



**Report of the Canadian Parliamentary Delegation respecting
its participation at the Expert Committee Meeting on Status
(EXCO)**

**Canadian Branch of the Commonwealth Parliamentary
Association (CPA)**

**London, United Kingdom
June 8 to 11, 2018**

Report

Ms. Alexandra Mendès M.P. attended the Commonwealth Parliamentary Association (CPA) Working Group on Status meeting in London, United Kingdom, on behalf of the Canadian Branch of the CPA from June 8 to 11, 2018.

The Commonwealth Parliamentary Association Secretariat (CPA) hosted the CPA Working Group on Status in London, UK for members to discuss the status of the Association, at the request of the Executive Committee following its last meeting in Mauritius in March 2018.

The Working Group's Report provides the proposed Application to the UK Government. This comprises a 'Business Case' setting out the basis for a change of status. Subject to the agreement of the Executive Committee, this Business Case will be submitted to the UK Government by the end of 2018.

Recommendation

It is recommended that the Executive Committee:

Approves the proposed application comprising the 'Business Case' to the UK Government for a change of status of the Association and agrees that it should be submitted to the UK Government by the end of 2018.

Agrees 'in principle to establish a Governance Working Group that will meet in 2019 to discuss the proposed new governance arrangements.

Background

On the issue of the Association's status, the Executive Committee at its last meeting in Mauritius in March 2018 recommended the establishment of a small Advisory Working Group to be composed of the Secretary-General and some former members of the 2017 Working Group on Status, namely, the representatives from Africa (Hon. Justice Muturi), BIMR (Hon. Roberta Blackman-Woods), Canada (Hon. Alexandra Mendes) and South-East Asia (Hon. Kiandee). The Hon. CPA Treasurer Mrs. Dunne would serve as an Ex officio Member. Legal and financial experts would also be co-opted to the group to provide expert advice. The terms of Reference provided that the Working Group prepare a business case for reconstituting the change of status to be submitted to the UK Government through the Executive Committee. The Executive Committee agreed that any associated costs of constituting the Advisory Group, including travel to CPA Headquarters Secretariat to meet, would be borne from the 2018 budget.

It was also informally discussed that another Working Group would need to be established after the business case is established and submitted to look at the constitutional implications, including drafting the necessary constitutional reforms flowing from the change of status.

Development of the Business Case

A meeting of the co-opted Members of the CPA Expert Committee on Status took place in London on June 9th, 2018 and all the co-opted members agreed by the Executive Committee were in attendance except Hon. Kiandee (SE Asia) who was unable to confirm his attendance:

1. Africa Region (Hon. Justice Muturi),
2. British Islands and Mediterranean Region (Hon. Roberta Blackman-Woods),
3. Canada (Ms. Alexandra Mendes)
4. Australia (Hon Russell Wortley)
5. The Hon. CPA Treasurer Mrs. Dunne - an Ex officio Member.

The Working Group, under the chairperson Hon Wortley, held a very constructive and collegial meeting and considerable progress was made in identifying the way forward and the content of the 'business case' required by the UK Government.

Following the meeting the Secretary-General worked with the CPA external lawyer and Dr. Roberta Blackman Woods, MP (UK), to prepare the draft of the business case taking into account the very useful steer from Dr. Blackman Woods as to how to frame and position the submission so that it is best received by the UK Government, bearing in mind that the consistent position of the UK Government is that it will not be able to look at the CPA request until after BREXIT which is at end of March 2019.

The proposed 'Business Case' agreed by the Working Group for reconstituting the CPA from a UK charity to an international inter-parliamentary organisation to be submitted to the UK Government, subject to agreement of the Executive Committee is attached at Annex A.

In addition, the CPA UK Branch has established a small core group under CPA UK Chairperson, Hon. James Duddridge, MP to champion the business case across Westminster once it is submitted to the UK Government.

Next Steps

After the Executive Committee considers and approves the proposed application to the UK Government for a change of status of the Association, the business case will to be submitted by the Hon CPA Chairperson to the UK Government via the Minister responsible for the Commonwealth and United Nations, Lord Ahmad of Wimbledon.

Governance Working Group

The Secretary-General proposes that another working group will need to be established in 2019 to draft the new governance arrangements that will sit under the new international legal structure. Accordingly, the Executive Committee is respectfully requested to give an 'in principle' agreement to establish a Governance Working Group that will meet sometime in 2019.

