

**STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS**

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

WEDNESDAY, 6TH FEBRUARY, 2019

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE
LAW AND HUMAN RIGHTS HELD AT THE COMMITTEE ROOM (WEST WING),
PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON WEDNESDAY 6TH
FEBRUARY, 2019 AT 10.40 A.M.**

Interviewee/Submittee: Fiji Law Society

In Attendance:

- | | | | |
|----|-------------------------|---|-----------|
| 1. | Ms. Laurel Vaurasi | - | President |
| 2. | Ms. Seruwaia Nayacalevu | - | Member |
| 3. | Mr. Varea Seduadua | - | Member |
| 4. | Ms. Milika Sigabalavu | - | Member |

MR. CHAIRMAN.- Good morning, Honourable Members. I would like to welcome the team from Fiji Law Society. Thank you very much for availing yourselves this morning to do the submission with regards to the Code of Conduct Bill (Bill No. 33 of 2018).

(Introduction of Committee Members by the Chairman)

Without any further delay, I would like to give the floor to the Society to do their deliberation on the Bill itself. If there is any clarification during the submission, we shall interrupt in between to ask the question or get clarity and if not, then we will open the floor right at the end, after the submission is presented for question and answer and discussion session. Thank you, now you have the floor.

MS. L. VAURASI.- Thank you Honourable Chairman and thank you Honourable Members for giving us this opportunity to present. For those who do not know me, I am Laurel Vaurasi, I am the President of the Fiji Law Society, accompanying me today are the members Seruwaia Nayacalevu, Varea Seduadua and Milika Sigabalavu.

We will just be raising certain issues from the Bill that we believe needs reconsideration and we do have copies of our amendments. We will be starting with the Interpretation Clause which is Clause 2 and in it we specifically refer to the definition of “child”. The definition of child here has a reference to biological, adopted, stepchild as well as under the age of 18 and over the age 18 years and is dependent on his or her parent for support.

Given the fact that, with respect to the definition of a “child”, there is one particular reference to it in the Code of Conduct, and in particular Clause 26 which addresses Declaration of Income, Assets, Other Interests and Liabilities. This is really meant for the purpose of transparency, and so in that regard, age and dependency should not be a hindrance to this purpose. We are suggesting that the definition of “child” be limited to just biological child, adopted child or stepchild and there is no restriction with regards to age or dependency.

The second part that we are referring to is Part 3 specifically to Clause 10(3). In it, we have suggested that you need to amend to state that the Commission must accept and investigate any complaint from an anonymous person provided that there is compelling evidence or give the Commission the following powers and as such, if the complaint is supported by evidence, they must investigate it, if it is not supported by evidence, they should have the discretion to decide whether any anonymous complaint should be investigated or not.

The reason why we believe that this is very important, is because there are times when, I mean we are complaining, the complaint will be lodged against public official, it can be against the President, it can be against the Prime Minister and any normal person who is going to lodge a complaint knows that, this is not something taken lightly. You need to be brave to be able to come and state that this public official stole this money or there was a bribery involved, or whatever in discretion. But if you are going to use the anonymous Clause, then at the end of the day, there may be some really genuine cases but people who do not have the encourage to be able to step up will be removed just by that Clause. In this Clause, if the evidence that is given, for example, that anonymous person may have gone to a lawyer, may have compiled all the documents and you look at it and you say for certain, "this is really genuine." You have looked at all the evidence, why should you turn them away because there is not a face.

In any event, we have legislations here in Fiji that provides for the whistle-blower. Why should an important task such as this be deleted or be removed and the Commission not be given the discretion? Worst-case scenario, give the Commission the discretion but to specifically say that they must neither accept nor investigate, then, if we look at the members at the Commission, these are high-powered, very intelligent people, why should that power be removed from them and that is what we are suggesting here.

You have seen in my explanation that I have stated there that there are enough examples in Fiji's past or people being deported or evicted from Fiji for taking a position in direct opposition to either Government and or Government representatives and I will give an example of the Karen Seaton case. The reality is that despite the best legislative protections, there will always be some form of victimisation or backlash for attempting to take a high Government official to task.

