



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

**MORNING SESSION: 3.32 p.m. – 7.20 p.m.**

**Gibraltar, Thursday, 13th November 2025**

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# The Gibraltar Parliament

*The Parliament met at 3.32 p.m.*

[MADAM SPEAKER: Hon. Judge K Ramagge GMH *in the Chair*]

[CLERK TO THE PARLIAMENT: P A Borge McCarthy Esq *in attendance*]

## Order of the Day

### SUSPENSION OF STANDING ORDERS

5 **Clerk:** Meeting of Parliament. Thursday 13th November 2025. Suspension of Standing Orders.  
The Hon. the Chief Minister.

10 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I beg to move under Standing Order 7(3)  
to suspend Standing Order 7(1) in order to proceed with the laying of a report on the table.

**Madam Speaker:** Those in favour? (**Members:** Aye.) Those against? Carried.

### PAPERS TO BE LAID

15 **Clerk:** Papers to be laid. The Hon. the Chief Minister.

20 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I have the honour to lay on the table the  
annual report of the Independent Monitoring Authority for Citizens' Rights on the 12-month  
period from January the 1st to December the 31st 2024.

### COMMUNICATIONS FROM THE CHAIR

25 **Madam Speaker:** Ordered to lie... All right, before we continue with the motion, I have a short  
ruling to make.

The procedure governing motions and amendments can often, except in the simplest of cases,  
be subject to uncertainty which in turn can lead to some confusion.

30 I propose to set out some guidelines which I hope may be of use for members present and  
future. In this ruling, I deal only with a specific scenario which is before the House and which, for  
the sake of clarity, I set out below:

(1) The House has before it a Government motion moved by the Hon. the Chief Minister in  
relation to the Public Auditor's Report 2018-2019;

(2) The Hon. the Chief Minister has spoken on the motion and from the start of his address has indicated that he will be moving amendments which he has particularised during the course of his speech;

(3) At the conclusion of his address the Hon. the Chief Minister provided the Chair with his proposed amendments in writing, and these were circulated amongst members. The next step is for me to propose the amendments;

(4) Debate would then proceed on the amendments at the conclusion of which a vote would be taken;

(5) In the event that the amendments are not passed, the original motion would remain before the House and debate on it would ensue culminating in a vote; and

(6) In the event that the amendments are passed, they would become part of the main question and debate could then ensue on the original motion as amended, culminating in a vote.

In the situation currently before the House, the original motion and the amendments are inextricably related. The amendments are substantive and are *inter alia* a particularisation of general principles moved in the motion. What this translates to is that if there is a debate on the amendments, it is likely to be a *de facto* discussion of the original motion as amended.

From a strictly procedural point of view, it is perfectly permissible to have a debate on the amendments followed by, if the amendments are passed, a debate on the original motion as amended.

Standing Order 21(8) provides that when every amendment has been disposed of the Speaker shall either again propose the question upon the motion or shall propose the question upon the motion as amended, as the case may require, and after any further debate which may arise thereon, shall put the question for decision. Thus, the Speaker must put the motion as amended and may allow further debate if further debate arises.

Whether to allow further debate requires an exercise of discretion. A discretion as to whether matters have been sufficiently dealt with and a discretion which must be exercised cognisant of the responsibility to prevent repetitious debate. That is the view taken by Erskine May, supporting the general proposition of relevancy in debate and the avoidance of repetition, so that when an amendment has passed, the main question as amended may be debated further, unless it appears that the subject has already been adequately discussed in the course of the debate on the amendment.

Where therefore there has been a full debate at the amendment stage which has covered the full substance of the motion as amended, particularly where the motion and the amendment are closely interconnected, further debate on the motion as amended should not be allowed. But what happens where the debate on the amendment has not been a full debate, for example because one side elects not to speak on the amendment.

In the present case I have had discussions with the Hon. the Chief Minister and the Hon. the Leader of the Opposition behind the Speaker's Chair. I have indications from them, and I put it no higher than that, indications may change, that some may wish to speak on the amendments, and some do not wish to speak on the amendments but wish to speak on the original motion as amended.

