



National Parliament of Solomon Islands

Special Select Committee on Privileges, Powers and
Immunities of Parliament

Committee Report

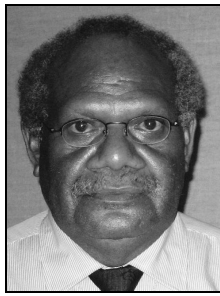
**Inquiry into the preparation of appropriate
rules and regulations for prescription by
Parliament according to section 69 of the
Constitution**

**NP-Paper No. 19/2009
Presented on 19 June 2009
National Parliament Office**

“Parliamentary privilege exists for the greater good of the community and protects the public interest, not only through promoting the functions of an effective parliamentary system and a democratic government but also through Members being freely able to bring matters to the attention of the Parliament.”

Mr John Evans
Former Clerk of NSW Parliament
Evidence presented to the Committee
22 August 2008

Committee Members



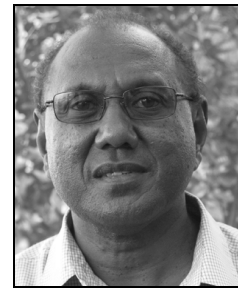
Hon. Pateson Oti, MP
Chairman



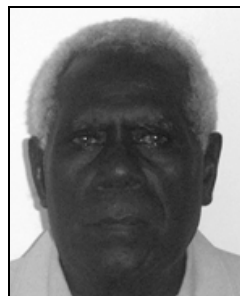
Hon. Clement Kengava, MP
Member



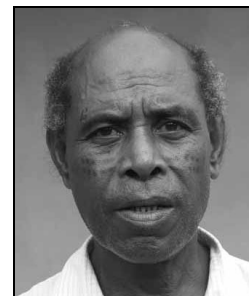
Hon. Steve Abana, MP
Member



Hon. Milner Tozaka, MP
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Hon. Japhet Waipora, MP
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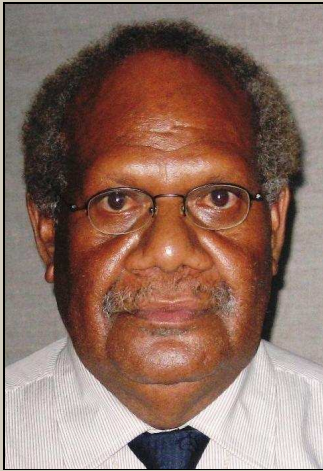
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Chair's Foreword



Hon. Paterson Oti
Chairman

I am pleased to present the report of the Special Select Committee on Privileges, Immunities and Powers of Parliament to the Parliamentary House Committee.

Parliamentary privilege is in its detail, a complex and technical subject matter. The reason for its complexity lies in its historic origins and Parliament's diverse functions. Parliament has a legislative and deliberative function and the constitutional role to enact laws and make financial provisions for government expenditure. Parliament also provides a forum where grievances are aired by members on behalf of their constituents. It is where Ministers explain to Parliament what they have done in their capacity as Ministers and the policies and actions of their Ministries. Parliament may also consider or review any matter it chooses principally through referring such matters to an appropriate committee. In order for Parliament to undertake its functions and duties, Parliament needs certain privileges and immunities to carry out its everyday business.

Under British law, parliamentary privilege is derived chiefly from ancient practice, asserted by Parliament and accepted over time by the Crown and the Courts of Law. The privileges of the House of Commons were established through centuries of struggle between Parliament and the monarch with Parliament eventually asserting its supremacy. During this period Members of the House of Commons were sometimes imprisoned or punished for what they said in Parliament that was displeasing to the monarch. The passing of the Bill of Rights in 1689 settled the matter once and for all in Parliaments favour.

Article 9 of the Bill of Rights allows for the freedom of speech and for Parliament to have exclusive control of its proceedings. Freedom of speech allows members of Parliament to say anything they believe is necessary on the floor of Parliament and not be sued for defamation. It also allows for Parliament to have control over its proceedings or business without impeachment by the Courts. Article 9 became part of Solomon Islands law under the *Constitution of Solomon Islands 1978*.

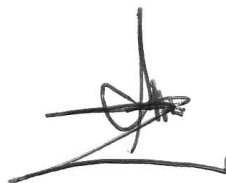
On the 17 August 2007 I successfully moved a motion to address the issue of the privileges of this Parliament for two reasons. Firstly, to ensure immediate clarity of the privileges and immunities and powers by applying those of the House of Commons and secondly, the ensuing resolution created this special select committee, which was mandated to prepare a report to the Parliamentary House Committee for consideration and report to the House on appropriate rules and regulations for prescription by Parliament according to Section 69 of the Constitution. Section 69 of the Constitution also allows for Parliament to makes laws or rules regarding parliamentary privileges. For 29 years the Solomon Islands Parliament did not exercise its powers under Section 69 of the *Constitution*.

Following that motion, Parliament passed the *Prescription of Parliament Privileges, Immunities and Powers Act 2007* in August 2007. The Act applies to the National Parliament of Solomon

Islands all the privileges, immunities and powers of House of Commons of the United Kingdom and its members that were in existence at 7 July 1978.

The Committee having carefully considered the matter recommends the adoption of the semi-legislative approach which proposes that Parliament enact legislation for powers and privileges in certain cases where clarity is necessary and beneficial to the Parliament such as in the case of defining the parliamentary precincts or the summoning of witnesses. This approach also proposes amendment to the *Standing Orders* as the best method of defining and entrenching other privileges, immunities and powers of Solomon Islands Parliament. The advantage of this minimal legislative approach is that the courts can only interpret those issues which the Parliament has enacted in legislation or are constitutional matters. This leaves the rest of the privileges and powers to the *Standing Orders* and the practices and procedures of the House. Such an approach assists in maintaining Parliament's supremacy.

On behalf of the Committee I would like to thank the Individuals and Expert Witnesses including His Excellency Sir Nathaniel Waena, Governor General of Solomon Islands for the evidence given during the inquiry. I also would like to thank the Speaker to the National Parliament, the Rt Hon Sir Peter Kenilorea, Clerk to Parliament Mrs Taeasi Sanga and the Committee Secretariat including Ms Alice Willy, Mr John Taupongi and Mr Calvin Ziru for their support to me and the Committee during this Inquiry. Special mention must be made of the contribution and guidance provided by Mr John Evans, former Clerk of the Legislative Council, Parliament of New South Wales, Australia and Mr Warren Cahill, Project Manager of the UNDP Parliamentary Strengthening Project. Mr Evans was contracted firstly under the UNDP project and later through generous additional funding provided by the Commonwealth Parliamentary Association (CPA). In this regard and on behalf of the Committee I wish to sincerely thank the Secretary General of the CPA Dr William F Shija and acknowledge the important support provided by the CPA over many years to the National Parliament of Solomon Islands. Finally and most importantly, I would like to thank my Committee members for their support throughout the Inquiry and their contributions to this Report. I am grateful for your commitments and support to this inquiry and I am confident that you will each be pleased with the results, findings and recommendations made herein.



Hon. John Patteson Oti, MP
Chairman

Terms of Reference

Notwithstanding anything contrary in the Standing Orders for the purpose of this inquiry, the Terms of Reference for the Special Select Committee on Privileges, Immunities and Powers of Parliament (Committee) are as follows:

1. Purpose of the Committee:

- 1.1 To prepare appropriate rules and regulations for prescription by Parliament according to Section 69 of the Constitution;
- 1.2 To submit its draft report to the Parliamentary House Committee for its examination and approval and it shall report to Parliament under the provisions of Standing Order 70 (1);

2. Membership of the Committee:

- 2.1 The Committee shall comprise only of members of Parliament appointed by the Speaker;
- 2.2 Members may at any time be discharged from the Committee by the Speaker and other members of Parliament may be appointed or added to the Committee.

3. Powers and procedures of the Committee:

- 3.1 The Committee shall have the power
 - (a) To adjourn from time to time
 - (b) To adjourn from place to place
 - (c) To send for and examine persons, papers, records and things
 - (d) To make visits of inspection
 - (e) To request the attendance of and examine members of the House.
- 3.2 The Committee shall conduct all its hearings in public unless the majority of the members present resolve that a particular hearing should not be conducted in public.
- 3.3 The Committee may authorize the recording of its public hearings and require official records to be prepared by Hansard.
- 3.4 Any persons of body may make written or recorded submissions to the Committee with respect to the inquiry and the Committee has the power to authorize publication, before presentation to the House, of submissions received and evidence taken; and
- 3.5 The Clerk shall fix the time and place for the first meeting of the Committee in such manner as the Clerk thinks fit. Thereafter all meetings of the Committee shall be as determined by the Committee or by the Clerk upon the request of the Committee.

Summary of Recommendations

The Committee considered the submissions and presentations of expert witnesses and recommends the following:

Recommendation 1 – Publication of a Guide Book

- (a) That a “Guide to the Privileges, Immunities and Powers of the National Parliament of Solomon Islands” be prepared by the House Committee and contain a clear explanation of the privileges, immunities and powers of the National Parliament outlined in this Report.
- (b) That the Guide be tabled by the Chair of the House Committee and published under the authority of the House.

Recommendation 2 – Freedom of Speech and Article 9 of the Bill of Rights

That this important privilege be explained in the Guide

Recommendation 3 – Restriction of the use of publication of Proceedings of Parliament and Article 9 of the Bill of Rights

That this important privilege be explained in the Guide.

Recommendation 4 – Right to Reply

That the House Committee, in its review of the Standing Orders considers provisions of procedures where a person or organisation adversely affected by comments in debate to may apply to have a response to allegations.

Recommendation 5 – Authority of Speaker

That Standing Order 38 governing the conduct of members and powers of the House and the Speaker to discipline members and impose sanctions and penalties should be modernised.

Recommendation 6 – Procedure to raising matter of Privilege

That Standing Order 25 governing matters of procedure be modernised to ensure that a member wishing to raise a matter of privilege must provide written notice to the Speaker.

Recommendation 7 – Freedom of Arrest in a Civil Case

That Parliament adopts a resolution providing that the privilege of freedom from arrest in a civil case have no application to the House.

Recommendation 8 – Exemption from Jury Service

That this privilege be explained in the Guide.

Recommendation 9 – Exemption from attendance at a Court or Tribunal as a witness except where the member or officer is a defendant in criminal proceedings or in respect of contempt of court

That this privilege be explained in the Guide.

Recommendation 10 – Exclusive Control of the proceedings of the House

That these important privileges be explained in the Guide.

Recommendation 11 – Control of reports of proceedings of the House

That the Standing Orders be modernised to provide provisions to control the reporting and publication of proceedings of the House and Committees.

Recommendation 12 – Control of access to sittings of the House

That the Standing Orders be modernised to regulate the attendance and conduct of its members, and control the admission of strangers to the galleries of the House and meetings of Select Committees.

Recommendation 13 – Power to conduct inquiries and call witnesses

That the Standing Orders be modernised to provide all Committees with appropriate powers to conduct inquiries and to call and summons witnesses.

Recommendation 14 – Power to delegate

That the Standing Orders be modernised to ensure appropriate powers are provided to committees to conduct inquiries on behalf of the House.

Recommendation 15 – Parliamentary Evidence Act

That Parliament enacts legislation governing the summoning of witnesses before Committees of the House where required and for appropriate penalties should a witness refuse to appear according to that summons and for other relevant matters.

Recommendation 16 – Power to order the production of documents

That the Standing Orders be modernised to provide procedures for the House and committees to order the production of documents in order to ensure proper scrutiny of the actions of the executive.

Recommendation 17 – Power to maintain the attendance and service of its members

That the Standing Orders be modernised to ensure the attendance and service of members in the House and in Committee meetings including procedures for granting leave of absence from attendance.

Recommendation 18 – Power to control the precincts of Parliament

That Parliament enacts legislation governing the precincts of the Parliament and providing for the Speaker to control the parliamentary precincts and for other matters relating to the security of members.

Recommendation 19 – Power to administer an Oath

That the Standing Orders be modernised to provide procedures for the giving of evidence under oath.

Recommendation 20 – Contempt of Parliament

That the Standing Orders be modernised to include examples of matters that the House may treat as contempt and that the Guide contain details on the types of conduct that may fall within the definition of contempt.

Recommendation 21 – Power to discipline members

That the Committee recommends that the Parliament adopt a Code of Conduct that will clearly outline the conducts that might subject a member to discipline, and the procedures for dealing with such matters.

Recommendation 22 – Power to suspend a member

That the Standing Orders be modernised to provide procedures for the suspension of members for breaches of order and forfeiture of rights where it is absolutely necessary for the preservation of the dignity of the House.

Recommendation 23 – Power to expel a member

That Parliament should amend the Constitution to provide for a member's seat to be vacated where Parliament adjudges a member's conduct to be unworthy of a member.

Recommendation 24 – Power to imprison for contempt

That Parliament should monitor the need for relevant legislation should this become necessary in the future.

Recommendation 25 – Adoption of a semi-legislative approach

That Parliament should adopt the semi legislative approach to defining its privileges, powers and immunities.

Chapter 1: Introduction

1.1 Background to Committee Inquiry

On Friday 17 August 2007, the House resolved on a motion moved by Hon Pattersen Oti that Parliament under Standing Order 73 establish a Special Select Committee to prepare appropriate rules and regulations for prescription by Parliament according to Section 69 of the Constitution. This Committee thereafter became known as the Special Select Committee on Privileges, Immunities and Powers of Parliament (“Committee”).

Members of the Committee were appointed by the Speaker on 26 October 2007 under Standing Orders 68 (4) with Hon. Job Dudley Tausinga, MP for North New Georgia as the Chair. The first meeting of the Committee was held on Friday, 9 November 2007.

On Tuesday, 25 November 2007, there was a change of government following a motion of no confidence. This led to the alteration of the composition of the Committee membership. Hon. Tausinga became a minister in the new government and declined to continue his appointment to the Committee. Accordingly, on 27 February 2008, Hon Pattersen Oti (the mover of the motion) was appointed by the Speaker to be the new Chair of the Committee.

The Committee held seven meetings prior to presentation of its Report to the House Committee.

1.2 The Role of the Committee

The Committee is mandated to undertake the specific functions outlined in the Terms of Reference.

1.3 The Conduct of the Inquiry

Public Hearings

The Committee undertook the inquiry by receiving written and oral submissions at various hearings in Honiara and through substantial research work undertaken by the Committee Secretariat. The public hearings were held in Honiara and pursuant to its Term of Reference, all hearings were held in public (unless the Committee decides otherwise).

A total of three hearings were held on the following dates in which the following witnesses made submissions to the Committee:

- **Wednesday 9 April 2008:** Professor Don Paterson, Mr Joseph Foukona, Mr Frank Kabui & Mr Andrew Radclyffe.
- **Wednesday 18 June 2008:** Mr John Evans.
- **Friday 22 August 2008:** Sir Nathaniel Waena.

