly, as Palmer J pointed out, Parliament must comply with s 59(1) and legislate "subject to the provision of this Constitution", but in the absence of words to the effect that it may not consider the role of elders in provincial government it is free to consider inclusion of any person or body of persons.

Whilst Palmer J's view might be supported by the *expressio unius est exclusio* alterius principle, that principle cannot be applied where there is some other reason for singling out the item in question.[39] Accordingly, the express provision that Parliament should consider this important matter should not prohibit it from considering any other matter which it considers relevant to provincial government. The use of the word "and" in subs (2)(b) supports this view, as it indicates that consideration of the role of traditional chiefs in the provinces is a task additional to that of making provision for provincial government. Thus

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[36] (1992) 175 CLR 1.

[37] (1997) 71 ALJR 173.

[38] See eg M Fraser "Judges Should Not Complain of Rough Justice" *The Australian*, 26 April 1997.

[39] F Bennion *Statutory Interpretation* (Butterworths, London, 1992) 878.

it is submitted that a common sense interpretation[40] of that paragraph is that Parliament shall:

1 make provision for the government of Honiara city and the provinces; and

2 consider the role of traditional chiefs in the provinces.

In the carrying out the former task it may take into account the matters stated by the Attorney-General in argument as "all relevant social, political, cultural and traditional considerations..." This may include consideration of the role of elders or any other person or group which Parliament thinks relevant.

C Changes in the Bench

Palmer J suggested that Part II of Chapter VII of the Constitution might be amended so that at least three judges would preside in constitutional cases. Until 1966 there were only two judges, although there is provision in the Constitution for appointment of acting judges and Commissioners.[41] Palmer J also suggested that the Court of Appeal might be constituted by five members when sitting to hear constitutional cases. Although the Court of Appeal usually consists of three visiting judges, High Court judges are also ex officio members. In normal cases, therefore this would allow for five members, not including the judge of first instance. However, if the High Court were required to sit with all three judges to hear the case at first instance, this would preclude them all from sitting on the appeal.[42] Accordingly, five judges would be required to be brought in from overseas.

In both matters, there is a question of resources. From establishment to 1994 there was only one permanent High Court judge, the Chief Justice. There are now three judges. The Magistrates Court bench has not enjoyed a similar increase, and it has been argued by the legal profession that this is a more compelling need.

Should the suggestions of Palmer J be pursued, consequential amendments would also be required to the Court of Appeal Act 1978, which provides that "it shall be duly constituted by not less than three judges",[43] or where it is impractical to summon a court of three judges, not less than two.[44] Further, the Constitutional Provisions Rules of Court 1992[45] require

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40 Examples of the numerous authorities supporting the application of common sense in the interpretation of statutes *Barnes v Jarvis* [1953] 1 WLR 649, 652; *Bradford v Wilson* [1983] Crim LR 482.

41 Section 79(4).

42 The Court of Appeal Act 1978, s 9, provides that a judge of the Court of Appeal shall not sit as a judge on the hearing of an appeal from any order, judgment or decision made by that judge.

43 Section 6(1).

44 Section 6(2).

application for leave be made in the case of an application for redress in the case of an alleged contravention of the fundamental rights or freedoms protected by Chapter II of the Constitution. Such an application for leave might also usefully be required in the case of any application under s 83(1), which provides for declarations and other relief to be sought on the grounds of contravention of the Constitution other than Chapter II. Applications for leave are required to be accompanied by an affidavit verifying the facts relied on, and leave may be refused in the case of frivolous or vexatious applications. This would prevent the waste of court time, and in particular the time of three and five judges respectively.

IV CONCLUSION

Under Palmer J's decision Parliament must comply with the underlying principles of representative and responsible government in enacting any legislation, not just when exercising its powers under section 114. It remains to be seen whether there are other underlying principles, but the scope of the words of the Preamble is considerable. For example, argument might be presented on the principles of equality, social justice and the equitable distribution of income in paragraph (b) of the Pledge, or the protection of different cultural traditions in paragraph (d).

Regarding the role of traditional chiefs, it is notable that it took nearly twenty years for Parliament to carry out its mandate under s 114(2)(b), and give consideration to the chiefs' role, by making them de facto members of the Area Assembly. Under the Provincial Government Act 1981, the only reference to this matter was in s 14. Now that the Provincial Government Act 1996 has been declared void, it is to be hoped that it will not take another twenty years for Parliament to reconsider the role that traditional chiefs might play in provincial government.

The Judge's remarks about increasing the size of the bench to share the "weighty" burden of constitutional decision making, no doubt reflect the Judge's scrupulous approach to what he regarded as an "awesome" task. Given resource constraints it is unlikely that there will be an increase in the number of judges required to hear constitutional cases within the foreseeable future. The Court of Appeal may give some guidance for single judges of the High Court, but for the time being they will have to follow the approach adopted in other difficult cases and "do the best they can".[46]

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[45] LN 9/92.

[46] See eg *Helen Teioli (an infant suing by her next friend and mother Alice Teioli) v Dante Teioli*, unreported, High Court, Solomon Islands, cc5/95, 12 October 1995, 5.

The following words of Palmer J serve well to encapsulate his views on the concepts underlying the Constitution, and the principles that should guide us all:[47]

> clear principles of representative and responsible government ... stand out as clear reminders, like the carvings on top of Parliament Building (apart from their aesthetic beauty), to ... Parliamentarians that the Parliament belongs to the People of Solomon Islands, like the Coat of Arms above the seat where Judges [sit] in this court, to remind judges, lawyers and the parties who come to the court that the court belongs to the People of Solomon Islands; lest we forget.

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[47] Above n 1, 11.