

**IN THE COURT OF APPEAL OF SOLOMON ISLANDS**

Civil Case No. 299 of 1994  
Constitutional Jurisdiction.

**IN THE MATTER** of sections 2, 30, 33(1) 76(b) and paragraph 2 of Schedule 3 to the  
Constitution.

**BETWEEN:**

**FRANCIS BILLY HILLY**  
First Plaintiff

**SPEAKER OF NATIONAL PARLIAMENT**  
Second Plaintiff

**COMMISSIONER OF POLICE**  
Third Plaintiff

AND:

**MOSES PUIBANGARA PITAKAKA**  
First Defendant

**SOLOMON SUNAONE MAMALONI**  
Second Defendant

Judgment: Williams JA.

Delivered 22nd October 1994.

The Constitution of the Solomon Islands is unique in that the Prime Minister is not appointed by the Governor General but is elected by the Members of Parliament in accordance with section 33(1) and Schedule 2 of the Constitution. The Governor General is given an express power to remove a Prime Minister with respect to whom the Parliament has passed a vote of no confidence.

It is argued that because of that express provision there is no reserve power in the Governor General to remove a Prime Minister no matter what the circumstances.

No problem will arise when Parliament is meeting regularly. Indeed it could be said that the Constitution is predicated on the assumption that the Parliament would meet regularly. But unfortunately there is no constitutional requirement for it to do so. It should meet at least once a year to pass an Appropriation Act (s.102,103, and 104), but the Constitution itself does not provide any remedy or sanction if the government should act unconstitutionally and not convene Parliament for that purpose.

The calling of meetings of Parliament is dealt with by s.72 of the Constitution, and it also is provided for in Standing Order 7 of the Standing Orders of the National Parliament of Solomon Islands. Paragraph (3) thereof is of significance for present purposes.

Parliament has not met since January 1994 and the Prime Minister has conceded in discussion with the Governor General, if not publicly, that he does not enjoy the support of a majority of Members of Parliament. He remains hopeful that delay in calling Parliament will enable him to muster further support.

The Prime Minister has taken steps to have Parliament convene on 18th November, but there is no certainty that will occur. The Governor-General is concerned that even if Parliament met on 18th November certain constitutional problems may not be overcome. If the Prime Minister lost a vote of confidence on that date there would have to be an election of a new Prime Minister and the swearing in of a new Cabinet before the new government could direct its attention to appropriation for 1995. It is unlikely that could occur before 31st December 1994. That is of particular importance because of the finding by the Chief Justice of the High Court in Abe v. Minister of Finance and Attorney General ([1994] SBHC 35; No.197 of 1994, judgment delivered 4th October 1994) that the present government has contravened the provisions of Section 5(3) of the 1994 Appropriation Act 1993 by borrowing the sum of \$31.072 million which sum is in excess of the \$21 million stipulated in the first column of the Second Schedule to the Act without first obtaining further authority from Parliament.

Given that Parliament has not met since January 1994, that the incumbent Prime Minister does not have (and has not had for some time) majority support in Parliament, and that the government has been borrowing money unlawfully there is presently a Constitutional crisis which demands the immediate recall of Parliament.

In the circumstances in my view the Governor-General has the power under s.72 of the Constitution and Standing Order 7(3) to direct that Parliament convene on a specified date. If that is not the correct interpretation of those provisions, I would be prepared to hold that he was entitled to do pursuant to a reserve power vested in the Governor-General. If a Prime Minister without majority support in Parliament sought to continue governing without convening Parliament I am of the view that the reserve prerogative powers would authorise the Governor-General to direct that Parliament be convened.

Subject to what I have written I agree with all that has been said by Connolly P. and with the answers he proposes to the questions posed.

**Williams JA**