The exact modalities and Terms of Reference of the Working Group will be submitted to the Executive Committee at its mid-year meeting in 2019. The reason for the deferral being that it would be premature at this meeting to define the Terms of Reference for the new Governance Working Group in advance of a response and reaction of the UK Government on the business case being received by the CPA. At that point it is submitted that the CPA will be in a much better position to frame the Terms of Reference. In anticipation of establishing the Governance Working Group in 2019 a financial provision has been included in the Draft 2019 budget.

Respectfully submitted,
Yasmin Ratansi, M.P.
Chair of the Canadian Branch of the
Commonwealth Parliamentary Association (CPA)

ANNEX A

Commonwealth Parliamentary Association Application to the UK Government for a change of status Business case

1. The Commonwealth Parliamentary Association (“CPA”)

1.1 The CPA is the international organisation of Commonwealth parliaments and parliamentarians. Its members comprise 53 Commonwealth parliaments and other sub-national legislatures in Commonwealth countries, which act as branches.

1.2 The CPA was founded in 1911 as the Empire Parliamentary Association. When the modern Commonwealth was established following the 1949 London Declaration, the CPA adopted its current name and widened its membership.

1.3 The CPA works alongside the Commonwealth Secretariat and carries out activities which strengthen Commonwealth parliaments and help achieve the values of the Commonwealth. The CPA sets benchmarks of democratic governance for parliaments, and provides upskilling support to parliamentarians and their staff to enable them to carry out their roles effectively within parliamentary institutions.

1.4 Through its work the CPA has supported the significant growth of parliamentary democracy in Commonwealth countries over recent decades. There is a strong desire among its member parliaments for the CPA to build on its success and have an enhanced role in promoting and defending parliamentary democracy and the rule of law across the Commonwealth.

1.5 However, the CPA has reached a critical stage in its development and needs a change to its legal status to enable the organisation to continue to function effectively, and to achieve its ambitions for the future. The member parliaments and legislatures of the CPA have identified that the only feasible option is the recognition of the CPA as an international organisation by the UK Government.

2. The need for change

2.1 In all respects the CPA operates in practice as an international inter-parliamentary organisation, but the CPA has the legal status of an English charity. It would not usually be expected that an organisation such as the CPA would be a charity, given the nature of the CPA and the work it carries out.

2.2 The CPA currently has the legal form of an unincorporated association and it has been registered as a charity in England and Wales since 1971. The charitable objects of the CPA are:

“...to promote knowledge of the constitutional, legislative, economic, social and cultural aspects of parliamentary democracy, with particular reference to the countries of the Commonwealth of Nations.”

2.3 In the decades following the registration of the CPA as a charity a number of issues were identified which caused the member parliaments and parliamentarians of the CPA to question whether charitable status was appropriate for the CPA. In particular:

2.3.1 As a charity the CPA is limited in its ability to carry out certain activities which would promote democracy, human rights and democratic values and protect the rights and privileges of parliamentarians. This is because of the restrictions on charities pursuing 'political' purposes¹. The CPA has been unable to sign up to certain international statements and communiques because of its charitable status. It has also been unable to join other international organisations in speaking out against events in Commonwealth countries, such as the unlawful imprisonment of parliamentarians. For example, the CPA has been unable to make statements of concern over the situation of the Rohingya and the treatment of Parliamentarians who are denied their human rights, when other international organisations have made statements. There has been a desire among the members of the CPA for the CPA to make statements on such matters.

2.3.2 The Charity Commission has substantial legal powers to investigate and intervene in charities, including the power to remove charity trustees. This gives a UK regulatory body significant power over the CPA, which is inappropriate given the nature of the CPA and its functions as an international inter-parliamentary organisation.

2.3.3 The current status of the CPA is unacceptable to many of its members. Charitable status has resulted in issues of democratic legitimacy, because there are limits on the amendments member parliaments can make to the constitution of the CPA because the CPA is a charity. There have also been serious and ongoing concerns among a number of CPA member parliaments about their ability under national law to make payments to a UK charity and about the appropriateness of charitable status for the parliamentary organisation of the Commonwealth. This puts at risk some of the funding that the CPA needs in order to carry out its role effectively. A number of members have also expressed serious concerns about the perception of the CPA as a result of its charitable status, particularly in Africa and the Caribbean.

2.3.4 There are limitations on the ability of the CPA to achieve its mission because of its current status. For example, at the Commonwealth Heads of Government Meeting the CPA can only participate as a civil society organisation, which places a serious practical limitation on the ability of the CPA to provide a strong voice at CHOGM on issues relating to parliamentary democracy and good democratic governance.

