

NATIONAL PARLIAMENT OF SOLOMON ISLANDS
8TH PARLIAMENT – 1ST SESSION – 4TH MEETING
DAILY HANSARD

FRIDAY 10TH AUGUST 2007

The Speaker, Sir Peter Kenilorea took the Chair at 9.30 a.m.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of the Minister for Home Affairs, Foreign Affairs and THE Members for North Malaita and South New Georgia/Rendova/Tetepari.

STATEMENT BY THE SPEAKER

Appreciation of Ms Want's work

Mr Speaker: Honorable Members I have a short statement to make in terms of informing the House.

Honorable Members, I advise that for the past five weeks, Ms Susan Want, an officer of the Legislative Council of New South Wales has been working in Parliament developing procedural systems to assist the Speaker, the Clerk and all Members. I would like again to acknowledge the very close relationship between the National Parliament of Solomon Islands and the Parliament of New South Wales, and to thank the Parliament of New South Wales for the financial support that allowed Ms Want to undertake this work.

I made this statement because the officer is now leaving us. Thank you very much indeed honorable Members for your attention.

STATEMENT OF GOVERNMENT BUSINESS

(Statement read by the Prime Minister)

MOTIONS

Motion of No Confidence

Mr Speaker: The honorable Member for East Are Are is to move his motion of no confidence.

Hon Sogavare: Point of order. As you are aware and all honorable Members of this House and of course the public at large, I have issued originating summons to the mover and also the Speaker of the House on a number of legal and constitutional issues surrounding the motion that is proposed to be tabled this morning. Since we have the Attorney General here with us, Mr Speaker, I would ask permission that he presents the legal position on this proposed motion to the House.

Attorney General: Mr Speaker, I preface my advice to the Government under section 42 of the Constitution with two remarks.

First and contrary the mistaken view circulating outside this Chamber, I have never expressed any opinion on the specific matter I am now asked to address. What I have publicly confirmed is the existence of three pending judicial proceedings in the High Court, which touch and concern the legality and substance of the proposed motion for the resolution of no confidence in the Prime Minister. I will elaborate on the legal implications of those three proceedings shortly.

Secondly, and with my own position now fortified as a result of yesterday's judgment of our Court of Appeal in *Primo Afeau v. Judicial and Legal Services Commission*, I cannot omit to mention how mindful I am, Mr Speaker, of the weight you have always attached to opinions tendered to this Chamber from the chair I happen to occupy. In a memorandum written to all Members of Parliament on

December 19, 2002 concerning the same subject matter upon which my advice is now sought, you acknowledged, ‘that the constitutional authority for legal advice is the Attorney General’ and then invited him ‘to share his legal opinion on this for our benefit, which shall be final’.

On that footing, Mr Speaker, let now address the legal concerns of the moment.

The right of any Member of Parliament to move a resolution of no confidence in the Prime Minister is embodied in Section 34(2) of the Constitution in the following terms:

“A motion for a resolution of no confidence in the Prime Minister shall not be passed by Parliament unless notice of the motion has been given to the Speaker at least seven clear days before it is introduced”.

Describe somewhat inelegantly as a “stand-alone” motion, Section 34(2) does no more than merely entitle Parliament to pass a resolution by the requisite majority prescribed in Section 34(1) when notice thereof has been given to the Speaker ‘at least seven clear days before it is introduced’. Viewed as an independently operating constitutional mechanism for seeking parliamentary expression of its majority’s vote of no confidence in a Prime Minister, Section 34(2) can only be triggered by the provision of “at least seven clear days notice” to the Speaker “before it is introduced.” Absent from the text of Section 34 and any other substantive provisions of the Constitution is any indication of how the requisite notice “is introduce,” the requisite from thereof or how the proposed resolution is required to “be passed by Parliament.” Giving Section 34 its independent operational role, force and effect, Parliament can quite capably proceed to vote on a motion of no confidence introduced after at least seven clear days prior notice thereof.

Mr Speaker, that prospect is complicated, however, by the terms in which Honorable Edward Huniehu MP has formulated his notice of motion. Although it satisfies the temporal requirements of Section 34(2), the formulation of a notice which requires

Parliament to resolve that it has no confidence in the Prime Minister on the basis and for the reasons that it stipulates, creates a problem that can only be rectified by deletion of the surplus words. The additional words “following the recent actions and decisions he had taken, which are not in the national interest of Solomon Islands” are not only unnecessary but offend the *sub judice* rule which requires strict observance to preserve mutual respect and confidence between the legislative and judicial branches of government, particularly in the context of all those “recent actions and decisions” which are the subject of pending judicial proceedings. The *sub judice* rule is an elementary principle of justice under the common law, preserved by applicable statutes and grounded in Section 12(2) of our Constitution “for the purposes of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings” and “maintain the authority and independence of the courts”.

