



GUIDEBOOK TO THE PRIVILEGES, IMMUNITIES,
AND POWERS OF
THE NATIONAL PARLIAMENT OF
SOLOMON ISLANDS

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FOREWORD

In 2007, the National Parliament of Solomon Islands passed the *Prescription of Parliamentary Privileges, Immunities and Powers Act 2007* which provides that,

“For the purpose of section 69 of the Constitution and until otherwise prescribed by Parliament, the privileges, immunities and powers of Parliament and its members shall be those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland and its members existing as at July 7, 1978.”

It becomes apparent about the generality of the Act and the need to establish guidelines that clarify the privileges, immunities and powers of Parliament and its members. In August 2007, Parliament passed a motion that established a Special Select Committee mandated to prepare appropriate rules and regulations for prescription by Parliament according to section 69 of the Constitution among others. The Special Select Committee conducted its inquiry and produced a report with recommendations. The first recommendation was 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 that report.

It is therefore my pleasure to present to you the Privileges, Immunities and Powers of Parliament Guidebook.

Taeasi Sanga
Clerk to National Parliament

November 2014

PURPOSE OF THE GUIDE

The purpose of this guide is to provide Members of Parliament and others with a guide that identifies the privileges, immunities and powers of the National Parliament of Solomon Islands. The guide contains a clear explanation of these privileges, immunities and powers that applies to the National Parliament of Solomon Islands and its members. However, it is a short summary on parliamentary privilege in Solomon Islands. If there is any doubt, it is wise to refer to Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976.

SOURCE OF AUTHORITY FOR PRIVILEGES, POWERS AND IMMUNITIES IN SOLOMON ISLANDS

1. *The Constitution* of Solomon Islands
2. *Prescription of Parliamentary Privileges, Immunities and Powers Act 2007*
3. Bill of Rights 1689
4. Parliamentary Law, Practice and Convention

GENERAL OVERVIEW OF POWERS, PRIVILEGES AND IMMUNITIES

Definition

Erskine May's Treatise on Law, Privileges, Proceedings and Usage of Parliament defines 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 possessed by other bodies or individuals.”¹

There are three main themes in the definition. First, parliamentary privilege is a collection of unusual rights enjoyed by Parliament and its members. It is unusual in the sense that it is only inherent in Parliament and its members.

Second, these rights are essential for Parliament and its members to discharge its constitutional function. In other words, without parliamentary privileges Parliament and members will not be able to discharge their legislative, oversight and representative function as required by the Constitution.

Third, parliamentary privilege exceeds those privileges possessed by other bodies or individuals. This means that the House can settle its own code of procedure at its own pleasure. Thus, Parliament is not responsible to any external bodies or individuals for adhering to the rules that it sets for itself.

Collective and individual privilege

There is a distinction between individual and collective privileges, though they have the same purpose. 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.

For example, Erskine May states that certain rights such as freedom from arrest belongs primarily to the individual member of the House. However, this does not mean that Members cannot be arrested during their tenure as Members of

¹Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p67.

Parliament. The House collectively has the power to hold and punish for contempt or to control its own proceedings. This collective privilege is well recognized by the courts in various decisions handed down over the years.

Rationale of Privilege

In a nutshell, the rationale of privilege is to enable Members in their individual capacity and the House in its collective role to discharge the constitutional functions that is required of them effectively.

The distinctive feature of privilege is its ancillary character. Erskine May states that the privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. "They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity."²

APPLICATION OF PRIVILEGES

The National Parliament of Solomon Islands is established by the Constitution. Section 62 of the Constitution provides that, "[S]ubject to the provisions of this Constitution, Parliament may from time to time, make, amend and revoke rules and orders for the regulation and orderly conduct of its proceedings and the despatch of business, and for the passing, intituling and numbering of Bills." Section 69 further provides that, "[P]arliament may prescribe the privileges, immunities and powers of Parliament and its members."

In 2007 the National Parliament of Solomon Islands passed the *Prescription of Parliamentary Privileges, Immunities and Powers Act 2007*. The Act provide that until otherwise prescribed by Parliament, the privileges, immunities and powers of Parliament and its members shall be those of the House of Commons of Parliament of the United Kingdom of Great Britain and Northern Ireland and its members existing as at July 7, 1978, without exception. It is expressly clear that Parliament

² Erskine May on Parliamentary Privileges, "*The Law, Privileges, proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 67.

under section 69 of the Constitution has prescribed that all parliamentary privileges enjoyed by the House of Commons of Parliament of the United Kingdom of Great Britain and Northern Ireland and its members as of 1978 apply in Solomon Islands.