If that is the case, it seems to me that the debate on the amendments would not be balanced and arguably not complete in the sense of a full debate, so that further debate on the original motion as amended would be necessary and allowed. This would mean any Members who have already spoken on the amendment would be able to speak again on the original motion as amended.

I do not ignore that depending on the content of their argument this could give rise to repetition over and above that which is reasonably acceptable. Should that occur, Members can expect to be interrupted. I take this opportunity to warn Members against embarking upon repetition of arguments already rehearsed.

By way of summary therefore:

(1) Procedurally once an amendment has been passed the House may debate the original motion as amended;

(2) In circumstances where the original motion and the motion as amended are inextricably linked and where there has been full debate on the amendments, the Chair is unlikely to allow further debate on the original motion as amended. The crucial question in exercising the discretion whether to allow further debate is whether there has been a full and complete debate at the amendment stage; and

(3) In the event that further debate is allowed, Members who have already spoken on the amendments may speak again but only if they do not re-argue points already advanced.

I hope that is of some help in clarifying the situation and now we will return to the motion.

**Chief Minister (Hon. F R Picardo):** The amendment...

**Madam Speaker:** Well, the motion which... contains the amendment, yes. What I was going to do now is propose the question on the amendments, so I now propose the question in terms of the amendments moved by the Hon. the Chief Minister. Does anybody wish to speak on the amendments?

Yes, the Hon. the Leader of the Opposition.

#### GOVERNMENT MOTION

**Hon. Dr K Azopardi:** Yes, Madam Speaker, I do want to speak, finally speak after seven and a half weeks, and I do not know, I have lost the count of the days that we have been waiting for this moment, because this has been an unprecedented debate, Madam Speaker, so far, unprecedented in so many ways. Unprecedented because of the nature of the assault on a constitutional officer, unprecedented because of the length, unprecedented because of the manipulation of a parliamentary calendar, so to stagger the debate in a way that can only have been self-serving and gratuitous, unprecedented because the issues at stake are fundamental, Madam Speaker, and it shows how much in disarray this Government is, and how far they are prepared to go. They now represent a danger to democratic governance, and this is only one example of a growing track record that demonstrates it.

Madam Speaker, the publication of this Principal Auditor's report a few months ago scandalised Gibraltar. Rightly, not just because of the examples of waste and abuse, but because of the stark contrast with people's daily lives, the people who were struggling to make ends meet, to deal with a cost-of-living crisis and instead see those examples of waste and abuse. The people who have not had wage rises to match inflation, who became angered by a Government that does not take care of its money properly, it does not take care of the people's money properly, not just by the opaqueness, not just because of the rampant lacks of control, not just because of the downright waste, but because it showed an increasing track record and of disarray and abuse that is tolerated by the Government. People were rightly angered, Madam Speaker, because it is not the first time.

I know there is a keenness on that side to portray this somehow as a seminal moment, but it is not. This is not the first time that we have complained about these things. This is not the first time that there has been a report pointing out lack of control or examples of waste and abuse, or intransparency.

They are supposed to, Madam Speaker, hold the people's money on sacred trust, but all they have done is in breach of that trust, in breach of your trust, the people's trust, in handling your money, and faced with these facts, Madam Speaker, they play the man, not the ball, but in a way that is dangerous to democracy and have created a shameless kangaroo court.

135 Madam Speaker, the methodology of the Government is transparent and discernible. They play the victim but are the aggressor. I am going to trace those methodologies, but a number of themes and of those methodologies already come through as we see through the smoke screen and rip off the Government's mask.

140 There are, in our view, in my view, three discernible tactics that they are following: The first one is that they trash talk their way, or they try to trash talk their way out of the serious spectre of waste, abuse, and corruption; The second tactic is to follow a methodology of systematic repetition, repeat, repeat, repeat, often enough that the Principal Auditor is a liar or politically partisan, to try to get people to believe it; and the third tactic is to stop at nothing, to be reckless as to the constitutional protections and safeguards, and that is the greatest issue of concern because they are so visceral in defending themselves, because they show such little regard to parliament, democracy, and the Constitution. Madam Speaker, that leads to four consequences, 145 four consequences.