The first two hearings were held at the National Parliament, main conference room, whilst the third hearing was held at Government House, the official residence of the Governor-General.

Submissions

In terms of written submissions, the Chairman had written to a number of organisations and individuals and invited them to make written submissions to the Committee on the subject. By the closing date for submissions, on 30 May 2008 submissions were received from His Excellency, Sir Nathaniel Waena, Governor-General of Solomon Islands, Mr Andrew Radclyffe, Private Barrister and Solicitor and Mr Frank Kabui, Chairman of the Law Reform Commission (former Attorney General and High Court Judge).

The Committee also resolved to invite the following experts to give evidence: from Professor Don Paterson and Mr Joseph Foukona from the University of the South Pacific Law School; and Mr John Evans, former Clerk of the New South Wales Legislative Council.

Transcripts

Following the hearings, the Committee resolved to have the official transcripts published and made available for public viewing. Transcripts of the hearings are available on the National Parliament website www.parliament.gov.sb

Chapter 2:

Background to parliamentary privilege

2.1 Historical background to parliamentary privilege

The struggle for rights and immunities of Parliament started in the early fifteenth century in the House of Commons, United Kingdom. At that time the House of Commons was subject to continued threats from the Monarch in terms of its role and authority. In 1523, Speaker Sir Thomas Moore petitioned King Henry VIII seeking to recognise the privileges of Parliament, especially the freedom of speech. In time it became the custom at the commencement of every Parliament *“for the Speaker, in the name and on behalf of the House of Commons, to lay humble petition to their ancient and undoubted rights and privileges; particularly to freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require; and that the most favourable construction should be placed upon all their proceedings”*.¹

In the early seventeenth century members of the House of Commons were arrested and imprisoned by the King if he was offended by what he considered to be seditious words expressed in Parliament. The resultant struggle for power between the legislature and the monarchy eventually led to civil war between the Parliament and the monarch and the beheading of King Charles I. In the late seventeenth century, Queen Mary and King William were invited by Parliament to ascend the throne and in 1689 assented to the Bill of Rights, in which Article 9 finally confirmed the basic privilege of Parliament – freedom of speech – and also confirmed Parliament’s supremacy over the monarch.

“Historically conflict between Parliament, the Executive and the courts over parliamentary privilege was political in origin and not legal. Parliamentary privilege can be located within what has been called the ‘rough’ doctrine of separation of powers that operates in Westminster parliamentary systems. The fundamental rights of the House of Commons were asserted against the prerogatives of the Crown and the authority of the courts. The assertion of privilege was a declaration of its independence from the other branches of government”.²

Article 9 of the Bill of Rights paved the way forward for the development of parliamentary privileges in the House of Commons. Article 9 was primarily intended to give statutory force to privileges which had been claimed by the Houses of the Parliament, particularly the House of Commons.³

2.2 Definition of parliamentary privilege

Erskine May’s Treatise on Law, Privileges, Proceedings and Usage of Parliament define parliamentary privilege as:

“...the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those

¹ Erskine May on Parliamentary Privileges, “The Law, Privileges, Proceedings and Usage of Parliament, 23 Ed, Lexis Nexis, Butterworths, 2004, p78.

² Griffith Gareth, “Parliamentary privileges: first principles and recent applications, Briefing Paper No 1/09 NSW Parliamentary Library Research Service, Para 7 of summary.

³ Campbell, E, “*Parliamentary Privilege*” The Federation Press, 2003 p10.

possessed by other bodies or individuals... Other such rights and immunities such as powers to punish for contempt and the power to regulate its own Constitution belongs primarily to each House as a collective body, for the protection of its Members and the vindications of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members".⁴

In a Canadian case, *House of Commons v Vaid*,⁵ the essence of these rights was stated as follows "to protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly's work in holding the government to account for the conduct of the country's business".⁶

**Parliamentary privilege
exists for the greater good
of the community.**

John Evens
Evidence to the Committee
22 August 2008

The rights and immunities are to preserve the freedom, the authority and the dignity of Parliament. Without such rights and immunities, Parliament may, for example, be subjected to ongoing legal suits against members of the House on matters discussed in Parliament.

There is a distinction between the rights and immunities available to individual members and the powers of the House. This is something which is often misunderstood by the public as well as parliamentarians.

The privileges of Parliament essentially belong to the House as a whole. Individual members of Parliament can only claim privilege to the extent that some action, proposed or otherwise, would impede them in carrying out their responsibilities and duties as a member of the House, or adversely affect the proper functioning of the House or a Committee.⁷ This view was emphasised by Mr Radclyffe in his presentation to the Committee. Mr Radclyffe discussed the necessity of parliamentary privileges and stated that "*the primary intention is to enable Members of Parliament to carry out their constitutional duties or in relation to their functions without interference from the court or public or the people*".⁸

With respect to the House as a collective body, privilege includes the right of the House to regulate its own proceedings and the power to punish breaches of privilege and contempt committed against it.

The privilege of freedom of speech enjoyed by members of Parliament is essentially the privilege of their constituents. It is available to members not for their personal benefit, but to enable them to discharge the functions of their office without fear of civil suit or criminal prosecution. It is the voters' right that their elected representative should be able to carry out their duties as a member of the House without undue influence or pressure.

Mr John Evans in his presentation to the Committee also summarised the advantages of having parliamentary privilege in a Westminster parliamentary system. He expressed that:

"...parliamentary privilege exists for the greater good of the community and protects the public interest, not only through promoting the functions of an effective

⁴ 23rd Ed., Lexis Nexis UK 2004, p75.

⁵ [2005] 1 SCR 667.

⁶ Ibid at Para 4.

⁷ Lovelock and Evans, *New South Wales Legislative Council Practice*, 2008, p48.

⁸ Radclyffe A., Evidence presented to the Committee, 18 June 2008.

parliamentary system and a democratic government but also through Members being freely able to bring matters to the attention of the Parliament subject, of course, to the rules of order and quorum in the House. It also enables citizens to bring to the attention of the Parliament through their members and petitions and committee enquiries.”⁹

Parliamentary privilege does not place members above the law. They have certain exemptions from the law in order that the Parliament may function independently and effectively, and in the interests of the nation as a whole. Individual members cannot claim various privileges or immunities, such as protection from criminal charges that are unrelated to their functions in the House. The use of the term “privilege” in its traditional parliamentary sense often gives rise to misconception on the part of the public and others as to the meaning of the term. The use of the term “rights and immunities” is easier to understand as the essential protection required by the House, its members and officers for the exercise of their powers and functions.

2.3 Nature of parliamentary privilege

All legislative bodies must enjoy certain privileges, powers and immunities. In many jurisdictions they are set out in detail in a legal instrument such as a statute. Where no instrument of this nature exists (as in the case of Solomon Islands until recently), the law implies privileges, powers and immunities as being inherent in any body operating as a legislature. These privileges, powers and immunities are collectively known as “parliamentary privilege”.

“Privileges for a legislature have been justified in law on grounds:

- that a legislature must enjoy an autonomy from control by the Crown and the courts (an aspect of the Constitutional separation of powers);
- that it must possess certain powers to facilitate the carrying out of its functions; and
- that its members and others participating in its proceedings must enjoy certain immunities, if the legislature is to discharge those functions effectively.

The privileges that a legislature enjoys are not an end in themselves. They form part of a constitutional expression of parliamentary autonomy and are a means to achieving an end – an effectively functioning legislature able to operate in the public interest. Parliamentary privilege is thus designed to remove any impediments or restraints to the legislature going about its work and to enable it to deal with challenges to its authority in more indirect ways, such attacks that affect its dignity and lower the esteem in which it is held”.¹⁰

The privileges, powers and immunities conferred on the Parliament as parliamentary privilege inevitably involve the imposition of corresponding duties and responsibilities on members, and on other persons who are made subject to the exercise of those privileges or powers, or who have those immunities invoked against them.

⁹ Evans J., Oral evidence to Committee, 18 June 2008.

¹⁰ McGee D, *Parliamentary Practice in New Zealand*, 3 Ed, Wellington, NZ: GP Publications, 2005, p605.

Chapter 3:

Parliamentary privilege in Solomon Islands

3.1 Premise for introduction of privileges in Solomon Islands

As explained in the previous Chapter, the privileges, powers and immunities of a parliament modelled on the Westminster system may be traced as far back as the fifteenth century. These were of no concern to Solomon Islands until 1961. Although the islands became a protectorate of Britain in 1893, the British Solomon Islands Protectorate did not have its own legislature until 1961. In that year, the first Legislative Council was established in the Protectorate. By virtue of that Council's link to Britain, parliamentary privileges were imported as part of the inherent powers of that colonial legislature. There is however no record of the Legislative Council asserting its privileges between 1961 and 1978.

In 1978 when Solomon Islands attained independence the first sovereign local legislature, the National Parliament of Solomon Islands, was established under the *Constitution*. As a transitional measure, the *Constitution* provided that United Kingdom statutes of general application, as at 1 January 1961, were to form part of the laws of Solomon Islands. Similarly, principles of common law and equity as at independence were also made part of the laws of the land. In terms of parliamentary privileges, the effect of these transitional provisions was that the new Parliament inherited the privileges of the British parliament through the *Bill of Rights* as a statute of general application and also through the principles of common law that had earlier entrenched other privileges.

The Parliament of Solomon Islands thus came into existence with the same privileges and powers that the British House of Commons enjoyed at that point in time. While the framers of the independence *Constitution* were aware of parliamentary privilege there was no immediate attempt to clarify or codify any of the privileges. Instead, the *Constitution* left it to Parliament to prescribe such privileges at some later point in time.¹¹ While a complete prescription or clarification of the privileges of Parliament was delayed, the *Constitution* and subsequent written laws have touched on aspects of privilege where necessary. These are described below.

3.2 References to powers and privileges of Parliament in written laws

Constitution

Apart from section 69 of the *Constitution*, which powers provide that the Parliament may prescribe the privileges, immunities and powers of the Parliament and its members, certain other provisions of the *Constitution* include aspects of the powers and privileges of the Parliament. These may be summarised as follows:

- **Section 62:** provides that the Parliament may make and amend rules and orders regulating the orderly conduct of its proceedings, the despatch of business and the passing and numbering of bills;
- **Section 76 & Schedule 3:** section 76 stipulates the hierarchy of the applicability of certain Acts of the United Kingdoms followed by principles and rules of common law and equity. The principles confirmed in the *Bill of Rights* also existed as common law principles as at 7 July 1978 and as such are part of the existing laws under Schedule 3 of

¹¹ Section 69, *Constitution*.

the Constitution. Significantly in terms of parliamentary privilege, Article 9 of the Bill of Rights 1689 of the Imperial Parliament has application in Solomon Islands, not only as a statute of general application but also as part of the common law.

- **Section 34:** allows any Member to move a motion of no confidence in the Prime Minister, which, if passed by an absolute majority of all Members, would require the Governor-General to remove the Prime Minister from office.
- **Section 42:** entitles the Attorney-General (when not a Minister) to take part in proceedings as advisor to the government.
- **Chapter 4, Part 1, Sections 46 – 58:** govern matters such as the establishment of the Parliament, qualifications for membership, disqualification from membership, vacation of seats and determination of questions of membership.
- **Chapter 6, Part 2, Sections 59 to 74:** govern legislation and proceedings in Parliament such as the power to make laws, introduction of bills, alteration of Constitution and also procedure and oath of allegiance by Members, election of the Speaker and Deputy Speaker, presiding in Parliament, quorum, validity of proceedings in Parliament, privileges, Members entitlements, proceedings to be held in public, voting, prorogation and dissolution, and elections.
- **Chapter 8, the Leadership Code:** establishes the Code which applies to the Prime Minister, Ministers and other Members of Parliament and the Speaker; and leaves the establishment of mechanisms to enforce the Code to legislation.
- **Chapter 10, Finance:** governs raising and expenditure of monies from the Consolidated Fund.
- **Section 144:** provides for various interpretation provisions concerning the Parliament.

Although the above provisions (introduced in 1978) do not directly relate to parliamentary privilege, these established the first sovereign legislature and set out its powers and functions as well as the functions and duties of its Members. However, these powers, duties and functions could not be fulfilled unless Parliament and its Members inherited the necessary powers, privileges and immunities of a Parliament, both under statute law and the common law. While such privileges were not clarified in 1978 in the *Constitution*, they were already in existence and clearly the above provisions of the *Constitution* were drafted with that assumption in mind.

Legislation

Apart from the *Constitution*, certain Acts subsequently enacted also indicate acknowledgement by Parliament that it has inherited privilege at independence.

Such acknowledgement may be found in legislation relating to the criminal justice system. The *Penal Code*¹² for instance recognises the freedom of speech in respect of criminal defamation. Section 195 (i), (a) and (b) provides absolute privilege for publication of defamatory matter in any official publication or proceeding of Parliament, and publication of defamatory matter in Parliament by the Prime Minister, a Minister or a Member of Parliament. This section together with Article 9 of the Bill of Rights provides absolute privilege to the proceedings and documents of the Parliament and its Committees. Further, section 195 (1) (f) provides absolute privilege from publication of defamatory matter, which is in fact a fair report of anything said

¹² Cap. 26, Revised Laws of Solomon Islands 1996.

done or published in the Parliament, and section 196 provides for conditional privilege of defamatory matter, which is published in good faith in certain circumstances.

Another example within the criminal justice system relates to trial by assessors. Under Chapter VIII of the *Criminal Procedures Code*¹³ trial of criminal offences by assessors is an option. Assessors are to be selected from lists submitted from the various parts of the country.¹⁴ By virtue of section 243, however, Members of Parliament are exempt from such service if their names are selected. This reflects a modified version of the right of members of the British House of Commons to be exempt from jury duty.

In other areas, privileges and powers of Parliament may be seen to underlie certain statutory requirements. For example the *Interpretation and General Provisions Act*¹⁵ provides for the tabling and annulment by the Parliament of subsidiary legislation and various other Acts; and further provides for tabling and annulment of specific subsidiary legislation.¹⁶ It is evident from these provisions that the requirements relating to delegated (or subsidiary) legislation reflect the powers of Parliament and corresponding limitations on the making of delegated legislation by the executive.

There may be other examples of legislation touching on the powers and privileges of Parliament, however, while the Parliament has not expressly asserted its privileges in Solomon Islands in the 30 years since independence, Parliament has certainly entrenched aspects of its powers and privileges into laws it enacted during that period.

Standing Orders

Another relevant feature of the independence *Constitution* is that it gave the new Parliament exclusive power to, *inter alia*, regulate its own proceedings by way of orders or rules.¹⁷ Parliament exercised this power in 1982 when it passed the *Standing Orders of the National Parliament*. Although the *Standing Orders* largely focus on the proceedings of the House, certain aspects of the *Standing Orders* relate inherited powers and privileges.