There needs to be room for anonymity to protect from the influence of the person being complained about. At the very least, the Commission should have the discretion to decide whether to act on the complaint or not. If the complaint is well articulated and appears to be supported by evidence, they should be allowed to investigate notwithstanding that the complaint came from an anonymous source.

The next provision that I will be moving to is in Part 4, in fact most of the matters that we are raising is in Part 4, and that is Part 4, Clause (11) (1) where it says and I quote: "Upon receipt of a complaint, the Commission must notify the complainant in writing of the receipt of the complaint as soon as practicable."

What we have suggested is that "as soon as practicable," be also given an additional requirement and that is no later than 21 days. The definition of "as soon as practicable" differs and I am not trying to say that the Commission does know better about "as soon as practicable" but there are different reasons. Otherwise then you should give a definition or, at least, some timelines to ensure that the complaint is processed without undue delay. We are removing the possibilities of delay in the process and not only that, for all complainants.

Also for the person who is being complained about, it is important that you are aware of it soon enough and you start using your resources. At the end of the day, if there is a complaint led by the Police against you, you will quickly have to run to a lawyer, get your evidence in order and so that is the reason why you are not destroying evidence or documents that could be of assistance to you. That is why we have put in a timeframe for that.

Part 4, Clause 11(3), we have asked to delete the reference to person and for it to read as follows:

"The Commission must verify every complaints identification, contact details including address for service of documents."

The reason why we have stated that is, the current wording seems to imply that there will be a non-person being a complainant.

Moving onto Clause 12(1), in it, you will see that it says, this is about the investigation by the Commission. It says and I quote: “The Commission must investigate any complaint received by the Commission, unless the Commission is of the opinion that...” and it sets out (a) to (h).

As opposed to the words “unless the Commission is of the opinion”, we have stated that “unless the Commission makes a finding that”. Otherwise the Commission can discuss various factors but you must make a finding on that particular fact.

We put there that the Commission must have made a finding as opposed to forming an opinion or referencing it. If there is a finding, there would have been reasons for the finding. So in that regard, we are putting it forward because in the court system, unless the court makes a finding on a particular fact, your appeal that you have come before the court has to be based on the court finding. Otherwise sometimes you can talk about the fact, you can talk about the scenario (pages and pages) but with regards to that issue, there has to be a finding before the Commission can exercise its powers.

The other issue that we have raised here and also in Clause 12(1)(b) and I am sure you have heard numerous issues with regards to this Clause and that is, “The Commission must investigate any complaint received by the Commission unless the Commission is of the opinion that the complaint is malicious or is politically motivated or is made for the purpose of discrediting, defaming or causing reputational damage to, the person the subject of the complaint.” In this regard we have specifically asked that the words “malicious and politically motivated” they either be defined or deleted completely.

The Commission would be guided as to the basis of what is malicious. I mean, you need for something as big as that being malicious or politically motivated, there has to be some guidelines for the Commission to follow as to what is political motivation. We have seen that with regards to the definition of the child, there is only one reference to the definition of the child and yet it referenced. But with regards to this complaint of malicious or politically motivated which is seen throughout the Code of Conduct, there is no definition for it. We are recommending that this be either deleted or there must be a definition to it.

With regards to Clause 12(1)(b), I am referring now to Clause 12(1)(c), it says so the Commission does not have to investigate if, and I quote, “... the complainant has disclosed the nature, substance or details of his or her complaint or has disclosed the name or office of the person the subject of the complaint to any other person or entity apart from the Commission.” This subclause really defeats the purpose of the Commission’s duty; you are investigating but at the end of the day what the public at large, what we want to see is that the public officials are above reproach.

If you cannot complain to another person, you cannot voice your views, if you are going to complain about a senior official whether it is the Prime Minister or the Attorney-General, you will have reservations, you want to talk about it with someone before you bring it forward. It maybe to your lawyer, grant that we would prefer if people did not put it up on *Facebook* and all that, but at the end of the day, everyone has rights and this defeats the purposes of the right to expression, right to legal representation and these are all entrenched in our Constitution under Section 17(1). I just want to read Section 17(1), with all due respect.

Section 17(1) is very clear and it states, and I quote:

“Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes –

- (a) freedom to seek, receive and impart information, knowledge and ideas;
- (b) freedom of the press, including print, electronic and other media;
- (c) freedom of imagination and creativity; and
- (d) academic freedom and freedom of scientific research.” et cetera.

