



**NATIONAL PARLIAMENT OF  
SOLOMON ISLANDS**

**Bills and Legislation  
Committee**

**Report on the**

---

**Evidence Bill 2009**

---

**NP-Paper No. 21/2009**

Presented on 30 June 2009

National Parliament Office

# Contents

---

<b>1</b>	<b>Introduction</b>	<b>2</b>
	Terms of Reference	2
	Functions of the Committee	2
	Membership	3
<b>2</b>	<b>Policy Background</b>	<b>4</b>
	Purpose	4
	Background	4
<b>3</b>	<b>Review of the Bill</b>	<b>7</b>
	Secondary Materials	7
	Public Hearing	7
<b>4</b>	<b>Issues Arising</b>	<b>11</b>
<b>5</b>	<b>Recommendations</b>	<b>19</b>
<b>6</b>	<b>Appendices</b>	<b>20</b>

# 1 Introduction

---

The Bills and Legislation Committee has completed its review of the Evidence Bill 2009 introduced in the House by the Minister for Justice and Legal Affairs. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*<sup>1</sup>. The Speaker examined the Bill<sup>2</sup> and authorised it to be introduced in the current Parliament meeting.

According to government business for the current (10<sup>th</sup>) meeting of Parliament, the Bill was read a first time on 17 June 2009. According to Government Business the Bill is set down for second reading on Tuesday 30 June 2009. On 22 June 2009, the Bills and Legislation Committee considered the Bill and heard evidence from a range of stakeholders. Following its review, the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament's consideration.

## Terms of Reference

Pursuant to its mandate under the *Standing Orders* the terms of reference of the Committee in this instance is to examine the **Evidence Bill 2009** and to report its observations and recommendations on the Bill to Parliament.

## Functions of the Committee

The Bills and Legislation Committee (the Committee) is established under *Standing Order 71*, an Order made pursuant to the *Constitution*<sup>3</sup>, and has, under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;

---

<sup>1</sup> *Standing Order 44* (1).

<sup>2</sup> As required by *Standing Order 45* (1).

<sup>3</sup> Section 62, *Constitution of Solomon Islands 1978*.

- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

## **Membership**

The current members of the Bills and Legislation Committee (9<sup>th</sup> Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

## 2 Policy Background

---

### Purpose of the Bill

The policy objectives of the **Evidence Bill 2009** may be summarised as follows:

The object of the Evidence Bill 2008 [sic] is to provide a modern, comprehensive statement of the law of evidence to be applied in Solomon Islands courts. The Bill codifies many aspects of the evidence of law and imposes structure, consistency and predictability.

Previously, the law of evidence was a large collection of rules developed over the centuries by the courts of common law jurisdictions on a case by case basis. The Bill reduces this huge mosaic of common law into one, plain language making it easier to find and simpler to understand, leading to a more consistent and predictable application of the rules by the courts.

The Bill provides the legal framework which enables the court to determine how evidence may be offered, whether it will be taken into account and how to decide the factual issues on the evidence. The Bill provides a mechanism for these purposes which carefully balances the interests and needs of individual litigants, the society, investigating agencies, prosecuting authorities and the courts.

The Bill is not an exhaustive code and it preserves the common law and other statutory provisions where it is appropriate or where those areas are clear and settled. The Bill is structured so that the provisions are logically set out in the order in which matters would be expected to emerge in a trial. The Bill makes the law of evidence as clear, simple and accessibly as possible to facilitate the fair, just and timely resolution of disputes.

The Bill reforms some aspects of the common law rules of evidence to recognize new technology and provides practical means to present evidence in documentary form or from outside the jurisdiction. It reforms the law of evidence to conform with international obligations relating to human rights, and the rights of women and children. It provides a means to protect vulnerable witnesses. It codifies and clarifies rules of evidence relating to competence, compellability, identification, hearsay, confessions, unfavourable witnesses and privilege<sup>4</sup>.

---

<sup>4</sup> See the Explanatory Memorandum attached to the Bill, page 93.  
*BLC – Report on the Evidence Bill 2009*

## Background

Since independence, Solomon Islands courts and legal practitioners have been relying on a combination of English statutes, local legislation and common law cases as Solomon Islands' law of evidence. As a British Protectorate, Solomon Islands did not have its own comprehensive legislation on the law of evidence. At independence, the framers of the *Constitution of Solomon Islands 1978* tried to ensure that the new country could continue to rely on the English laws until such time that the country was able to come up with its own legislation.

