



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF
SOLOMON ISLANDS

OFFICIAL HANDSARD TRANSCRIPT OF COMMITTEE HEARING

Professor Don Patterson & Mr. Joseph Foukona

Wednesday 18 June 2008

First Hearing
Second Sitting

The Honourable Deputy Speaker, Mr. Kengava was elected temporary chairman for the meeting.

Hon. Kengava: Can the Minister for public Service open our meeting with a prayer please?

Hon. Tozaka: Let us pray, our God our loving father, we acknowledge your Lordship's supremacy. Thank you God for this morning's meeting for bringing our thoughts together for this very important meeting of the special committee on immunities and powers of parliament. Thank you also for the election of our chairman this morning for this meeting. I pray God that you will bless each and every one of us and including the officials who are here with us. Guide us, Lead us, give us total freedom Lord that we will be able to speak freely and share our experiences and how we are going to go about the huge responsibility that is empowered on us as leaders of this country and our people. We ask this prayer in Jesus Name, Amen.

Hon. Kengava: Thank you, First of all, I would like to welcome Honorable Colleagues and Professor Don Patterson and Joseph Foukona and the secretariat of Parliament to this meeting and on behalf of the Committee, thank you for your time this morning in attending this first meeting of the committee of privileges and immunities. I also welcome the Clerk who has just come in.

As Acting Chairman of the Special Select Committee on Privileges, Immunities and Powers, I would like to welcome all Members to this committee hearing. Thank you Honorable Members for availing yourselves in this morning meeting.

First, apologies from the Chairman and Honourable Boseto who are performing their constituent duties, and Honourable Steve Abana, Minister for Aid and Co-ordination, who is also currently on overseas duties. However, the meeting today is purposely conducted to obtain as much evidence and advice from the eminent persons with us today – Professor Don Patterson and Mr. Joseph Foukona who are present with us now. Mr. Frank Kabui and Mr. Andrew Radclyffe will be presenting to the committee in the afternoon.

I would also like to thank the committee secretariat for arrangements made in bringing in expert witnesses for this particular hearing. I would also like to thank you all for accepting me as your acting chairman for the hearing. Before I ask the first witnesses to proceed with their evidence, I would like to invite members of the committee to make any statements at this point. Are there any members of the committee who would like to make statements at this point? As no one wishes to make a statement, I would now ask Professor Don Paterson and Joseph Foukona to address the committee on Privileges, Immunities and Powers of Parliament.

Professor Patterson: Thank you chair for your words of welcome. Thank you also for the invitation for us both to be present at this important meeting of the

committee. I must also record the gratitude of both of us to the UNDP, the Project Manager, Warren Cahill and the team for making all the arrangements to bring us here. We are grateful for that.

What we thought we would do is that, I would speak so that the text is recorded for Hansard and Joseph would also speak as well as provide some illustrative slides to assist us with our discussions about the various points that will arise.

Please, Honourable Members, feel welcome at any stage to ask questions. We would like to discuss any points. What we would do is try to describe the main points about parliamentary privilege and at each point, we would pause and I hope that members would feel very welcome to ask any questions at all as we go along.

I will concentrate mainly on the precedents from the Pacific, especially Cook Islands, Fiji and Papua New Guinea, which you have in your files, and also the Australian Federal Parliament. But first Honourable Members, a word or two about what are parliamentary privileges and immunities. They really have their origin in the earlier centuries, especially in the seventeenth century, when the House of Commons, and to a certain extent the House of Lords, but especially the House of Commons in England was in conflict with the King, and the King was attempting to harass members, to stop them from discussing aspects of his government, aspects about taxes he was imposing, religious measures that he was going to impose. Eventually the conflict between the House and the Crown erupted into the civil war, which the king lost. But it was during this period of conflict that many of the basic principles about parliamentary privileges developed.

Now, of course, that was in the 17th century, we are now in the 21st century and we do not have that conflict with the crown that impedes the operations of parliament. But the parliament is threatened from other sources that can interfere with its effective operation. I think one need to consider the question of parliamentary privileges in the modern context of influences that may be brought improperly upon members of parliament and also the possibilities of restrictions upon freedom of speech of members of parliament during the course of parliamentary proceedings.

Now, there are various ways in which one can deal with the question of the privileges of members of parliament and of Houses of parliament collectively. One method is to say; well we will just accept what has been developed in England. In England some of the principles have been incorporated into legislation, but some of the principles just remain as practices, as customs, if you like, of the Houses of Parliament. They have not been incorporated into legislation.

There was a committee which met late last century, at the turn of the century, which recommended that legislation should be passed. A copy of the report of that committee, I think is in your files as well. But it recommended that there

should be legislation passed but so far that has not happened. On the other hand, in many countries of the South Pacific, there are provisions about parliamentary privilege. In some countries, they are in the constitution, like in Cook Islands, there is a provision about parliamentary privileges in the constitution and also in Papua New Guinea, but also in most countries there are provisions in legislation. And that, of course, is the issue which this honorable committee is considering whether or not legislation should be enacted to provide in written form for the privileges of parliament.