Mr Speaker, as vague and ill-defined as those “recent actions and decisions” may be and without entering into debate about the attribution of direct or collective responsibility for them to Cabinet or the Prime Minister under the principle embodied in Section 35(2) of the Constitution, there are currently many cases before our courts (three of which I have already alluded to in my recent media statement) that will have a bearing on parliamentary discussions in breach of the *sub judice* rule.

An amendment of the notice by the deletion of the surplusage will be able to overcome that objection and bring the proposed motion within the fold of one couched in “general terms” which our Court of Appeal in *The Speaker v. Danny Philip* (Appeal No. 5 of 1990, 30/08/91) regarded as permissible notwithstanding any contrary regulatory requirement of the Standing Orders of the National Parliament (“Standing Orders”). The subsequent practice of Parliament is consistent with the approach I have prescribed and may be relied upon to resolve any residual procedural doubts by virtue of Standing Order 82.

Mr Speaker, once the requisite amendment is secured, in the absence of any constitutional requirement mandating the procedure to be followed by Parliament after “a

motion for a resolution of no confidence in the Prime Minister” is “introduced” and before it is “passed by Parliament”, I would venture to suggest that no debate is really necessary in the circumstances where all Members of Parliament have already pledged their individual and collective support for the passage of the Supplementary Appropriation Bill 2007 which was yesterday committed to the committee of supply. It remains for those who vote in favor of the amended motion to reconcile their conscience with their decision to approve the supplementary appropriation of funds for expenditure necessitated by the “actions and decisions” which they have also disapproved.

Parliament should be counseled to avoid debating issues that might touch and concern matters that are being adjudicated in our courts not only to accord respect for the proper administration of justice by the judicial branch of government but also do so to allow the Speaker to preside over the ensuing proceedings without being perceived in an unfair light, if he decides not to yield his adjudicatory seat to the Deputy Speaker for that limited purpose and duration.

Mr Speaker, the practical solution proposed by the advice I offer avoids any resort to the Standing Orders for resolution of the complications they cause and provides a dignified manner of resolving possible tensions between the legislative and judicial branches of government whilst proceedings remain pending for adjudication. No less significantly, it reinforces the independently operating status and character of the no confidence motion mechanism under Section 34 of our Constitution.

I am pleased to advise the government accordingly and tender a copy for your records may please the House.

STATEMENT BY THE HONORABLE SPEAKER

Mr Speaker: Thank you honorable Attorney General. I have listened very carefully to the presentations and legal clarifications you have raised. Had this issue being debated and then

that particular legal clarification is made, I can quite fully understand.

You have, however, referred to the distinction between Parliament and the Judiciary and this motion is a parliament business, and we do not want to preempt the judiciary involving in parliament business. Since it was accepted under the constitutional provision of section 34, I need to inform the honorable Parliament on the basis on which I have ruled that this motion be moved today.

The privileges, powers and immunities of Parliament

The National Parliament of Solomon Islands enjoys such legal and inherent privileges, powers and immunities necessary to carry out its functions effectively. The Parliament enjoys autonomy from control by the Crown and the Courts, an aspect of our constitutional separation of powers, and Members and others participating in its proceedings can freely do so without fear of impeachment.

Article 9 of the *Bill of Rights* 1689 applies in Solomon Islands as a matter of common law. The effect of Article 9 is not to prevent or restrict the disclosure of things said in the course of parliamentary proceedings in the courts, but to preclude the impeachment or questioning of such matters.

The importance of freedom of speech has been described by Professor Enid Campbell in the following terms:

Freedom of speech and debate in parliament is one of the most cherished of all parliamentary privileges, without which parliaments probably would degenerate into polite but ineffectual debating societies. Freedom of speech and the associated powers of the Houses to determine their own order and subjects of debate, the English parliamentarians of the sixteenth and seventeenth century believed

*was the key to parliamentary supremacy - supremacy over the Crown and its Ministers.*¹

Essentially, freedom of speech means that the Speaker, Members and other participants in parliament are immune from impeachment or questioning before the courts including being sued or prosecuted, in relation to their contribution to the ‘proceedings in Parliament’.