Thus, section 76 of the *Constitution* provides:

Until Parliament makes other provision under the preceding section [section 75] the provisions of Schedule 3 to this Constitution shall have effect for the purpose of determining the operation in Solomon Islands –

- (a) of certain Acts of the Parliament of the United Kingdom mentioned therein;
- (b) of the principles of common law and equity;
- (c) of customary law; and
- (d) of the legal doctrine of judicial precedent.

Schedule 3 stipulates:

1. Subject to this Constitution and to any Act of Parliament, the Acts of the Parliament of the United Kingdom of general application and in force on 1<sup>st</sup> January 1961 shall have effect as part of the law of Solomon Islands, with such changes to names, titles, offices, persons and institutions, and as to such other informal and non-substantive matter, as may be necessary to facilitate their application to the circumstances of Solomon Islands from time to time.

2. (1) Subject to this paragraph, the principles and rules of the common law and equity shall have effect as part of the law of Solomon Islands, save in so far as –

- (a) they are inconsistent with this Constitution or any Act of Parliament;
- (b) they are inapplicable to or inappropriate in the circumstances of Solomon Islands from time to time; or
- (c) in their application to any particular matter, they are inconsistent with customary law applying in respect of that matter.

...

4. (1) No court of Solomon Islands shall be bound by any decision of a foreign court given on or after 7<sup>th</sup> July 1978.

Read together, section 76 and the relevant parts of Schedule 3 have the effect of making UK statutes of general application which were enacted in the UK prior to 1 January 1961 part of the laws of Solomon Islands where there is no local equivalent; and of making principles of common law and equity part of the laws of the land but only those principles contained in UK cases (and cases from other common law jurisdictions) prior to independence. Principles developed in the UK after independence does not form part of the laws of Solomon Islands.

In terms of the law of evidence, given that there was no single piece legislation pertaining to the law of evidence prior to independence, relevant UK statutes continued to apply, supplemented by common law and equity judgements that interpreted and applied such statutes. However, most of those UK statutes have since 1961 been repealed and the principles of common law and equity modernised in the period post 1978. However because of the two cut-off dates referred to above, Solomon Islands continued to rely on pre-1961 UK statutes and pre-1978 UK cases for guidance in relation to the law of evidence.

Key statutes that Solomon Islands has been relying on include the *Evidence Act* 1843<sup>5</sup>, the *Evidence Act* 1845<sup>6</sup>, the *Evidence Act* 1851<sup>7</sup>, the *Evidence Amendment Act* 1853<sup>8</sup>, the *Documentary Evidence Act* 1868<sup>9</sup>, the *Evidence Further Amendment Act* 1869<sup>10</sup>, the *Evidence Act* 1877<sup>11</sup>, the *Documentary Evidence Act* 1882<sup>12</sup>, the *Criminal Evidence Act* 1898<sup>13</sup>, and the *Evidence Act* 1938<sup>14</sup>. A large body of precedent (court cases) also developed in England between 1843 and 1938 to supplement these statutes. Additionally, other rules relating to evidence were contained in the

---

<sup>5</sup> Contains rules such as those permitting defendants to be cross-examined.

<sup>6</sup> Contains rules including those dealing with the admissibility of certain public documents and judicial documents as evidence.

<sup>7</sup> Contains rules relating to competency and compellability as witnesses of parties to a case (except in criminal cases); inspection of documents; foreign judgements and documents; proof of previous convictions; certification of public documents; and administration of oaths by authorised bodies.

<sup>8</sup> Contains rules relating to competency and compellability of the spouses of parties to a case (except criminal cases) and the privilege of communications made during marriage.

<sup>9</sup> This sets out rules on the mode of providing certain official documents such as royal proclamations and orders.

<sup>10</sup> This deals with the competency of parties in a case a breach of promise to marry, and adultery.

<sup>11</sup> This deals with the competency of parties in certain types of cases (relating to public nuisance on roads, rivers and bridges).

<sup>12</sup> This statute deals with the effect of documents printed by the Queen's or Government's printers.