And in this regards, if the complainant, your whole complaint is, the Commission will put it aside and will not investigate it because they have heard or they have seen that you voiced it to other persons and if you measure the whole purpose of this investigation to ensure that our public officials are above reproach, then the two rights, you look at it, it just does not make sense and it defeats the purpose. That is why our view is that, that Clause should be completely deleted.

Moving on to Clause 12 (1)(d) – a minor amendment but an amendment to conform with our legislative drafting that we have in previous legislations and that is:

“The Commission must investigate any complaint received by the Commission, unless the Commission is of the opinion, that –

- (d) there has been such a delay between the conduct complained of and the complaint to the Commission as to render an investigation unreasonable.”

As opposed to the words “such a delay” to put “an inordinate delay”.

I now move onto Clause 12 (1)(f) which talks about the Commission not having to investigate if they have asked for further information and verification and this has not been provided by the complainant. You will see that what we have specifically stated there is that this request for information and verification must be done in writing.

I say this because even as lawyers today, sometimes the request comes via a phone call and then we come to court and we tell the court, “I am so sorry, we did not get that notification” and if it is serious, someone can be in trouble, then you must ensure that proper due process is given to them and they have it in writing and personally served upon them.

HON. N. NAWAIKULA.- (Inaudible)

MS. L. VAURASI.- As required in writing by the Commission and personally served.

The next one that we have stated is Clause 12 (1)(g) and this is with regards to the subject matter of the complaint has been the subject of a previous complainant that has been dismissed by the Commission. In it, we have said that it should be amended so that the words “previous complainant” should be by the same complainant.

I know it is a play for words, but it is important that there be clarity in paragraph (g). If it is the same complainant that has come to make a complaint against one of the public officials with regards to the same subject matter, then that should not be entertained. But if it is a different complainant coming and making a complaint on the same subject matter, then that should be allowed.

It maybe that you may have new evidence, it may be that there was evidence that was not available by the first complainant that the second complainant has, so in that regard, why should that in proper conduct or a breach of that code of conduct be swept away because we have talked about this issue before, and if it is with regards to our public officials that have to be accountable, then the complainant that have proper information, different complainant should have proper opportunity to be heard and to bring the evidence that they have before the Commission.

The other issue that we have raised is with regards to Clause 12(4), and in it we have stated that the words that should be deleted, and if you look at subclause 4, it says and I quote:

“If the Commission believes that a complaint which has been summarily dismissed under this section was malicious or was politically motivated (*again it needs to be defined*) against a person the subject of the complaint or was made for the purpose of discrediting or defaming, or causing reputational damage to, a person the subject of the complaint, then the Commission must refer the complaint to the prosecuting authority for the prosecuting authority to institute such criminal proceeding under Section 13 or under any other written law against the complainant as the prosecuting authority may deem appropriate.”

What we have specifically recommended for there is to delete :

“If the Commission believes that” and substitute it with “If in the Commission’s finding”.

Again, we are saying it is not something that the Commission believes, we can talk about everything and we can all have a different belief but there must be a finding by the Commission in this respect and also we have specifically stated, to delete from the fourth line, the words; “the Commission must” and substitute it with “the Commission may”.

So in this regard, the Commission has heard the matter, made a finding and this Commission should have the discretion to refer the matter to prosecution or not because they have heard the evidence and they can ascertain the criteria whether indeed it was really that malicious or it was not, looking at the definitions that we are suggesting should be provided. Not only that, if you look at it, this would be consistent with the later Clause of Clause 18 which Clause 18(1) does give the Commission a discretion with regards to the decision after investigation but, that is our recommendation with regards to Clause 12(4).

Whilst I am on it, I might as well address Clause 18(1). You will see that, with regards to Clause 18(1), it says:

“Upon completing its investigations into any complaint, which has not been summarily dismissed by the Commission under this Act, the Commission must, by written notice either –

- a) dismiss the complaint and provide a copy of the written notice; or
- b) refer the complaint to the prosecuting authority.”

So there is a discretion given to the Commission here and that is the reason why we are saying to align with Clause 18.