In cases of doubt as to the application of privileges, immunities and powers in Solomon Islands, one should refer to Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament”*, 19th edition, 1976. This should always be the starting point. That said, it should also be noted that Article 9 of the Bill of Rights also applies as part of common law and a statute of general application in Solomon Islands.

Parliament has not enacted any specific legislation related to certain specific privileges, immunities and powers. However, section 69 of the Constitution expressly provides that the House can do this should it wishes to do so. There is no legal impediment preventing the House from enacting legislations vis-a-vis specific privileges, immunities and powers should the need arise in the future.

Freedom of Speech and the Bill of Rights 1689

The most important immunity accorded to members of the Parliament is the exercise of freedom of speech in parliamentary proceedings. Article 9 of the Bill of Rights states, “[T]hat the **freedom of speech**, and **debates or proceedings in Parliament**, ought not to impeached or questioned in any court or place out of Parliament.”³

Freedom of speech permits members to speak freely during proceedings in the House or in a committee meeting while enjoying complete immunity from prosecution for any comment they make. This is the most important privilege enjoyed by the House, which is essential to the House to effectively discharge its constitutional function.

The reach of the legal immunity granted by Article 9 of the *Bill of Rights 1689* is both wide and absolute. Besides Members, it also covers officers of the House, witnesses before committees and other participants in proceedings in the House.

³ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 77.

While it is clear what speech and debates mean, however, the term ‘proceedings in Parliament’ is quite broad and implies something much more than speeches and debates. This is discussed later.

Limitation imposed by the House on Freedom of Speech

It is the duty of each Member to exercise his or her privilege of freedom of speech in such a manner that is not prejudicial to the enjoyment of that privilege. It is important to note that this is a limitation imposed by the House and not some other authority or body. The House of Commons declared by resolution⁴ that,

“it is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Members of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member’s complete independence and freedom of action in Parliament or stipulating the Member’s that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof.”

This limitation is reflected in the rules of debate in the Standing Orders which are imposed by the House concerning the freedom of speech of its members. Instances of such limitation are provided for under Standing Order 36. For example, Standing Order 36 (5) provides that no member shall impute improper motive to another Member or make unbecoming reference to his private affairs.

Republishing of speeches

The privilege of freedom of speech protects speeches and debates made in the House or in a committee. This privilege does not extend to the publication of debates and speeches outside of Parliament. Even if the printing and publication of proceedings in Parliament is ordered by the House to be published outside of Parliament, this does not confer privilege on that publication.

⁴ This was on 15 July 1947.

A Member who publishes his or her speech made in the House separately from the whole proceedings in that sitting or debate is not protected by privilege. Thus, that Member can be liable for any defamation suit brought against him or her in common law. However, a fair and accurate publication of debate in the House is protected by the same principle that applies to publication of court proceedings, “namely, that the advantage to the public outweighs any disadvantage to individuals unless malice is proved.”⁵

Meaning of “proceedings in Parliament”

The immunity under Article 9 of the Bill of Rights extend beyond speeches and debates to “proceedings in Parliament”. Erskine May defines “proceedings in parliament” as, “some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision.”⁶ Erskine May is very helpful in describing what constitutes “proceedings in parliament:”

“An individual Member takes part in a proceeding usually by speech, but also by various recognized kinds of formal action, such as voting, giving notice of a motion, etc., or presenting a petition or a report from a Committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers also can take part in the proceedings of a House, e.g. by giving evidence before it or before one of its committees, or by securing the presentation of their petitions.

While taking part in the proceedings of a House, Members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.”⁷

Members, officers of Parliament and strangers who take part in ‘proceedings in Parliament’ cannot be called to account for their actions by any authority other than the House itself.