- **Order 22:** Contents of questions: outlines rules regarding framing of questions, which reflect certain restrictions that Parliaments usually place members asking questions.
- **Order 25:** Matters of Privilege: allows a Member to draw the House's attention to an alleged breach of privilege, which the House may debate.
- **Order 34 (2) (a):** Interruptions: allows the interruption of debate if a matter of privilege suddenly arises in the course of that debate.
- **Order 36:** Content of Speeches: contains rules to control the content of a Member's speech. Most of the prohibitions in this Order reflect restrictions that Parliaments usually place on the conduct of individual members. An example is the *sub judice* rule.¹⁸
- **Order 39:** Order in Parliament and Committee (Whole House): provides a procedure for dealing with Members who make unjustified defamatory statements or who refuse to adhere to rules of debate; empowers the Speaker to reprimand, impose a fine on or

¹³ Cap 7, Revised Laws of Solomon Islands 1996.

¹⁴ Section 241, *Criminal Procedures Code*, Cap. 7.

¹⁵ Cap. 85, Revised Laws of Solomon Islands 1996.

¹⁶ Part X, *Interpretation and General Provisions Act*, Cap. 85.

¹⁷ Section 62, *Constitution*.

¹⁸ SO 36 (3) prohibits reference in a speech to a case that is pending in a court of law if the Speaker is of the opinion that such a reference could prejudice that case. This is known as the *sub judice* rule which is explained in more detail on page 26 (*post*).

suspend a Member who is guilty of gross disorderly conduct; and gives the House the option to collectively reprimand, impose a fine on or suspend a Member.

- **Order 74:** Premature publication of Evidence: prohibits publication of evidence taken by a committee prior to that committee reporting to the House.
- **Order 79:** Admission of Press and Public: gives the Speaker the discretion to make rules for the admission of members of the press and public. Under the *Constitution* all proceedings of the House must be held in public unless its rules/orders provide otherwise.¹⁹ Order 79 however delegates the power to regulate admission to the Speaker.
- **Order 80:** Withdrawal of Strangers: allows the House to resolve that a particular sitting is to be held in camera (private) by having all members of the public and the press removed from the public/media galleries. The Speaker also has the power to unilaterally make a similar order.
- **Order 82:** Procedure in case of Doubt: permits Parliament to rely on the practices and usages of the UK House of Commons where the *Standing Orders* are silent or unclear on an issue. When used, this Order could potentially import practices of the Commons that touch on the privileges of that House.

It should be understood that the standing orders are not a source of power, but rather regulate the manner in which the Parliament exercises its statutory and inherited powers and functions. The Parliament derives its powers from statute and the common law. The power to make standing orders comes from the constitution and the Standing Order prescribes the manner in which the Parliament and its members exercise their powers, functions and duties. In *Egan v Willis* the High Court said standing orders merely regulate the manner in which the Council called for state documents. The power to call for state documents was part of the doctrine of necessity in superintending the executive and part of the legislative functions of the Parliament.

As with the *Constitution* and local statutes, the *Standing Orders* contain the basic rules of practice and procedure that are followed in other Parliaments, with local variations, as well as certain restrictions that Parliaments usually place on the conduct of individual members in the exercise of their duties and functions. The *Standing Orders* however make no attempt to clearly outline what are the privileges of Parliament or their limitations.

Despite the prolonged delay in the Parliament prescribing or clarifying its own privileges, the National Parliament of Solomon Islands has nevertheless been able to effectively exercise its powers and functions as a legislature with only some of the basic privileges acknowledged in statute law. Nevertheless, clarity on its privilege and powers will enable Parliament, its committees and members to better discharge their respective functions.

3.3 Period of testing privileges

Although the *Constitution*, certain legislation and the *Standing Orders* were premised partly on the powers, privileges and immunities of the British House of Commons, these remained theoretical as far as the three arms of government were concerned throughout the first decade of independence. In 1983, however, the relationship between the legislature, executive and the judiciary began to be tested in a series of cases before the court.

¹⁹ Section 70, *Constitution*.

High Court's exclusive jurisdiction in constitutional cases

In 1983, the first case in which a Member of Parliament turned to the courts on a serious constitutional question was instituted in *Kenilorea v Attorney-General* (1983).²⁰ Although the case was in respect of the Committee on the Prerogative of Mercy established under the *Constitution*, it was the first case that was brought under section 83 of the *Constitution* which gives the High Court exclusive jurisdiction to determine on any alleged breach of constitution which affects the interests of an individual. From this point onwards, the High Court asserted its exclusive jurisdiction in constitutional questions.

Judicial challenges against validity of Acts of Parliament

(a) Price Control (Retrospective Operation and Validation) Act 1983

In January 1984, laws enacted by Parliament came under the High Court's scrutiny for the first time in *Kenilorea v Attorney-General*.²¹ In that case, Parliament had earlier passed the *Price Control Act 1982* and certain orders were purportedly made under that Act by the executive. These orders were not laid before Parliament as required by the Act and were thus challenged by some businesses as invalid. Before the High Court could make a ruling on the challenge, Parliament passed the *Price Control (Retrospective Operation and Validation) Act 1983*, which, amongst others, retrospectively validated the orders concerned and declared that such orders cannot be questioned by the courts. The amendment Act went further and purported to direct the courts on how to decide on any pending cases challenging the orders. The plaintiff who was the Leader of the Official Opposition relied on section 83 of the *Constitution* and challenged the validity of the amendment Act in the High Court. The Court ruled that the amending Act was unconstitutional as it was a breach of the doctrine of separation of powers and accordingly the Act ceased to be law. This was the first case in which the High Court declared an Act of Parliament to be null and void. In so doing, the High Court asserted its independence from both the legislature and the executive. This case however did not question the actual proceedings of Parliament leading to passage of the amendment Act.

(b) National Parliament Electoral Provisions (Amendment) Act 2001

In the 2001 case of *Folotalu v Attorney-General*²² the plaintiff, who was interested in contesting in national elections, challenged the constitutionality of amending legislation. Earlier that year Parliament passed the *National Parliament Electoral Provisions (Amendment) Act 2001* to increase the candidacy deposit from \$2,000 to \$5,000. The plaintiff sought a declaration that the amendment was unconstitutional because such an increase made it very difficult for him to exercise his freedom of association and assembly²³ enshrined in the *Constitution*. The Court accepted this argument and declared that the 2001 amendment Act was unconstitutional and was therefore null and void.

This is the only other instance since the Price Control Act case in 1983 where the High Court has declared an Act of Parliament null and void. However, unlike the earlier case, the Court's declaration in 2001 appears to have been ignored. The 2001 Act has not been repealed by Parliament but instead continues to be applied to national elections.

²⁰ [1983] SILR 61.

²¹ [1984] SILR 179.

²² [2001] SBHC 149; HC-CC 234 of 2001 (19 October 2001) – PacLii citation.

²³ Section 14, *Constitution*.

Judicial scrutiny of the internal proceedings of Parliament

(a) Election of Speaker

Section 64 of the *Constitution* requires the Parliament at its first meeting after a general election to elect a Speaker from among persons qualified for election as member of Parliament.

The proceedings for the election of the Speaker became the subject of judicial inquiry in 1989. The first instance was in *Waena v Attorney-General*²⁴ which related to the election of the Speaker for the 4th Parliament. For that election a number of non-Members were nominated, one of whom was the then Attorney-General. On the sitting day on which the election was held, a point of order was raised that the Attorney-General was not qualified to contest the election as he was still a public officer at the time of election.²⁵ The Speaker accepted this point and after hearing from the Chief Legal Officer (who was summoned by the Prime Minister since the Attorney-General had a conflict of interest and could not advised), ruled that the Attorney-General was disqualified and therefore removed his name as a candidate. The plaintiff who nominated the Attorney-General then initiated legal action and sought declaration from the Court that the decision of the Speaker was null and void on basis that Speaker had no authority to do remove the names of nominees and that the Speaker had usurped the jurisdiction of the High Court.

The Court held that the Speaker had the authority to decide on the qualification of nominees in a Speaker's election and that under practices of the UK House Commons the ruling of the Speaker was final.²⁶ The Court however thought that the Speaker should not have accepted any advice on the floor from a government lawyer other than the Attorney-General. While the Court did not question the election results, there was *obiter* comment that perhaps the Court may have had there been evidence that the election was not properly constituted.

A number of interesting matters came out of this case. First, the High Court inquired into the procedure for the election of the Speaker even though this occurred during a sitting of the Parliament. Second, while *Standing Order* 38 declares that the ruling of the Speaker on a point of order is final and conclusive, that did not prevent the Court from considering the ruling of the Speaker in respect of the Attorney General. In fact the issue of likely interference with the proceedings of Parliament was not even raised in this case. Third, the Court also considered the issue of a legal officer other than the Attorney-General giving advice to Parliament during a sitting. It was held that the entitlement under the *Constitution* does not extend to any other government lawyer. Lastly, it seems that the Court felt that it has the jurisdiction to even question the validity of the election of a Speaker had this been an issue. This was the first case in which the High Court, relying on the *Constitution*, scrutinised the proceedings of Parliament and statements made in proceedings including the ruling of the Speaker. It is obvious that in this case the Parliament did not assert its exclusive power to control its own proceedings. In fact the case was decided without any reference to this power.

(b) Proceedings on motions of No Confidence

If there was any doubt in the 1980s as to the jurisdiction of the High Court in cases involving proceedings of Parliament, that was put to rest in 1990 in the case of *Philip v Speaker of*

²⁴ [1988-1989] SILR 29.

²⁵ By virtue of section 64 (1) (a) read with section 49 (1) (b) of the *Constitution*. Under section 64 (1) (a) of the *Constitution* a person is not eligible for the Speaker's office unless he or she is qualified for election as a Member of Parliament. Section 49 (1) (b) disqualifies a person from contesting in a national election if he or she, *inter alia*, holds a public office.

²⁶ On this point, the High Court relied on *Standing Order* 82; interestingly, there was no reference to *Standing Order* 38 which states that the Speaker's ruling on a point of order is final.

National Parliament.²⁷ That case arose from a motion of no confidence that was moved in the then Prime Minister under section 34 of the *Constitution*. On the sitting day on which the motion was moved, a point of order was raised that the motion was in breach of the same question rule²⁸ as set out in the *Standing Orders*. The Speaker accepted this argument and ruled the motion out of order. The mover of the motion then challenged the Speaker's ruling in the High Court, relying on section 83 of the *Constitution*, on the ground that the ruling was unconstitutional.

In order to consider the legal challenge, the High Court was for the first time confronted with the argument, advanced on behalf of the Speaker,²⁹ that the High Court had no jurisdiction to interfere with the internal proceedings of Parliament. This was the first instance in which Parliament, through the Speaker, raised the power of the Parliament to control its own proceedings. In asserting the privilege of the Parliament, the Speaker relied on the common law, particularly the case of *Bradlaugh v Gosset*.³⁰

Faced with this, the High Court accepted the common law position and acknowledged the existence of the privilege but held that since Solomon Islands has a written constitution (unlike UK) that privilege is subject to the *Constitution*. The High Court considered that section 83 of the *Constitution* gave the High Court exclusive jurisdiction to inquire into any matter, even proceedings of Parliament, if there is an alleged constitutional breach affecting one's rights. In this case, the Court found that all Members had a right to move a motion of no confidence under the *Constitution*, coupled with the potential to form a new government, so the ruling of the Speaker which allegedly denied the constitutional right of the mover was open to inquiry by the Court by virtue of section 83. In reaching that conclusion, the High Court stated that:

"By that section the jurisdiction of the High Court is clear. If an action is brought seeking a declaration on those grounds, the Court must enquire into it to ascertain whether there has been a contravention and whether the applicant's interests are affected. A strict observance of the common law rule that the Courts cannot enquire into the internal proceedings of Parliament would preclude such an enquiry and is therefore inconsistent with section 83 ...

The concept of the separation of powers between the Legislature, Executive and Judiciary which is the basis of our Constitution makes any such enquiry exceptional. In the same way that Parliament will avoid criticising or interfering with the Courts, so the Courts must be most reluctant to be seen to interfere with the affairs of Parliament.

The Courts in England will rule in such a way as to reduce any conflict and the same must apply here. Whilst the Court will never shirk from its duty to remedy any breach or infringement of the constitutional rights of any person even if that requires an enquiry into the internal procedures of Parliament, it will only do so for the limited purposes of section 83 and in such a way as to reduce any potential conflict between the two institutions. Thus, although Section 83 gives the Court power to make declarations and grant relief, counsel for Mr Philip has sought only the former and I have no doubt that was an intentional limitation. The making of a declaration alone should be sufficient and it would be most unusual for the Courts to feel it necessary to make a specific order for further relief.

Most of the proceedings of Parliament do not involve constitutional questions. When

²⁷ [1990] SBHC 68; HC-CC 224 of 1990 (23 November 1990) – PacLii citation.

²⁸ *Standing Order* 36 (3) prohibits any attempt to reconsider a specific question Parliament has already decided on in the current meeting or previous two meetings.

²⁹ Mr Andrew Radclyffe (Esq.) represented the Speaker in this case and raised advanced this argument: see *Philip v Speaker of National Parliament* [1990] SBHC 68, at page 72, per Ward CJ (PacLii citation).

³⁰ (1884) 12 Q.B.D. 271.

the Speaker rules on procedural matters, the Court has no jurisdiction to enquire further but if that ruling interferes with constitutional rights of the person involved, the Courts do have the right to enquire”.³¹

On this basis, the High Court considered what actually transpired in the sitting, relying on Hansard transcripts, and found that the Speaker had ruled wrongly in respect of the same question rule. Despite the statement above that the Court need not make any further order for relief, the Court went on and ordered that the Speaker pay the plaintiff’s legal costs.

On appeal the decision was upheld by the Court of Appeal and thus set a precedent that as long as the requirements of section 83 of the *Constitution* are satisfied, the proceedings of Parliament and even decisions of the Speaker are not beyond the High Court’s scrutiny. The 1990s was an eventful decade as far as the powers and privileges of the Parliament were concerned.

(c) *Proceedings on Bills*

In 1996, the question of Parliament’s power to control its own proceedings was revisited in *Huniehu v Attorney-General*.³² The issue in that case related to a bill that Parliament passed without the necessary quorum. At the sitting on which the bill was to be considered and voted on, there were less than half of Members present and the plaintiff objected to this. The Speaker suspended the sitting according to the *Standing Orders* and allowed some time before resuming. There was still no quorum and again the plaintiff objected to this. However, the Speaker made a ruling that notwithstanding the lack of quorum, the House could proceed with its business. The bill was subsequently passed and later assented to by the Governor-General. The plaintiff then initiated legal action seeking declarations that the Speaker’s ruling was unconstitutional and that the resulting enactment of the bill was null and void.

