



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

**NATIONAL PARLIAMENT OF
SOLOMON ISLANDS**

OFFICIAL HANDSARD TRANSCRIPT OF COMMITTEE HEARING

Mr. Andrew Radclyffe

Wednesday 18 June 2008

First Hearing
Second Sitting

Hon. Kengava (Acting Chairman): I would like to formally welcome you, Mr. Radclyffe to our session in our first meeting. We have started our meeting in the morning and now this afternoon we are pleased to hear from you to assist us to find ways in which we can come up with something for Solomon Islands.

Mr. Radclyffe: I wrote to the Chairman in response to the invitation to make submissions to your Committee and I did that on 28th April 2008. I do not claim to be an expert in this field by any means and I was responding to the invitation to make representation to the committee. I made two or three brief points in my letter. Perhaps if I can just cover those or any other issues you think I might be able to assist you then I would be pleased to try and do so.

I noted in my letter that perhaps almost 30 years since independence that Parliament has done without specific legislation that deals with privilege. So I was posing the question that perhaps the initiative here since independence where if they have been defined privileges and immunities where situation would have turned out differently. It seems clear that privileges and immunities should be designed to meet real problems. I noted too that the present constitution also provide certain fundamental rights of freedoms, though it applies to all of us including Honourable Members of Parliament and principle amongst the freedom of speech. I noted that Section 51 of the Constitution deals with the vacation that of seat by an Honourable member in certain circumstances. That is the provision with a situation if a member is convicted at certain offences he can be required to vacant his seat. I pointed out that the constitution is of course the supreme law, and therefore, any privileges or immunities which are inconsistency with the constitution would be void with no fact.

Another matter I have raised was that as you will be aware Chairman, in some countries Members of Parliament are immune from arrest of criminal offences and in some cases while parliament is sitting or during the life of parliament. For example, I believe the situation in UK that members of the House of Common cannot be arrested and they are protected from civil service as well, although in 1999, there was a committee of the House of Common which made certain recommendations and one of them is the removal of immunity from civil service.

In my respectable submission is that in Solomon Islands that Members of Parliament should not have immunity certainly from criminal proceedings whilst they are members or whilst the parliament is sitting. I do not think they should have immunity to civil process either. I think there are two reasons for that and one is there is already provisions in the constitution which requires that if a member is convicted from criminal offences or if he is sentence for more than six months he will lose his seat. So the obvious message won't get in the constitution is that MPs should not be protected from criminal process as if prescribed in dealing with as if they are.

The second reason why I do not think it is appropriate is that it seems to me with those facts of sending a wrong message to the general public that somehow

Members of Parliament are setting this out above the law. As you know Members of Parliament are subject to the Leadership Code Commission provisions in the constitution relating to leadership, and if there was some sort of immunity from criminal process, it seems to me that if you send a wrong message on one hand, leaders are being told, oh you must conduct yourself and you must not degrade your office. Put it from the other hand they were to get immunity from criminal process whilst they are Members of Parliament. That would seem to me they send the wrong message.

So those are the only points that I wrote up in my letter. I was having a look on the internet couple days ago and I come across this report from the UK Parliament in 1999. Some of you would already be aware of that, but there was a report and then which made recommendations just sort of update, the House of Commons and the House of Lords immunities. Certain recommendations were made but certainly no act was passed after that. And it seems to me that this is a useful report to have a look at.

Hon. Tozaka: What I would like to ask is that our privileges and immunities are in the standing orders and of course it is control by the Speaker. The point here is that some Members of Parliament are not aware of what we are saying 'yes' to in the UK privileges and immunities. So the first things that we would like to know, what are those privileges and immunities? Once we know and once they are prescribed in the standing orders. As we are now progressing on developing our parliamentary system, we are thinking here by a Member of Parliament some of us exactly felt what you are saying but at the same time not because other countries in the Pacific have introduced their legislations but that we would like to prescribe them, we would like to clarify them so that we know that these are the immunities we have apart from standing orders. We might ease out some of our immunities and standing orders put them into this legislation. Now you are talking about the constitution and the last thing we want is to be challenged in court when we put these things there. Do you think that this is going to happen?

Mr. Radclyffe: Do you think there might be a challenge in court because of the immunity system?

Hon. Tozaka: If we put them in the legislation, if we legislated for the privileges.