The constitution expressly authorizes parliament to do this in section 69 of the constitution, but so far in this country, parliament has not moved on that. I think there was a resolution of parliament last year when it resolved that parliament would for now accept the privileges as they have been developed in the House of Commons in England. That is one approach, and I think it is the approach that is recommended by the Chairman of the Law Reform Commission in his submissions. It has the advantage of being very simple and being very quick. You just pass as was done last year, an act stating that the privileges of the House of the Commons in England have existed at the time of independence and still operate here in Solomon Islands. That certainly is very easy to do. The problem about it is that it does not tell you what those customs and privileges are. It means that at any point in time there is likely to be a lack of clarity about the spirit and the customs of the House of Commons at the time Solomon Islands acquired independence.

If the committee should choose to adopt that approach, I would suggest that perhaps the secretariat might prepare a small booklet, which could explain their understanding of the privileges of the houses of parliament in England at that time so that it could be a guide. But certainly legislation would provide greater details and clarity.

Both of us feel that there is advantage in parliament providing legislation describing what the privileges and immunities of Members of Parliament are so that misunderstanding can be removed. You have a number of useful models to look at. For that purpose they are provided in your papers. Fiji, Papua New Guinea and also the Australian Federal Parliament. They all have acts describing the privileges and immunities of parliament. If you wanted to provide for legislation you would certainly have models that you can use.

Perhaps it might be useful if I can just outline the main features of parliamentary privilege as developed in England, and adopted in Commonwealth countries. First and foremost is what is usually described as the freedom of speech of members of parliament. That is to say that 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 or 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.

As I mentioned that is simple, and is considered to be important today to ensure that Members of Parliament can effectively talk about any aspects of life in the country without any fear of retribution, without any fear of punishment or civil proceedings especially for defamation. But one would have to say there are some problem areas about this, which the committee might wish to think about. First is the question about whether Members of Parliament should be able to comment on court proceedings – proceedings in the court. In most Standing Orders there is provision, on what is usually called the *sub judice* rule to allow the Speaker to limit questions or debate about proceedings in the court. It is felt undesirable that Members of Parliament should comment on proceedings that are currently before the courts because of the possibility of influencing the independence of the judiciary and also of giving rise to conflict between the courts and the legislature. If one was thinking about the provision of freedom of speech one might want to think about whether there should be legislations to cover certain proceedings before the court.

There is also another issue relating to court proceedings, which has come to the floor in recent times in some countries, and that is with regard to improper influences upon Members. In a particular country it may be that there is legislation making it an offence for people to try to bribe Members, to intimidate them, to force them to act or speak in a certain way, and if that is so then one may need to look to have access to what was said by the Members during the course of their debate either in the house or in the committees. There is a question about parliamentary offences – offences either by Members of Parliament or against Members of Parliament, and to what extent you allow the record of what was said in parliament to be made available in court proceedings.

A third issue, which has arisen, is whether there should be any right of reply. If a Member of Parliament says something rude about another Member of Parliament, that other Member of Parliament can jump up and reply. If he says anything detrimental about people outside, then that person outside cannot come into the chamber and reply. For example, suppose there is a debate here about the rise of prices of goods in the stores (there is debate in many countries about this now) and one Member says a particular trader in town is profiteering and the cost of food import has gone up is because he is putting extra price on to his stocks, and the Member names the trader, now clearly that is very detrimental to the business of the trader, and the reputation of the trader and the question has arisen in some countries as to whether some sort of reply or opportunity to respond should be provided.

In some continental countries as Joseph will explain later, there is provision for members of the public to ask for a statement to be included in Hansard to correct what has been said in Parliament. Now, that has not happened in the Pacific. It is something which is fairly new, it is fairly controversial, it was discussed in England and the committee there decided not to provide for it. But it is

something which I would suggest one need to think about when one is endorsing the full freedom of Members of Parliament to talk and to vote as they wish.

Now, perhaps if I might pause here for a moment. Is there anything that you would like to add to that Joseph? Or there may be some questions from Members.

Hon. Tozaka: Thank you, Chairman, just on the question - the last one that you mentioned, just for clarification purposes, are you saying that a person that an allegation or statement has been made against by a Member of Parliament, would he have the privilege of coming into the Chamber to make a statement in reply to the allegation?

Professor Patterson: Yes, allowed to make a statement but not to take part in the debate, rather to make a statement of clarification, if you like. This is something, as I mentioned, that is fairly new and controversial. The issue for a Committee is about whether this should be allowed, in some European countries it is allowed but it has not been endorsed as far as I'm aware by all Australian Parliaments.