<sup>13</sup> This deals with the competency of witnesses in criminal cases, evidence of persons charged, right of reply and calling of spouses in certain cases.

<sup>14</sup> This sets out rules the admissibility of written statements, the weight to attach to such statements and presumptions relating to documents more than 20 years old.

procedures of colonial courts having jurisdiction in the British Solomon Islands Protectorate. One such is the *High Court (Civil Procedure) Rules* 1964<sup>15</sup>. Together, these two sources of law (statutes and common law), supplemented by court rules, comprised the law of evidence at independence.

As such, since that time, in trials, the judiciary and legal practitioners needed to be well versed in a wide set of rules on evidence scattered across a number of UK statutes and thousands of cases from earlier centuries. Whilst the United Kingdom has modernised its laws, Solomon Islands could not because of the dates fixed by Schedule 3 of the *Constitution*. For that reason, the law of evidence in Solomon Islands was unable to keep up with rapidly changing technology relating to documents and communications and changes in society that required the needs, rights and vulnerability of certain witnesses to be recognised at law.

The situation was compounded further by local enactments that dealt separately with different areas of evidence law but which were insufficiently linked. For instance there are rules relating to evidence in such legislation as the *Affiliation, Separation and Maintenance Act*<sup>16</sup>, the *Arbitration Act*<sup>17</sup>, the *Commission of Inquiry Act*<sup>18</sup>, the *Court of Appeal Act and Rules*<sup>19</sup>, the *Criminal Procedures Code*<sup>20</sup>, the *Crown Proceedings Act*<sup>21</sup>, the *Documentary Evidence Act*<sup>22</sup>, the *Local Courts Act*<sup>23</sup>, the *Magistrates Court Act and Rules*<sup>24</sup>, the *Deportation Act*<sup>25</sup>, the *Trade Disputes Act*<sup>26</sup>, the *Interpretation and General Provisions Act*<sup>27</sup>, the *Leadership Code (Further Provisions) Act*<sup>28</sup>, the *Ombudsman (Further Provisions) Act*<sup>29</sup>, the *Custom Land Records Act*<sup>30</sup>, the *Customs Recognition Act* 2000 and the *Adoption Act* 2004. These Acts either deal with the use of documents as evidence or proof of such in court; or

---

<sup>15</sup> Introduced through the *Western Pacific (Courts) Order in Council* 1961.

<sup>16</sup> Chapter 1, Laws of Solomon Islands, 1996 Revision

<sup>17</sup> *Ibid*, Chapter 2

<sup>18</sup> *Ibid*, Chapter 5

<sup>19</sup> *Ibid*, Chapter 6

<sup>20</sup> *Ibid*, Chapter 7

<sup>21</sup> *Ibid*, Chapter 8

<sup>22</sup> *Ibid*, Chapter 10

<sup>23</sup> *Ibid*, Chapter 19

<sup>24</sup> *Ibid*, Chapter 20

<sup>25</sup> *Ibid*, Chapter 58

<sup>26</sup> *Ibid*, Chapter 75

<sup>27</sup> *Ibid*, Chapter 85

<sup>28</sup> *Ibid*, Chapter 86

<sup>29</sup> *Ibid*, Chapter 88

<sup>30</sup> *Ibid*, Chapter 132



provide court-like powers and procedures to other tribunals to call and examine witnesses or documents.

Within the first decade of independence then, the law of evidence existed in a number of UK statutes, at common law and certain local legislation and court rules. Under this regime there was always a high risk of overlaps and inconsistencies in the law. The state of the law of evidence was also such that the lay person (including police investigators) was unlikely to clearly understand the law relating to evidence. This was clearly inconsistent with principles of fairness, transparency or accountability. It also meant that the ordinary citizen could not readily or easily access the law of evidence due to the complications that entailed never mind the legal technicalities.

This was a situation that perhaps the courts could have rectified through re-interpretation of old rules. It appears however that Solomon Islands courts were reluctant to do this and preferred that Parliament take the lead. The only major action taken within the judiciary until now was the commencement of the *Solomon Islands Courts (Civil Procedure) Rules 2007*, made by the Rules Committee<sup>31</sup>. These Rules superseded the *High Court (Civil Procedure) Rules 1964* and outlines rules relating to evidence in civil proceedings<sup>32</sup>.