If I could just move on to Clause 13, which deals with malicious complaints again, and what we have stated is that, it should be amended to read:

“Any person who makes a complaint which complaint has been found by the Commission to be malicious or politically motivated as opposed to any person which makes a complaint which is malicious or is politically motivated.”

So in there, we are asking for two measuring sticks: one, that there be a finding; and second, as earlier on, that these words be defined.

Having said that, you will see that this is all linked to Clause 12(1)(b), and I will just want to make a point here, that with regards to defamation and reputational damages, even in the system that we are currently in, you need to take the matter through court, you need to have a proper hearing, evidence is called, cross-examination, and any lawyer will tell you that doing a defamation case is not an easy one to get. Whenever a client comes to lawyers, we give them the different advice but you will tell them, “Look, unless you have very good evidence with regards to defamation...”

Yet in this case, the Commission has the discretion whether to have a hearing and unless the complainants themselves insist on a hearing, so what is the measuring stick here? It seems that in the High Court and for every other public person that brings a case on defamation, you have a high standard that you have to follow. You have to go through the gruelling processes of court and yet the Commission does not have to go through that process but can make a finding on defamation.

It is something that I am asking that there be reconsideration with regards to Clause 12(1)(b) apart from the malicious or politically-motivated which is the one littered throughout, and therefore there needs to be a proper yard-stick or at least guidelines for that for the Commission.

The other issue that I wanted to raise is Clause 14(4), I am repeating what I have mentioned earlier in Clause 12(4) and that is to do delete the words, “... if the Commission believes ...” so wherever the Commission is supposed to have “believed” it is not about “belief” it is about a finding based on the facts that were brought before the Commission and we are asking that that be the same amendment for Clause 14(4).

If I could just move now to Clause 16 and I will ask Seruwaia Nayacalevu to present on that.

MS. S. NAYACALEVU.- Thank you. In regards to Clause 16(1), it talks about disclosure of information that could either prejudice the security defence or international relations of the State or in terms of proceedings in Cabinet, that person must produce a certificate signed by the Attorney-General, certifying the matters specified.

We are of the view that in terms of Clause 16(1)(a), because it deals with Government and the running of the State, “the certificate should be signed by the relevant Ministers which is either the Minister for Security, Defence or the Minister for Foreign Affairs”, and in terms of (b) which is to do with Parliament that should either be the certificate “should be signed either by the Secretary of Cabinet or the Speaker of the House”. This is in correlation as well with the separation of powers in terms of a certificate that must be produced. This would be, in our view, the authority that should sign-off on the certificates as opposed to what has been stated in Clause 16(1) of the Attorney-General certifying the documents.

That is the main point that we wish to raise in Clause 16(1) in terms of the production of the certificate. Just to repeat that for (a), “should be done by the relevant Ministers, either by the Minister for Security, Defence or international relations or even the Prime Minister”, and for (b), because it is to do with Cabinet and Parliament it “should be either be the Secretary to Cabinet or the Speaker of the House”,

certifying the documents and again holding on to those important governance principles of the separation of powers. Thank you.

MS. L. VAURASI.- There is also Clause 16(3) which talks about “The Commission must not require production of any document, paper or thing or require answers to any question from any person if a written law authorises or requires the withholding of any document, paper or thing or the refusal to answer any questions by that person. In it, we are saying that the language needs to be strengthened, it must take transparent steps to deal with it.

In that regard, there needs to be room for the Commission to obtain a court order for the production of the information and not by way of a search warrant. The Commission should have the liberty to apply to the High Court for an order for the production of the information. In this way the producing party has protection for releasing the information and the Commission’s investigations may continue subject to the granting of that order.

In that regard, what we are saying is that, in here the Commission’s power is limited but if there is a justification to that document then the Commission should be able to go to the High Court and seek redress to ensure that those documents that the law may say that you cannot access, the High Court can make an exception to it.

If I could just move on to the Schedules and in this regard, I wish to refer to the divestment of personal interests in Schedule 1. In here, it says that:

- 3.1 A person to whom the Code applies, upon assuming office, must take transparent steps to deal with the financial and other interests of himself or herself, or his or her spouse or child, which could create the impression of a material conflict with his or her public duties.