Mr. Cahill (UNDP Project Manager, Solomon Islands Parliament): It's now fairly common with state legislatures. In New South Wales, both Houses provide for a right of reply, but the person has no automatic right to appear. The matters are dealt with by the privileges committee and the person writes to the privileges committee. They consider the matter and if they believe that it fits the criteria that have been set for right of reply. The House has already passed certain criteria, then they allow the person to provide a written response, which after the committee vets it, is published. The Committee they usually do not change much unless it is provocative as they do not want the situation to inflame and then the right of reply is published that in Hansard. By publishing it in Hansard the person gets the same level of publication as the Member of Parliament has got in the official record. But that process has to be dealt with by the privileges committee.

Hon. Tozaka: The other thing chairman is about Section 69. You say that - and I've looked through some of the comments by others, basically the way this committee must decide is if we will continue with what is currently have which is the UK model or you have said that we need to legislate and perhaps improve it or change it to fit in with our situation. Is that what you are saying?

Professor Patterson: Yes, I am saying that one way is just to adopt the principles that were applied in England at the time of Independence or even are applied now if you wish, but the disadvantage about that is that you don't really know what you are adopting until an issue arises and then of course people start to take positions on it and it becomes most difficult to resolve it peacefully.

Hon. Tozaka: Thank you Chairman.

Hon. Kengava: Any other questions?

Professor Patterson: Chairman, I suppose the second central feature about parliamentary privilege is the freedom of Members of Parliament from arrest and also from service of court process, and also from compulsory attendance outside before a court or a tribunal. If I could just take them one by one.

Freedom from arrest. The principles allow for freedom from arrest from civil proceedings, but not criminal proceedings. Now, arrest in civil proceedings is really very uncommon and it doesn't arise very often and in fact in England it was suggested that this should be abolished. If it was felt that here in Solomon Islands, arrest of Members or indeed also of officers of the Parliament in the civil proceedings was going to arise, so as to interfere with the operations of Parliament, then it should be provided for. And one could provide to have immunity on the actual day of the sitting or may be for several days before and after the sitting. But the important thing to note I think is that in most countries there's no immunity from arrest in criminal proceedings, and that of course is where arrest normally occurs.

Service of court process like service of summons, service of writs, it is felt in a number of countries that is not appropriate that – that should happen within the precincts of Parliament as it demeans the status of Members of Parliament if bailers or police officers are going to be allowed to come into the Parliamentary compound and serve proceedings. So, I think there is something to be said for providing that court process should not be served within the precincts. That doesn't mean that it can't be served elsewhere but not within the parliamentary compound.

One also might want to ensure that Members of Parliament and maybe officers of Parliament as well, and when I say Members of Parliament I also include the Speaker, because here of course the Speaker may not a Member of Parliament, one might want to provide that they are not required to leave their parliamentary duties and go and either be a witness in court proceedings or be a party to court proceedings.

One may feel that their duties or work in Parliament should take priority over courts. In a number of countries it is provided that Members of Parliament and the Speaker, and also in some countries officers are immune from being summoned away during sessions of Parliament, if summoned by the Court. That's something that you might want to specify in the legislation. Perhaps I will pause there just in case there are any questions that anyone would like to ask about.

Hon Tozaka: Can I ask you a question? When you say officers, we have a system here whereby the Attorney General sits in the precincts of Parliament, meaning he sits with us and our Permanent Secretaries are also in the Chamber. This means that if we need to change this, it basically means that the only ones to be allowed in the Chamber would be Members of Parliament, strictly speaking.

Professor Patterson: What you would have to think about is whether you need them here or in the committee room so much that they should not be able to be taken away to become involved in court proceedings. The purpose of it is so that proceedings of Parliament are not interrupted because either member has to go and attend, say the Magistrate Courts down the road or those you need to have with you such as maybe the Attorney General or the permanent secretary. When they are summoned to appear before parliament or where they are to appear, you might want them also not to be removed and have other engagements somewhere else.

Hon. Tozaka: I am just saying this because it was very interesting when we had the privilege of visiting the Papua New Guinea Parliament. What we gathered from them compared with our Parliament here is that only Members of Parliament are allowed to be in the Chamber. The rest of the advisers, the attorney generals and others are provided with separate sort of blocks or cubicles. I mean what you are saying is interesting where in PNG nobody is allowed on the floor except Members of Parliament. And as soon as the Parliament meeting ends the door is closed and that place is completely out of bounds from officers. That is the part which I think is interesting. When you mention this, probably it has some connections. It is about privilege, immunities and powers. That must be the reason and that's why I am asking the question. I was quite interested with this.