⁵ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 80.*

⁶ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 87.*

⁷ *Ibid.*

“Proceedings in parliament” include committee hearings. Committees are an integral part of parliamentary proceedings. This is reflected in section 62 of the Constitution which states that, “Parliament may from time to time make, amend and revoke rules and orders for the regulation and orderly conduct of its proceedings and the despatch of business, and for the passing, intituling and numbering of Bills.” Parliament by a resolution of the House made an order under the Standing Orders in establishing the existing Standing Committees. Select Committees have also been established by an order of the House by way of a resolution. Committee hearings are therefore proceedings in parliament which cannot be divorced from Parliament discharging its constitutional functions. In other words, committees are necessary for parliament to dispatch off its business. Therefore, parliamentary privileges apply to proceedings of committees as well. Committee Chairs in their opening statement during committee hearings inform witnesses about this.

Matters arising in the House that are not proceedings in Parliament

“What is done or said by an individual Member becomes entitled to protection when it forms part of [the] proceeding of the House in its technical sense, i.e., the formal transaction of business with the Speaker in the Chair or in a properly constituted committee.”⁸ However, it is important to note that not everything that is done or said in the House during a sitting is part of the proceedings in Parliament. For example, if during the transaction of business in the House a member swore at another member, that is not a proceeding in parliament and as such is not covered by privilege. Another example is if a Member makes an offensive or disrespectful gesture during the transaction of business in the House.

EXCLUSIVE COGNIZANCE OF THE HOUSE

Article 9 of the Bill of Rights is one aspect of the broader exclusive cognizance of the House to be the master of its own proceedings. Erskine May identifies three principal matters that this statement of law contains:

⁸ Erskine May on Parliamentary Privileges, “*The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 89.

1. The right of each House to be the sole judge of the lawfulness of its own proceedings;
2. The right implied to punish its own Members for their conduct in Parliament;
3. The right of the House to attendance and service of its members.

The Right of the House to be the sole judge of the lawfulness of its own proceedings

This reflects the doctrine of separation of powers, in that the three arms of the state must not interfere with each other's jurisdiction in the exercise of their powers or the discharge of their functions. The position in the United Kingdom of Great Britain and Northern Ireland as of 7 July 1978 was that the House has exclusive jurisdiction over interpreting its rules and orders, and regulating its own proceedings. The courts recognized 'that whatever matter arises concerning Parliament ought to be examined, discussed and adjudged in Parliament and not elsewhere.'⁹

The Right implied to punish its own Members for their conduct in Parliament

Parliament has the power to punish its own Members if they offend the House. This is reflected in the Standing Orders 39. This demonstrates that Parliament has exclusive control over its own proceedings.

The Right of the House to attendance and service of its Members

Parliament also has the right of access to its Members. Members of Parliament are essential to Parliament in terms of the House discharging its function. This is why Members of Parliament are exempted for jury service in other jurisdictions. Members of Parliament are also exempted to attend court as witness when the House is sitting, and this extends to officers of the House as well.

Freedom from arrest in a civil proceeding is a privilege that apply to Members, especially when Parliament or a committee is sitting. This also applies to officers of

⁹ *Philip v. Speaker* [1990] sbhc;68 HC-CCC 224 of 1990 (23 November 1990)

the House as well as other persons such as strangers who are participating in proceedings in Parliament.¹⁰

THE POWER TO DEAL WITH CONTEMPT

The National Parliament of Solomon Islands has the power to declare an act to be a contempt of Parliament. This power extends to punishing such acts even in the absence of any precedence. The contempt power of National Parliament of Solomon Islands is the same as that of the House of Commons, as legislated for under the *Prescription of Parliamentary Privileges, Immunities and Powers Act 2007*.

In the House of Commons, contempt of Parliament includes any conduct which improperly interferes with or is intended to or likely improperly to interfere with the performance by the House or a Committee of its function, or the performance by a member or officer of the House in his or her duties as a member or officer. As stated in Erskine May:

“It may be stated generally that any act or omission which obstructs or impedes...Parliament in the performance of its functions, or which obstructs or impedes any member or officer of [Parliament] in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt”¹¹

Erskine May also states:

“When any of these rights and immunities, both of the Members, individually, and of the assembly in its collective capacity, which are known by the general name of privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its Members. Such

¹⁰ Erskine May on Parliamentary Privileges, *The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 94.

¹¹ Erskine May on Parliamentary Privileges, *The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 136.

actions, though often called “breaches of privilege” are more properly distinguished as “contempts.”¹²

Not all contempts are breaches of privileges; however, all breach of privileges are contempts. For example, refusing to appear before a Parliamentary committee is not a breach of privilege but it is an action that qualifies as contempt. Disorderly conduct by Members is not a breach of privilege but it is contempt, because it brings the integrity of the House into disrepute.