The language here needs to be strengthened and that it must take transparent steps to deal with, currently drafted is too general, and our reasoning is, a person to whom the code applies upon assuming office must fully disclose to all relevant parties within 14 days, the financial and other interest of himself or herself, or his spouse or child which could create the impression of a material conflict with his or her public duties.

With respect to the Schedules, the divestment of personal interests is really only in Schedule 1. It is not in the other schedules. Whether that should be a consideration for Schedule 2 which applies to the Speaker, the Deputy Speaker and Members of Parliament as well.

The other issue that I wanted to raise is that, under Clause 10 of Schedule 1, it talks about directorships and other forms of employment. It specifically says that:

- 10.1 A person to whom this Code applies (and in this case, the President, Prime Minister and Minister), must not engage in any outside employment that involves a substantial commitment of time and effort such as to interfere with his or her official duties.

With all due respect to the drafters of this: the President, the Prime Minister and the Ministers have fulltime duties, we have seen. Even I, in the Fiji Law Society position, in my smaller office compared to that more demanding schedule, I must state that there is so much just trying to find the time to do your own billable hours or work as a private practitioner.

When I looked at this, I personally thought, how is it that someone in that office can give full commitment to the job and yet still be able to be employed, and it is my suggestion that this should be removed so that they will, as officers of the State in that capacity, should be able to give fulltime to their work. But then again, I have never been the Prime Minister or the President or a Member of Parliament yet and perhaps, they should answer better for themselves.

The other issue I wanted to raise that I have seen missing, and I think it is very important, is with regards to Schedule 2. If you look at improper advantage and misuse of official position, you will see that this is noted in paragraph 4 of Schedule 1 for the President, Prime Minister and Ministers. It is noted in Schedule 2 for the Speaker, the Deputy Speaker and Members of Parliament. It is even noted with respect to Schedule 5, you will find it there, but it is only in Schedule 2 that has a Clause that is not in the others, and that is Clause 3.3.

So if you look at Clause 4 in Schedule 1 - Improper Advantage and Misuse of Official Position. You will see that it has got three parts to it and the first part is, and I quote:

“4.1 – A person to whom this Code applies should never take undue advantage of his or her position...”

4.2 – A person to this Code applies must undertake, upon assuming office, not to use his or her position improperly to gain a direct or indirect personal advantage...

4.3 – A person to whom this Code applies should not offer or give any advantage in any way connected with his or her position...”

But if you look at that same Clause with regards to the Speaker, the Deputy Speaker and Members of Parliament, it is Clause 3.3 that is missing which says, and I quote:

“A person to whom this Code applies, during and after leaving...”

So when you leave your position as President or when you leave your position as Prime Minister, this Clause is missing. Everyone is bound by it with regards to Schedule 2 but yourself, because it says, and I quote:

“...must not use his or her influence improperly in order to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of himself or herself or another person or persons.”

So during, it is covered but after you leave, that Code of Conduct after leaving public office does not apply to the Prime Minister, the President and the Ministers. So it is my humble suggestion that, what is good for goose is also good for the gander, therefore, that should also be applicable to the Prime Minister, the President and Members of Parliament.

The other issue that I have also noted under Schedule 4, and that is paragraph 3.4. This is under Improper Advantage as well. It says, and I quote:

“A person to whom this Code applies should not seek to influence for private purposes or any person, including public officials, by using his or her official position or by offering him or her personal advantages.”

I do not see this Clause with regards to Schedules 1 and 2. So for the sake of uniformity and ensuring that everyone has the same measuring stick of what your Code of Conduct is perhaps, the drafters could just relook at those different wordings.

Also with regards to Schedule 4, Clause 5 - Information Held by Public Authorities. You will see that this Code that is applicable only to Schedule 4 is not there for Schedules 1 and 2. For example, it says in Clause 5:

“A person to whom this Code applies should only disclose information in accordance with the rules and requirements applying to the entity by which he or she is appointed.”

It talks about appropriate steps to protect the security and confidentiality.

And granted there are some conflict of interest provisions, there is confidentiality provisions, but with respect to Schedule 4, Clause 5 - Information Held by Public Authorities, at which the President, Prime Minister, as well as the Speaker, also fall into these definitions as well. Perhaps, the drafters could relook at that.

I just want to move from there to Section 26 because there are prescribed forms that are referred to, that has not been provided which should really be part of the Bill as well.