Mr. Cahill: Yes, one of the biggest surprises when I came here is to see people on the floor other than the Members and the Clerk, to see Permanent Secretaries come on to the floor. But I guess a lot has to do with the design of the building. Most of the other Parliaments have an area where the Permanent Secretaries can sit and the Ministers go over and talk to them and maybe get some paper or advice or something like that and then they go back to their chair. The design of this Chamber makes that quite difficult. But at any other Parliament if someone walks onto the floor the Members would immediately take a point of order and call that a stranger was on the floor. Everything would stop immediately and the sergeant would be required to remove or arrest the person for stepping onto the floor.

Professor Patterson: Just to follow that point. It may be that you would want to word such a provision about Members not being required to attend the courts, you would also want to ensure that public servants or people who are supposed to be attending your sessions here are not required to attend elsewhere.

The third major aspect of the privileges of Parliament is really the power of Parliament to control its proceedings, - what is going on in the Chamber or the committee rooms of Parliament. It has just been mentioned about the power to control non members – strangers. Obviously there is occasionally the need to restrict entry or require someone to be removed from the Chambers or the committee room. You might also want to have power to exclude them from coming in here if they had been guilty of some misbehavior or improper

behavior. There's a question of strangers – control of strangers which can be regulated as part of the privileges.

There is also, of course, the control of members. If a member becomes too disruptive or offensive, Parliament, like in here, might have a body to look at ways or the need to have some way of controlling that person and certainly a power to suspend the Member or require him to leave the chamber or the committee room would obviously be desirable.

I think the rule in England if taken to the extreme, would allow the house to actually expel a member. This is a matter of debate but certainly some would contend that it did. In some countries that raise a very fundamental question because if you are expelling a member you are really depriving the constituency of that member of representation in the house. And so it's a very serious action to be taken.

The Australian Federal legislation, you will see prohibits the Parliament from expelling a member. It can suspend him; it can exclude him from session but not to actually expel him. Thus there will need to be considered what limits there might be on the extent of the removal or the exclusion of a member.

Then there's the question of what is usually described as contempt of Parliament - what kinds of action either by members or by non-members does the Parliament consider should be punishable.

Nowadays, the kinds of behavior that are most in mind, I suppose are intimidation of members, bribery of members, undue influence of members, and what does one do about that. First, should Parliament provide punishment for that kind of activity or should that be left to the courts. If Parliament is given the power to punish for parliamentary offences, should there be any limit on the fine or the period of imprisonment?

In the Australian legislation, if you look you'll see that there are limits where you can only impose fines up to certain amount or imprisonment up to a certain period. If you consider that Parliament should have this cohesive power over members or non-members, then I think it would be desirable to think what limits there should be.

There are some countries where it is felt that the decision about punishment of members or non-members should not be done by the House or the Committee of Privileges but should be done by the courts, and that would be something that would need to be considered. There is a difference of practice in some countries, it is felt preferable for this kind of cohesive power to be exercised by the courts rather than by Parliament but if Parliament considers that it should have that power it could give itself that power but I would suggest that there should be limits that are placed upon it. Because after all, Parliament is a political body where many of its actions arise out of the interaction between political parties, and one wants to ensure there is no abuse or misuse of power.

An important power, Mr. Chairman, I would suggest that Parliament could consider useful is the power to summon witnesses and to require the production of documents in committee hearings, especially full committee hearings such as this one, it may be that there's some issue that has arisen and it may be that the committee would realize what is the bottom of it but it is finding that people are reluctant to come forward and talk or to produce material, and so it is useful for power to be given to committees of the House and also for the house itself to be able to require the attendance of witnesses and the production of materials.

Another power which many parliaments have is the power to control the publication of proceedings, the extent to which proceedings within the Parliament Chamber or within a committee can be published outside. Parliament may wish to control that or regulate it so that there are no leakages of confidential information. At a meeting like this morning, we would not go out and talk to the press about what we are saying but there might be other witnesses in other meetings who might find it advantages again to do that, and so you might want to be able to place some limit upon the extent to which what is said in Parliament or in the committee of parliament can be regulated. On the other hand, of course, one has to remember that we are encouraging good governance and transparency so one wouldn't want to place excessive restrictions, but I think some regulation of the publication of materials presented to Parliament or over what has been spoken to Parliament is an order.

Finally, there's a question of whether Parliament would like to protect its members from undesirable action by members of the public - harassment, intimidation, bribery, whether it's felt that this is necessary. Some of these matters may not at present be criminal offences and you might want to consider whether you want to make them criminal offences, and if so whether they should be determined by the courts or by parliament. There is the misuse of false statements made to Parliament or to the committee and what I would describe as offences against Parliament or against Members of Parliament. We don't have any provisions for those at present and the committee may feel that this is a suitable time to provide for that just to protect members from the public.

Hon. Kengava: Any questions or comments from Members. This is just a comment. I think on the punishment of Members, we have under Standing Orders, a section that attempts to deal with that but if we decide to make separate legislation will that mean we need to change parts of the Standing Orders.