TYPES OF CONTEMPT

There is no definitive list of what constitutes contempt of Parliament. However, guidance may be drawn for previous examples of contempt as discussed by Erskine May.

Misconduct in the presence of Parliament or a Committee

Disorderly, disobedient or disrespectful conduct by strangers or witnesses in the presence of Parliament or a committee constitutes a contempt. As such, a Member present at a committee, who is not of the committee, must be considered as standing, in most respects, on the same footing as a stranger.¹³

Misconduct of strangers

Strangers can be held in contempt for disorderly conduct on their part such as:

- Interrupting or disturbing the proceedings of either House.
- Remaining in the House after they have been directed to withdraw
- Taking notes of what is passing in the House and refusing to desist when requested to do so.¹⁴

¹² Erskine May on Parliamentary Privileges, *“The Law, Privileges, proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 68.*

¹³ Erskine May on Parliamentary Privileges, *“The Law, Privileges, proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 136.*

¹⁴ Ibid.

Disobedience to orders of Committees

“Disobedience to the orders of a committee is a contempt of the House by which the committee was appointed, provided the order disobeyed is within the scope of the committee’s authority.”¹⁵

Instances of disobedience to the orders of a committee include;

- Disobedience to the orders for the attendance of persons made by committees duly authorised in that behalf.
- Disobedience to orders for the production before committees of papers or other documents.
- Refusing to permit books or papers to be inspected when required by orders of committees.¹⁶

Obstructing or molesting Members

“It is a breach of privilege to molest a Member of either House while attending such House or when coming to or going from it.”¹⁷

Assaulting or insulting any Member of Parliament in the coming and going from the House, or because of their behaviour in Parliament is a contempt. The House of Commons was of the view that this is a, “high infringement of the privilege of this House, a most outrageous and dangerous violation of the rights of Parliament and an (sic) high crime and misdemeanour.”¹⁸

Molestation of Members on Account of their Conduct in Parliament

It is a breach of privilege to molest any Member on account of their conduct in Parliament. The following are examples of such;

¹⁵ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 139.*

¹⁶ Ibid.

¹⁷ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 148.*

¹⁸ Ibid.

- Challenging Members to a fight on account of their behaviour in the House or any committee, or even on account of remarks made outside the House which touched proceedings in the House.
- Sending insulting letters to Members in reference to their conduct in Parliament or letters reflecting on their conduct as such Members.
- Inciting the readers of a newspaper to telephone a Member and complain of a question which he or she had given notice.
- Calling in a newspaper for the arrest of a Member and describing him as an arch traitor.¹⁹
- Demanding compensation from a Member on account of their conduct in Parliament.

Attempts by improper means to influence members in their Parliamentary conduct

It is a gross contempt of Parliament for any person to attempt to compel Members by force to vote for or against any proposition that is before the House or is expected to be brought before the House. In the same vein it is a breach of privilege to bribe a Member to influence their conduct in voting or promoting any bill or resolution that is pending or before the House.²⁰

It goes without saying that attempting to influence Members in their conduct by threats is also a contempt. Example of these kinds of threats includes;

- Publishing statements impugning the conduct of Members and publishing threatening them with further exposure if they take part in the debates of the House.
- Sending a letter to Members setting out a list of questions referring to proposed legislation to make certain activities illegal, and intimating that, if the writer did not hear from such Members, he would feel justified in letting their constituents know that they had no objections to such activities.
- Publishing posters containing threats.
- Sending a letter to a Member threatening him or her with the possibility of a trial at some time for asking a question in the House.

¹⁹ Erskine May on Parliamentary Privileges, *"The Law, Privileges, Proceedings and Usage of Parliament"*, 19 Ed, Butterworth, 1976, p 151.

²⁰ Erskine May on Parliamentary Privileges, *"The Law, Privileges, Proceedings and Usage of Parliament"*, 19 Ed, Butterworth, 1976, p 149-150.