3. Reviews of the status of the CPA

3.1 As a result of these and other issues, the CPA has been engaged for several decades in a lengthy process of reviewing its status and seeking change. In particular:

3.1.1 In **1992** the CPA General Assembly² approved the recommendation of a working party that steps be taken to obtain recognition for the CPA as an international inter-parliamentary organisation and that the support and assistance of Heads of Government of the Commonwealth be sought. Support was obtained from many Heads of

¹ See Charity Commission [Campaigning and Political Activity Guidance \(CC9\)](#)

² The ultimate constitutional authority to determine the policy and management of the CPA lies with the General Assembly. Attendees at the General Assembly include the Officers of the CPA, the Chairperson of the Commonwealth Women Parliamentarians, Regional Representatives and Branch delegates. The General Assembly takes place during the annual Commonwealth Parliamentary Conference which the CPA organises

Government, but at that time the then UK Prime Minister, John Major, was unable to provide the support of the UK Government.

3.1.2 In **2006** CPA members raised concerns about the charitable status of the CPA and a new working party considered the status of the CPA and recommended the CPA investigate the possibility of obtaining consultative status at the UN.

3.1.3 In **2010** the CPA set up a working party to examine again the CPA's status and the working party recommended in 2011 that the CPA commence discussions with the UK Government to obtain a similar status to that of the Commonwealth Foundation. The UK Government was approached and in July 2013 Minister of State, Lord Howell, responded that the CPA required a stronger business case for primary legislation.

3.1.4 In **2012** a CPA branch proposed a resolution to amend the CPA constitution, which was not capable of being passed because of the charitable status of the CPA. This caused serious concerns among a number of CPA members because it highlighted the inability of members of the CPA (being Commonwealth parliaments) to change aspects of the constitution to which they are parties.

3.1.5 In August **2013** the CPA Executive Committee resolved to explore the issue of the CPA status, including by writing to Commonwealth Heads of Government. Each Head of Government was approached, but by October 2014 it had not proved possible to obtain a consensus.

3.1.6 In December **2016** the General Assembly approved the establishment of a new expert committee to consider the CPA's status. In March 2017 the expert committee met and made a recommendation that the CPA be reconstituted in the United Kingdom as an inter-parliamentary institution with an international vocation, with functional privileges and immunities to reflect its appropriate status; and, that the UK Government be approached about the enactment of relevant UK legislation that would provide functional privileges and immunities to the reconstituted organisation. The recommendation was shared with the Commonwealth Heads of Government. Sir Alan Duncan wrote to the CPA, on behalf of the UK Prime Minister, on 22 August 2017 and stated that "In principle, we are willing to consider the CPA's request for privileges and immunities, however, we would like more detail about the functional need for such privileges and immunities".

3.1.7 In November **2017** the CPA General Assembly approved the recommendation of the expert committee. Following the 2017 General Assembly the CPA Secretary General wrote to Lord Ahmad of Wimbledon to inform him of the decision made by the General Assembly. In a letter in response to the Secretary General of the CPA dated 10 December 2017, Lord Ahmad wrote:

"Regarding the Government's position on privileges and immunities for the CPA, in principle we are willing to consider the request, however, we would appreciate more detail from the CPA about the functional need for such privileges and immunities. In addition, it would be necessary to introduce primary legislation for the CPA to receive privileges and immunities and you should be aware that, for the foreseeable future, the Parliamentary timetable for legislation will be heavily focussed on work related to the UK leaving the EU.

However, I remain eager and willing to work with you on this important issue for the CPA and will, of course, give any business case you provide my fullest consideration."

3.1.8 On 13 March 2017 the CPA Chairperson and Secretary-General held meetings with the CPA UK Chair Hon James Duddridge MP, and members of the CPA UK Branch Executive Committee, the Minister responsible for the Commonwealth and United Nations, Lord Ahmad of Wimbledon, and also the Chief Legal Advisor at the Foreign and Commonwealth Office, Sir Iain MacLeod.

4. Functional need for a new status

4.1 The numerous reviews of the status of the CPA and attempts to obtain a new status for the CPA have intensified over time and the CPA has now reached a critical point, where the ability of the organisation to discharge its functions, maintain its unity and achieve fully the ambitions of its members for the future is at risk.

4.2 There is a serious concern among the members of the CPA that without a change in status the influence and effectiveness of the CPA could decline over time and this would weaken the Commonwealth more generally. This long-standing issue now poses an existential risk to the future of the organisation unless it is resolved without delay.