However, as early as 1987, the need to have a comprehensive set of rules on evidence was recognized and acted upon. In that year, an Evidence Bill was drafted and circulated to members of the Solomon Islands Bar Association but it was not proceeded with. In 2005, the same draft was again put to a committee of the Bar Association to review and work on, including suggested changes that may be required. That Committee prepared and submitted a 1,250 page report in August 2006. The report contained 269 recommendations. That report was considered by the Ministry of Justice, following which a further draft was prepared taking into account the committees' recommendations. The second draft was then circulated within the Ministry and other stakeholders for further comment. Submissions were received from the Law Reform Commission, police prosecutions, Public Solicitor's Office and the Office of the Director of Public Prosecutions.

---

<sup>31</sup> Established by section 90 of the *Constitution* and comprises, amongst others, the Chief Justice and the Attorney-General

<sup>32</sup> See for instance Chapters 13 and 14 of the *Solomon Islands Courts (Civil Procedure) Rules 2007*.  
*BLC – Report on the Evidence Bill 2009*

By this time, the CNURA Government had come into power with a stated policy objective in its National Policy Statement to strengthen the court system at all levels of the Solomon Islands society. In pursuit of this outcome, an Evidence Bill Committee was established and was chaired by a High Court judge with the Ministry providing secretariat support. That committee included representatives of Public Solicitor's Office, the Bar Association, DPP, Attorney-General's Chamber, Ministry of Justice and Legal Affairs and the Ministry of Police, National Security and Correctional Services.

The Evidence Bill Committee started its review of the draft Bill in October 2008 and approved a final draft in February 2009. This final draft was then forwarded to the Ministry of Justice and Legal Affairs, the judiciary, magistracy and other government legal stakeholders. It subsequently received the support of the Chief Justice, the Public Solicitor's Office, the DPP, the Attorney-General's Chamber and the Ministry. The Law Reform Commission and Women in Law Association also made contributions on human rights and international obligations and the implications on the treatment of women and children by the law, including the law of evidence.

## 3 Review of the Bill

---

In its review of the Evidence Bill 2009, the Committee considered secondary materials and also heard from certain key witnesses.

### Secondary Material

In order to review the Bill in its proper context, the Committee received briefings from the Committee Secretariat on the history of the law of evidence and its sources (common law and relevant UK statutes). The Committee also received briefings on the law of evidence in other common law jurisdictions, including Australia.

### Public Hearing

On Monday 22 and Tuesday 23 June 2009 the Committee held public hearings with view to hear from relevant officials of the Ministry concerned and key stakeholders. In that hearing, the Committee heard from representatives and officials of:

- the Ministry of Justice and Legal Affairs;
- Attorney-General's Chamber;
- Office of Director of Public Prosecution
- Public Solicitor's Office; and
- Solomon Islands Bar Association.

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

## 4 Issues Arising

---

### Consultation

The work of the Committee is designed to ensure that there is proper scrutiny of proposed legislation. In that regard the Committee notes that a number of the witnesses representing private law firms invited to the hearings declined on the basis of not having sufficient time to review such a substantial piece of legislation prior to appearing before the Committee. The Committee has on many occasions entreated the Government to consult widely with stakeholders before introducing legislation to parliament and placing it in the hands of this Committee. The Committee continues to hear that stakeholders are frustrated by the limited and last minute consultation that occurs in relation to the final Bills presented to Parliament. The Committee feels that this limits and frustrates the effectiveness of the Committee as witnesses have little to prepare themselves adequately before being asked to appear before the Committee.

The Committee notes that there was consultation prior to drafting the Bill amongst the legal and judicial fraternity and other authorities involved but not necessarily more broadly. The Committee is aware that in 1987 a draft evidence Bill was created and had been circulated for consultation. Although it was brought to the attention of the Committee that the current Bill is an update of the 1987 draft and that over the years there has been consultations, it is unclear whether these consultations were only done among the legal fraternity and not to the broader community which are those stakeholders who present evidence.

While the Committee acknowledges that the Bill is technical in nature, it is too important not to be widely circulated to all stakeholders and the public before being introduced into Parliament. Now that the Bill is before Parliament, the Committee strongly suggests that the Ministry ensure that there is a proper public awareness program to ensure that all stakeholders, including the public at large, know how they will be affected by the new rules under the Bill.