Consequence one, is who and what is next? It is a question that people ask themselves, who or what is next? If they are prepared to do this, Madam Speaker, what else are they prepared to do to save their political skins, to cover their tracks? Who else is in the firing line if they disagree?

150 Consequence two, is what else? That is another question that people are asking themselves, what else if they are reacting so aggressively over reports up to 2018–2019, albeit that there are contemporaneous now value for money assessments, what else is there to hide when everything is brought up to date, up to 2024–2025?

155 Consequence three, Madam Speaker, is the outcome, the outcome of this motion, because the outcome of this motion is not worth the paper it is going to be written on if it is passed. It is a piece of self-serving, politically partisan claptrap.

Consequence four, Madam Speaker, is that no Minister saves themselves if in this moment, in this constitutional moment, all Ministers support it, because it will be a shameful indictment of everyone on that side should they support it, and that includes those who aspire to lead that party after the incumbent has gone. The totality of those consequences, Madam Speaker, brings us to 160 the ultimate consequence, that it demonstrates as a result why the GSLP must now go.

Madam Speaker, the heckling has already started on that side, it is an early sign of nervousness, there will be time, there will be quite a lot of time as they sit there, yes.

165 Madam Speaker, the nub, the nub of the amendment, the document that has been produced by the Chief Minister in moving his amendments, is in affirmative language, almost pretending that it is somehow a court judgement, seeking to make declarations as to the interpretation in law of certain things, or whether procedurally it is right or wrong, but the nub of it is that you either agree with them or you get chastised. But of course this motion, as we will show, does not gloss over the other issues or the fundamental issues in the report, but most fundamentally, Madam 170 Speaker, what this motion demonstrates, together with their reaction and the content, when I get into it, shows that this is a constitutional outrage that cannot be tolerated, and I am going to get into the detail, but first I must put some preliminary remarks on the table.

175 Madam Speaker, far from making things better, the amendments enshrine the outrage because they reveal that with this Government you are either with them or against them. So, they think they can cherry-pick their way around the report, decide what they like, decide what they do not like, decide that they like that the Principal Auditor may have approved the accounts, decide what they do not like in the value for money, but that is not how it works, Madam Speaker. The Principal Auditor has a constitutional function which he fulfils to the best of his ability in the way that he decides, in his absolute discretion. They do not respect the Auditor's right to say what 180 he wants, how he wants, whenever he wants, despite what they have said before, which I will take you to, and this is unprecedented, Madam Speaker, as an attack on a public servant.

It is unprecedented as an attack on constitutional protections. It usurps the role of the courts, it abuses the role of this Parliament, which is to hold the Government to account, and which should not be weaponised against public officers.

185 The affirmative legalistic language which we have been treated to as if it was some sort of judgement, without taking the risk, of course, without taking the risk that they will not succeed. And the final nail in the coffin of the, not just the motion, but the amendment, is the counter-report. So this is a report, this is an amendment that purports to set aside certain aspects of the Principal Auditor's report, and then worse still, seeks to produce an alternative counter-report.

190 Well, Madam Speaker, you will appreciate the point that this House cannot reject a report that the Auditor is bound to produce and bound to deliver. What certainly cannot happen is for someone else to produce an alternative counter-report when it is within the exclusive constitutional competence of the Principal Auditor to produce it. And that is why, in fact, the bottom line is that this motion brought by the Chief Minister is, at its heart, unconstitutional - all in all, it is a travesty, Madam Speaker.

195 Now people will be watching and saying, perhaps, so why does this matter to me? I want to spend a few minutes on that, because this is a constitutional outrage that people need to understand affects them. Because it affects the way this community is run, and it affects the decisions that are taken, it affects the accountability of the Government, and it affects the ability of anyone overseeing, supervising, or controlling how the affairs of this community are run.