Professor Patterson: Yes, you just lift it out of the legislation. Probably in Standing Orders there's also something about sub judice or you could take that also as separate legislation.

Hon. Tozaka: So what you are saying Chairman is for criminal proceedings we cannot get it legislated?

Professor Patterson: At present what would be regarded as undesirable activities are not reasonably criminal offences. Like intimidation of Members of Parliament, bribing of Members of Parliament and you might want, if you are producing legislation of this kind, to make them criminal offences, if you feel that Members of Parliament require that protection.

Hon. Tozaka: What I mean is the arrest of Members on criminal offences, is that a criminal offence?

Professor Patterson: Arrest of a member, at present so far as criminal arrest is concerned there is no special protection or immunity against Members of Parliament.

Hon. Tozaka: So, that is up to the courts.

Professor Patterson: It is just that criminal arrest has never been one of the privileges of Members of Parliament. Now you might want to say that Members of Parliament should not be arrested here in this compound, and you could provide the court processes should not be carried out here in this building but that would not prevent Members of Parliament being arrested in their homes. It is just that it would not happen here.

Hon. Tozaka: What is the boundary there having said something that is offensive in Parliament and the men outside say 'I'll wait for you until you come out and we arrest you, would that be all right?

Professor Patterson: No, you can say whatever you like in the chamber and nothing can be done.

Hon. Tozaka: So is that the end of it?

Professor Patterson: That is the end of it, and that is why the question arises, should there be any right of reply by the person you referred to. You may say that a service station is putting water in its gasoline in order to overcome the rise in prices', and you might genuinely believe that and you are free to say that here, but for the retail or the service station that may ruin his business, and that is the question of whether he should be allowed the right of reply.

Hon. Kengava: When you mean right of reply, does it mean that somewhere you should clarify.

Professor Patterson: Not to be involved in a debate or discussions but just be allowed to submit a statement that could be incorporated into the parliamentary record.

Hon. Kengava: Would the statements be said in parliament?

Professor Patterson: Yes, it could be read out in parliament.

Mr. Cahill: With some of these things, it is always good to look at extreme cases rather than, for example if you are thinking about arrest from a parking ticket. But basically if we consider a major criminal offence or any criminal offence, for example, if a Member murdered someone. There has never been a privilege that Members have had that they cannot be arrested for undertaking such a crime. If they rob a bank or any of those things that fall under the Penal Code, Members are not protected. In every jurisdiction it seems natural to the public that this is a fair thing because the parliament makes the laws and it applies to everyone equally. But as Don was saying in relation to a process being served on Members, historically that is not allowed in the precincts as it may be used to try and intimidate members or to threaten members to remove them from the house to attend court proceedings or to threaten court proceedings, and that is why historically members are protected from having any court service given to them within Parliament. It can be done outside but it should not intimidate members from within the parliament.

Professor Patterson: This is what you might want to provide for then. Members cannot be arrested or served with court documents or summonses within the precincts of this building.

Mr. Cahill: I think in the House of Commons too there is an arrangement whereby if there is any reason why the police must arrest a member for a criminal action, they make arrangement with the Speaker to protect the dignity of parliament. On the other hand arrangements are made whereby clearly the member cannot escape because they are in the chamber.

Professor Patterson: It is just to preserve the dignity of the institution.

Hon. Tozaka: What about instances where there is a debate that goes out of hand and there is scuffle inside the chamber where there is physical exchange by government and opposition. What happens in such a situation? Do you leave us to settle the matter or get the policeman in?

Mr. Cahill: Anything that happens within the chamber is under the jurisdiction of the Speaker. He would advise the sergeant and call Members to order. But the wonderful thing about here is that there is a high level of courtesy in the chamber and so it has not been necessary in this jurisdiction.

Hon. Vahoe: The privileges and immunities should not only cover the chamber but the compounds of parliament area as well.

Professor Patterson: And then you would describe in the legislation what is meant by the compound or the precincts of parliament. You could describe it either in words as the surrounding lands or there may be a legal title of the land. In PNG they have a legal title; in Fiji they just describe it in words.

Mr. Cahill: The House Committee is looking at drafting a parliamentary precincts act here, so that would define the precincts by act.

Hon. Kengava: There is also the question about if we have to draft a separate legislation for privileges, immunities and powers, what comes to my mind is the question on the role of the Leadership Code Commission. How would we come to agree what may be Leadership Code of Conduct to look at our conduct outside of parliament and at our conduct inside parliament. Is that the difference? I think the Leadership Code Commission is looking at the behavior of members of parliament outside of parliament whilst the privileges act protects the behaviors of members of parliament inside parliament. Is that the difference?

Professor Patterson: Yes.