## **Common Knowledge, Evidence and Custom**

Questions were raised by the Committee regarding custom and customary law not being considered common knowledge by virtue of Clause 17 (5) of the Bill.

A number of witnesses testified that there is a wide diversity of customs and customary laws across the Solomon Islands. The laws of the land and its courts do recognize the existence of various customs and customary laws. It is on the basis of the diversity in customary beliefs, practices and values that customs and customary law are not considered a common knowledge. What can be regarded as common knowledge in one cultural group is not necessarily common in another. It has been expressed and acknowledged by witnesses that the Evidence Bill is not taking away the admissibility of custom laws. It is just indicating that customary law is not regarded as a matter of common knowledge due to diversity of customs.

A notable element in customary practice alluded to by witnesses, and is directly related to the Bill, was the oral passing down of history through generations. Questions by the Committee revolved on whether customary related evidence can be classified as hearsay evidence or opinion evidence. The witnesses pointed out that provision is made in the Bill (in Clause 119, (3) and (4) respectively) stating that the hearsay and opinion rules do not apply to the traditional laws and customs of a Solomon Islanders tribal group. Therefore in this regard, evidence related to traditional laws and customs are neither treated as hearsay nor opinion evidence, but recognize that there are various customs and customary practices in the country.

Related to the customs and customary laws was the issue of reconciliation by means of traditional practices such as exchange of food and pigs, and whether such practices are recognized by the courts. A case in point that was raised was where parties have a case before the courts, but subsequently decided to reconcile according to traditional practice. The question was whether the case would proceed before courts. Witnesses agreed that customary laws are recognized by the courts and in such a case it usually becomes a matter in which decision is usually made by the prosecutor about whether or not a matter will proceed where reconciliation has taken place. In this regard local conventions or understandings developed within our criminal justice system may not

be necessarily codified by the Bill but will probably be retained when the Bill comes into operation.

## **Evidence by Vulnerable Persons**

The Committee sought clarification on Clause 19 from witnesses; in particular why a court need not exercise caution before convicting an accused where reliance is placed on evidence given by a child, a victim of an offence against morality and in relation to an offence against morality where there was delay in reporting the crime.

According to witnesses, the present rule (common law) requires a cautious approach by the courts on evidence from a child. Courts traditionally take this approach because of uncertainty as to whether the child remembers and understand what he/she saw and heard, or might have forgotten or simply repeating as evidence something mentioned by other people (e.g., by the parents).

Evidence by victims of an offence against morality, and evidence related to an offence against morality where there was a delay in reporting, also had in practice been treated in the courts with caution. The cautionary approach exercised by the courts, according to witnesses, relates to the traditional, and now questionable, view that it was possible for a woman claiming to be a victim of rape to have consented to the act but later decided, for a range of reasons to have charges brought against the alleged rapist (e.g., a relationship gone sour).

Witnesses further expressed that there is a level of discrimination involved when the courts exercised caution with respect to the treatment of vulnerable witnesses such as women and children. On the same note, it was pointed out that judges do have the capacity to weigh all relevant evidence and prove their reliability and truthfulness beyond reasonable doubt; without being told to be cautious. As such, Clause 19 seeks to address the discriminatory practice by protecting vulnerable witnesses and as well as to encouraging confidence amongst judges in their ability to accurately assess evidence.

According to the witnesses, the courts will need to assess evidence and be satisfied beyond reasonable doubt as to the honesty and reliability of that evidence, irrespective

of the class of persons who are giving evidence. There is thus no need to draw a line between classes of witnesses. Child witnesses and evidence by victims of an offence against morality will be assessed by the judge during the course of the trial in the same way as any other witnesses and a provision of this nature is consistent with other jurisdictions where reform of the law had taken place. This intention is also in line with the provisions of the Bill which seeks to remove the need for corroboration in Solomon Islands. Removal of the rules relating to corroboration and unreliable evidence is further consistent with precedent set by the local Court of Appeal and with internationally accepted practice.

### **Evidence and Sentencing (Murder)**

Another issue which emerged at the hearing relates to cases of murder in which the death of a person is used as evidence in courts. For example, the Committee observed that there were cases where an accused was proven (beyond reasonable doubt) to have murdered another, such that the occurrence of death of the victim was deemed to be evidence of murder. Yet in the courts the verdict turned out to be of a lighter sentence such as, for example manslaughter.