The immunity from impeachment is embodied in the Separation of Powers. While the Attorney General has the right to submit to the High Court any question of constitutionality, the Court has no jurisdiction to inquire into proceedings in Parliament, aside from the very limited purposes of s. 83 of the Constitution. In this regard the Court found in *Danny Philip v Speaker*.

Standing order 36(2)

Standing Order 36 is intended to ensure that, in the interest of justice and the judicial process, and in order to avoid prejudice to court proceedings or harm to specific individuals, Members refrain from making reference, either in debate or through motions, questions and committee proceedings, to matters which are before the courts. This practice is known generally as the *sub judice* convention.

In considering any point of order raised under Standing Order 36(2), the Speaker must weigh the competing interests of the right of Members to legislate and debate on any matter and the likelihood of prejudice to a case. The application of the Standing Order should only be to prevent discussion of the precise issue before the courts, and not to prevent general discussion of the matter.

Standing order 36(2) does not prevent a motion being put before the Parliament, the subject of which may have some connection with a case pending in a court. If a Member refers to the matter of a case pending in a court during debate on any motion, the Speaker will

determine at that time if, in the opinion of the Speaker, the matter is sub judice.

Standing order 36(3)

Essentially, Standing Order 36(3) ensures that a decision of the Parliament has authority and legitimacy, and to prevent the misuse or inefficient use of parliamentary proceedings to repeatedly raise matters that have already been decided. The Standing Order does not prevent a resolution being rescinded or for a new resolution being adopted which ceases or amends a resolution.

The Standing Order embodies the well established principle of Westminster Parliaments known as the “same question rule”. It is not often that a motion is exactly the same as a motion moved previously. Even if the terms are the same as one previously determined, the motion almost invariably has a different effect because of changed circumstances and is therefore not the same motion.

While Standing Order 36(3) applies to a motion of no confidence as it does to all other motions, no two motions of no confidence deal with exactly the same matter. [See section on confidence below] As the Court found in *Danny Philip v Speaker*, a latter motion of no confidence dealt with a subject matter that was substantially different from an earlier motion of no confidence.

Confidence

The Government of Solomon Islands is formed when the duly elected Members of Parliament elect from one of its number to the Office of Prime Minister. The Prime Minister only continues in this office while he commands majority support from other Members. This support is in effect constantly tested throughout the life of the Parliament. It is the political situation as represented by the Members elected to serve in this Parliament which determines who is to govern.

Under section 34 of the Constitution a resolution by the Parliament expressing a lack of confidence in the Prime Minister requires the Governor-General to remove the Prime Minister from office.

The stability of government is no doubt impeded by frequent or vexatious use of the no confidence provisions of the Constitution. The Opposition, as an alternative government, must consider its actions carefully and be prepared to stand by them. However, once the question of confidence has been raised, and as long as the relevant provisions of the constitution have been complied with, the matter should be resolved as soon as possible.

The crux of the issue is whether **this** Parliament has confidence in **this** government. No action in any court can decide that matter, only elected Members of this Parliament can decide. Nor can the issue be avoided by court or executive action without the democratic system of government in Solomon Islands being attacked.

Ruling

For me to rule in any other way than to allow the motion of no confidence to proceed would be to restrict the fundamental right and responsibility of elected Members to determine who should form Government in this country. I therefore rule that the motion may proceed.

Mr Hilly: Point of order, Mr Speaker. You have very well explained the subject matter to Parliament and therefore I do not see the necessity of the Attorney General briefing Parliament when he is taking the honorable Speaker and the mover of this motion to court. Let the court decide on the facts of this, as none of us here in Parliament is capable of making that judgment. The fact that the honorable Speaker has accepted the motion, it is now left to the mover whether he agrees to the request from the Minister to let the judicial process done before he brings back the motion or otherwise.

Mr Speaker: Certainly, as I have said, it is only Parliament that can deal with this particular constitution. We should not allow the judiciary and the executive to collude on interfering with parliament business.

Hon Sogavare: Mr Speaker, point of order. The Attorney General has made a submission which is very clear as far as the Government's position is concerned on this matter. Mr

Speaker, I guess this boils down to the Parliament complying with its business.

Mr Speaker, you have expressed personally your opinion on a number of issues that no doubt would be raised by the mover of this motion when he introduces the substance of the motion. The position put forward by the Learned Attorney General is basically to protect all of us. That is basically the interest of the government - that this House protects the mover, protects anyone else who would contribute to the motion and also your chair.

