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## EDITORIAL

Next year, 2018, will mark the 20th anniversary of the Commonwealth Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence and the 15th anniversary of the Commonwealth (Latimer House) Principles on the Accountability and Relationship between the three branches of government which were endorsed by Commonwealth Heads of Government at their meeting in Abuja in 2003. These instruments have formed an integral part of the Commonwealth fundamental values since 2005 and the Commonwealth Charter since 2013.

The CMJA has acted as the catalyst for the advancement of the Principles and subsequent Plans of Action (Nairobi 2005 and Edinburgh 2008) in an effort to ensure that the Principles are implemented across the Commonwealth. It continues to play an important role as the Secretariat of the Latimer House Working Group which monitors the implementation across the Commonwealth and has been involved in a number of projects to advance and develop the Principles. The Working Group is composed of representatives from the Commonwealth Lawyers Association (CLA), Commonwealth Legal Education Association (CLEA), Commonwealth Parliamentary Association (CPA) and the CMJA as well as the Rule of Law Section of the Commonwealth Secretariat).

Dr Karen Brewer, CMJA Secretary General, Dr Peter Slinn, CLEA Vice-President, and His Hon. Keith Hollis, former CMJA Director of Programmes, and members of the CJJ Editorial Board, were instrumental in the drafting of a Toolkit commissioned by the Commonwealth Secretariat with a view to enhancing and strengthening accountability and the relationship between the three branches of government and to encourage better understanding and respect through dialogue. The Toolkit was completed in 2015 and was launched in August 2017 by the Commonwealth Secretary General in London. The Principles were widely acclaimed during the Commonwealth Law Ministers Meeting in the Bahamas in October 2017 and it is hoped that the Toolkit will be rolled out soon by the Commonwealth Secretariat.

Although several years have passed since the Latimer House Principles were adopted, their relevance particularly with respect to the issue of accountability and relationship between the three branches of government, remains as timely as ever. This is in view of the various strains and pressures that judiciaries, both within and outside the Commonwealth, have been under in recent years.

In Kenya, after the Supreme Court ruled that the August 2017 presidential elections had been “invalid, null and void” – a ruling which was described as unprecedented in Africa – members of the judiciary reported threats and intimidation against the Supreme Court. According to one report in the *NewStatesman* (“The judges who defied the president: why Kenya’s election is being rerun”, 12 October 2017), although the incumbent, President Uhuru Kenyatta, pledged to abide by the Supreme Court’s decision and stand for re-election, he denounced the judiciary. Hours after Chief Justice David Maraga read the ruling, Kenyatta called the judges a bunch of wakora (“crooks” in Kiswahili) during an impromptu speech. He promised to “fix” the courts and accused them of “a judicial coup” subverting the will of the people. *Deutsche Welle* further reported that senior political leaders in Kenya threatened the judiciary promising to cut it to size and teach judges a lesson (“Political tension grips Kenya after Supreme Court backs Kenyatta win”, 21 November 2017). This sort of rhetoric may serve to engender a climate of intimidation which severely inhibits the judiciary from undertaking its role.

There are, unfortunately, several other cases of strains on the judiciary in recent years also from outside the Commonwealth. In the United States, President Donald Trump’s oblique threats to the judiciary, in the context of the travel ban to the US, are well known. In a series of tweets, he stated “If these judges wanted to help the court in terms of respect for the court, they’d do what they should be doing,” stating “It’s so sad.” He added: “I don’t ever want to call a court biased, so I won’t call it biased. But courts seem to be so political, and it would be so great for our

justice system if they would read [the law] and do what's right." According to the Washington Post, Trump suggested to the judges of the US Court of Appeals for the 9th Circuit that they would marginalize themselves politically if they decide the wrong way ("Trump is not-so-subtly threatening the judicial system, and even his Supreme Court nominee is upset", 8 February 2017).

In Poland, the government introduced a series of profound changes to the rules governing the functioning of the Constitutional Tribunal, the highest court in Poland, which make it possible for the government to remove judges, set a minimum quorum of 13, change the definition of a majority needed for a verdict from half to two-thirds of judges and take away the Tribunal's ability to choose cases. Subsequently, the Polish government refused to publish a ruling of the Constitutional Tribunal of March 2016, which declared these rule changes to be unconstitutional, effectively stymieing the legal effect of this ruling. According to a report of the Venice Commission, a body of legal experts within the Council of Europe, these changes endanger "not only the rule of law, but also the functioning of the democratic system" in Poland ("On Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland", 11-12 March 2016).

The above cases show that modern judiciaries continue to face severe threats and challenges, and underscore the continued relevance of the the Latimer House Principles on the importance of accountability and the relationship between the three branches of government.

Our readers are reminded to register for the CMJA 18th Triannual Conference in Brisbane, Australia, with the theme of "Becoming

Stronger Together", 9-14 September 2018. Please visit [www.cmja.biz](http://www.cmja.biz) for more details. The Commonwealth Heads of Government Meeting (CHOGM) will also be organised in 2018, with the theme of "Towards a Common Future".

This issue opens with a tribute to the lives of Chief Justice Kipling Ernest Douglas and Chief Justice Robin Rhodes Millhouse. LexisNexis have kindly given us permission to reproduce a reflection by Michael Kirby on the *Law Reports of the Commonwealth Foundation General Editors (1985-2016)*: James S. Read and Peter E. Slinn. In *Quality of Justice – Myth or Reality*, William Young explores a series of connected ideas about the quality of justice. Subsequently, in *Social Media: A Judicial Survival Guide*, Barry Clarke provides a detailed insight into the way technology and social media are transforming all aspects of life and the impact of these changes on the judiciary. John Lowndes examines new and emerging forms of judicial accountability in his article on *Judicial Accountability as an Evolving and Fluid Concept*. Finally, Keith Hollis provides a brief note on the interest and value of legal blogs in *A Note on Blogging*.

The Journal has collaborated with LexisNexis to publish two cases from the Law Reports of the Commonwealth (LRC). There are *Bar Association of Belize v Attorney General*, which concerns, *inter alia*, appointment and re-appointment of Justices of Appeal, and *Law Society of Botswana and Another v President and Others*, which relates to the binding nature of the advice of Judicial Service Commission. These reports have been reproduced by permission of RELX (UK) Limited, trading as LexisNexis.