The witnesses explained that the grounds to acquit an accused of murder and instead be convicted of manslaughter vary according to judges. As one witness pointed out, *“One ground (in relation to evidence) may be a fact that deals with the issue of intention. The court may exercise its discretion to reduce that to manslaughter if the court is not satisfied with the element of intention”*. In such circumstances the accused by virtue of his/her action, did not know that his/her action would result in death of, or grievous bodily harm to, the deceased (no such intention); or was acting in self defence. In such a case, it usually becomes the discretion and prerogative of the judge to decide whether to convict for murder or for manslaughter.

### **Accessibility of the Justice System by Victims of crime**

Another issue of interest was the accessibility of the justice system to victims of crime. The Committee raised questions based on the undesirable situation where, as a result of unethical litigation, an innocent suspect ends up being convicted of a crime he/she did not commit. The question was whether the Bill addresses this fear and allows access to justice for those who may have been wrongly convicted.

The Committee was assured that the courts always maintain control over its procedures. Judges have full legal training and will hear all submissions made by counsel for the defence and counsel for the prosecution. Witnesses stated that the Bill *“provides a way forward for this country to ensure that when people have been the victims of a particular class of crime, they do have access to justice”*. They further expressed that for a very long time and in many different countries, a large number of people did not have access to justice; and it was only through a lot of work by courageous people that in many country the law has been reformed to create a proper balance between the rights of the victim and the rights of the accused. Accordingly, the Deputy Solicitor General stated that, *“It is the opinion of those who have put forward this Bill that that balance is properly met”*.

### **Witnesses, Competence and Compellability**

Of great interest to the Committee too was the issue related to the competence and compellability of a close relative to stand as a witness in criminal proceedings and its suitability to Solomon Islands cultural settings. As stipulated in clause 34 and 35, the Committee sought clarifications from witnesses.

According to witnesses, in general terms, all witnesses are competent to give evidence. Exceptions are the physically disabled and persons lacking the capacity to understand a question about a fact or be understood in giving an answer. Clauses 34 and 35 declare that a close relative of a person charged, though competent is not compellable to give evidence for the prosecution or defence. It has been expressed by the witnesses that the law recognizes the sanctity of marriage and clause 34 and 35 addresses adequately issue relating to close relatives of persons charged.

### **Flexibility for reform**

The Committee also raised the issue of flexibility for legislative reform. The Committee noted that although on one hand the Bill provides legal framework for the courts and accessibility for all, the Committee was interested if a danger existed in encoding Laws or rules which may make them rigid and hinder further development in the future.



Accordingly, the Committee was again assured that section 3<sup>33</sup> of the Bill preserves common law principles in relation to evidence but only those principles and rules that are consistent with the Act are preserved. That deals in part with the concern that was raised. Secondly, in interpreting the Act, courts would play an important role in applying the law to the circumstances that exist in Solomon Islands and there will undoubtedly be room for judicial interpretation and development of what this law means in this particular context.

## **Admissibility of Evidence**

The Committee also posed questions relating to the rule of admissibility of evidence, the Committee raised the question as to under what situation is evidence classified as inadmissible.

The Committee heard that the Bill does not clearly list what is admissible but rather the Bill provides a guideline and helps to clarify what is admissible and what is not admissible. The Bill gives clarity on certain issues such as hearsay evidence.

The Committee notes that the Bill will not solve all questions on the matter but it provides room for debate and gives discretion for judges to decide as to what is admissible in any particular circumstance. In short the Bill provides direction and guidance; it doesn't provide necessarily a clear answer in every particular circumstance

Whilst the Committee is pleased with the provisions of the Bill it strongly believes that it is important for all parties to have certainty as to what would be allowed by the courts, as well as having a minimal amount of judicial discretion so that injustices will not occur due to inflexible interpretations.

## **Corroboration of Evidence**

On the issue of corroboration of evidence the Committee notes that the Bill will abrogate the principles and rules of the common law that relate to the need for corroboration of certain evidence.

---

<sup>33</sup> 3. This Act shall not operate as a Code and the principles and rules of the common law in relation to evidence that are not inconsistent with this Act, are preserved.