The High Court had no trouble inquiring into the proceedings of Parliament, and justified its jurisdiction on the basis of section 83 of the *Constitution* in the following terms:

“It must be accepted, as had been done in *The Speaker v Danny Philip* Civ. App. No. 5 of 1990 (CA), that in the proceedings of Parliament the Speaker’s ruling on procedural matters is final and the Courts do not have jurisdiction to enquire into it further.

Where however there is a breach of the Constitution, the courts must have power to enquire into such a breach even into the internal proceedings of Parliament³³ ...

The jurisdiction of the Court is clear under that section [s.83]. That the High Court has power to enquire into and to ascertain whether a provision of the *Constitution* has been contravened even if that involves examination of the internal workings of the National Parliament and that had been established in this jurisdiction in *The Speaker v Danny Philip* (supra). This had also been recognised in *Sanft v Fotofile* (supra) and *Siale v Fotofile & Others* [1987] LRC (Const.) 240. These cases must be regarded as the exception to the common law rule as stated in *Bradlaugh v Gossett* (1884) 12 QBD 276 that Parliament has exclusive control over its internal proceedings and it is not subject to the court’s control.

Nevertheless while accepting the exception to the common law rule as stated in *Bradlaugh v Gossett*, we must also accept the concept of separation of powers between the Legislature, Executive and Judiciary as the foundation of our *Constitution*. Just as Parliament will avoid interfering with the Courts, so also will the

³¹ *Philip v Speaker of National Parliament* [1990] SBHC 68, at page 75-76, per Ward CJ (PacLii citation).

³² [1996] SBHC 43; HC-CC 067 of 1996 (29 August 1996) – PacLii citation.

³³ *Huniehu v Attorney-General* [1996] SBHC 43; HC-CC 067 of 1996 (29 August 1996), at page 47, per Muria CJ (PacLii citation).

courts be most reluctant to interfere with the affairs of Parliament. It is with these principles in mind that when the Court is called upon to exercise its powers under section 83 of the *Constitution*, that it will only do so for the limited purposes of that provision and in such a way as to reduce any potential conflict between the two institutions”.³⁴

After considering what occurred during the relevant sitting, the Court found that the Speaker had indeed breached the *Standing Orders* and the *Constitution* in allowing proceedings to continue. However, such a breach did not invalidate enactment of the bill. The Court also refused to question how the Act was enacted (or “go behind the Act after it was passed to question how it was passed by Parliament”).³⁵

Judicial scrutiny of other ‘proceedings’

(a) Election of Governor-General

Section 27 of the *Constitution* requires that the Governor-General be appointed by the Head of State on an address from Parliament.

In 1989, the High Court was again probing into the proceedings of Parliament in *Re Nori’s Application*³⁶ but this time in relation to the appointment of the Governor-General. The facts are that a public officer (whom the Court judgment simply referred to as “L”) was elected as Governor-General designate by Parliament pursuant to the *Constitution* and the *Standing Orders* and was supposed to have resigned or proceed on unpaid leave prior to appointment but had inadvertently failed to do so. As such, at the time L was appointed by Her Majesty as Governor-General, he was still a public officer. Andrew Nori, a parliamentarian, challenged the validity of the Governor-General’s appointment as well as acts he performed following appointment. Such acts included the election of the Prime Minister and appointment of Ministers.

The High Court held that the Governor-General’s appointment was indeed invalid because he was disqualified at the date of appointment³⁷ but that his subsequent actions in good faith were valid as these were made on *de facto* authority. While the High Court did not directly probe into Parliament’s election of the Governor-General in this case, it indicated that it would have had the results of the election been challenged.

(b) Election of Prime Minister

Section 33 of the *Constitution* requires that the Prime Minister be elected by the Parliament from among the members in accordance with the procedures of Schedule 2 to the *Constitution*. In this context the proceedings for the election of the Prime Minister, which is conducted by the Governor-General, is a meeting of members for that specific purpose rather than a formal proceeding of Parliament.

In 1993, the meeting of Parliament for the election of the Prime Minister, which by practice takes place in the Parliament building, was subject to the jurisdiction of the High Court.

³⁴ Ibid, at page 58, per Muria CJ. The High Court also relied on common law cases: See also the cases of *Sanft v Fotofile* [1987] LRC (Const) 247 and *Siale v Fotofile* [1987] LRC (Const) 240.

³⁵ *Huniehu v Attorney-General* [1996] SBHC 43; HC-CC 067 of 1996 (29 August 1996), at page 55, per Muria CJ.

³⁶ [1989] 1 LRC 10.

³⁷ By virtue of section 27 (2) read with section 49 (1) of the *Constitution*. Under section 27 (2) of the *Constitution* a person is not eligible for the Governor-General post unless he or she is qualified for election as a member of Parliament under Chapter VI. This is reference to section 49 (1) (b) which disqualifies a person from contesting in a national election if he or she, *inter alia*, holds a public office.

In *Mamaloni v Attorney-General and Governor-General*³⁸, the plaintiff contested in the election for the office of Prime Minister conducted by the Governor-General but was defeated. The winning candidate, however, only won with 24 votes out of the 47 Members present and voting although the total number of seats of the members of Parliament was 50. The plaintiff challenged the result in terms of the required majority and sought a declaration that the result was null and void. The High Court again inquired into the election and its results and held that the required majority was satisfied. In this particular case, the issue of privilege was not considered.

It is clear from the above account of judicial precedents that the main privilege that was constantly put to the test was the power of Parliament to control its own proceedings. The distinction between the application of that power in Solomon Islands and the House of Commons appears to be that Solomon Islands has a written constitution whereas the United Kingdom does not. The High Court in the Solomon Islands has thus used section 83 of the *Constitution* to develop exceptions to Parliament's power resulting in judicial scrutiny of the proceedings and procedures of the Parliament. In so doing however, the High Court has questioned and even impeached what was said in parliamentary proceedings, including rulings of the Speaker.

3.4 Call for prescription and clarification of privileges

After more than two decades of the regular testing of its powers and privileges, Parliament began to examine its privileges more seriously in 2007. In that year, changes in political circumstances and continuous challenges to the powers of Parliament in terms of how it viewed its own privileges and powers forced the Parliament to examine parliamentary privilege more closely.

Political circumstances of 2007

The year 2007 saw increased intensity in national politics and the increasing use of the courts and judicial processes to interfere with the operations of Parliament. In that year alone, four no-confidence motions were either moved or submitted to the Clerk. As history would have it, changes in the political circumstances in 2007 had a significant impact on parliamentary privilege. An account of these changes and their impacts is given below.

Use of legal actions to question proceedings of Parliament

In February 2007, the Opposition gave notice of its intention to move a no-confidence motion against the Prime Minister. Before the Speaker had made any determination as to the admissibility of the proposed motion, the Prime Minister filed a High Court lawsuit against the Speaker and the intended mover of the motion,³⁹ asking the High Court to declare the proposed motion "unconstitutional and in breach of the *Standing Orders*". It seemed implicit in the Writ of Summons served on the Speaker that there was a prevailing view that the High Court can and should intervene even if the dispute arose in the internal proceedings of Parliament. The proposed motion, however, did not qualify under the 'seven clear days' constitutional requirement⁴⁰ and was ruled inadmissible so the lawsuit was left unresolved. This was nevertheless an early indication of a new mentality - that the courts could be used to prevent or support a no-confidence motion.

³⁸[1993] SBHC 71; HCSI-CC 290 & 291 of 1993 (8 October 1993) – PacLii citation.

³⁹Writ of Summons served on or about 26 February 2007, Civil Case No. 63 of 2007.

⁴⁰The Prime Minister adjourned the meeting *sine die* before seven clear days had lapsed: See *Parliamentary Debates (Hansard) Report* dated 23 February 2007.

Several months later, in July 2007, the Opposition submitted to the Speaker notice of another no-confidence motion. The notice was given well before the fourth meeting of the current Parliament so the 'seven clear days' rule was met. The Speaker then indicated to the intended mover that the motion was admissible and would go ahead on the next private members' day (Friday). A delay in the meeting date however meant that the motion was put on hold until the next month when the House eventually sat for its fourth Meeting.

On 6 July 2007, just a day before the meeting was due to commence, the Prime Minister instituted yet another lawsuit against the Speaker and the intended mover.⁴¹ The Prime Minister sought a number of declarations from the High Court, including declarations that the Speaker was "guilty of misconduct in office" under the *Constitution* for directing that the proposed motion was admissible and also for allegedly speaking publicly on issues related to the intended motion; and that the proposed motion was in breach of the *Standing Orders* in terms of admissibility rules and the 'same question rule', which prohibits the reconsideration of a specific question that Parliament had already taken a decision on in the last two meetings.⁴²

After the Writ of Summons had been served on the Speaker (on the first sitting day) the government then went to the media and claimed that the proposed no-confidence motion should not proceed on the basis that there was a pending court case precisely on that motion.⁴³ There was also reference to the first case instituted in February 2007, which case was never resolved or withdrawn. The Speaker had the no-confidence motion set down for the Order Paper of Friday 10 August 2007. On that day various points of order were raised, centred on the convention of *sub judice*.⁴⁴ In short, these points of order urged the Speaker to rule the motion out of order under the *Standing Orders* on the ground that the motion was the subject-matter of a pending court case.⁴⁵

The Speaker exercised his discretion under the *Standing Orders* and ruled that the no-confidence motion was not *sub judice* and that in any case the election and removal of the Prime Minister was for Parliament to decide and the privileges enjoyed by Parliament demand that the judiciary respect the internal proceedings of Parliament.⁴⁶ The Speaker thus ruled that the motion was in order and should be allowed to proceed. The mover however subsequently withdrew his motion.⁴⁷

The Opposition then submitted notice of another no-confidence motion just under three hours after they had withdrawn the first motion.⁴⁸ The Speaker rejected the second motion on the ground that it was an attempt to reconsider a specific question already considered and decided by Parliament (by having allowed the first motion to be withdrawn) and was therefore in breach of the 'same question rule' enshrined in the *Standing Orders*.⁴⁹ In making this ruling, the Speaker relied first on his earlier ruling in respect of the first motion, and also on the precedent set by *Philip v Speaker of National Parliament* (1990).⁵⁰ While the Speaker ruled the motion out of order he did not support the proposition that the matter was *sub judice*. The Speaker's ruling on the second motion was made on 16 August 2007.

⁴¹ Writ of Summons served on 6/08/07, Civil Case No. 300 of 2007.

⁴² *Standing Order 27* (admissibility of motions) and *Standing Order 36 (3)* (same question rule).

⁴³ Example – media releases circulated (Government Communication Unit) and *Solomon Star* front page article "Three Moves Back Vote" in *Solomon Star* Issue No. 3412 on Thursday 9 August 2007.

⁴⁴ *Parliamentary Debates (Hansard) Report*, 8th Parliament, 4th Meeting: dated 10 August 2007.

⁴⁵ See *Standing Order 36 (2)*.

⁴⁶ Speaker's Ruling on a Motion of No Confidence moved by Hon. E. Huniehu: refer to *Parliamentary Debates (Hansard) Report*, 8th Parliament, 4th Meeting: dated 10 August 2007.

⁴⁷ See *Parliamentary Debates (Hansard) Report*, 8th Parliament, 4th Meeting: dated 10 August 2007.

⁴⁸ Notice of the new motion was submitted by Hon. William Haomae at 1:30pm on 10 August 2007.

⁴⁹ *Standing Order 36 (3)*.

⁵⁰ [1990] SILR 227.

What emerged from this period was that it became clear that Members were becoming more aware of parliamentary procedures and privilege and their extent as well as potential restrictions. Further, the Speaker's rulings on the *sub judice* convention was the first clear message from Parliament to the judiciary that Parliament was becoming more cognisant of its powers and privileges and was prepared to assert them when necessary. For the first time, Parliament had asserted its power to control its proceedings instead of waiting to raise the issue in court proceedings after the fact (as occurred in the pre-2007 cases).

Call for clarity

The events of August 2007 described above raised serious questions about parliamentary privilege. The government's response to this was prompt and clear: there was an urgent need to have clarity on privileges and a longer term need for Parliament to exercise its constitutional function of prescribing such privileges.

Accordingly, on 17 August 2007, the then Minister for Foreign Affairs (the current Chair of this Committee) moved the motion which resulted in the establishment of this Committee; and the application of the privileges, powers and immunities of the House of Commons as at 7 July 1978 to the Parliament of Solomon Islands.

While the newly established special select committee was preparing to undertake its work, the government took a step further and introduced the Prescription of Parliamentary Privileges, Immunities and Powers Bill 2007. Parliament unanimously passed that bill on 23 August 2007 and at its commencement, the 2007 Act provided a much clearer guide on how privileges were to apply. With some degree of clarity in place, this Committee was then able to commence with its inquiry.

Chapter 4: Parliamentary privileges applicable in Solomon Islands following passing of the 2007 Act

4.1 Parliamentary privileges of the House of Commons as at 7 July 1978

As discussed above, “parliamentary privilege” refers to ‘immunities’ enjoyed by members of a legislature and ‘powers’ afforded to the legislature to manage and conduct its own affairs.⁵¹ This Chapter examines the parliamentary immunities and powers that existed in the House of Commons as at 7 July 1978 and which by virtue of the 2007 Act were made applicable in Solomon Islands, which merit further consideration by the Parliament.

The Immunities of the House of Commons as at 7 July 1978 included:

- (a) Freedom of speech
- (b) Freedom from arrest in civil case
- (c) Exemption from jury service
- (d) Exemption from attendance at a court or tribunal as a witness

The Powers of the House of Commons as at 7 July 1978 included:

- (a) Exclusive control of the proceedings of the House
- (b) Control of reports of proceedings of the House
- (c) Control of access to the sittings of the House
- (d) The power to conduct inquiries and call witnesses
- (e) The power to order the productions of documents
- (f) The power to maintain the attendance and service of its Members
- (g) The power to control the precincts of Parliament
- (h) The right to administer an oath
- (i) The power to discipline for contempt
- (j) The power to discipline members
- (k) The power to suspend to a Member
- (l) The power to expel a Member
- (m) The power to imprison.⁵²

In identifying the specific privileges relevant to the National Parliament it is necessary to first ascertain the privileges of the House of the Commons in the United Kingdom as at 7 July 1978. The rationale and principle behind the above immunities and powers are important in terms of understanding their relevance to the National Parliament and in formulating the Committee’s recommendations.⁵³

⁵¹ Lovelock L and Evans J, *New South Wales Legislative Practice*, The Federation Press, New South Wales, 2008, p47.

⁵² Erskine M., ‘Treatise on the Law, Privileges, Proceedings and Usages of Parliament’, 23rd edition, Lexis Nexis, Butterworths, 2004.

⁵³ See for example, Enid Campbell, *Parliamentary Privilege in Australia*, 1966, Enid Campbell, *Parliamentary Privilege*, 2nd edition, 2003, House of Representatives Practice (Australia), 5th edition, 2005, Lovelock and Evans, *New South Wales Legislative Council Practice*, 2008, Joseph Maingot QC, *Parliamentary Privilege in Canada*, 2nd edition, 1997, Marleau and Montpetit, *House of Commons Practice and Procedure (Canada)*, 2000, McGee, *Parliamentary Practice in New Zealand*, 3rd edition, 2005, Odgers’ *Australian Senate Practice*, 11th edition.