That is all that I have before us.

MR. CHAIRMAN.- Thank you very much, Madam, for that intensive submission that you have brought before the Committee. Before I open the floor to the Honourable Members, I have some clarifications to make with regards to Part 4 - Clause 12(4) where you are deleting some words and inserting some new ones. As you were saying, “...believed to be substituted by findings but then the word ‘must’ should be converted to ‘may’”.

If I am getting it right, on one side you are saying that if the Committee believes right so they should come with actual findings, but then if they do come with actual findings and if we remove that word ‘must’ and put ‘may’, what will happen if they do not, even with the findings. They suggest that we do not actually take it to the prosecuting authorities. What happens then? What are the views if we go along with the submission given by the society and put the word ‘may’ and the Commission decides, “It is not a ‘must’ it is a ‘may’, we may not go to the prosecuting authority, even though our findings says that there was a breach.” So, what are your views with regards to that?

MS. L. VAURASI.- Ultimately, for example, FICAC, DPP, et cetera, it is not to say that they cannot initiate their own proceedings. I am not saying that they cannot initiate, what I am saying is that, the Commission having heard it should be given the discretion because they will have the evidence before them and they should be able to give that decision and have that discretion. That is why I am giving it to them but it does not mean that other enforcing authorities, after reading the findings because these rulings will be made available, they may themselves decide that they would like to prosecute or otherwise.

In this regard, when I look at the makeup of the Commission and Judicial Officers, if you have heard the case, you should be able to make a finding and yourself put your reasoning as to what you think should happen after that, and that is the reason why they should be given a discretion. If we trust the Commission to believe that they have heard it and made the finding and they know what the evidence entails, then surely they should be able to be given that discretion.

MR. CHAIRMAN.- But as this Bill stands at this point in time without any changes made to the Bill itself, would not that be an injustice if the Commission does decide not to go to the prosecuting authorities in the first place?

Secondly, what I would like to ask is, for example, as this Bill stands at this point in time, the complainant must go to the Commission. So, in that case the prosecuting authorities might not even be aware of any such case coming into the Commission. How would they carry out an investigation without even knowing that such a breach of code of conduct did take place in the first instance and if the Commission is not passing that information to the prosecuting authority? So, they would not have any idea if they can initiate an investigation into something that they are not even aware of.

MS. L. VAURASI.- The Commission's ruling would be printed out or delivered within the machinery of Government which has Memorandums of Agreements. I do not see why something like a ruling on a complaint like that, like we have complaints against lawyers and those rulings are published for the public to see. So, they would be aware of that but also we are linking it to Clause 18.

MS. S. NAYACALEVU.- So, the discretion that has been referred to is the reason for 'may' is because if you look at Section 18 it also gives the discretion, so should you not refer it to a prosecuting authority, the Commission also has the discretion to dismiss the complaint and provide a copy of the written notice to the complainant, as well as the person who is the subject the complaint.

If you put the word 'must' there, then it takes away the discretion that is already given to the Commission as well, in Clause 18. It is either they can dismiss or they can refer it to the prosecuting authority for the complaint to be dealt with, provided they have that finding that we are referring to.

MR. CHAIRMAN.- I think at this point in time, the way the Committee sees that particular Clause, is if there is a finding that shows that there is evidence before the Commission that a person needs to be prosecuted, so it is a must for the Commission to actually refer that case to the prosecuting authority or the appointing authority of that particular person. They cannot decide on their own discretion whether it should be going to them or not but if they have enough evidence to see that, that person needs to be prosecuted and there was a breach, it is a must for the Commission to act on that particular complaint. That is one of the reasons why it is specified 'it is a must', they cannot put their own discretion, knowing that there is evidence against someone who has breached the Code of Conduct.

MS. S. NAYACALEVU.- With that being said, we are just referencing that back to what Clause 18(1) is saying that, if there is a complaint which has not been summarily dismissed, then the Commission under the Act by a written notice either dismiss the complaint and provide a copy of this notice to the complainant and the subject of the complaint or refer the complaint to the prosecuting authority. So either way, it has to make a decision or that is what Clause 18(1) provides. It is that decision, it is either dismissed or referred to the authority to be dealt with as per the provisions of the law.