In taking evidence the Committee heard that a majority of all Common Law jurisdictions have abolished the need for corroboration. Sections 7, 18 and 19 of the Bill are examples of where there is no requirement for corroboration.

The Committee also heard that one of the reasons why many Commonwealth jurisdictions have abrogated corroboration is due to the argument that common law discriminates against women especially when a woman is a victim of an offence against morality. Women have previously been disadvantaged by arguments that they have a tendency to lie especially in relation to offences of a sexual nature.

The Committee noticed that not all of the witnesses that appeared in the hearings had a similar view on the issue of Corroboration. For example one of the witnesses was concerned with clause 19 (c)<sup>34</sup> stating that:

“the reason for me to state earlier that I have some concern with regards to paragraph (c) is in line with experience in this country that if a girl or woman really asserts that she has been attacked or raped then she should report it immediately whether to the Police or to her family. But to take weeks, months before reporting that incident is highly questionable. That is where I base my concern for paragraph (c).”

The Committee was assured that despite the abrogation, the Bill does not abrogate judicial control over the process. There are, for example, clauses in the Bill, (136 and 137), which gives to the court power to reject evidence if they believe that it would be unreliable. What the Bill does is take away an absolute need for corroboration and provides capacity in the court to make a determination .

## **Privilege against Self incrimination**

Clause 146 of the Bill spells out privilege against self incrimination. The Committee questioned the witnesses whether the privilege extends to the close relatives of an accused, such as in the Truth and Reconciliation Commission Act 2008.

---

<sup>34</sup> 19. A court need not exercise caution before convicting an accused in reliance on the following evidence – (c) evidence in relation to an offence against morality where there was delay in reporting the crime.

A witness explained that the privilege against self incrimination arose from the rule that ‘everyone is innocent until proven guilty’. An existing rule exercised in the courts is that an accused person, in giving evidence is not permitted to admit to committing the offence. The witness clarified that an accused is not obliged to answer any questions that would incriminate him/her, to suggest that they had in fact committed an offence somewhere, sometime ago. Clause 146 consolidates that existing rule.

On the note of whether the privilege extends to relatives of the accused, as was done in the Truth and Reconciliation Act 2008, it was implied by a witness that privilege does not extend to relatives. It was however, admitted, that provision was made in the Truth and Reconciliation Act 2008 for privilege for ex militants and their relatives. Particularly to encourage them to provide evidence for the Commission to pave the way for reconciliation and to protect them from being implicated and incriminated from the evidence collected by the Commission.

## 5 Recommendations

---

The Committee has reviewed the Bill and recommends that the government monitor matters raised in this report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. The Committee be given sufficient time to ensure that there is proper scrutiny of proposed legislation.
2. Prior to gazettal of the Bill the Ministry of Justice and Legal Affairs undertake a public awareness program on the new law;
3. At Committee Stage, the Minister should outline the financial implications of the Bill;



**Hon. Severino Nuaiasi**

Chairman

Bills and Legislation Committee

22 June 2009

# Appendix 1: Minutes

---



## BILLS AND LEGISLATION COMMITTEE

---

### NATIONAL PARLIAMENT OF SOLOMON ISLANDS

#### Minutes of Proceedings Meeting No. 17

Monday 22 June 2009, Conference Room 2, Parliament House, 2:45pm

#### 1. Members Present

Hon. Severino Nuaiasi, (Chair) MP  
Hon. Manasseh Sogavare, MP  
Hon. Isaac Inoke Tosika, MP  
Hon. Augustine Taneko, MP  
Hon. Japhet Waipora, MP

#### Apologies:

Hon. Siriako Usa, MP  
Hon. Nelson Ne'e, MP

#### Secretariat:

Mr. David Luta Kusilifu, Committee Secretariat

#### Witnesses:

Mr. James Remobatu, Permanent Secretary, Ministry of Justice and Legal Affairs

Ms. Pamela Wilde, Principle Legal Officer, Ministry of Justice and Legal Affairs

Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney-General's Chamber

Mr. Steven Woods, Deputy Solicitor General, Attorney-General's Chamber

Mr. Ronald B Talasasa, Director Public Prosecution

Mr. Douglas Hou, Director Public Solicitor

## **2. Deliberation on Issues and Questions for the Public Hearing**

The Chair and Members thanked the Secretariat for the preparatory work for the Public Hearing.