- Sending a letter to Members threatening them that to vote for a particular bill would be regarded as a treasonable act by future administration.²¹

Molestation of witnesses

It is a contempt to molest any persons attending either House or committees of Parliament as witnesses during their attendance in Parliament or committee.²²

The following are instances of this form of misconduct;

- Assault upon witnesses in the precincts of the House or elsewhere.
- The use of threatening language to witnesses with the precincts of the House or elsewhere.
- The use of insulting or abusive language to witnesses within the precincts of the House or elsewhere.

To tamper with a witness in regard to the evidence to be given before Parliament or any committee of Parliament or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a contempt.²³

Molestation of witnesses on account of their attendance or testimony as witnesses

Any conduct which is calculated to deter prospective witnesses from giving evidence before Parliament or before committees of Parliament is a contempt. It is upon this principle that witnesses are protected from arrest, not only while going to or attending Parliament or committees of Parliament, but while returning from Parliament or committees.²⁴

Instances of these kinds of misconduct that amounts to molestation includes;

²¹ Erskine May on Parliamentary Privileges, *"The Law, Privileges, Proceedings and Usage of Parliament"*, 19 Ed, Butterworth, 1976, p 149-150.

²² Erskine May on Parliamentary Privileges, *"The Law, Privileges, Proceedings and Usage of Parliament"*, 19 Ed, Butterworth, 1976, p 156-158

²³ Ibid.

²⁴ Ibid.

- Assaulting persons for having given evidence before committees or on account of the evidence which they have given committees.
- Threatening persons with personal violence on account of the evidence which they have given before the House of committees.
- Insulting and abusing a witness on account of the evidence which he has given before a committee.

Misconduct by witnesses

The following are examples of contempt by witnesses:

- Refusing to be sworn or to take upon them some corresponding obligation to speak the truth.
- Refusing to answer questions which also extend to refusing to produce documents in their possession.
- Prevaricating or being evasive when giving evidence before a Committee and wilfully suppressing the truth or persistently misleading a committee.²⁵

Premature disclosure of committee proceedings

“By the ancient custom of Parliament, “no act done at any committee should be divulged before the same be reported to the House.””²⁶ This is regulated under Standing Order 74.

Advocacy by Members of matters in which they have been concerned professionally

“...[I]t is contrary to the usage and derogatory to the dignity of this House that any of its Members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward.”²⁷ However, it was held that this does

²⁵ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 137-138.*

²⁶ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 147.*

²⁷ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 143-144.*

not preclude any Member who has been concerned in a criminal case that has been decided from participating in a debate relating to that case.²⁸

POWERS OF THE HOUSE TO PUNISH CONTEMPTS

The power to deal with contempt flows directly from the power of the House having exclusive jurisdiction over its own proceedings as discussed above. It is important to bear in mind that the power to punish for contempt is not only applicable to members. It extends to all contempts against the House, whether committed by Members or other persons. The fact that the offence is committed within or outside the precincts of Parliament is not an element that constitutes contempt. Using the earlier example, a person who refuses to attend a committee hearing when summoned is in contempt of Parliament, even though the action happens outside of the precinct.

“The House of Commons has the power to send for persons whose conduct has been brought before the House on a matter of privilege by an order for their attendance, without specifying in the order the object or the causes whereon their attendance is required.”²⁹

The Parliament has power to punish its Members and strangers for contempt. In less serious matters of contempt, the offender may be reprimanded or admonished by the Speaker. In the House of Commons, when a person who is not a Member is directed to be reprimanded or admonished, he or she is to be brought before the House immediately by the Serjeant at Arms. The offender will then be reprimanded by the Speaker in the name of and by the authority of the House, after which the offender is discharged. However, if the offender is not in attendance he or she shall be ordered to be taken into the custody of the Serjeant at Arms and brought to Parliament to be reprimanded and admonished.³⁰ This is the position in Solomon Islands with regard to a person who is not a Member.

Should more serious matters of contempt arise the powers of National Parliament are unclear. Based on the powers of the House of Commons and the absence of any

²⁸ Ibid.

²⁹ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 120.*

³⁰ Erskine May on Parliamentary Privileges, *“The Law, Privileges, Proceedings and Usage of Parliament, 19 Ed, Butterworth, 1976, p 130.*

express legislation, it is doubtful whether the National Parliament has the power to fine or imprison persons adjudged to have committed a contempt. It is wise that Parliament tread with great caution should it wish to assume this power, which at best is contentious. It should be noted that this powers is rarely used in modern times.