200 Madam Speaker, we have a written Constitution that creates a balance of institutions between the Parliament, the Legislature, and the Executive - It is the first thing they teach you at constitutional school. It creates a document that also vests certain rights in certain officers. One of them is the Principal Auditor, who has constitutional rights. Those issues are defined. Those powers are defined. Those powers are for him. It is a matter of interpreting the Constitution and understanding what it says. Our Constitution, unlike in England, effectively creates a situation where in Gibraltar we do not have parliamentary sovereignty. I mean the Chief Minister said we have parliamentary sovereignty. What we have in Gibraltar is constitutional supremacy, not parliamentary sovereignty. Because section 32 of the Constitution says:

210 Subject to the provisions of this Constitution, the Parliament makes laws for the peace, order, and good Government of this community.

215 Subject to the provisions of this Constitution - because the Constitution is supreme. The constitutional structures are supported by a charter of rights of the individual - part one of the Constitution. That charter sets out what the fundamental rights of people are, what they enjoy in Gibraltar. It is further supported by a set of checks and balances on the power of various institutions, most importantly the Government. Those checks and balances are there, although they could be improved.

220 One of the checks and balances is ensuring that the Principal Auditor audits the accounts of Gibraltar and does so exclusively and can say whatever he wants on them. That requirement in our Constitution was introduced for the first time in 1969. It was not present in the previous bodies of law that were constitutional in effect, either in 1950 or in 1964. It was introduced in 1969, although at that stage the laying of the report went through the Governor. Now it comes direct to this House, as it should.

225 This is important because we have fought very hard in this community to get here over the last 300 years in our move to self-governance. Once a year I have the privilege as part of the law course that they give lawyers to be in Gibraltar. I give the Constitutional Law Lecture. I always like to trace the history of where we have come from over the last 300 years and how the move to self-Government really was snail's pace at the beginning and it then acquired a degree of momentum, especially after 1921. Even bigger momentum post-war, where we had those four constitutional instruments culminating in the 2006 Constitution. But we have come a long way to strip absolute power away from the colonial master and that requires that degree of ensuring that there are checks and balances on the power of the Government, the elected Government, as it should be.

230 And because that is in our interests, because that secures the rule of law in Gibraltar, because it is for all of us to protect those institutions, for all of us to ensure that the rights, the fundamental

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rights, that the checks and balances are not only there, but they are also protected and they are indeed improved. So rather than trash and erode those constitutional structures, they should be protected and strengthened.

240 And again, why does it matter to you? Because if we do not do those things, Madam Speaker, we give the Government unbridled, unchecked power. Unbridled, unchecked power with your money, with your rights, with the decisions that affect you and that does not work for anybody. Because we replace the absolute colonial power for a system that allows the Executive to exercise unchecked power.

245 With unchecked power, Madam Speaker, they can do whatever they want, whenever they want, on any decision that affects you. And so that is why this is important, because it affects you, it affects every citizen of Gibraltar, it affects their rights, it affects the quality of decision making and the use of your money, which is at the heart of what the Principal Auditor must do. Because the Principal Auditor is an important part of that constitutional architecture of checks and  
250 balances.

In England, the system of the equivalent, the Auditor General, goes back more than 150 years. Here, around 50, because we have had, as I say, that finance part since 1969 and a specific legislation, more particular specific legislation, since 1977.

It is based on the premise, Madam Speaker, that the Government holds your money on sacred  
255 trust. But the Government cannot decide how to use it without first asking Parliament for permission to spend and that is why we come here once a year on the budget. And how they spend it gets checked by the Principal Auditor.

Without the control of anyone, still less the Government, because, and of course that would, if we did not have that, those controls, it would water down those protections. It would lead to  
260 Government using your money however they want, without even a review.

So already, Madam Speaker, we complain about opaqueness. Already we have had a huge time lag on the Principal Auditor reports engineered by this Government, and we have had previous debates in this House about how they have engineered that. There was comment in the previous Principal Auditor's report about it, how different Bills, Supplementary Appropriation Bills, had  
265 been published but they were never taken and how that slowed it all down. So, by the time of the last election, in 2023, we still did not even have the 2016–2017 report and we are still having a massive time lag. So already we complain about that, but this is part of their strategy, Madam Speaker, their strategy of intransparency.

First, they break down the system, now they trash the players. The result, Madam Speaker, is  
270 a dysfunctional system of accountability and a signal to others, a signal that we on this side of the House consider can only be deliberate. A signal that if you fall out of line and disagree with me, we fall on you like a tonne of bricks with all our executive power and that is shameful.