On that regard, Mr Speaker, I would request respectfully that you excuse yourself from presiding on this motion or the Government would be forced to put to vote or to ask you to leave the chair and ask the Deputy to chair the proceeding.

Mr Speaker: Thank you Honorable Prime Minister. The decision of the Speaker has been made subject to legal advice the Speaker avails himself to. The Speaker therefore does not see any reason why we should politicize the Speaker's post by requesting him to leave his chair. I am very willing to serve Parliament and listen to the debate if I am allowed to and I am allowed to by appointment. But thank you for the gesture Honorable Prime Minister.

Hon Sogavare: Mr Speaker, I heard what you said but if you read the newspaper releases leading to the mover of this motion

Mr Gukuna: Point of order, Mr Speaker.

Mr Speaker: Could we allow the honorable Prime Minister to finish what he is saying?

Hon Sogavare: Thank you, Mr Speaker. You have expressed a lot of opinions and views on where you placed yourself on all of the positions which of course the mover would be presenting to Parliament.

Sir, to use the word 'coming to Parliament to politicize this matter', is a claim that will fall because you have obviously expressed very strong views on a lot of issues that are being debated in the public that I know will be raised as well by the mover of the motion.

Mr Speaker, I would now ask your permission to move a motion right now to ask you to leave the House.

Mr Gukuna: Mr Speaker, I think you have made the ruling. We are unnecessarily trying to intimidate the proceedings of this Parliament. You have made the ruling and it is time for you to give the floor to the mover of the motion.

Mr Speaker: Thank you very much indeed. I would not allow the motion to remove the Speaker because the Speaker can only be absent from the Chair under the Constitution, and that is when he is unable to perform his functions. Honourable Member for East Are Are, please continue with your motion.

Mr Huniehu: Mr Speaker, I respect your decision on this...

Hon Sogavare: Point of order. This side of the House is just like this. We just want to follow the law, rules and procedures laid down. That is all and so far we have not got one.

Going back to the first ruling you made, Mr Speaker, on the first day when the Leader of the Opposition raised that the Attorney General be removed from Parliament, you made the ruling that because the matter is before the court it is not an issue to be discussed. That reasoning is consistent to the advice given by the Attorney General on the floor of Parliament that we respect matters that are before the court as they may be contempt of court. That is the premise on which the government is presenting its views.

Sir, you have made the ruling and I just want to tell the nation and Members of Parliament who are present here and everyone sitting down here that those of us on this side of the House are determined to abide by the Constitution and follow procedures that are laid down. We do not want to be seen as breaking the laws because we have been consistent since we have taken office where the courts have ruled in favour of the stands we have taken and therefore we would want to comply with our laws.

For that reason, sir, we are going to listen to the mover who is going to move this motion and listen to the points he is going to

raise, but let it be known to every people of this country that this side of the House will not participate in the debate as advised by the Attorney General because this matter can lead to some serious legal consequences.

I just want to let the people of this country know that we will listen to the mover of the motion and the Opposition who want to speak to this motion. We will take note of everything they are going to say, but let it be known that this side of the House is not afraid of this motion. No, not at all.

We just want to make sure that we comply with the rules and laws. So we will not participate in any debate. You can go ahead and debate alone - that side of the House. We will sit down and give you the audience, painful though it may be, but we will sit down and listen to you.

Mr Gukuna: Play the guitar, sing and listen.

Mr Speaker: Thank you honorable Prime Minister. Yes, I do acknowledge the fact that the Attorney General is our legal advisor in Parliament but I am also aware of the fact that Parliament cannot interpret its own laws. We apply the law but it is for the court to interpret and hence I have made my ruling and I am appreciative of the fact that you had now concurred with my view that the motion should proceed.

Mr Huniehu: Thank you, Mr Speaker.

Hon Sogavare: In relation to the last comment that you just made, Mr Speaker, I just want to tender this document to you Mr Speaker and this is signed by the Speaker of Parliament interpreting.

Mr Speaker: Thank you very much indeed. That was an interpretation by the Speaker and not the Parliament.

Hon Lilo: Mr Speaker, perhaps another point that has not been clarified, but is being expressly stated in the constitution is the wording of the motion "in accordance with Section 34 of the Constitution" Mr Speaker. I seek your ruling on the wording of the motion where the constitution

expressly stipulates that the motion should be worded as a resolution of no confidence in the Prime Minister. It did not stipulate any additional wording but the motion that you have accepted, Mr Speaker, contains additional wordings, which I believe may be contrary to Section 34 of the Constitution.