Mr. Radclyffe: No, there is nothing wrong with the legislation in section 69 provides for that. Having its right there should be an Act of Parliament prescribing Parliament's privileges and immunities. I have got no problem with that. It seems to me it just adopt wholesale, for example what happens in UK, it may be very different from our circumstances here and that what is happening at the moment, that act when it was 30 years ago. As I understand it that was more like temporary like a stock gap at least you have something. The difficulty with that act is that as you say, okay the privileges have applied in UK in 1978, I will never know where they were apart from the obvious once like the freedom of speech and so on. So I would agree that there is a need for something here

whether it is a separate Act of Parliament or whether it is some sort of regulations which clearly defines what National Parliament privileges and immunities are.

And having had a brief look at that 1994 UK it is useful and I think it does set out the privileges and immunities that existed at that time in 1999. I imagine there were similar in 1978 presented in UK Parliament and of course in Parliament being for hundred of years and fundamental privileges and immunities go back many hundreds of years. Obviously freedom of speech is one of those principles. So I think it should be somewhere in our law it should set up what privileges and immunities are. But having said that obviously those privileges and immunities are subject to the constitution and if they can't then they would be void.

Hon. Kengava: I think it is very clear why section 69 is now to be activated because now a lot of challenges are made in Parliament on Speaker's decision and Speaker taken to Court and the Members of Parliament especially when it comes to a motion of no confidence. So I think these are things why may be it is timely now that we should put something more clearer for members of parliament, the privileges and all these things.

Mr. Radclyffe: Chairman, the motion-of-no-confidence into my mind is something different from privileges and immunities.

Hon. Kengava: May be in relation to the questioning of a decision made by the Speaker and all these sort of things. The Members of Parliament may feel that they have the right to make decision to move motion of no confidence in certain times is correct and what the Speaker is making. So may be we should have more specific guidelines and the relationship between the Speaker and the members of parliament must be made clear for Members of Parliament.

Mr. Radclyffe: Since privileges and immunities should be - the primary intention to enable Members of Parliament to carry out their constitution or in relation to their functions without interference from the court or public or the people. I would suggest that the difference between privileges and immunities and for example internal workings of a Parliament and may be the Speaker's decision is final and certainly traditionally one of the privileges is that Parliament can describe its own way of operating procedures and specifically what standing orders are designed to do. In addition to looking at privileges and immunities may be we should be looking at standing orders as well to see whether those can be tidied up as if we felt that are somehow the Standing Orders needs tidying up then we tidy it up instead of trying another Standing Orders. As I understand it the Speaker's decision is final and it is presumably up to the Speaker to ensure that is respected. If it is not, then Members of Parliament misbehave themselves and challenge it then you can look at privilege to punish for contempt and that is one of the privileges that is open to legislature to punish for contempt, then certainly those provisions in the House of Common. I am just a bit worry if it is thought somehow that the privileges and immunities can somehow solve all the day-to-day problems of the motion-of-no-confidence

then Members of Parliament are not behaving themselves as prescribed by Standing Order. So it is necessary to review the Standing Orders.

Another area which has just occurred to me is I understand that there is a plan here to have integrity bill and probably some of you will look at that and probably what your Committee is looking at. Particularly, as I understand it I have not seen that bill if it exists yet. As I understand it that this puzzle that Members of Parliament should be in fact keep the house if they change sides as you know and it seems to me that when you considering that Bill you should consider the implication of that in relation to privileges and immunities because I could see a potential of a conflict there. If a Member of Parliament did change sides that could conflict with.

Hon. Tozaka: Seeing the regulation that that is alright we do not disturb that and that is why we need to define that regulation and things like that. At the moment they are not and we understand that.

Mr. Radclyffe: Given that there is going to be an Integrity Bill and it has to have a critical format.

Hon. Kengava: I think for Solomon Islands may be we can separate the legislature bearing in mind the regular changing over of Members of Parliament every four years. As a young nation politics is still very young, political parties are not developing well yet so we need this to be made clearer. This is not only for Members of Parliament but also the public to be aware of the rights of the Members of Parliament rather than just to improve on the Standing Orders which very much intend for members much better, in a way we can make more transparent to the public. And also intended Members of Parliament may be to have their rights in a certain area only during Parliament but not outside of Parliament and not when they come in to Parliament and not they commit civil cases. So I think a legislation would be much more helpful to us, your opinion has the bearing in mind the context of ordinary Solomon Islanders, they will come to understand the need for this.