Mr. Cahill: I think that is one thing. In terms of privileges they only apply in terms of Members carrying out their duties and relate to the proceedings of parliament, and so members are protected absolutely from anything they say in the chamber but they are not protected if they are making a speech on the streets. All of these privileges relate to proceedings of parliament or the actions of members relating to a proceeding of parliament. For example, if you drafted a question for the house but someone took that from your computer, that would be still part of your work as a proceeding of the house and so it would be protected. But if you just wrote a letter to Don where you said "so and so is a terrible person then that may have nothing to do with parliamentary proceedings and you are the same as everyone else. All of these relate to parliamentary proceedings.

Professor Patterson: And if you are making legislation, you would want to describe what parts of your proceedings is in just the same way as you would want it for the precincts of parliament.

Mr. Cahill: This is very important in terms of any future corruption body. For example, in New South Wales they have the Independent Commission against Corruption which can investigate Members for certain things. They have on a number of occasions arranged to take documents from Members' offices and there are now special procedures in place to do that to ensure they cannot take anything that relates to a proceeding of parliament that is privileged and immune. However, they have been able to take documents that relate to, maybe some activity that they are investigating for corruption.

Professor Patterson: That completes my presentation, Mr. Chairman, unless anyone has any questions. If not then we will have Joseph who will just give us some general thoughts.

Mr. Foukona: Thank you, Mr. Chairman. Basically I want us to go back to one of the key things that we sort of identified in our discussion, and that is the element and scope. What exactly is the scope of the whole idea of privilege and

immunity? There are four questions which arose from what Don has covered, and they are

- the question of protection of whom,
- the protection period
- the duration and time of protection, the protection venue and also;
- the actions to be protected.

I think those are the four key questions, which if we are to draft an act of parliament dealing with privileges and immunities, these are the four key questions that we need to take into account in order to determine the scope of this idea of parliamentary privileges and immunities.

Just by way of summary on what we've covered, with regards to this whole idea of parliamentary privilege and immunity, there are two key things we are trying to focus on: first, is with regards to privilege and immunities of the House of Parliament and second is the power of Parliament to protect the integrity of the institution. The whole aim as Don looked at is the aim to protect Parliament to function effectively in order to carry out its functions, and the functions would include enquiry, debate, and also the functions of legislating. That is the whole aim behind the idea of parliamentary privilege and immunities, and it is especially to ensure that Parliament functions effectively in terms of undertaking its duties or its operations within the House.

There are two key things that I would like to highlight here. One is the idea of non-liability or non-accountability, which refers to the freedoms that Don talked about, which is the freedom of speech and also the other freedoms he also mentioned and also the issue of detention on legal proceedings. I will move onto focus on these two key things with regards to the whole idea of parliamentary privilege and immunity.

Just a note on the issue of freedom of speech, which is one of the key aspects to parliamentary privilege and immunity, is the fact that there are exceptions or there are restrictions to the whole idea of freedom of speech. One is in regards to insults made in reference to the Head of State. That is an exception to the whole idea of the freedom of speech and also criticisms that Members of Parliament make when a matter is before the court, the question of broadcasting of information regarding parliamentary sittings and also actions that are much more serious than it was so. These are some of the restrictions and limitations with regards to this whole idea of freedom of speech. I just want to highlight that there are also limitations to freedom of speech.

Mr. Cahill: Just as on that they are normally self-restrictions that are in the Standing Orders. So in effect they are restrictions that Members place on themselves in the Standing Orders to say that they won't criticize the Head of State, as you know there is a whole list here in the Standing Orders, and the Speaker will draw Members' attention to that but they are not restrictions placed on Members by any outside bodies. They are self-made.

Mr. Foukona: It is also important to take note when we talk about the whole question of parliamentary privileges and immunities are the punitive powers of Parliament. Basically Parliament has the ability to determine its own rules and enforce them by means of disciplinary sanctions, for example suspension or expulsion and Parliament can also punish for breach of privilege. For example, if the actions, which are regarded not racial to Parliament or it can also punish for contempt and offence that is against the authority of Parliament. Those are some of the punitive powers that enhance the effective functioning of Parliament with regards to the whole idea of privileges and immunities.

There are two forms in regards to the whole idea of parliamentary immunities and privileges. One is the non-liability and non-accountability in relation to the whole notion of freedom of speech, and the other one is the punitive power, which covers the whole aspect of arrest of Parliament Members.

As I raised in the question of scope, which persons are covered under these two categories, the duration of when does it take effect is such time when persons are elected or when they can make a move is when you apply the question of immunity, and the question of whether this can be waived, and what are the procedures for waiving of the immunities and privileges.

In regards to the whole idea of parliamentary privilege and immunities, there are actually two forms. One is the narrow scope, and examples of countries that have undertaken in following the narrow scope are the US and UK. With regards to the narrow scope, in regards to parliamentary privileges and immunities, it covers basically the proceedings in Parliament.