You have made your consideration on the sub judice and the separation of powers between the legislature and the judiciary. I appreciate those observations, Mr Speaker, but I am just wondering whether you could also express your ruling on the wording of the motion, which if we are to follow the rule and follow the letters of the Constitution, it would mean that the motion itself is defaulted because it contains surplus wording not actually prescribed by the Constitution. I humbly seek your ruling on that. Thank you, Mr Speaker.

Mr Speaker: Thank you honorable Minister. My ruling has certainly been based on Section 36(3). Of course, the language of the motion, I seem to take it extends beyond what you are suggesting is simply an explanation of what he wants to say and it does not necessarily, in my view, interfere with the constitutionality of the motion.

Hon Lilo: Point of order, Mr Speaker. Yes, I fully appreciate your ruling on that. I do respect and appreciate the fact that you, yourself have always been very sensitive and respectful to the intent of the Constitution. I do not feel that we should encourage ourselves to go beyond the intent of the Constitution, Mr Speaker.

My submission is very simple, simple to the letters of the Constitution, and that is what is being prescribed under the Constitution should be carried as the intent of the Constitution because to go beyond would be our own personal imposition. That is my problem.

If you take it as your ruling that you have no problem with the excess wording in the way this motion is being designed Mr Speaker, then let me as a simple Member of Parliament for Gizo/Kolombangara say that we are really going beyond the rule of law and the intention of our Constitution. Thank you, Mr Speaker.

Sir Kemakeza: Thank you, Mr Speaker, for respecting the Member of Parliament for Savo/Russells to arbitrate a bit on this issue.

Mr Speaker, it would seem to me that we are performing a court of law on this floor of Parliament and we term you as a judge.

The manner of contributing to whatever motions, Mr Speaker, is all guided by relevant sections of the Standing Orders. Standing Orders as well, Mr Speaker, give the final and conclusive decision to the Speaker. It would seem to me the Government Bench has a different agenda, if you like.

This is not a numbers game, Mr Speaker, but the state is the issue and therefore your ruling is final and conclusive, it is final and conclusive and no Member on this Parliament can question otherwise.

The AG's advice is not only compulsory or your chair and even the Prime Minister and every Ministers chair are all opinions and are not compulsory that we would have to comply with. Therefore, Mr Speaker, your final ruling is taken on board, let alone the Member of Parliament for Gizo/Kolombangara who is also our second attorney general and the Member for Savo/Russell still abides by your ruling to give the opportunity to the mover to make his deliberate judgment on this. As an arbitrator we allow your ruling and let the mover to decide otherwise.

Mr Speaker: Thank you Honorable Member for Savo/Russells. I think we should proceed with the motion and see what happens.

Mr Huniehu: Thank you, Mr Speaker, and thank you for the various explanations from the Prime Minister, the Attorney General and the rest who have made comments.

I have to make a valid judgment in here. I respect your decision in allowing this motion to be moved in this Parliament now. As you know, High Court summons have been served on you as the first defendant and myself as the second defendant and the High Court summons was issued by none other than the Prime Minister of Solomon Islands. The High Court case will be heard within eight days time and the High Court will determine the basis for the case.

As you may have realized the gist of this motion hinges on the honorability, integrity and respectability of the judiciary and the court system. This motion, if it is moved now is about the honorability of this Parliament and the integrity and respectability of our court systems and the judicial and therefore I have no intention of creating animosity, acrimony and confusion by moving this motion now.

Mr Speaker, whilst I could move the motion now but with the submission made by the Prime Minister that the High Court will be hearing this case within eight days period, I have decided that this motion be deferred until after the High Court made its judgment on this motion.

(applause)

Mr Speaker: There is no provision under our Standing Orders for deferment but there is a provision for withdrawal of motions. Under what wordings have you done that Honorable?

Are you withdrawing the motion or deferring it? The Chair now understands that the motion has now been withdrawn.

Mr Dausabea: Mr Speaker, I think this motion has been all over the government in the last several months. We come here to debate it and now that you have made the finality in your ruling I would like this motion to be debated or withdrawn but not deferred. Thank you.

Mr Speaker: The motion has accordingly been withdrawn as the Honorable Member, the mover of the motion has decided.

The motion was withdrawn

Hon Sogavare: Mr Speaker, I beg to move that this House do now adjourn.

The House adjourned at 10.45am.