4.2 Immunities of the House of Commons as at 1978

Freedom of speech

Perhaps the most important immunity of Parliament is the freedom of speech. Article 9 of the Bill of Rights 1689 clearly provides that:

“...the freedom of Speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”.⁵⁴

This privilege gives members of Parliament the right to speak freely in the proceedings of Parliament with complete immunity from civil or criminal liability for any comment they may make. This right relates to speeches made during a sitting of the House or a committee meeting. This freedom is essential for the effective working of the House and its committees and is based on the premise that Parliament could not function effectively unless members are able to speak freely without fear of legal sanction against them. This freedom permits members to make statements or debate on issues which they could not ordinarily make without the protection of the privilege.

In his submission to the Committee, Professor Don Paterson summed up freedom of Speech and Article 9 of the Bill of Rights and said:

“Members of Parliament are free to say whatever they like in the course of parliamentary proceedings, and that no civil or criminal proceedings can be brought against them or the statements that they have made or in respect of the votes that they have cast. This is regarded as the real heart and core of parliamentary privilege. It is the ability of Members of Parliament to say whatever they think is appropriate in the course of debate on bills and on motions and during questions”.⁵⁵

However, it is important to note that the rights of individual members are subordinate to those of the House as a whole and the Standing Orders protect abuses of the right of free speech by individual members. The Speaker has authority under the Standing Orders to caution and discipline members for ‘unparliamentary’ language and abuse of the freedom of speech.⁵⁶ The House also has the power to discipline its members.

While there is a need for members to express their opinion openly in Parliament, it is also important that the reputation of citizens and others are not unfairly attacked. The Parliament of New Zealand and many Houses of Parliament in Australia have adopted procedures in their Standing Orders to allow persons who have been adversely affected by references in the House to apply to have a response put before the House. This is usually referred to as providing citizens with a right of reply.

This argument was also submitted by Prof. Don Paterson⁵⁷ and Mr John Evans⁵⁸ in their presentations to the Committee, where they each expressed the need to provide for the “right of reply” in the Standing Orders. Paterson pointed out that whilst a member could reply to allegations raised against him in the Chamber, this was not possible for members of the public. Paterson suggested that an amendment to the Standing Orders be made to permit a person

⁵⁴ Enid Campbell, *Parliamentary Privilege*, The Federation press, Sydney, 2003, p10.

⁵⁵ Paterson D., Oral evidence presented to the Committee, Wednesday, 18 June 2008.

⁵⁶ For instance, Rule 39 of the Standing Orders.

⁵⁷ Ibid. Wednesday 18 June 2008.

⁵⁸ Evans J., Oral evidence presented to the Committee, 22 August 2008.

affected by references made in Parliament to apply to the House to provide a formal response to these allegations.⁵⁹

The privilege of freedom of speech applies only to proceedings in Parliament and not to proceedings or debates published by newspapers, television or others outside Parliament. This is reflected in section 195 (1) (a) and (b) of the *Penal Code*, which provides absolute privilege to publication of defamatory matter in any official document or proceeding of Parliament and publication of defamatory matter in Parliament by the Prime Minister, a Minister or Member of Parliament. This section together with Article 9 of the Bill of Rights provides absolute privilege to the proceedings and documents of the Parliament and its committees.

Freedom of speech however does not protect a member from comments made outside Parliament or republican outside the Parliament of comments made in Parliament. Even if a member is quoting their own speech they may be exposed to libel action taken in the courts. Members need to be extremely cautious in what they say outside of Parliament particularly in terms of repeating contentious statements made in the House or in a meeting of the committee.

Article 9 of the Bill of Rights 1689 guarantees absolute protection over proceedings of Parliament and is very essential for the effective functioning of Parliament. Article 9 also established the right of Parliament to determine what matters are to be considered by Parliament. The protection accorded by Article 9 extends not only to members but also to parliamentary witnesses and those who present petitions to Parliament. It also protects the authors of documents tabled in Parliament.

Freedom of speech is the real heart and core of parliamentary privilege.

Professor Don Paterson
Evidence to the Committee
18 June 2008

Article 9 forbids the impeachment of questioning of proceedings in Parliament in any court or place out of Parliament. It thereby imposes restrictions on the receipt and use of proceedings of Parliament by the courts, other bodies such as commissions of inquiry and any 'place out of parliament'. The meaning of 'place out of parliament' has not been defined but it has been reasonably suggested to include "agencies of government and statutory bodies that are quasi-judicial in nature".⁶⁰

It was recommended by Prof. Paterson and Mr John Evans in their individual presentations that a "*Guide to the Privileges, Powers and Immunities of the National Parliament of Solomon Islands*" (Guide) be prepared by the National Parliament Office to provide clarity on the concept of parliamentary privilege and its application in the Solomon Islands Parliament.⁶¹ This proposal was an important one because of the highly technical nature of parliamentary privilege. It is on the basis of this view that the Committee recommends as follows:

⁵⁹ Such response will then be published in the Hansard. Evans added that this would ensure that the reputations of citizens and others were not unfairly attacked by references made in the House.

⁶⁰ Lovelock and Evans, *New South Wales Legislative Council Practice*, 2008, p60.

⁶¹ Paterson D., Evidence presented to the Committee, 18 June 2008.

Recommendation 1

The Committee recommends that:

- (a) the Guide be prepared by the House Committee and contain a clear explanation of the privileges, immunities and powers of the National Parliament outlined in this Report.
- (b) the Guide be tabled by the Chair of the House Committee and published under the authority of the House

Recommendation 2

The Committee recommends that 'Freedom of Speech and Article 9 of the Bill of Rights' be explained in the Guide

Recommendation 3

The Committee recommends that the restriction of the use of publication of proceedings of Parliament in relation to Article 9 of the Bill of Rights be explained in the Guide.

Recommendation 4

The Committee recommends that the House Committee, in its review of the Standing Orders considers provisions of procedures where a person or organisation adversely affected by comments in debate to may apply to have a response to allegations.

Recommendation 5

The Committee recommends that Standing Order 38 governing the conduct of members and powers of the House and the Speaker to discipline members and impose sanctions and penalties should be modernised.

Recommendation 6

The Committee recommends that Standing Order 25 governing matters of procedure be modernised to ensure that a member wishing to raise a matter of privilege must provide written notice to the Speaker.

It is important to note that despite the freedom of speech enjoyed by Parliament, the only restriction imposed by the practice of the Parliament is the *sub judice* convention which was developed to inhibit members from making references in debates, motions, questions or committee proceedings to any matter before the court, where such reference could prejudice proceedings pending before a court.⁶² In the Solomon Islands this is provided for in the

⁶² Lovelock and Evans, *New South Wales Legislative Council Practice*, 2008, p320.

Standing Orders.⁶³ Nevertheless, the Speaker is the final arbiter in *sub judice* issues and has absolute discretion in making a ruling to prevent or allow discussion.⁶⁴

Freedom from arrest in civil case

Privilege also relates to the enjoyment of the freedom from arrest in a civil case, and in particular when parliament or a committee is sitting. This also applies to officers of the House such as the Speaker and the Clerk and other officers in attendance on the House. This was supported by Prof. Don Paterson in who stated that the principle provided freedom from arrest from civil proceedings, but not criminal proceedings. Paterson added that an arrest in this respect was “very uncommon” and that proposals have been made in England for the rule to be abolished.⁶⁵

Freedom of arrest in a civil case has little application today in the United Kingdom. This immunity lost its importance in 1870 when the imprisonment for debt was abolished under legislation,⁶⁶ if any, scope beyond providing immunity from arrest for disobedience of a court order in civil proceedings, Thus on that basis, the 1967 Committee recommended the enactment of a legislation to abolish the privilege. The 1999 joint Committee also recommended that this privilege should be abolished.⁶⁷

Recommendation 7

The Committee recommends that Parliament adopt a resolution providing that the privilege of freedom from arrest in a civil case have no application to the House.

Exemption from jury service

Another privilege enjoyed by members of the British House of Commons is the exemption from jury service. Whilst the Solomon Islands criminal system does not use jurors,⁶⁸ this exemption exists and applies to members irrespective of the absence of relevant law on jury service.

Recommendation 8

The Committee recommends that the privilege of ‘exemption from jury service’ be explained in the Guide.

Exemption from attendance at a court or tribunal as a witness

On any day on which the House of Commons sits or a Committee meets, members of Parliament are exempted from attending a Court or tribunal as a witness. This also applies to officers of the House. The exemption does not apply where the member or officer is a defendant in criminal proceedings or in respect of contempt of court.

⁶³ See *Standing Orders* 36 (2).

⁶⁴ *Ibid.*, p320.

⁶⁵ Paterson D., Oral evidence presented to the Committee, 18 June 2008.

⁶⁶ Debtors Act cited in the Joint Committee on Parliamentary Privilege, Report: Volume 1, “*Report and Proceedings of the Committee*”, VIC Parliament, Session 1998-99, HL Paper 43-1, HC 214-1, Ch 1, Para 327.

⁶⁷ Joint Committee on Parliamentary Privilege, Report: Volume 1, “*Report and Proceedings of the Committee*”, VIC Parliament, Session 1998-99, HL Paper 43-1, HC 214-1, Ch 1, Para 19.

⁶⁸ See Section 243, Part VIII of the Criminal Procedures Code, Cap. 7.

The right of the House to the attendance and service of its members and officers is considered paramount to any obligation to give evidence in a court. While a member may give evidence voluntarily, if a subpoena is issued a member or officer is not obliged to comply. In these circumstances the Speaker would draw the Court's attention to the privilege by letter in writing.

Recommendation 9

The Committee recommends that the privilege of 'exemption from attendance at a court or tribunal as a witness' be explained in the Guide.

4.3 Powers of the House of Commons

In a similar manner to a court, Parliament has considerable power to maintain its dignity and authority. Parliament has exclusive right to regulate its own internal affairs, disciplinary powers, and the right to institute inquiries into any matter, to require the attendance of witnesses and order the production of documents.

Exclusive control of the proceedings of the House

Parliament also has the exclusive right to regulate its internal affairs and control of its own agenda and proceedings. This is also one of the rights derived from Article 9 of the Bill of Rights, which gives the House exclusive cognizance of the own proceedings, and to settle, or depart from, their own codes of procedure and ensures that other institutions such as the courts do not interfere directly with the proceedings of the House.⁶⁹

The English courts recognised the House of Commons right to exclusive control of its proceedings, even in matters prescribed in statutes. In the case of *Bradlaugh v Gosset* [1883-84] 12 QBD 271⁷⁰ the court declined to intervene when the House of Commons refused to allow a member, who was an avowed atheist, to take the oath even though he was required to do so under statute. In that case, the court ruled that:

"...the House of Commons is not subject to the control of...courts in its administration of that part of the statute law which has relation to its own proceedings...Even if that interpretation should be erroneous [the] court has no power to interfere with it, directly or indirectly".⁷¹

This principle was confirmed in *British Railways Board v Pickin* [1974] AC 765⁷² by Lord Morris when in his deliberation on the courts power to question the passage of a bill stated that:

"When an [Act] is passed there is finality, unless and until it is amended or repealed by Parliament...It must surely be for Parliament to lay down the procedures which are to be followed. It must be for Parliament to lay down and to construe its Standing Orders and further to decide whether they have been obeyed: it must be for Parliament to decide whether in any particular case to dispense with compliance with such orders".⁷³

⁶⁹ Erskine M., 23rd Edn, p102.

⁷⁰ [1883-84] 12 QBD 271 at 271.

⁷¹ Ibid, at p278-86.

⁷² *British Railways Board v Pickin* [1974] AC 765.

⁷³ Ibid at 788-789.

This privilege also covers the proceedings of parliamentary committees, the tabling of documents and petitions once presented to the House.⁷⁴ McHugh J stated in the High Court in *Egan v Willis*:

“Of all the great privileges of the House of Commons, none played a greater role in the Commons achieving influence than its capacity to control its own business and to set its own agenda. The view of the monarchs was that the House of Commons was summoned only to vote on the appropriations asked of them, to approve legislation submitted to them and to express opinions on matters of policy only when asked. The House of Commons would not have become the powerful institution that it is if the views of those monarchs had prevailed. The importance of Parliament under the Westminster System to control its business has existed for so long that it must be regarded as an essential part of its procedure which inheres in the very notion of a legislative chamber under that system”.⁷⁵

In Solomon Islands, the Court has no jurisdiction to inquire into proceedings in Parliament, except perhaps in the very limited circumstances of matters prescribed in the Constitution. Even in those circumstances the authority of the courts should be restricted to manner and form provisions in the constitution and evidence of fact only of what was said or done in proceedings in Parliament.

Recommendation 10

The Committee recommends that the power of exclusive control of proceedings of Parliament be explained in the Guide

Control of reports of proceedings of the House and tabled documents

Another power of the House derived under Article 9 is the power of the House to control the extent to which its proceedings may be reported.⁷⁶ The records of the House include a range of publications such as the Minutes of Proceedings, the Notice Paper, the Questions and Answers Paper and Hansard which are covered by absolute privilege.⁷⁷ A document tabled in the House by a member is protected by absolute privilege.

On the other hand, the extent to which the privilege applies beyond the parliament is more problematic. For example, when a speech delivered by Lord Abingdon in the House of Lords in 1794 was published at his own expense, his plea of privileged publication in a subsequent lawsuit was rejected by the courts.⁷⁸ Likewise, a member sued for defamation with respect to a document unrelated to parliamentary business could also not claim privilege by tabling the document in Parliament.⁷⁹

Another leading case is *Stockdale v Hansard*,⁸⁰ where Messrs Hansard printed by order of the House of Commons a report prepared by the inspector of prisons. The inspector's report described as indecent and obscene a book on anatomy found in Newgate prison library. Stockdale, the publisher of the book, sued for libel but the court held that parliamentary privilege protected papers printed by order of the House for the use of its own members. The

⁷⁴ Campbell E, *Parliamentary Privileges*, Monash University, The Federal Press, 2003, p12.

⁷⁵ (1998) 195 CLR 424 at 478.

⁷⁶ McGee D, *Parliamentary Practice in New Zealand*, 3 Ed, Wellington, NZ: GP Publications, 2005, p638.

⁷⁷ Lovelock and Evans, *New South Wales Legislative Council Practice*, 2008, p267.

⁷⁸ Erskine M, *Parliamentary Privileges*, 22 Ed, p99.

⁷⁹ *Ibid.* Lovelock and Evans, p70.