The broader scope, which is a continental approach, examples of which would be countries like Ukraine and Guatemala, covers the actions of Parliament Members within Parliament and also their actions outside and that is why it is a broader scope. Those are the two forms of parliamentary privileges and immunities. One of which is the narrow scope that most Commonwealth Countries follow only concerns activities or actions of Members of Parliament within Parliament. The broader scope concerns actions within Parliament and also outside of Parliament.

The paper you have in front of you is a list of countries that actually adopt either the narrow approach or the narrow scope in terms of Parliamentary privilege and immunity or the broader scope, and it is followed by countries in Europe. If you look at the table, most of the countries actually follow the narrow scope of parliamentary privileges and immunity. All these countries, the scope in terms of parliamentary privileges and immunities relates to parliamentary proceedings or activities and actions for Members of Parliament within Parliament and not outside of Parliament. I want us to look at these two different forms because there are some issues that arise in terms of these two different forms.

With regards to the narrow scope, the advantage is that there is less room for abuse of the privileges and immunities. With regards to the wider scope in terms

of privileges and immunity, there is a disadvantage that Members could be in a position to utilize their seats in Parliament for illegal activities or corruption and still be covered under the whole idea of privileges and immunities. That is the danger in regards to the wider scope of parliamentary immunities and privileges.

The other issue also with regards to the wider approach is that in the circumstance in which the executive is powerful, and with the backing of most members of Parliament, it is so easy to violate or abuse this whole idea of parliamentary privileges and immunities and silence Members of the Opposition. Those are the two key issues that could arise with regards to a scope that is wide as opposed to a narrow scope, which most Commonwealth countries have undertaken.

There are two lessons which could be learnt from these two forms. One is when you talk about parliamentary privileges and immunities, the idea of trying to come up with something that tries to look at the privileges and immunities of Parliament, it is important that we have to take into account the politics or the politics of the country should be considered when you try to determine the scope of the immunity. The second lesson we also could learn from other countries is that a weak rule of law is also a factor in terms of the abuse of the immunity. These are the two key lessons we could pick out in terms of when we are trying to determine the scope of the whole question of parliamentary immunities and privileges.

Before I stop I just want to highlight a few thoughts, and this again relates to the scope, and the question of should the legislature be encouraged to adopt national policies and laws through open processes, which allow for consultation and citizen participation and also parliamentary procedures should be transparent and allow for public scrutiny, Parliament must have a certain amount of authority to affect the budget and also the thought on parliamentary committees being adequate in terms of resources and also the power to summon witnesses including Ministers in order to fulfill their mission. These are some of the thoughts I want to leave with the committee when we come to think about this idea of parliamentary privileges and immunities.

Mr. Cahill: Reproduction of parliamentary proceedings, I think as long as it is the official record. If it is a limited reproduction it would only have a limited privilege as well.

Mr. Foukona: It is also important to take note when we talk about the whole question of parliamentary privileges and immunities are the punitive powers of Parliament. Basically Parliament has the ability to determine its own rules and enforce them by means of disciplinary sanctions, for example suspension or expulsion and Parliament can also punish for breach of privilege. For example, if the actions, which are regarded not racial to Parliament or it can also punish for contempt and offence that is against the authority of Parliament. Those are some of the punitive powers that sorts enhance the effective functioning of Parliament with regards to the whole idea of privileges and immunities.

Basically there are two forms in regards to the whole idea of parliamentary immunities and privileges. One is the non-liability and non-accountability in relation to the whole notion of freedom of speech, and the other one is the punitive, which covers the whole aspect of arrest of Parliament Members.

As I raised in the question of scope, which persons are covered under these two categories, the duration whether when does it take effect is such time when they are elected or when they can make a move is when you apply the question of immunity, and the question of whether this can be waived or can this privilege be waived, and what are the procedures for waiving of the immunities and privileges.

In regards to the whole idea of parliamentary privilege and immunities, there are actually two forms. One is the narrow scope, and examples of countries that have undertaken in following the narrow scope are the US and UK. With regards to the narrow scope, in regards to parliamentary privileges and immunities, it covers basically the proceedings in Parliament.

The broader scope, which is a continental approach, examples of which would be countries like Ukraine and Guatemala, covers the actions of Parliament Members within Parliament and also their actions outside and that is why it is a broader scope. Those are the two forms of parliamentary privileges and immunities. One of which is the narrow scope that most Commonwealth Countries follows only concerns activities or actions of Members of Parliament within Parliament. The broader scope concerns actions within Parliament and also outside of Parliament.

The paper you have in front of you is a list of countries that actually adopt either the narrow approach or the narrow scope in terms of Parliamentary privilege and immunity or the broader scope, and it is basically countries in Europe. If you look at the table, basically most of the countries actually follow the narrow scope of parliamentary privileges and immunity. Basically all these countries, the scope in terms of parliamentary privileges and immunities relates to parliamentary proceedings or activities and actions for Members of Parliament within Parliament and not outside of Parliament. I want us to look at these two different forms because there are some issues that arise in terms of these two different forms.