Mr. Radclyffe: As I have said earlier I have got no problem with privileges and immunities being put into legislature forms so that everybody knows where they stand. My slight qualification about this is that these are things that really should go towards ensuring the Parliament that they have the functions. They should not in my view would be designed to set Members of Parliament apart from the rest of us by giving them privileges, which is basically not deserved on necessary.

Hon. Tozaka: Your point, chairman, your ability in civil process because it is already constitutional and you said that it might send wrong messages to the public about the law. Are you implying 'timing' that it is still too early for us to have this legislature?

Mr. Radclyffe: Well, I do not think it should ever apply. If the Member of Parliament commits criminal offence I do not see why he should be protective

and why should he? If he has done something wrong I suggest he is not fit to be in Parliament so why not should he be protective from immunities from prosecution. The civil processes are I do not think people arrests matters here. If someone wants to see a Member of Parliament he can do so, not normally they are sued because of personal matters and as capacity as a Member of Parliament. I am not suggesting that police should be able to march in the Parliament and grab you out of your chair obviously I am not saying that I am just saying that in some dodgy countries it is design to protect dictators from being prosecuted, like Pinochet in Chile for example. There you have immunity. That is not the situation we want to encourage here and the point that I have made earlier – to give protection from criminal process does seem to conflict with the provision of the constitution.

Hon. Tozaka: *(inaudible)*

Mr. Cahill: *(inaudible)*

Mr. Radclyffe: Yeah, I do not know what the problem with that is but Solomons does not sit very often here anyway. Most of the times the courts are sitting most of the year but Parliament does not sit. I am just trying to think of any situation, but I cannot think of any situation where an Honorable Member is involved in a civil case where it has caused a sort of conflict between Parliament and the Courts. Normally in a Parliament sitting and where a Member of Parliament is being sued in court he would certainly ask for an adjournment and the Court would normally say it would deal with it after the Parliament meeting is finished. I do not think in practice it is really an issue here.

Mr. Radclyffe: That is different from freedom of speech. The freedom of speech is well known in common law. It is understandable that if you say something in Parliament, which is defamatory of me, I can't sue you because you have absolute privilege. That is what I know, and the Courts are not going to hold a different view.

Mr. Radclyffe: That was not freedom of speech. It went to whether the speaker was doing something he was not entitled to do.

Mr. Cahill: *(inaudible)*

Mr. Radclyffe: I think it is generally understood here between the Courts and amongst the legal profession that Courts should be very wary before they interfere in the proceedings of Parliament and where cases have come about, it is usually where there has been interpretation of provisions of the Constitution. If somebody complains to the Speaker that an Honorable Member of Parliament wants something which offends the Constitution, then it is essentially clearly that Courts have a role because the Court is being asked to decide whether there was an infringement of the Constitution or not. That is different from somebody just poking their nose into sort of every day work of the Parliament. That is clearly not a matter of the Courts jurisdiction.

Going back to that UK 1999 report, is quite a lot in there when you can comment on a case and when you cannot, and so on and may be there are some materials there that can be useful to your committee and apply in here.

I think if we can end up with rules that everybody understands so they know where they stand and there is a clear demarcation between the Courts' roles and the Parliament's roles seems to be the way we should be heading. But it seems to me that you can't say that there should be no right for somebody to go to court over anything to do with Parliament. And the cases that have come before the courts here generally involved some sort of confusion over what the Constitution means or what the Standing Orders mean. And one of the last one we did this term was Standing Orders 7, I think. That was a clear case where the Standing Orders are confusing as to what is meant by a meeting and a session and all that. It seems to be widely misunderstood.

Mr. Cahill: *(inaudible)*

Mr. Radclyffe: I do not think cases like that should get into the Courts. It is entirely a matter for the Parliament and the speaker to deal with and it is not the role of the Courts to say whether Parliament should or not. I think if you are thinking of providing for that amongst the privileges and immunities then I would certainly support that. We don't like people rushing out to court to try and stop Parliament from meeting.

Hon. Kengava: Maybe Mr. Radclyffe would like to say any last and final thing to us.

Mr. Radclyffe: I just wish you well in your work and hopefully you will come up with something we would not be challenging in the Courts.

Hon. Kengava: On behalf of the committee I would like to thank Mr. Radclyffe for your time in giving us those very useful suggestions, though very brief but very informative and important. As the Committee proceeds with this particular task, if we have to, where we need you again we might call you at some later date.

Mr. Radclyffe: Thank you very much chairman. I would try and assist you in anyway I can.

Evidence Concluded