⁸⁰ (1839) 112 ER 1160 cited in Joint Committee on Parliamentary Privileges, Vol 1, para340.

court however went further to say that this protection did not extend to papers made available outside the House to members of the public.⁸¹

Proceedings of committees have always been treated on a different basis from proceedings of the House itself as far as disclosure is concerned. This is because the House normally takes the view that it should be the first to learn of the deliberations and conclusions of its committee. The report and proceedings of a committee are therefore confidential until a committee reports to the House. Disclosure of a report before tabling in the House may be treated as contempt.⁸²

In terms of broadcasting through radio and televising by television of public hearings of committees or meetings of Parliament, are established as a very effective means in communicating proceedings of Parliament to the public. In both instances, it really depends on whether the source of information is authorised by Parliament or the committee prior to the public hearing on whether information broadcasted or televised during a meeting of parliament or the committee should be disclosed live.

Recommendation 11

The Committee recommends that the Standing Orders be modernised to provide provisions to control the reporting and publication of proceedings of the House and Committees.

Control of access to the sittings of the House

In many jurisdictions, it is a constitutional requirement that sittings of parliament be made public or be accessible by the public. In Solomon Islands, this is provided in section 70 of the *Constitution*. However, parliamentary privilege extends the power of the House to control access to its sittings by regulating the attendance and conduct of members and non-members and excluding strangers, if it sees fit.⁸³ The latter element is of key significance to this rule.

Under this privilege, parliament has the power to remove members and strangers, particularly for grounds related to the maintenance of order. It also applies to the removal of members of the public present or in attendance at a parliamentary proceeding, who behave in a disorderly manner. Whilst the Standing Orders provide rules for the maintenance of order by the Speaker and the circumstances in which a member may be excluded from the Chamber, it is necessary that the Standing Orders be improved to control even the admission of strangers to the galleries as well as Committee hearings.

Recommendation 12

The Committee recommends that the Standing Orders be modernised to regulate the attendance and conduct of its members, and control the admission of strangers to the galleries of the House and meetings of Select Committees.

⁸¹ Joint Committee on Parliamentary Privilege, Report: Volume 1, “*Report and Proceedings of the Committee*”, VIC Parliament, Session 1998-99, HL Paper 43-1, HC 214-1, para340.

⁸² McGee D, *Parliamentary Practice in New Zealand*, 3 Ed., 2005, p638.

⁸³ *Ibid*, p635.

The power to conduct inquiries and call witnesses

Under the Westminster system, the House has the inherent power to conduct inquiries into any matter it considers fit and call witnesses. In Solomon Islands, these powers have been provided for in the Standing Orders as well as in various Acts. This power is normally delegated to parliamentary committees and the procedures for such inquiries are often provided for in the Standing Order or as may be determined by the House. In such inquiries, witnesses are invited or summoned and evidence is recorded and broadcast or published. It is an essential part of committee proceedings.

In *Egan v Willis*, Justice McHugh cited a number of cases in expressing the importance of conducting inquiries and calling witnesses. He stated that:

“In *Stockdale*, Lord Denman CJ described the House of Commons as “the grand inquest of the nation.” In *Howard v Gosset*, Colridge J said that “the Commons are, in the words of Lord Coke, the general inquisitors of the realm”. These statements summarise one of the most important functions of a House in a legislature under the Westminster system, namely, that is the function of the Houses of Parliament to obtain information as to the State of affairs in their jurisdictions so that they can, where necessary, criticize the ways in which public affairs are being administered and public money is being spent. The Crown through its Ministers governs. Under the system of responsible government, those Ministers are responsible to the Parliament. For that system to work effectively, for the administration to retain the confidence of the Parliament, the Houses of Parliament must have access to information relating to public affairs and public finance which is in the possession of the governments of the day”.⁸⁴

The Standing Orders presently allow for the Public Accounts Committee to summon accounting officers, technical officers and other public officers to give information that the Committee might need for its inquiry.⁸⁵

Recommendation 13

The Committee recommends that the Standing Orders be modernised to provide all Committees with appropriate powers to conduct inquiries and to call and summons witnesses.

Recommendation 14

The Committee recommends that the Standing Orders be modernised to ensure appropriate powers are provided to committees to conduct inquiries on behalf of the House.

Recommendation 15

The Committee recommends that a Parliamentary Evidence Act be passed by Parliament to provide for the summoning of witness where required and for appropriate penalties should a witness refuse to appear according to that summons and for other relevant matters.

⁸⁴ *Egan v Willis* (1998) 195 CLR424, p475.

⁸⁵ Standing Orders of the National Parliament, Order 69(1) (f).

The power to order the productions of documents

The House has an inherent power to send for and order the production of documents. The House may delegate to a committee the power to order witnesses to appear or documents to be produced. Such a delegated power is known as “the power to send for documents, papers and records”.⁸⁶

In *Egan v Willis*⁸⁷ the High Court of Australia held that production of documents by Ministers is “reasonably necessary” for the performance by the House of its functions. Further, there is the need to review the Executive’s conduct, as derived from the doctrine of responsible government. In the above case, it was held unanimously that “*a power to order the production of state papers ... is reasonably necessary for the proper exercise by the Legislative Council of its functions.*”⁸⁸

Recommendation 16

The Committee recommends that the Standing Orders be modernised to provide procedures for the House and committees to order the production of documents in order to ensure proper scrutiny of the actions of the executive.

The power to maintain the attendance and service of its Members

Parliament has the power to ensure that its members abide by the orders and rules of the House. Attendance upon by the service of Parliament includes the obligation to fulfil the duties imposed on members by the orders and regulations of the House.⁸⁹

Recommendation 17

The Committee recommends that the Standing Orders be modernised to ensure the attendance and service of members in the House and in Committee meetings including procedures for granting leave of absence from attendance.

The power to control the precincts of Parliament

Another power that is vested in Parliament is the power to control the precincts of the Parliament. This power flows from the power of the House to control its own proceedings and is normally exercised by the Speaker when necessary, to ensure the proper functioning of the Parliament. This power to control the precincts also includes the power to remove a person from the parliamentary buildings.⁹⁰

In *Willis and Christie v Perry*, Griffith CJ stated that:

“The Speaker undoubtedly has the power, when any person who is outside the Chamber is conducting himself in such a manner as to interfere with the orderly conduct of proceedings in the chamber, to have that person removed, and for that purpose to obtain the aid of the police”.⁹¹

⁸⁶ McGee D, *Parliamentary Practice in New Zealand*, 3 Ed, 2005, p428.

⁸⁷ [1998] 195 CLR 424 at p453.

⁸⁸ *Egan v Willis*, Cahill (SCNSW, unreported 29 November 1996) at 26 (per Gleeson CJ).

⁸⁹ May E, 22nd Ed, p179.

⁹⁰ McGee D, *Parliamentary Practice in New Zealand*, 3 Ed, Wellington, NZ: GP Publications, 2005, p635.

⁹¹ *Willis and Christie v Perry* in Lovelock and Evans, *New South Wales Legislative Council Practice*, 2008, p99.

This power is necessary for the security of members, but has been confused with the power to protect members from being arrested in the precincts for a criminal offence. This is incorrect as members are not ordinarily protected from criminal implications. In such instances, the office of the police commissioner would be expected to notify the Speaker of the circumstances concerning a member and authorisation to enter the precincts would be granted.

Recommendation 18

The Committee recommends that Parliament enact legislation governing the precincts of the Parliament and providing for the Speaker to control the parliamentary precincts and for other matters relating to the security of members.

The right to administer an oath

The powers of Parliament also relate to the right to administer an oath in its proceedings, particularly in committee hearings, where witnesses are expected to give evidence.⁹² Whilst this power is important, the Committee is of the view that this right should be exercised when the House or a committee, in its discretion, deems necessary. Administering an oath is a very formal process that is not necessary for informal hearings. Whilst the House should have the power to examine witnesses under oath, the National Parliament should be given the discretion of determining when and for which types of witnesses, oaths would be necessary.

Recommendation 19

The Committee recommends that the Standing Orders be modernised to provide procedures for the giving of evidence under oath.

The power to discipline for contempt

The power for Parliament to discipline its members or any strangers found to be in contempt of Parliament is an inherent power of the House of Commons. Contempt includes any conduct (including words) which improperly interferes, or is intended or likely to interfere, with the performance by the House of its functions, or the performance by a member or officer of the House or one of its committees in the performance of their duties.

Contempts are diverse in character and can involve the conduct of other persons such as witnesses and petitioners. The House has the exclusive right to judge whether or not conduct amounts to improper interference and hence contempt.⁹³ Generally a House will treat as contempt any act or omission which obstructs or impedes the House or a committee in the performance of its functions, obstructs or impedes any member or officer of the House in the discharge of their duties or has a tendency to directly or indirectly, have the above effect.

Examples of contempt against the House include the following:

- (a) interrupting or disturbing the proceedings of, engaging in other misconduct in the presence of, the House or a Committee;

⁹² Marleau R and Montpetit C, *House of Commons Procedure and Practice*, edn 2000, Cheneliere/McGraw-Hill, Canada, 2000, p106.

⁹³ Joint Committee on Parliamentary Privilege, Report: Volume 1, "Report and Proceedings of the Committee", VIC Parliament, Session 1998-99, HL Paper 43-1, HC 214-1, Ch 1.

⁹⁶ Ibid, Lovelock and Evans.

- (b) assaulting, threatening, obstructing a member or officer of the House in the discharge of the member's duty or officer's duty;
- (c) deliberately publishing a false or misleading report of the proceedings of a House or a Committee;
- (d) removing, without authority, papers belonging to the House;
- (e) falsifying or altering any papers belonging to the House or formally submitted to a Committee of the House;
- (f) deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a Committee;
- (g) without reasonable excuse, failing to attend before the House or a Committee after being summoned to do so;
- (h) without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a Committee;
- (i) without reasonable excuse, disobeying a lawful order of the House or a Committee;
- (j) interfering with or obstructing a person who is carrying out a lawful order of the House or a Committee;
- (k) bribing or attempting to bribe a member to influence the member's conduct in respect of proceedings of the House or a Committee;
- (l) intimidating, preventing or hindering a witness from giving evidence or giving evidence in full to the House or a Committee;
- (m) bribing or attempting to bribe a witness;
- (n) assaulting, threatening or disadvantaging a member on account of the member's conduct in Parliament, or a former member, on account of the former member's conduct in Parliament;
- (o) divulging or publishing the content of any report or evidence of a select committee before it has been reported to the House;
- (p) Accepting a bribe intended to influence a member's conduct in respect of proceedings of the House or Committee;
- (q) acting in breach of any orders of the House;
- (r) failing to fulfil any requirement of the House, as declared in a code of conduct or otherwise, relating to the possession, declaration, or registration of financial interests or participation in debate or other proceedings.⁹⁴

The above list is not intended to be exhaustive and various examples can be found in the texts on parliamentary practice. New situations may arise which the House may wish to treat as contempt.

Some Parliaments, such as the New Zealand House of Representatives, have by resolution outlined conduct that may be considered as contempt. Other Parliaments have incorporated such conduct within their Standing Orders.

d Evans.

⁹⁶ Joint Committee on Parliamentary Privilege, Report: Volume 1, "*Report and Proceedings of the Committee*", VIC Parliament, Session 1998-99, HL Paper 43-1, HC 214-1, Ch 1, Para 264.

, New South Wales Legislative Council Practice, 2008, p.88

⁹⁶ Campbell E, *Parliamentary Privileges*, 2003, p.208

⁹⁶ *Ibid*, p.210

⁹⁶ *Ibid*

⁹⁶ Lovelock and Evans, *New South Wales Council Practice*, 2008, p.

, *New South Wales Legislative Council Practice*, 2008, p.88

Recommendation 20

The Committee recommends that the Standing Orders be modernised to include examples of matters that the House may treat as contempt and that the Guide contain a general statement of the types of conduct that may fall within the definition of contempt.

The power to discipline members

Closely related to the power to discipline for contempt is the power of the Parliament to discipline its own members found guilty of misconduct or conduct unworthy of the House, which conduct have included contempt of the House, making threats, offering or taking bribes or intimidating persons. Disciplinary measures include admonition, censure, reprimand, demanding an apology for words spoken, as well as suspension and in some cases even expulsion. Mr Joseph Foukona remarked on this in his submission to the Committee, stating that “parliament has the ability to determine its own rules and enforce them by means of disciplinary sanctions, [including] suspension or expulsion and punish for breach of privilege. These punitive powers enhance the effective functioning of Parliament”.⁹⁵

Recommendation 21

The Committee recommends that the Parliament adopt a Code of Conduct that will clearly outline the conducts that might subject a member to discipline, and the procedures for dealing with such matters.

The power to suspend a Member

Suspension of a member by the House is usually employed if a member disregards the authority of the Chair or abuses the rules of the House.⁹⁶

Members of the House who are suspended from the service of the House are not entitled to sit and vote. In appropriate case, they may not be entitled to receive their parliamentary salary or allowance although this may be covered by regulation or statute.⁹⁷

During the 19th Century, the Judicial Committee of the Privy Council advised that houses of the colonial parliaments within the British Empire do not have the inherent power to impose punitive sanctions; however, it conceded that colonial parliaments need the penal powers to adjudged members who disregard the capacity of their legislatures to carry out their constitutional duties.⁹⁸ ‘The House of Commons of the United Kingdoms parliament and houses invested with the same powers and privileges as the House of Commons have the power to suspend members for any period not exceeding the life of parliament’.⁹⁹ Thus, the power to suspend must be done within a time limit; normally the period must not exceed the life of parliament. Nineteenth century case law makes it clear that, while the [Legislative] Council has the right to take reasonable measures to prevent disorderly conduct in the chamber, that right does not extend to ‘unconditional suspension, for an indefinite time’.¹⁰⁰ *‘Houses which have not been invested with powers and privileges of the House of Commons*

⁹⁶ Ibid, Lovelock and Evans.

⁹⁶ Ibid, Lovelock and Evans.

⁹⁷ Campbell E, “*Parliamentary Privileges*”, 2003, p208.

⁹⁸ Ibid, p210.

⁹⁹ Ibid.

¹⁰⁰ Lovelock and Evans, “*New South Wales Council Practice*”, 2008, p88.