The only beneficiaries, Madam Speaker, is this opaque Government because they get to do what they want, when they want. And they get to do it without immediate contemporaneous  
275 scrutiny, with a huge time lag. Except of course for the value for money reports that have caused such consternation in the Government benches, and we are certainly not going to allow them to get away with that, Madam Speaker. We are not going to allow it because the fundamental point and let me be very clear about this because there will be a lot of detail that I will cover, but let me be very clear that the fundamental point is we should not be here today. We should not be here  
280 because the Principal Auditor is a constitutional officer and an officer of this Parliament, made an officer of this Parliament by our Constitution. He was not before. He has been made an officer of this Parliament 20 years ago now.

He is not subject to the direction or control of anyone, any person or any authority. Nobody here can subject the Principal Auditor to direction or control. And we should not be here, Madam  
285 Speaker, because this process that has been mounted by the Government abuses the protections, the independence of the Auditor and the process of this Parliament, which is to hold the Government to account.

What they do on the other side is to hijack Parliament because they are in a permanent executive majority, to then weaponise Parliament against the Principal Auditor in an unconstitutional way.

Because there is a very big difference, Madam Speaker, and I have said that publicly already, there is a very big difference between the ability of the Government to say that the Principal Auditor may be wrong, which we would respect and correct the record and abusing Parliament or seeking to exercise direction or control over the Auditor.

That is what this motion purports to do by seeking to set aside this report in part. That is what this motion seeks to do by saying we are going to write a counter-report on other things. They have no power under the Constitution to write a counter-report. The exclusive competence is of the Principal Auditor. The Government are abusing Parliament to get it to say that and that is why this is fundamentally unconstitutional.

So, while I will go into some of the detail, I am not going to go into every single point, because that would be to fall into their trap of inviting us into the weeds so that we do not see where we are going. I will have to look at some of the detail to show that some of the principal things said are nonsense; to debunk the theories but we cannot lose sight of the main point.

And the main point, Madam Speaker, is that it would be wrong as a matter of constitutional principle for this Parliament to pass a motion censuring the Principal Auditor in relation to his conduct, because that is a matter constitutionally only for the Specified Appointments and for the Governor, or to censure the Principal Auditor for his report which he is duty-bound to lay without any exercise of direction or control. And the motion seeks to do precisely that, not just to criticise parts of it, but to set aside parts as unconstitutional and it purports to exercise direction and control over the Principal Auditor, which, when he is beyond our control, that would be fundamentally wrong. And that is why this is a constitutional outrage, impermissible under our laws, impermissible under our Supreme Constitution.

Because Madam Speaker, boundaries are important, not just in life, in politics, and indeed constitutional boundaries are important.

As I say, criticism and correcting the record, okay. We may disagree, but okay. We accept this is a human process. He may have got things right; he may have got things wrong. So, pointing out issues, okay. Trashing the public officer personally and with such vitriol is not, because ultimately there needs to be an element of mutual respect between the Government and the Principal Auditor.

The boundaries are there, not just because there has to be mutual respect. The boundaries are there because there needs to be balance between the constitutional structures, between the constitutional institutions. Because Madam Speaker, if institutions and protections in the Constitution get trashed, then there is nothing holding the Government back ever, and nothing to protect the citizen from excesses.

The Auditor is the watchdog of the people's money and, Madam Speaker, this is the tip of the iceberg because if it is done here, it is a sign of intent for others and the future, and a disrespect of the institutions.

And looking at something unrelated, I came across the distinction on boundaries that a previous Speaker of this House had given in an interjection with the Father of the House many, many years ago. I mean, this is, I am trying to do the maths on this, but this is almost 50 years ago. But in an exchange about a report that was the subject of comment in this House in late 1976, the hon. the Father of the House got up to make a comment on the report and the Speaker, who at the time must have been Sir Alfred Vazquez, says:

I will allow you to make remarks on the contents of the report, but I am not going to allow you to censure the person who has made the report on the excuse of replying to the Chief Minister.