With regards to the narrow scope, the advantage of the narrow scope is that there is less room for abuse of the privileges and immunities, there is less room. With regards to the wider scope in terms of privileges and immunity, there is a disadvantage that Members could be in a position to utilize their seats in Parliament for illegal activities or corruption and still be covered under the whole idea of privileges and immunities. That is the danger in regards to the wider scope of parliamentary immunities and privileges.

The other issue also with regards to the wider approach is that in the circumstance in which the executive is powerful, and with the backing of most members of Parliament, it is so easy to violate or abuse this whole idea of parliamentary privileges and immunities and silence Members of the Opposition. Those are the two key issues that could arise with regards to a scope that is wide as opposed to a narrow scope, which most Commonwealth countries have undertaken.

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Before I stop I just want to highlight a few thoughts, and this again relates to the scope, and the question of should the legislatures again be entitled to written to the government and also the idea of should legislatures be encourage adopt national policies and laws through open processes, which allow for consultation and citizen participation and also parliamentary procedures should be transparent and allow for public scrutiny, Parliament must have a certain amount of authority to affect the budget and also the thought on parliamentary committees being adequate in terms of resources and also the power to summon witnesses including Ministers in order to fulfill their mission. These are some of the thoughts I wanted to leave with the committee when we come to think about this idea of parliamentary privileges and immunities.

Hon. Tozaka: Can you just explain again the broader scope approach?

Mr. Foukona: The broader scope approach is the privilege and immunity of Parliament members extending outside of the House as well. It not only covers what Members do within parliament but it also extend outside. It also covers Members actions outside of Parliament. That is the broader scope and is adopted basically by France and other countries. But most European countries and Commonwealth countries adopt the narrow scope, and that is the privilege and immunities concern only the activities or actions of Members within Parliament.

Hon. Tozaka: The last point you made, I think was about the enforcement of the law, which means a weak rule of law is a factor in this.

Mr. Foukona: I am making reference to this in terms of, if you are widening the scope, you are taking a broader approach and if we have a weak rule of law there is a danger of abusing the privileges and immunities

Mr. Cahill: Perhaps the other point you are raising there that is very important is that every privilege, the privilege is provided so that Parliament can operate effectively and does its important constitutional role effectively. Members individually have these privileges or freedom of speech because they are collectively part of the Parliament. All Members collectively have it - Members individually have it but only if you like, to allow Parliament to do what it needs to do in a proper, effective way. The individual actions by Members should always reflect the goal of the privilege in the first place, and that is to benefit the people of Solomon Islands and to allow the Parliament to do its work effectively.

The other element I guess is that every privilege has a responsibility so the reason the privilege exists is so that it will be used properly by Members and by Parliament. Every Member has the responsibility, if you like, to uphold that privilege, and that is why where certain Members in other jurisdictions who have not used their privilege properly, Parliament has taken action against the Member because that has brought the Parliament into disrepute.

While in the Federal position I think they have restricted their power to expel, in NSW for example, Parliament has expelled probably three or four Members over 156 six years for conduct unworthy of a Member but it was never, ever being used politically because each side of the House knows that at one point ever they would be in a position so it was only being used in the case where virtually, unanimously the House has agreed a Member has acted in a way that brought the House into disrepute. I think that responsibility about privileges and immunities is important.

Hon. Kengava: Any last comments from any of you, which you can advise the committee?

Professor Patterson: Chairman, thank you. Just to sum up the main issues that seems to me that are facing this committee. First is whether you wish to just rely upon the laws and the practices that are adopted in England and not making any specific provision for parliamentary privilege in Solomon Islands. If the Committee feels that it is satisfactory as to say we will adopt whatever is done in England then that is end of the matter, although as I mentioned I think in such a case, it would be useful to publish a booklet of the English practice.

If on the other hand it is felt that there are some aspects, some but not necessarily all, aspects of having which is desirable both for Members and also the public to know in the context of Solomon Islands then I think it is important to put it in legislation. I would suggest that the models that are provided in the Cook Islands, in Fiji, in PNG and Federal Australia would be helpful to the committee. Thank you, Mr. Chairman.

Mr. Chairman: On behalf of the Committee, I would like to thank Professor Don Patterson and Joseph Foukona for your very eloquent and important presentations. I must say that there are two very outstanding points that you raised. One is that you've made, and to repeat yourself again, the importance of having a separate legislation that makes it much clearer to members of Parliament; and also the public of Solomon Islands to know the privileges, immunities and powers of Members of Parliament. The other one raised by Joseph is the Broad Scope and the Narrow Scope, which way would we want to go is very important for the Committee to know. Thank you both for this very important hearing. On behalf of the Committee, thank you very much.

Evidence Concluded