

## RECENTLY ENACTED LEGISLATION

### ▪ RIGHT OF ACCESS TO INFORMATION ACT 2017

This Act applies to all public bodies of the Federal Government and shall come into force at once. The Act repeals the Freedom of Information Ordinance 2002. 'Right of access to information' is defined by clause (xii) of section 2 of the Act.

Section 3 (2) of the Act lays down that the Act shall be interpreted so as to advance its objectives as described in the Preamble, to promote the right of access to information and to facilitate and encourage the disclosure promptly of the information at the lowest and reasonable cost.

Section 3 (1) provides that "*No applicant shall be denied access to information or record held by a public body*"; this right is however subject to other provisions of the Act. '*Information*', '*public body*' and '*record*' are defined respectively by clauses (v), (ix) and (x) of section 2 of the Act.

Section 11, 13, 14 and 17 relate to the procedure of making a '*request*' to the '*designated officer*' and Appeal to the '*Information Commission*'. '*Request*' means a *request for access to information and includes a request for access to a specific record*. '*Designated Officer*' and '*Information Commission*' are defined respectively by clauses (iii) and (iv) of section 2.

Under the provisions of section 11, a request may be made to the designated official by any citizen of Pakistan. The citizen needs not provide any reason for making the request. Where the requested information is not available with the designated official, he is required by provisions of section 12 to inform the applicant accordingly within ten working days of making of request.

Under the provisions of section 13, the designated official shall provide a written acknowledgement at the time of receiving the request to the citizen. The citizen shall be entitled

to receive the information on payment of prescribed fee or in case of refusal shall be entitled to make an appeal under provisions of section 17 to the Information Commission.

If the request is rejected, the designated official shall disclose ground (s) as mentioned in section 13 (2) (b) on which the request was rejected. It is further provided in section 13 (4) of the Act that the designated official shall not reject the request without the sanction of the Principal Officer [section 2 (viii)]

Under section 14, the request shall be responded to within a maximum of ten working days by the designated official. A maximum of further ten days for response are allowed by section 10 (2) in cases where '*the request requires a search through a large number of records or record located in different offices or consultation is required with third parties or other public bodies*'. According to section 10 (3), information required to protect the life or liberty shall have to be provided within three days of making the request.

According to the provisions of section 17, an applicant who is not satisfied by the decision of the designated official or if no decision has been communicated to him within the time fixed for such decision, may, within a period not exceeding thirty days after either receiving a decision or after the time limit for such a decision has passed, prefer an appeal to the Information Commission. An appeal shall be free of charge. The Information Commission shall decide an appeal within a period of sixty days. The public body shall, in an appeal, bear the burden of proof showing that it acted in accordance with the provisions of the Act.

Section 22 of the Act defines the offences which may be committed in relation to the process of provision of the information or the integrity of the record to be provided under the provisions of the Act and provides punishments.

Section 7 excludes certain record from the ambit of the provisions of section 6 while section 16 describes the class of information which is exempt from disclosure.

Section 4, 5 and 8 relate to maintaining, indexing, publishing, computerization and voluntary disclosure of record by public bodies, except that record which is excluded under the provisions of section 7 and 16.

## ▪ COURT CASES

### 2006 SCC 76

**This is a Canadian decision that I happened to study recently. It decides an issue that arose with other issues of the case. The issue that is excerpted below (from paragraph 54 to 58 of the Judgment) relates to the binding effect of the 'obiter dicta' of the Supreme Court of Canada on the lower Courts. It appears to be a sound view of the issue of 'precedent':**

*The traditional view expressed by the Earl of Halsbury L.C. was that "a case is only an authority for what it actually decides", and that "every judgment must be read as applicable to the particular facts proved, or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. (Quinn v. Leatham, [1901] A.C. 495 (H.L.), at p. 506)"*

*The caution was important at the time, of course, because the House of Lords did not then claim the authority to review and overrule its own precedents. This is no longer the case (since the declaration of 1966). Even in the time of the Earl of Halsbury L.C., however, the challenge was to know how broadly or how narrowly to draw "what it actually decides".*