MR. CHAIRMAN.- Any other Honourable Members have any other clarification they want to seek?

HON. N. NAWAIKULA.- We have a single Commission in which all the three parts of the arms of government will be subjected to – Legislative (Parliament), the Executive, even the Judiciary. I am more worried about the Judiciary being subjective to this Commission because from the Opposition side, we have had similar Commissions, like FICAC and Human Rights where despite all the Clause for independence or the sureties, the Government of the day can use them against people who oppose it, as well as it can also use it for people to tow the lines.

I am interested to know your feeling about that issue. I have checked on some of the other jurisdictions where they have their own internal ones - Parliament has their own, so what is your feeling about the effect of this law might have on the independence of the Judiciary?

MS. L. VAURASI.- The independence of the Judiciary is critical because they are supposed to rule with regards to if there was any misbehaviour in the different arms. So the Commission as it is formed under the Constitution, is chaired by a judicial officer or someone that has the ability to be appointed as a judicial officer.

In that regard, I totally agree that we must ensure that the Commission is independent, and if I can put it very simply as, that it can bring its children into line without any fear of any repercussions on themselves. In that regard, yes, if you are going to whip the spoon or the cane, if I can put that in those terms, against His Excellency the President or the Honourable Attorney-General, you want to know that you can fairly do it without being dismissed later on for that work. I hope I am answering your question.

HON. N. NAWAIKULA.- Just a comment; there are lots of things that are very true in relation to weaknesses in the drafting. My comment is and I have said this in Parliament a lot of times, I only hope that during debates on this, the draftsmen should be sitting in Parliament or they should be here.

But having said that, this will be taken up and things like the need for definition or opinion is open-handed and if you take it on a judicial review, it cannot go anywhere. So those things are needed to be there. Well I hope it will be addressed, but I can assure you that if it is not addressed, I will also raise it in Parliament because there is a total need in relation to that.

MR. CHAIRMAN.- Honourable Member, that is actually undermining the Committee at this moment; those comments. The things that are coming in before the Committee, the Committee is going to deliberate on it and it is not appropriate at this point in time to comment on the Committee's work.

We have substantive Members actually sitting in the Committee, we would not actually allow an alternate Member to come and question how the Committee is going to perform its duties, it is a submission that has come to the Committee, the Committee has noted the submission, we are definitely going to deliberate on it and we will not accept any comments at this point in time towards the Committee.

HON. N. NAWAIKULA.- Let me just clarify. As a practitioner, I can appreciate your concern, touching on the need for better drafting, that is my comment.

MR. CHAIRMAN.- Thank you. Anymore comments, Honourable Ratu Suliano?

HON. RATU S. MATANITOBUA.- Thank you, Chair, through you, let us shift to the Bill. On Declaration of Assets, a person holding public office, I want to hear your views. If I hold a public office, does my spouse and child have to declare even though they do not hold public office?

MS. L. VAURASI.- It really comes down to the purpose of why the drafter wants to ensure that there is transparency on where your assets are. As lawyers, we have seen this in property law, I will just give an example of Family Law, where we had to go to court to find orders because in order to hide the assets, they have transferred it to their parents and we were just remarking that in this definition, it says child, but I tell you, in Family Law they transfer it to their in-laws, their parents anything to hide property.

If people believe that their children should not be part of it, I totally disagree, because if it is transparency and accountability and we are looking at where your assets are, then sometimes it is part of

character flaws that you may decide I will hide all my assets by transferring it to people. That is why I believe that those names should be in the list.

In addition, it may consider even your parents, because it is one of the biggest problems we are having in the Family Court right now where a lot of properties are being transferred to the in-laws and to the parents. In the past it used to be, when I first started law, I used to see a lot of it being transferred to the adult children but now, it is being transferred to the older parents and we have had to go to Court to try to force them to disclose those assets that were disclosed to parents, that would be my additional to this.

HON. N. NAWAIKULA.- I just needed some clarification, very important, on Clauses 12 and 13. We talk about whether this law, which is good, whether it will be delivered and if I hear you correctly, those are reservations that might stop people from utilising the services that are available here. If they risk being charged and if they fear for their own safety, if their identities will be revealed. Can you just talk more on that?