The Committee Secretariat briefed the Committee.

## **3. Hearing into the Evidence Bill 2009**

The Chair welcomed the witnesses and thanked them for their attendance.

The Chair opened the hearing and asked the witnesses to introduce themselves and make any opening statements.

The witnesses made their opening statements to their position on the Bill.

The Permanent Secretary provided an overview of the Bill.

The Committee questioned the witnesses.

Evidence Concluded.

## **4. Close**

The Chair thanked the witnesses for their attendance. Hon. Taneko closed the Committee's deliberations with a word of prayer.

Meeting closed at 5:15 pm.



# BILLS AND LEGISLATION COMMITTEE

---

## NATIONAL PARLIAMENT OF SOLOMON ISLANDS

### Minutes of Proceedings Meeting No. 18

Tuesday 23 June 2009, Conference Room 2, Parliament House, 2:00 pm

#### Members Present

Hon. Severino Nuaiasi, (Chair) MP  
Hon. Manasseh Sogavare, MP  
Hon. Augustine Taneko, MP  
Hon. Japhet Waipora, MP

#### Apologies:

Hon. Isaac Inoke Tosika, MP  
Hon. Siriako Usa, MP  
Hon. Nelson Ne'e, MP

#### Secretariat:

Mr. Ian Rakafia, Committee Secretariat

#### 1. Prayer

Hon. Taneko said the opening prayer.

#### 2. Chair's welcome and opening Remarks

The Chair welcomed and thanked the members for their attendance, offered apologies on behalf of members who were unable to attend and delivered his opening remarks.

**3. Evidence Bill 2009**

The Chairman of the Bar Association appeared before the Committee and present his opening statement to his position on the Bill.

The Committee questioned the witnesses.

Evidence Concluded.

**4. Close**

Hon. Waipora said the closing Prayer and the Meeting ended at 3:40pm.





# BILLS AND LEGISLATION COMMITTEE

---

## NATIONAL PARLIAMENT OF SOLOMON ISLANDS

### **Minutes of Proceedings Meeting No. 19**

Tuesday 30 June 2009, Conference Room 2, Parliament House, 10:07am

#### **Members Present**

Hon. Manasseh Sogavare, (Chair) MP  
Hon. Severino Nuaiasi, MP  
Hon. Isaac Inoke Tosika, MP  
Hon. Japhet Waipora, MP  
Hon Nelson Ne'e

#### **Apologies:**

Hon. Siriako Usa, MP  
Hon Augustine Taneko

#### **Secretariat:**

Mr. David Luta Kusilifu, Committee Secretariat  
Ian Rakafia Committee Secretariat  
Stanley Hanu Committee Secretariat  
Mr. Calvin Ziru, Committee Secretariat (Legal)

#### **In attendance:**

Mr. Warren Cahill, Project Manager

#### **1. Prayer**

Mr Ziru said the opening prayer.

#### **2. Appointment of chair**

The committee appointed Hon Manasseh Sogavare as Chair  
The Chair welcomed and thanked the members and secretariat for their attendance.

#### **3. Committee briefed by the secretariat**

The Secretariat briefed the Committee on the Evidence Report 2009.

#### **4. Chair's Report on the Evidence Bill 2009**

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on motion of Honourable Waipora that the report be the report of the Committee to Parliament.

## **5. Close**

The Meeting ended at 10:40am.

## Appendix 2: Witnesses

---

Witnesses who appeared before the Bills and Legislation Committee on 18 June 2009 were:

1. **Mr. James Remobatu**, Permanent Secretary, Ministry of Justice and Legal Affairs
2. **Ms. Pamela Wilde**, Principle Legal Officer, Ministry of Justice and Legal Affairs
3. **Mr. Rupeni Nawaqakuta**, Legal Draftsman, Attorney-General's Chamber
4. **Mr. Steven Woods**, Deputy Solicitor General, Attorney-General's Chamber
5. **Mr. Ronald B Talasasa**, Director Public Prosecution
6. **Mr. Douglas Hou**, Director Public Solicitor
7. **Mr. Frank Kabui**, President of the Bar Association, Chairman of the Law Reform Commission, and Governor – General elect.