Then the hon. the Father of the House says:



340 I am not censuring any person in particular, what I was censuring is that a report should have been require.

And the Speaker says:

We understand each other, you are quite free to say what you like on the contents of the report.

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Clearly the tenor there was, the boundaries were, do not censure the person, say whatever you want, within limits, but this is not what is happening here, Madam Speaker. This is not what is happening here. For the reasons I have indicated, this goes far beyond that, far beyond those boundaries that is set by the Constitution, as I will go on in now greater detail to deal with.

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Because there are a number of, I suppose, emerging themes here during the last seven and a half weeks of having to listen to what was a monologue and now no longer is.

There is a false premise, Madam Speaker, that this is somehow about correcting the record, but of course this goes well beyond it. The reasons I have indicated, this goes well beyond the correcting the record because of the language of the motion, that there is a massive distinction

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This has become, Madam Speaker, it had all the hallmarks of it, but as we have gone forward, I mean the Chief Minister said, I think on day one, that he was going to identify nine issues that he was going to speak to, we now look at the amendments, there are now 13. He got so excited that he enlarged the list as he went along. This has become a kangaroo court, Madam Speaker, with the Chief Minister donning different roles.

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There were stages that he was a prosecutor, there were stages that he was his own defence counsel. I remember someone, a senior lawyer, telling me that if you get a dog you do not bark yourself. I am not sure he was doing himself favours trying to defend himself.

In the most one-sided kangaroo court ever, I mean this, the features of a kangaroo court, anyone will understand what I am saying, but the features of a kangaroo court is that these are predetermined verdicts, that there is bias and partiality, that it is an irregular procedure, that there is no judicial authority, that there is a lack of due process, and that there are harsh outcomes. Well, you know, here we are.

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The motion reads like a charge sheet against a constitutional officer. It goes well beyond what is permissible, but it reads like a charge sheet. The learned Chief Minister accuses the Principal Auditor of running a kangaroo court style operation in the formulation of his report but then wheels out the biggest kangaroo of all of them. Everyone can see that the motion is probably predetermined unless we turn some of someone on the other side.

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That is why they have come here in this way, because this is safe territory. If you control the process, if you have got an inbuilt majority, if you do not have the inconvenience of backbenchers to negotiate with, well then of course you can get, you can say whatever you want, and you can trash the constitutional protections, but it is a dangerous game, Madam Speaker. It is a very dangerous game for them to play, be playing with the Constitution in this way.

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We have come a long way for them to trash the constitutional protections in this way just because it is an inconvenient report. Would it not have been easier for them to say, I do not agree with certain things, but look, that is his opinion, we are going to move ahead, we have got the business of Government to run. No, instead we have had the parliamentary calendar dominated for the last seven and a half weeks with this attempt to hijack Parliament to pass a motion which is unconstitutional. We have got important business of Government or of the Parliament to be done, there is a backlog of 350 questions waiting to be answered. The people who have concerns, who have come to us, and we have tabled questions in this House, are not getting answers because of the way that they are behaving. But that is what they want, because intransparency has now become their lifeblood, their lifeblood.

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So, in this kangaroo court, Madam Speaker, there is extreme hyperbole and exaggeration. Gibraltar has never been more at risk than when the Principal Auditor uttered something in sub-

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paragraph 3.5.6 of this report. Well, I can think of a few examples, Brexit, joint sovereignty, Covid, I mean, you know, let us tone down the language on that side of the House.

Because this is a deployed smokescreen, Madam Speaker, to hide what is going on, to hide the excesses, to soften the excesses, to delay, to delay and repeat, that is what they do. The ultimate  
 395 question remains, Madam Speaker and people will want to ask themselves, did the things that the Principal Auditor complain about, did they actually happen? You know, was the overtime paid? Yes. Were the *ex gratia* payments made? Yes. Where is the 50 million? You know, are the things that are pointed out in that report, did they happen? And some of them is a mixture of the undenied and the undeniable and those that have had explanations by members, by the Hon.  
 400 Chief Minister on that side, some of them are explanations that are castles in the air.