*have been held by courts to have an inherent jurisdiction to suspend and expel their members, but only for self-protective purposes.*¹⁰¹

This notion was further considered by the Privy Council in *Barton v Taylor*,¹⁰² a case in which, Taylor (a Member of the Legislative Assembly of New South Wales) brought an action against the Speaker for removing him from the Chamber and preventing him from returning. The Privy Council held that the Assembly has the power to suspend a Member from service on the basis of necessity. Their Lordships adopted the words of Sir James Colvile in *Doyle v Falconer* and stated that:

“[I]f a member of a Colonial House of Assembly is guilty of disorderly misconduct in the House while sitting, he may be removed or excluded for a time, or even expelled... the right to remove for self-security is one thing, the right to inflict punishment is another....if the good sense and conduct of the members of colonial legislatures prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person excluded from the place of meeting, and to keep him excluded”.¹⁰³

The Privy Council further considered the period of suspension that would be considered reasonable:

"The principle on which the implied power is given confines it within the limits of what is required by the assumed necessity. That necessity appears to their Lordships to extend as far as the whole duration of the particular meeting or sitting of the Assembly in the course of which the offence may have been committed. It seems to be reasonably necessary that some substantial interval should be interposed between the suspensory resolution and the resumption of his place in the assembly by the offender, in order to give opportunity for the subsidence of heat and passion, and for reflection of his own conduct by the person suspended; nor would anything less be generally sufficient for the vindication of the authority and dignity of the assembly”.¹⁰⁴

Another example of the House using its power to suspend a member due to misconduct is from the New South Wales Legislative Council where on 2 May 1996, the Treasurer and the Leader of the House, the Hon. Michael Egan, was judged guilty of contempt and suspended from the House for the remainder of the sitting day for failing to table papers. When Egan refused to leave the chamber, arguing that the House has no authority to compel the production of documents and therefore no grounds for suspending him, the Usher of the Black Rod (Mr Warren Cahill) was directed by the President to escort Mr Egan from the Chamber and the parliamentary precincts. The Usher of the Black Rod did this, taking Mr Egan from the Chamber and the parliamentary building out onto the footpath of Macquarie Street. This action subsequently became established the decision of the New South Wales Court of Appeal in *Egan v Willis and Cahill* and in turn the High Court decision in *Egan v Willis*.¹⁰⁵ In *Egan v Willis*, the majority of Judges considered that the action taken by the Legislative Council to suspend Egan from the Service of the House due to his failure to produce documents in the resolution of the House was within the power of the House.¹⁰⁶

The power to suspend a member is part of Solomon Islands law as common law and under schedule 3(2) of the Constitution. This is also provided in Standing Order 39 (3) (c) where the Speaker may, after giving the member an opportunity to be heard, suspend the member for a

¹⁰¹ Campbell, E “*Parliamentary Privileges*”, 2003, p208.

¹⁰² (1886) 11 AC 197 at p203.

¹⁰³ Ibid, p204.

¹⁰⁴ Ibid.

¹⁰⁵ Lovelock and Evans, “*New South Wales Council Practice*”, 2008, p89.

¹⁰⁶ [1998] 195 CLR 424.

period not exceeding 14 days. The current Standing Orders should however be amended to provide clear procedures for the suspension of members.

Recommendation 22

The Committee recommends that the Standing Orders be modernised to provide procedures for the suspension of members for breaches of order and forfeiture of rights, where it is absolutely necessary for the preservation of the dignity of the House.

The power to expel a Member

Under common law, the House has the inherent power to expel a member if the House adjudged that a member has utterly disregarded the authority of the House. The Supreme Court of New South Wales in *Armstrong v Budd*,¹⁰⁷ Justice Wallace stated that:

“I am of the opinion that the Legislative Council has an implied power to expel a member if it adjudges him to have been guilty of conduct unworthy of a member. The nature of this power is that it is solely defensive- a power to preserve and safeguard the dignity and honour of the Council and the proper conduct and exercise of its duties. The power extends to conduct outside the Council provided the exercise of the power is solely and genuinely inspired by the said defensive objectives. The manner and the occasion of the exercise of the power are for the decision of the Council”.¹⁰⁸

In a situation where a member of the House is expelled from the House, the member becomes disqualified from continuing to sit as a Member of Parliament. The expulsion of a member, even though it creates a vacancy in the seat of a member does not prevent a member from being elected again at the ensuing by election.

Constitutional instruments or statute normally have provision that deals with the qualification requirements of those seeking election for parliamentary seats and contained provisions that provides for situations where there is a vacancy in the seat of a member. In matters of parliamentary privileges, whether a seat becomes vacant or the Member disqualify from continuing is a question for the House to decide.

In Solomon Islands, the power to expel a member from the House is inherent through the common law and further confirmed in Schedule 3(2) of the Constitution. Section 50 of the Constitution adequately outlines the circumstances which could disqualify a Member of Parliament from his seat, however, it does not provide for the circumstance where Parliament through a resolution can expel a member.

Recommendation 23

The Committee recommends that Parliament should amend the Constitution to provide for a member's seat to be vacated where Parliament adjudges a members conduct to be unworthy of a member.

¹⁰⁷ (1969) 71 SR (NSW) 386 at 396.

¹⁰⁸ *Ibid*, p403.

The power to imprison

The origin of the power to punish for contempt may be traced back to the medieval concept of the English Parliament as primarily a court of justice. The power to fine or imprison for contempt belongs at common law to all courts of record. The House of Lords is a court of record and thus has power not only to imprison but to impose fines. The House of Commons power to commit offenders was exercised frequently until the end of the nineteenth century, it was distinctly accepted by the Lords in *Ashby v White* in 1704, repeatedly recognised by the courts, and virtually admitted by the Privileges of Parliament Act 1603, which provided that nothing therein should ‘*extend to the diminishing of any punishments to be hereafter, by censure in Parliament, inflicted upon any person*’.¹⁰⁹

The power to imprison is used rarely these days in the United Kingdom but there is a case in Western Australia in 1990s where a petitioner was imprisoned. The House of Lords in the United Kingdoms has not found the need to impose any punishment on a member this century.¹¹⁰

Recommendation 24

The Committee recommends that Parliament should monitor the need for relevant legislation should this become necessary in the future.

Thus, the privileges enjoyed by the House of Parliament can be conferred as a matter of inherent right, or under statute, or in the case of the Westminster Parliament, parliamentary privilege is also derived from “the law and custom of Parliament” – *lex et consuetudo parliamenti*.

¹⁰⁹ Erskine May, 23rd Edn, p156.

¹¹⁰ Joint Committee on Parliamentary Privilege, Report: Volume 1, “*Report and Proceedings of the Committee*”, VIC Parliament, Session 1998-99, HL Paper 43-1, HC 214-1, Ch 1, Para 25.

Chapter 5:

Approaches to outlining powers, rights and immunities of Solomon Islands

In order to determine the approach which the National Parliament of Solomon Islands would adopt in outlining its rights, powers and immunities, four approaches were considered during the hearings.

5.1 Consideration of laws governing parliamentary privilege in Solomon Islands

The first approach that was discussed in the hearings was the existing laws that governed parliamentary privilege in Solomon Islands. The law governing parliamentary privilege is a complex matter and the relevant laws in existence touching on the powers and privileges of the National Parliament of Solomon Island have been outlined in Chapter Three of this Report.

Parliamentary privilege is integral to the existence of the House. While at common law necessity defines the existence and extent of parliamentary privilege, the foundation of parliamentary privilege in Solomon Islands has now been firmly established by the 2007 Act. That Act confers on the Parliament the powers, privileges and immunities of the House of Commons of the United Kingdom and its members as at 7 July 1978.

Prior to the passing of the 2007 Act, the Parliament was vested with such powers and privileges by the common law as was reasonably necessary for the existence of the House and the proper exercise of the functions of the House under the Constitution.

Until the passing of the 2007 Act for example the Parliament lacked the power to punish for contempts committed against it. Parliamentary privilege has not been a major issue in Solomon Islands and it is not common for members to raise alleged breaches of privilege or contempt. No cases have resulted in a committee inquiry on privilege.

The lack of action taken or claim made on the basis of parliamentary privilege, however, does not suggest that the rights and immunities enjoyed by the House and its members are not important. This may only be indicative of members being unaware of the extent of or use of privilege or of the fact that parliamentary practice in Solomon Islands has not developed to the stage where insisting on privilege has been necessary. However, privilege is vital to the proper and effective functioning of the Parliament. This is as true today in Solomon Islands as it was when the House of Commons in the United Kingdom fought to secure its rights, privileges and immunities centuries ago.

Although the 2007 Act sets the basis for parliamentary privilege in Solomon Islands, it does not define the types of privilege that are available in the House of Commons at 7 July 1978. Further, it does not provide for the procedures to determine whether a particular privilege does exist.

5.2 Amendment of the current Standing Orders

The second approach which was discussed during the hearings is the review and overhaul of the current Standing Orders. Most of the witnesses expressed in their presentations that the

Standing Orders should be reviewed and modernised. Proposals made by witnesses included the following:

- The current Standing Orders should be amended to expressly identify parliamentary privilege and the proceedings of Parliament.
- The current Standing Orders should be amended to identify the powers, breaches or contempts and penalties on matters that the House considers as offensive to the integrity of the House.
- Additionally, the National Parliament Office should also publish a guide book which explains parliamentary privilege and identifies each such privilege.
- Parliament might like to consider the New Zealand Parliament as one example of Parliaments which have adopted this approach where various powers, procedures and contempts are outlined in the Standing Orders and resolutions of the House.

The advantage of this model in including procedures for the manner of the exercise of various powers and functions is that it is not open to interpretation by the courts in a similar manner to a statute, and thus ensures preservation of the supremacy and independence of the Parliament. The Committee is aware that the Standing Orders of the National Parliament are currently being reviewed by Mr Evans who appeared as a witness before this committee. Many of the recommendations to changes in the Standing Order in this Report are incorporated into the new draft Standing Orders.

5.3 The semi-legislative approach

Another approach that was considered during the hearings is based on a semi legislative model. Suggestions relating to this approach are outlined below:

- The National Parliament Office should publish the Guide that explains the privileges of Parliament.
- The Standing Orders should be amended to outline procedures for calling and attendance of witnesses or for providing documents, and penalties for refusal to attend or produce documents.
- Freedom of speech and the publication of the debates and proceedings of Parliament are presently covered by the Bill of Rights 1689 and the Penal Code.
- The Standing Orders should be amended to outline matters that House will regard as contempt. This approach has been followed in Queensland.
- Parliament should only legislate for powers and privileges in areas that are considered absolutely necessary, such as the powers of the House to summons persons to attend and give evidence or produce documents, administration of the oath, and sanctions and penalties for failure to attend and give evidence.
- Parliament should also legislate in relation to the precincts of the Parliament and in so doing provide for the authority of the Speaker over the parliamentary precincts.

The advantage of a minimal legislative approach is that the courts can only interpret those issues which the Parliament has enacted in legislation. This leaves the remainder of the

privileges and powers of the House to the Standing Orders, practices and procedures of the House. Such an approach would therefore still maintain Parliament's supremacy.

5.4 The legislative approach

The fourth approach – the legislative approach – was discussed extensively during the hearings. This approach has been adopted by the Australian Federal Parliament. In 1987 that Parliament codified the freedom of speech and other powers and immunities through the Parliamentary Privileges Act 1987.

The primary advantage of this approach is that it defines parliamentary privilege in an act of Parliament making it the primary source of law on parliamentary privilege. The disadvantage of this approach, on the other hand, is that it leaves the statute open to judicial interpretation; a feature that could in the long run undermine the supremacy of Parliament.

Parliament should have and maintain exclusive control over its proceeding. As explained by John Evans in his presentation, "*Parliament, as the grand inquest of the nation with power to inquire into any matter within its legislative competence should be the final arbiter as to whether a person may refuse to answer a question or produce a document in terms of the public interest of disclosure as against secrecy*".¹¹¹

Other countries which have adopted this approach include Cook Islands, Fiji, Papua New Guinea and Federal States of Micronesia. The Committee has thoroughly discussed this approach but inclined to recommend for the codification of a single statute the powers, privileges and immunities of the National Parliament and its members.

5.5 The Committee's recommended approach

The Committee discussed the four approaches and analysing the best approach that should be taken to developing appropriate rules and regulations for prescription by Parliament according to Section 69 of the *Constitution* following the enactment of that Act.

The first approach falls short of defining the nature of the privileges that exist in the House of Commons as at 7 July 1978. It also does not clearly set out the procedures for matters that are considered privilege, immunities and powers of the House.

The second approach is the amending or modernising of the current Standing Orders to govern matters concerning the privileges, immunities and powers of the House. The New Zealand Parliament adopted this model where matters of privilege and contempt were provided for in its Standing Orders. In Solomon Islands, the Courts do not have the jurisdiction to interfere on matters considered to be 'proceeding of the House' but only on constitutional matters. The Committee is inclined to adopt this approach.

The third approach is the semi legislative approach where various aspects of the exercise of the powers, privileges and immunities of the House are outlined in the Standing Orders, some are provided for in legislation and others are provided for in a resolution of the House. The Committee found this approach favourable and recommended that this approach should be adopted in outlining the nature of the powers, privileges and immunities of the Solomon Islands National Parliament. The advantage of this approach as previously stated is that it only allows the Courts to interpret grey areas in the legislation and leaves the remainder of the

¹¹¹ Evans J., "Oral evidence before the Committee on 22 August 2008.

privileges, immunities and powers to be governed by the Standing Orders and resolutions of the House.

Lovelock and Evans¹¹² outlined the jurisdiction of the courts in matters of privilege as follows:

The leading case on the right of the British Houses of Parliament to be the sole judge of the lawfulness of their own proceedings is *Bradlaugh v Gosset*. In that case the courts upheld the exclusive jurisdiction of the Commons in matters relating to the management of the internal proceedings of the House. Lord Coleridge CJ stated:

“What is said or done within the walls of Parliament cannot be inquired into in a court of law...The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive”.¹¹³

Erskine May went on to comment:

“In the nineteenth century, a series of cases forced upon the Commons and the courts a comprehensive review of the issues which divided them, from which it became clear that some of the earlier claims to jurisdiction made in the name of privilege by the House of Commons were untenable in a court of law: that the law of Parliament was part of the general law, that its principles were not beyond the judicial knowledge of the judges, and that it was the duty of the common law to define its limits could no longer be disputed. At the same time, it was established that there was a sphere in which the jurisdiction of the House of Commons was absolute and exclusive”.¹¹⁴

In Australia it has been accepted that the courts may inquire into the existence and extent of privilege, but not its exercise. In *Egan v Willis*, Gleeson CJ commented on the principle of non-intervention in Australia:

“As the High Court observed in *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 162, after a long period of controversy in England, it was established that disputes as to the existence of a power, privilege or immunity of a House of Parliament are justiciable in a court of law. The same principle applies in Australia. However, whilst it is for the courts to judge the existence in a House of Parliament of a privilege, if a privilege exists it is for the House to determine the occasion and the manner of its exercise”.¹¹⁵

The adoption of the semi legislative approach will ensure that the supremacy of Parliament is maintained in matters of privilege even though the Courts may inquire into the existence and extent of a privilege, but not the manner of its exercise.

The fourth approach is to define various powers and privileges in a statute which would allow the Court to interpret areas that are unclear or ambiguous. This approach undermines the supremacy of Parliament. The Committee does not believe there would be any advantage at the present time in attempting to codify the powers, privileges and immunities of the Parliament in a single statute. In those countries where this has been attempted resort is still made to the powers, privileges and immunities of the House of Commons at a specified date, except as modified by the statute.