5. Proposed new status

5.1 There is a consensus in the CPA that the only viable way to address these issues is by the UK Government formally recognising the CPA as an international inter-parliamentary organisation³. The CPA is confident that this will secure the future of the CPA and enable it to carry out a full range of activities to strengthen the Parliaments of the Commonwealth and promote human rights, democratic values and the rule of law, without unnecessary limitations.

5.2 The recognition of the CPA as an international inter-parliamentary organisation will better reflect the type of organisation that the CPA is and its functions. Other comparable organisations have this status, such as the Inter-Parliamentary Union and the Assemblée Parlementaire de la Francophonie. The CPA recognises that the UK Government is not bound by the practice of other states in relation to the granting of privileges and immunities, but the CPA asks the UK Government to take into account the status of these organisations.

5.3 The new status will give the CPA a more authoritative presence internationally and enhance the credibility of the CPA and its work strengthening the parliaments of the Commonwealth. It will also enhance the standing of the CPA among other international inter-parliamentary organisations and the parliaments (and parliamentarians) of the Commonwealth. The enhanced international status and standing will enable the CPA to operate more effectively, increase its impact internationally and compete more successfully for funding and partners.

³ The reviews of the status of the CPA have looked at a range of options. One option considered was a restructure of the CPA so that it remained a UK entity but was no longer a charity. However, it would then be exposed to UK taxation and its existing assets could not be used for non-charitable purposes. The CPA could not function if it had to pay UK taxation because it is likely that many member parliaments would not agree to make payments to the CPA which could be subject to taxation by the UK Government and there is a risk some members may consider leaving the organisation. For this reason the benefits the CPA is seeking include exemptions from taxation equivalent to those available to a charity.

5.4 It is anticipated that the CPA will also be able to achieve observer status in certain international organisations and participate more fully in organisations such as the UN, where the parliamentary voice of the Commonwealth should be present but it is presently excluded for lack of standing owing to the charitable status of the CPA.

5.5. Although the CPA would no longer be a charity subject to the regulation of the Charity Commission, it would still be subject to UK Parliamentary oversight, as the legislation recognising the CPA as an international inter-parliamentary organisation would be made by the UK Parliament.

6. Establishing the CPA as an international inter-parliamentary organisation

6.1 With the assistance of the UK Government, the CPA could be reconstituted by an international agreement of its member parliaments and other legislatures.

6.2 The recognition of the CPA by the UK Government as an international inter-parliamentary organisation will require simple legislation and the granting of functional privileges and immunities to the CPA. However, although it is acknowledged that the UK cannot of itself confer international legal personality on the CPA across the Commonwealth, it is nonetheless submitted that the granting by the UK of minimum privileges and immunities is a necessary first step towards the CPA's full recognition as an international inter-parliamentary organisation and in order to discharge its international functions.

6.3 In seeking recognition as an international inter-parliamentary organisation, the CPA wishes to ensure that it retains same tax benefits that it enjoys currently as a charity, but no more. For example, the CPA would wish to retain its current exemption from direct tax on income. Accordingly, there should be no ongoing cost or loss of revenue for the UK as a consequence of this change of status.

6.4 The CPA recognises that following the consideration of this business case there would need to be discussions between the CPA and the UK Government about the details of the legal and financial arrangements for the new structure of the CPA, including its new oversight and governance arrangements, and the transition from the current structure to the new structure, including how existing charitable assets would be dealt with.

7. Benefits to the Commonwealth of a new status for the CPA

7.1 As well as securing the future of the CPA and providing an opportunity for the CPA to achieve more in future, the new status of the CPA will also have significant benefits for the Commonwealth and the UK.

7.2 The granting of a new status to the CPA would be cost neutral to the UK Government. It will send a positive message from the UK Government to the parliamentarians of the Commonwealth and will encourage them to support the valuable work of the CPA and engage with its programmes. This will help strengthen the Commonwealth and maintain its unity and stability at a time where there are serious challenges to the international order, and to the sustainability of parliamentary democracy and human rights.

7.3 This change in the status of the CPA is also in line with the policy of the UK Government as the current Chair in Office of the Commonwealth to strengthen the Commonwealth as a focus for democratic practice and development, and to strengthen

the institutions of the Commonwealth so it promotes human rights, democratic values and the rule of law. The CPA is in a unique position to support the Commonwealth in these areas and expand its work.