POWER TO DISCIPLINE MEMBERS

As already discussed the House has the power to discipline its Members, by reprimanding, suspension or expulsion.

Reprimanding

Whilst the House can reprimand persons who are not Members for contempt, the House can also reprimand Members as well. It is the Speaker who reprimands the Member as provided for under Standing Orders 39.

Suspension

Suspension from the service of the House was a punishment employed by the House of Commons under its powers of enforcing discipline among its Members, long before it was prescribed by standing order for particular offences, such as disregard of the authority of the Chair, or obstruction, and it can still be imposed at the discretion of the House. This is reflected in Standing Order 39 of Parliament.

Expulsion

“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 circumstances where Parliament through a resolution can expel a member.”³¹

THE POWER TO CONDUCT INQUIRIES

A parliamentary committee is a group of members of Parliament primarily appointed to investigate policy issues, proposed legislation or executive activity on behalf of the House. Committees are an extension of the House, operate under the authority of the House and share the privileges of the House.

In *Egan v Wills*, the High Court of Australia expressed the importance of conducting enquiries, and stated,

“In *Stockdale*, Lord Denman CJ described the House of Commons as the “grand inquest of the nation.” In *Howard v Gosset*, Coleridge 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 House of Parliament to obtain information as to the state of affairs in their jurisdiction so that they can, where necessary, criticize the ways in which public affairs are being administered and public money is 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 House of Parliament must have access to information relating to public affairs and public finance which is in the possession of the government of the day.”

The power to conduct inquiries is part of *lex Parliament* and applies to Solomon Islands by virtue of the *Prescription of Parliamentary Privileges, Powers and Immunities Act 2007*. The importance of this is not lost to Parliament and is reflected in the ten Standing Committees established under the Standing Orders with specific functions. The House has in the past established special select committees by resolution to inquire into certain issues. Thus, committees derive their power to conduct inquiries from the House itself.

³¹ National Parliament of Solomon Islands Special Select Committee Report on Privileges, Powers and Immunities, NP-Paper No. 19/2009, p43.

THE POWER TO ORDER PRODUCTION OF PAPERS

The House has power to send for and order production of documents. This power may be delegated to a committee of the House.³²

To remove any record or other document from the custody of the Clerk or to falsify or improperly alter any records of, or documents presented to Parliament or committees of Parliament constitutes contempt.³³

PRIVILEGE AND THE CRIMINAL LAW

There is often confusion between privilege of freedom of speech, which is broad and absolute, and freedom from arrest which has its limitation. It must be made clear that Parliamentary privilege does not in any way give a Member licence to commit a criminal offence. It also does not prevent Members from being arrested within the Parliament precincts. However, if the House is sitting leave must be given by the House before a Member can be served with a charge or service of any criminal process. It would be breach of privilege to do otherwise.³⁴

As stated in Erskine May,... "...[T]he House will not allow even the sanctuary of its wall to protect a Member from the process of a criminal law; though ..., a service of a criminal process on a Member within the precincts of Parliament, whilst the House is sitting without obtaining the leave of the House, would be a breach of privilege."³⁵

³² Erskine May on Parliamentary Privileges, *The Law, Privileges, Proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 644.

³³ Erskine May on Parliamentary Privileges, *The Law, Privileges, proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 141.

³⁴ Ibid.

³⁵ Erskine May on Parliamentary Privileges, *The Law, Privileges, proceedings and Usage of Parliament*, 19 Ed, Butterworth, 1976, p 104.

JURISDICTION OF THE COURTS IN MATTERS OF PRIVILEGE

Parliament's right to adjudicate in breaches of privileges implies that the House has exclusive right to determine the existence and extent of privileges themselves. In other words, Parliament is the absolute and exclusive judge of its own privilege and that its judgement is not subjected to be examined by the courts.

The courts, on the other hand regard privileges of Parliament as part of the law, and as such are bound to take judicial notice. Any question of privilege that stems directly or indirectly from a case before the courts is considered by the courts to be within their jurisdiction to interpret the law. However, the courts admit that the internal control of proceeding in Parliament by the House is absolute and cannot be interfered with by the courts, and have been very reluctant to encroach into the jurisdiction of the House.

The decision of the courts vis-a-vis privilege is not considered by the courts to be binding, the reverse applies to the courts as well. However, in reality there is a general consensus on the nature and principle of privileges by the courts and Parliament.