¹¹² Lovelock and Evans, “*New South Wales Council Practice*”, 2008, p106.

¹¹³ (1884) 12 QBD 271 at 275

¹¹⁴ *Erskine May*, 23rd edn, p 184

¹¹⁵ (1998) 195 CLR 424 at 466-7.

Recommendation 25

The Committee recommends that Parliament should adopt the semi legislative approach to defining its privileges, powers and immunities.

Appendices

(See inset)

Appendix 1 – Witnesses

Date	Name	Position/Office	Submission
Wednesday, 18 June 2008	Professor Don Paterson	Lecturer, School of Law, University of South Pacific	Oral
Wednesday, 18 June 2008	Mr Joseph Foukona	Lecturer, School of Law, University of the South Pacific	Oral
Wednesday, 18 June 2008	Mr Frank Kabui	Chairman, Law Reform Commission	Oral/Written
Wednesday, 18 June 2008	Mr Andrew Radclyffe	Barrister and Solicitor, Private Practitioner	Oral/Written
Friday, 22 August 2008	Mr John Evans	Former Clerk, New South Wales Legislative Council	Oral
Tuesday 26 August 2008	H.E. Sir Nathaniel Waena	Governor General, Solomon Islands	Oral/Written

Appendix 2 – Minutes



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 1

Wednesday 9 April 2008, Parliament Conference Room 2, 11:15am

1. Members Present

Hon. Patteson Oti	Chairman
Hon. Rev. Leslie Boseto	Member
Hon. Japhet Waipora	Member
Hon. Patrick Vahoe	Member

Apologies

Hon. Rev, Leslie Boseto	Member
Hon. Clement Kengava	Member
Hon. Bernard Ghiri	Member

2. Secretariat

Ms. Alice Willy	Clerk to Inquiry
Mr. John Taupongi	Committee Secretariat

3. In-Attendance

Mr. Warren Cahill	Project Manager Parliamentary Strengthening Project
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4. Prayers

Hon. Rev Leslie Boseto said the opening prayers.

5. Chair's Opening Remarks

- The meeting took place in accordance to the advice from the Clerk as provided for under clause 3.5 of the resolution.
- The Chair thanked the members for their attendance. The Chair in his opening statement noted his appointment by the Speaker as provided for under Section 68(4) of the Standing Orders.
- The Chair invited Members of the Committee to make comments on the task of deliberating on the Privileges, Immunities and Powers of Parliament.

6. Committee Secretariat made a presentation on Privileges, Immunities and Powers of Parliament

The Committee Secretariat briefed the members through a PowerPoint presentation.

7. Discussion on the timeline for the work plan of the Committee

The Committee secretariat briefly outlined the timeline of the committee work plan. The Committee deliberated.

8. Close

Meeting ended at 1:00 pm.



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 2

Wednesday 18 June 2008, Parliament Conference Room 2, 10:30am

1. Members Present

Hon. Clement Kengava	Acting Chairperson
Hon. Milner Tozaka	Member
Hon. Japhet Waipora	Member
Hon. Bernard Ghiri	Member
Hon. Patrick Vahoe	Member

Apologies

Hon. Patteson Oti	Member
Hon. Rev. Leslie Boseto	Member
Hon. Steve Abana	Member

2. Secretariat

Ms. Alice Willy	Clerk to Inquiry
Mr. John Taupongi	Committee Secretariat

3. Witnesses

Professor Don Patterson	Lecturer, University of South Pacific
Joseph Foukona	Lecturer, University of South Pacific
Mr. Frank Kabui	Chairman, Law Reform Commission
Mr. Andrew Radclyffe	Lawyer

4. In-Attendance

Mr. Warren Cahill	Project Manager Parliamentary Strengthening Project
Ms. Taeasi Sanga	Clerk to National Parliament
Mr. Florence Naesol	Deputy Clerk to National Parliament

5. Prayers

Hon. Milner Tozaka said the opening prayer.

6. Chair's Opening Remarks

The Acting Chair welcomed members and witnesses, offered apologies on behalf of members who were unable to attend and delivered his opening statement.

The Chair invited Members of the Committee to make comments before he invited Professor Patterson and Mr. Foukona to give evidence before the committee.

7. Hearing:

Professor Don Patterson and Mr. Joseph Foukona:

Professor Patterson provided evidence to the Committee. Mr. Foukona provided evidence to the committee and presented a PowerPoint presentation.

The Committee questioned the expert witnesses.

Questioning concluded and the witnesses withdrew.

Mr. Frank Kabui:

Mr. Kabui gave evidence before the Committee. The Committee questioned the witness.

Questioning concluded and the witness withdrew.

Mr. Andrew Radclyffe:

Mr. Radclyffe gave evidence before the Committee. The Committee questioned the witness.

Questioning concluded and the witness withdrew.

The Chairman thanked all witnesses for their enlightening evidence and closed the hearing.

8. Close:

Meeting ended at 4:00 pm.



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 3

Friday 22 August 2008, Parliament Conference Room 2, 10:00am

1. Members Present

Hon. Patteson Oti	Chairman
Hon. Rev. Leslie Boseto	Member
Hon. Milner Tozaka	Member
Hon. Clement Kengava	Member
Hon. Japhet Waipora	Member
Hon. Patrick Vahoe	Member

Apologies

Hon. Steve Abana	Member
Hon. Bernard Ghiro	Member

2. Secretariat

Ms. Alice Willy	Clerk to Inquiry
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3. Witness

Mr. John Evans	Former Clerk to the New South Wales Legislative Council
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4. In-Attendance

Ms Taeasi Sanga	Clerk to National Parliament
Mr. Florence Naesol	Deputy Clerk to National Parliament
Mr. Warren Cahill	Project Manager, Parliamentary Strengthening Project
Mr. John Taupongi	Legal Officer- Committee Secretariat
Mr. David Kusilifu	Committee Secretariat
Mr. Boniface Supa	Senior Librarian
Ms. Esther Turangaluvu	Hansard Reporter

2. Prayers

Hon. Rev Boseto said the opening prayer.

3. Chair's Opening Remarks

The Chair welcomed and thanked the members and witnesses present for their attendance, offered apologies on behalf of the members who were unable to attend and delivered his opening statement.

The Chair welcomed Mr. John Evans and invited him to give evidence before the committee.

4. Hearing:

Mr John Evans former Clerk of the Legislative Council of New South Wales:

Mr. Evans provided evidence to the Committee. The Committee questioned the expert witness.

Evidence concluded. The expressed the Committee's gratitude to the witness and the witness withdrew.

5. Motion of Chair to publish official transcript of the first Hearing

The Committee resolved to publish the Official transcript of the first Committee hearing on the 18 June 2008.

6. Deliberations

The Committee resolved to accept invitation of the GG and hold the next hearing at the Governor General's residence.

7. Close

Meeting ended at 12: 30 pm.



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 4

Tuesday 26 August 2008, Government House, Courtesy Room, 11:15 am

1. Members Present

Hon. Patteson Oti	Chairman
Hon. Milner Tozaka	Member
Hon. Clement Kengava	Member
Hon. Japhet Waipora	Member
Hon. Steve Abana	Member

Apologies

Hon. Rev. Leslie Boseto	Member
Hon. Bernard Ghiro	Member
Hon. Patrick Vahoe	Member

2. Secretariat

Ms. Alice Willy	Clerk to inquiry
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3. Witness

Sir Nathaniel R Waena	Governor General
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4. In-Attendance

Mr. Rawcliff Ziza	Deputy Private Secretary
Mr. Boniface Supa	Senior Librarian
Ms. Esther Turangaluvu	Hansard Reporter

5. Welcome and Opening Remarks by Governor General

Governor General welcomed and thanked members of the Committee for their attendance. His Excellency then addressed the Committee.

The Chair thanked His Excellency for his invitation to host the Hearing at his residence and invited His Excellency to proceed with his presentation.

His Excellency, provided his views to the Committee.

6. Motion of Chair to publish official transcript of the first Hearing

The Committee resolved and passed the motion to publish the Official transcript of the Committee hearing on the 18 June 2008.

7. Close

Meeting ended at 12: 30 pm.



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 5

Tuesday 2 September 2008, Parliament Conference Room 2, 12:35pm

1. Members Present

Hon. Patteson Oti	Chair
Hon. Milner Tozaka	Member
Hon. Clement Kengava	Member
Hon. Japhet Waipora	Member
Hon. Patrick Vahoe	Member

Apologies

Hon. Rev. Leslie Boseto	Member
Hon. Steve Abana	Member
Hon. Bernard Ghiri	Member

2. Secretariat

Ms. Alice Willy	Clerk to inquiry
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3. In-Attendance

Ms. Taeasi Sanga	Clerk to National Parliament
Mr. Warren Cahill	Project Manager, UNDP Strengthening Project
Mr. Calvin Ziru	Committee Secretariat- Legal Officer

4. Prayer

Hon. Japhet Waipora said the opening prayer

5. Chair's welcome and opening Remarks

The Chairman welcomed and thanked the members present for their attendance, offered apologies on behalf of members who were unable to attend and delivered his opening statement.

The Chairman tabled an options paper developed by the Secretariat from evidence from witnesses.

6. Resolution of the Committee on Recommendations to adopt in the Draft Report.

The Committee deliberated on the options paper. The Committee resolved that option 3- which is the Semi Legislative approach be adopted in the Report of the Committee.

7. Motion of Chair to publish official transcript of the Second and Third Hearings

The Committee resolved and passed the motion to publish the Official transcript of Mr. John Evans and the Governor General as soon as the authors had the opportunity to review it and make any correction of fact.

8. Close

Meeting ended at 1: 45 pm.



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 6

Monday 6 April 2009, Parliament Conference Room 1, 1:00 pm.

1. Members Present

Hon. Patteson Oti	Chair
Hon. Milner Tozaka	Member
Hon. Steve Abana	Member
Hon. Japhet Waipora	Member
Hon. Bernard Ghiri	Member
Hon. Patrick Vahoe	Member

Apologies

Hon. Clement Kengava	Member
Hon. Rev. Leslie Boseto	Member

2. Secretariat

Ms. Alice Willy	Committee Secretariat-Legal
Mr. John Taupongi	Committee Secretariat-Legal
Mr. Calvin Ziru	Committee Secretariat-Legal
Mr. Warren Cahill	Project Manager, UNDP Strengthening Project

3. Prayer

Hon. Abana opened the meeting with a word of prayer.

4. Chair's welcome and opening Remarks

The Chair welcomed and thanked the members present for their attendance and made his opening statement.

5. Motion to confirm Minutes of Previous Meeting

Minutes of previous meetings 1- 5 held on the 9 April 2008, 18 June 2008, 22 August 2008, 26 August 2009 and 2 September 2008 respectively were confirmed on motion of Hon. Waipora.

6. Chair's Report

The Chairman tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time paragraph by paragraph.' Question put and passed.

The Committee deliberated:

Chapter 1 considered.

Resolved on motion of Hon. Abana, that Chapter 1 be adopted.

Chapter 2 considered:

Resolved on motion of Hon. Abana that Chapter 2 be adopted.

Chapter 3 considered:

Resolved on motion of Hon. Waipora that Chapter 3 be adopted.

Chapter 4 considered:

Resolved "That a Parliamentary Evidence Act be recommended and inserted in the Report to provide for the procedure for summoning witnesses and the procedure for giving oaths."

Resolved on motion of Hon. Abana that Chapter 4 be adopted.

Chapter 5 considered:

Resolved on motion of Hon. Vahoe that Chapter 5 be adopted.

Resolved on motion of Hon Vahoe that the relevant amendments be incorporated by the Secretariat and that the Committee meet tomorrow to pass the final resolution that the report be the report of the Committee to Parliament.

7. Close

Hon. Waipora said the closing Prayer and the Meeting adjourned at 3:35pm until 9.00am tomorrow.



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Meeting No. 7

Wednesday 8 April 2009, Parliament Conference Room 2, 10:45 am.

1. Members Present

Hon. Patteson Oti	Chair
Hon. Steve Abana	Member
Hon. Japhet Waipora	Member
Hon. Bernard Ghiri	Member
Hon. Patrick Vahoe	Member

Apologies

Hon. Milner Tozaka	Member
Hon. Rev. Leslie Boseto	Member
Hon. Clement Kengava	Member

2. Secretariat

Mr David Luta	Committee Secretariat
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3. In-Attendance

Mr. Calvin Ziru	Committee Secretariat-Legal
Mr. Warren Cahill	Project Manager, UNDP Strengthening Project

4. Prayer

Hon. Abana said the opening prayer

5. Chair's welcome and opening Remarks

The Chair welcomed and thanked the members present for their attendance, offered apologies on behalf of members who were unable to attend and delivered his opening remarks.

6. Motion to adopt confirm minutes of previous meeting

Minutes of previous meeting held on the 6 April 2008 were confirmed on motion of Hon. Abana.

7. Secretariat briefed the Committee on Report

The Secretariat briefed the Committee on amendments made to the Committee's report on the Privileges, immunities and Powers of Parliament.

8. The Committee adopts the Chair's Report.

The Secretariat provided an amendment paper outlining the amendments made following the consideration by the Committee during the previous meeting.

The Committee discussed the amendments and deliberated.

Resolved on motion from Hon. Ghire that the amendments reflected the decisions of the Committee and that the Report is a true record of the Committee and that it be referred to the Parliamentary House Committee for endorsement and tabling according to the Resolution of the House establishing the Committee.

9. AOB

The Chair to Committee commended and thanks all members and Secretariat staff.

10. Close

Hon. Abana said the closing Prayer and the Meeting ended at 3:35pm.

Appendix 3 - Reference

Articles

1. Enid Campbell, *Parliamentary Privilege*, The Federation press, Sydney, 2003.
2. Erskine May on Parliamentary Privileges, *The Law, Privileges, Proceedings and Usage of Parliament*, 24 Ed, Lexis Nexis, Butterworth, 2004.
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5. Marleau R and Montpetit C, *House of Commons Procedure and Practice*, edition 2000, Cheneliere/McGraw-Hill, Canada, 2000.
6. McGee D, *Parliamentary Practice in New Zealand*, 3 Ed, Wellington, New Zealand: GP Publications, 2005.
7. *Parliamentary Privilege: first principles and recent applications* by Gareth Griffith, Briefing Paper No 1/09, NSW Parliamentary Library Research Service, February 2009.
8. *Joint Report on Parliamentary Privileges*, First Report, The Joint Committee on Parliamentary Privileges, The United Kingdom Parliament, 9 April 1999.

Legislation

1. The Bill of Rights 1689
2. The Commonwealth Parliamentary Privileges Act 1987
3. The Constitution 1978, Cap 1
4. The Criminal Procedure Code, Cap 7
5. The Interpretation and General Provisions Act, Cap 85
6. The National Parliament Electoral Provisions (Amendment) Act, 2001
7. The Penal Code, Cap 26
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