8. The eligibility of the CPA for a new status

8.1 The CPA is in a position to be recognised by the UK Government as an international inter-parliamentary organisation, on the basis of functional need.

8.2 The CPA has a number of characteristics that support its recognition as an international inter-parliamentary organisation and distinguish it from non-governmental organisations and civil society organisations. In particular:

8.2.1 The CPA has a membership of parliaments, which are the public, legislative organs of states. No parliament will be able to participate in the CPA without the explicit or implicit consent of a national or sub-national parliament, elected by citizens.

8.2.2 The CPA is able to make arrangements and agreements with parliaments as the representative organs of states. This includes arrangements for international conferences of CPA member parliamentarians, and for events such as post-election seminars to strengthen parliaments and democratic governance.

8.2.3 The CPA has international support and recognition by governments. The Commonwealth Heads of Government have recognised the parliaments and legislatures of the Commonwealth as essential elements in the exercise of democratic governance, and have endorsed the efforts of the CPA as the parliamentary partner of the Commonwealth.

8.2.4 The CPA has aims and purposes which support the recognition of the CPA as an international inter-parliamentary organisation. These relate to the strengthening of parliaments and democratic governance.

8.2.5 The CPA governance arrangements include elected members of Commonwealth parliaments.

8.3 The CPA is already recognised by the Commonwealth Heads of Government and other international organisations as an international inter-parliamentary organisation which has an important role on the international plane, in strengthening the Commonwealth, parliaments and democratic governance.⁴

8.4 There is also currently an imbalance within the Commonwealth: the Commonwealth Secretariat and Commonwealth Foundation have no higher purpose or mandate than the CPA internationally, but both these organisations have been recognised as international organisations. This is anomalous and weakens the Commonwealth and needs to be addressed by the CPA being granted the same status.

8.5 It is particularly important for the Secretary General of the CPA to have equality with other functionaries performing the same or similar functions for comparable international institutions, for the effective performance of their role.

⁴ See, for example The Harare Commonwealth Declaration (1991) issued by the Commonwealth Heads of Government, which specifically recognised the role of the CPA in achieving the objectives of the Commonwealth

9. Next steps

9.1 The member parliaments of the CPA formally request that the UK Government recognise the CPA as an international inter-parliamentary organisation, and grant the CPA the minimum privileges and immunities the CPA needs to carry out its functions as an international inter-parliamentary organisation.

9.2 This can be achieved by the UK Parliament passing a short Act. The core provisions the CPA considers should be in the Act are set out in the schedule to this business case.

9.3 The CPA is grateful to the UK Government for agreeing to consider this request and for inviting the CPA to prepare a business case.

9.4 The CPA hopes to have provided sufficient information at this stage. However, should the UK Government require anything further the CPA will be pleased to assist.

8 November 2018

Schedule

Core provisions to be included in the Act

The following list of provisions for inclusion in the Act is intended to be indicative and non-exhaustive, as a starting point for discussion.

The Act would:

1. Confer on the CPA the legal capacities of a body corporate.
2. Provide that the CPA as an organisation shall have the following privileges and immunities:
 - a) exemption or relief from taxes at least equivalent to those enjoyed by the CPA as a charity;
 - b) inviolability of official archives, premises and communications; and
 - c) [immunity from prosecution and legal process, except in relation to certain civil matters].
3. Confer on the Secretary General of the CPA the following privileges and immunities, (if the Secretary General is not a UK citizen):
 - a) privileges and immunities similar to those afforded to diplomats;
 - b) exemption or relief from taxes and rates;
 - c) exemption and privileges in respect of official papers and documents equivalent to protections afforded to diplomats; and
 - d) [immunity from prosecution and legal process in respect of acts or omissions in the course of the performance of official duties, except in relation to certain civil matters].

Travel Costs*

ASSOCIATION	Canadian Branch of the Commonwealth Parliamentary Association
ACTIVITY	Expert Committee Meeting on Status (EXCO)
DESTINATION	London, United Kingdom
DATES	June 8 to 11, 2018
DELEGATION	
SENATE	
HOUSE OF COMMONS	Ms. Alexandra Mendès, M.P.
STAFF	
TRANSPORTATION	\$0.00
ACCOMMODATION	\$0.00
HOSPITALITY	\$0.00
PER DIEMS	\$310.49
OFFICIAL GIFTS	\$0.00
MISCELLANEOUS	\$0.00
TOTAL	\$310.49

**Only expenses not reimbursed by the Commonwealth Parliamentary Association are included.*