MS. L. VAURASI.- With respect to the Clause, you are referring to Clause 10 or Clause 12?

HON. N. NAWAIKULA.- (Inaudible)

MS. L. VAURASI.- As I had mentioned earlier, the Code of Conduct, we look at the purpose, the Code of Conduct is not something new, we find it in all jurisdictions ...

HON. N. NAWAIKULA.- (Inaudible)

MS. L. VAURASI.- As I had mentioned earlier, we look at the purpose, the Code of Conduct is not something new, we find it in all jurisdictions throughout the world to ensure that our public officials or those that are holding offices where the taxpayers money is funded, is that they are kept to account to us and they behave in a manner that is above reproach.

Here the public should be able to come and lodge a complaint on anyone that they believe have breached the Code of Conduct without fear. If your Commission under Clause 10(3) cannot investigate a complaint if it is from an anonymous person, that is on one extreme end. Then what is the purpose of having an investigation power by this Commission. Then it will become, with all due respect, a toothless tiger because you are going to have a lot of people.

As I said earlier, if I had to come and lodge a complaint against the Attorney-General or whoever it is or against Honourable Niko Nawaikula for that matter, I know that he is a powerful man, he has resources, he is strategically connected internationally, I will be very concerned to bring my complaint before you and these sections which say that "you can be prosecuted" if they believe that your complaint is politically motivated or malicious and all that, then it defeats the purpose of holding our power public officials to account and like I said earlier.

Not only that, most importantly as lawyers, it breaches the rights that these people have to be able to voice it, to be able to express their complaints or their concerns with regards to public officials. People should be able to freely come and say, "I am not happy about Honourable Ratu Suliano, he did this and this and this", not your story, Sir, but to say that he was there when the bribery happened. You should be able to, without fear come and lodge a complaint and that is why the word "anonymous" and removing that power from the Commission strips away the evidence that I may have this much evidence, but I am too frightened to bring it before you because Ratu Suliano is a powerful man.

That is why the Code of Conduct as stands, particularly Clauses (12) and (13) has to be really reconsidered. That is what I strongly urge to really reconsider these sections in light of the rights under the Constitution that is afforded to every member of the public to hold our members to account with regards to Code of Conduct.

MR. CHAIRMAN.- Honourable Salik?

HON. DR. S.R. GOVIND.- During your presentation you said that this Bill is targeting the public servants from different levels. When a public servant leaves his current job; retires, terminated, et cetera, the contents of the Bill will apply to him as well, but who will be prosecuted? The person who is using the information or the decision-maker? Like you have said that this Bill should be extended to Prime Minister's level, Members of Parliament after they leave their job, so if they are no longer in the service but using information to get favours from the current system, who will be the target of prosecution? The person who is giving that favour or the person seeking the favour? But then it will only be targeting public servants. Can you please clarify?

MR. CHAIRMAN.- Excuse me, Madam, can you please, on your microphone, for recording purposes?

MS. L. VAURASI.- The person who is receiving the bribe and the person who is also giving the bribe, but in here, the target is the public official because the Code of Conduct is applicable to them.

To answer your earlier question with regards to if they leave, confidentiality and all that still follows you. You are still bound by the different Clauses that are here, that are stated

HON. DR. S.R. GOVIND.- (Inaudible)

MS. L. VAURASI.- Even after you have left.

HON. DR. S.R. GOVIND.- (Inaudible)

MS. L. VAURASI.- Yes, has retired.

HON. DR. S.R. GOVIND.- (Inaudible)

MS. L. VAURASI.- If you received information on, for example, there was a big Government funding on the building of a new seashore frontline and you knew about the information as to who the funders were, how the tenders went and what the costings were, if you are you are going to use that information later on, that is actually the breach of confidentiality, and the Commission can prosecute you for giving that information. I am just giving an example, just to follow your question.

MR. CHAIRMAN.- Thank you very much Members and also to the members of the Fiji Law Society who presented this morning. From my Committee, I would like to thank you very much for availing yourselves to give some valid and very appropriate points for the Committee to consider once we are at deliberation stage with regards to the Code of Conduct Bill, (Bill No. 33 of 2018).

Thank you very much for coming this morning. Now we will take a short break and we will resume after that.

The Committee adjourned at 11.37 a.m.