And so, in the time available, Madam Speaker, you know, I am not going to pick up every single strand of exaggeration or confusion. There were many. Indeed, that is part of the tactic, to send everyone down a rabbit hole, to chase false leads, to confuse by sleight of hand.

The task will be to try to retain the discipline of discerning the real issues and keep on that road  
 405 to understand what is going on and what is at stake. And what is going on, Madam Speaker, is that this is an assault on the Constitution, an abuse of this Parliament, and a trashing of a constitutional officer. This is a self-serving *par excellence* amendment to a motion. The motion itself was self-serving. It is at its heart something that should not be done and entirely unacceptable.

Madam Speaker, no amount of whitewash is going to mask what is going on here. This is a  
 410 shameless political attack on a respected career civil servant who, before April, was respected by both sides of this House. And now, suddenly, a few weeks later, because they do not like his report, he is now a politically partisan, heinous individual. Well, people will see through all that when I go through the detail of what I am about to say and people will say, well, to what end and why? You know, why are they so worried? Why are they kicking this up now? What have they got to worry  
 415 about? Well, what they have got to worry about is that there are another six years of disclosures to come and maybe more value-for-money reports into different areas of Government that have not been untouched.

This is a bit like the Carlsberg advert. There may be parts of the Government that have not yet been reached by the Principal Auditor, and maybe that is what they are concerned about because  
 420 these protections, Madam Speaker, are there for the people. They are not there to be wrecked by the servants of the people - they are servants of the people.

Madam Speaker, the functions of the auditor are to do precisely what he has done. To audit. To control. To critically look at value-for-money. To assess. To recommend and yes, to criticise when he sees something wrong. It is absolutely right that he should raise these things. I mean,  
 425 after all, surely, we are not in the days of Caligula, who worked to undermine the checks on his power, was erratic and wanted to make his horse a consul. I certainly do not think the Chief Minister is Caligula... (*interjection*) Or Jonathan Scott a horse, says the Chief Minister, not under his breath, over his breath.

This has been an attempt, Madam Speaker, at legalistic confusion by the Chief Minister and I  
 430 regret that I may have to set the record straight by getting into some of the law. But legalistic confusion, heavily manufactured and loaded.

But of course, this is not being tested by anyone. Maybe it was a dry run for the Chief Minister's return to litigation. Maybe that is what this has been over the last seven and a half weeks. He understands, as he says, he is leaving, and therefore maybe this is his dry run of getting a shot in.  
 435 I can tell him that he would have been much more tested than he was over the last seven and a half weeks if he had purported to present those arguments in a court of law. Because today, there are no judges to probe or to ridicule his arguments. And if he is so confident, Madam Speaker, why does he not go to court?

I mean, there was a moment, I think it was day one, I lost track, there was a moment when he  
 440 said, I had to stop a Minister. I had to stop a Minister who wanted to take judicial review and if we had done it, we would for sure have won.

I mean, that is the height of hubris, surely. The height of hubris because it is important to understand what this is and what this is not.

445 This is a parliament. It is not a court of law. I know he is trying to create it into a court, but it is his kangaroo court only because if they are so confident, well, then maybe they should go to court to set aside parts of this report. If he has got this opinion that he keeps talking about, well, maybe he should go to court. Maybe they do not go to court because they know they would lose. Because, well, I mean, at the end of the day, we will have a look at his lawyer, but I do not think his lawyer is a constitutional lawyer or a constitutional expert. He is still less a constitutional expert. I mean, 450 as far as I can see, he is some kind of tax lawyer or financial crime specialist. Well, I mean, at the heart of this, this is about the Constitution of Gibraltar. That is a bit like saying, I need a heart bypass, I am going to go and see the knee specialist. Well, you might as well have asked the butcher for constitutional advice. So, this is not a court of law.

455 All this is a fake, selective, legalistic approach, which is out of place and it is not either, it is not either, a review panel of auditors. Not that, of course, the Principal Auditor could be reviewed by such a panel, because if he could be reviewed by such a panel, section 74 of the Constitution, would have a subsection 4. That would say the work of the Principal Auditor can be reviewed by a panel of auditors at the request of the Chief Minister or the Leader of the Opposition or the Parliament. It does not say that and therefore, this is not a panel of review either.