*From time to time there have been statements of some members of this Court that have been taken to suggest that other courts are bound by this Court's considered ruling on a point of law, even a point not strictly necessary to the conclusion. Most famously, in Sellars v. The Queen, [1980] 1 S.C.R. 527, at p. 529. The "Sellars principle", as it came to*

*be known, was thought by some observers to stand for the proposition that whatever was said in a majority judgment of the Supreme Court of Canada was binding, no matter how incidental to the main point of the case or how far it was removed from the dispositive facts and principles of law;*

*The issue in each case, to return to the Halsbury question, is what did the case decide? Beyond the ratio decidendi which, as the Earl of Halsbury L.C. pointed out, is generally rooted in the facts, the legal point decided by this Court may be as narrow as the jury instruction at issue in Sellars or as broad as the Oakes test. All obiter do not have, and are not intended to have, the same weight. The weight decreases as one moves from the dispositive ratio decidendi to a wider circle of analysis which is obviously intended for guidance and which should be accepted as authoritative. Beyond that, there will be commentary, examples or exposition that are intended to be helpful and may be found to be persuasive, but are certainly not "binding" in the sense the Sellars principle in its most exaggerated form would have it. The objective of the exercise is to promote certainty in the law, not to stifle its growth and creativity. The notion that each phrase in a judgment of this Court should be treated as if enacted in a statute is not supported by the cases and is inconsistent with the basic fundamental principle that the common law develops by experience.*

## ▪ IMPORTANT NEWS

**The Securities and Exchange Commission of Pakistan (SECP) has notified the Listed Companies (Code of Corporate Governance) Regulations 2017, replacing the Code of Corporate Governance 2012. The Listed Companies Regulations 2017, which would come into effect from January 1, 2018, have been issued under the PSX listing regulations and are aimed at aligning corporate governance practices with international standards.**

**The National Assembly on Monday passed a crucial bill seeking to amend the Nepra Act 1997. A major change in the proposed law deals with creation of an appellate tribunal under a retired high court judge to refer back National Electricity Power Regulatory Authority (Nepra) decisions for reconsideration. Under the existing law, Nepra decisions could only be challenged**

before a High Court. Also, the bill reduces the experience criteria for chairman and members of Nepra from 15-20 years to 10 years and their age limit to 62 years from 65. The bill has made issuance of wrong electricity bill a criminal offence and empowered Nepra to hear, investigate and award punishment to the guilty officials and refer the case to the law enforcement agency concerned for registration of an FIR. The proposed law has suggested imprisonment of up to three years or a fine up to Rs10 million or both for an employee of licensee, any company or any individual who is found guilty of overbilling.

**Supreme Court has fixed for hearing all nine petitions challenging the controversial Elections Act 2017, which allows a disqualified parliamentarian to hold party office.** These petitions had been earlier returned by the registrar's office on the ground that the petitioners had directly approached the apex court instead of availing the remedies offered by the appropriate forums. The petitioners assailed the registrar's decision to return the petitions. Hon' Chief Justice after arguments in-chamber, ordered the Court's office to remove the objections and directed the office to fix the petitions before a bench of the Court, which would be constituted later.

**A petition seeking direction for the Federation for merger of Fata with KPK province has been filed in the Supreme Court.** It argues that in its preamble the Constitution says the principles of democracy, freedom, equality and social justice will be upheld; the rights of the people of the federation's territories, including the areas that come under Fata, should be dealt with in a similar fashion. It is urged that the fundamental right of the people of Fata to enjoy equal protection of law and to be treated in accordance with law as an integral part of the federation should be enforced. The petition highlights that the president in consultation with the government of Khyber Pakhtunkhwa formulated a Fata reforms package. and the provincial government has fulfilled its constitutional requirement and consented to merge the areas of Fata with its territories, for which decisions and steps have already been taken. In addition, a resolution has been adopted by the provincial assembly in this regard, but the Federation, to the utter surprise of all concerned,

has backed down from merging Fata and KPK. The inaction on the part of the Federation to enforce Fata reforms package offends the principle of policy laid down in the Constitution and violates the fundamental rights of the citizens of the country, says the petition.

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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Similarly, it has not been designed to provide legal or other advice.

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