460 So, when the Chief Minister says that trust is broken, trust is broken because of them. If there is a breakdown of trust, Madam Speaker, it is because of the antics of the GSLP Governments. From presiding over waste and abuse, their opaque financial transactions, the political favouritism, the cronyism, the erosion of checks and balances, the intolerance to criticism or abuse of its power.

465 These antics manifest themselves from the trashing of the auditor to, yes, the grandiose motorcades disconnected from reality or the evidence of conflicts of interest in public contracts and payments. And I know he got a bit sensitive with the grandiose motorcades in one of his interventions. But yes, they were, in our view, pretentious and gave that appearance.

470 You know, you do not need to demonstrate that we are not the same as Mayors of *La Mancomunidad*. We are not. It is a constitutional fact that we are not the same.

The real issue, Madam Speaker, is he is so self-absorbed and his Government with the trappings of power and he said, well, if we were on that side of the House, we would have organised that. Well, Madam Speaker, maybe he is actually horrified at the idea of a car-share when we are in Government.

475 But I am not sure if he is worried about that. But if he is worried that he is going to share with me, you know, he can always share with his lawyer, who he seems to get on really well with nowadays.

480 Madam Speaker, trust is broken because of their shameless character assassination of this Principal Auditor. Trust is broken, Madam Speaker, because of their shameless character assassination of the Principal Auditor. Do they remember that only a few weeks ago they praised him? They said that he could say whatever he wants. In a press release of the 17th of April 2025, the Government said:

485 The office of the Governor and His Majesty's Government of Gibraltar would like to take this opportunity to thank the outgoing Principal Auditor, Mr Tony Sacramento, for his many years of dedicated public service.

Well, either that was a lie, or a few weeks on, because they do not like the report, they turn on the guy like they turn on so many people.

On the 23rd of April, a few days later, they said:

490

The Socialist Liberal Government...

that is the GSLP, the Gibraltar Socialist Liberal Party,

495 ...will continue to uphold and respect the independence of the office of the Principal Auditor and provide full cooperation in ensuring the audit of public finances continues in line with established practice and statutory responsibility. Furthermore, this GSLP liberal administration has demonstrated a greater commitment to transparency and accountability than any Government in Gibraltar's history.

500 I am not sure how he had the gall to write that, but fine, that is the press release. And then the Government's press release carries on:

505 The office of the Principal Auditor must be protected from party-politics, and the Principal Auditor must be free to carry out his statutory responsibilities without being dragged into the political arena. He must be free to say and not say what he wants, when he wants, and should not be subjected to public statements by politicians suggesting one view or another as a better position.

510 Surely, he must regret what he wrote just a few weeks before. The problem Madam Speaker is that the Chief Minister forgets what he says, well, I do not think he forgets what he says, he is a clever guy, I have said it often enough, I value highly his intellect. So, he knows what he is doing.

515 The problem is that he creates, either these statements were insincere at the time, or they turn on the guy because they just do not like what he says. Just a few weeks later, this was the 23rd of April, Madam Speaker, a month before he finishes the report, three months before it gets published, and suddenly he becomes the subject of this motion, trashing him, calling him all names under the sun, and saying that he is politically biased. The guy who they thanked for his work, the guy who they said should be free to say what he wants, when he wants, that is what they said just a few weeks ago.

520 I mean, this is incredible. I really, every time I come to the House, Madam Speaker, I try to resist the temptation of mentioning George Orwell at all. I was nearly there on this occasion, I nearly was able to contain myself.

But then, Madam Speaker, I saw what they wrote in their 2023 manifesto. And in their 2023 manifesto, it says, under a big heading, "Enhanced Powers of the Principal Auditor", it says:

525 We are committed to protecting our independent civil servants and public sector employees from political interrogations by the Opposition. We also fully support the Principal Auditor, who operates independently under the Constitution of Gibraltar. In this regard, if elected, we will bring legislation to Parliament to enhance the powers of the Principal Auditor on terms we have already consulted with the Auditor and his team.

530 Not only do they not bring the legislation, but they also now indicate they want to gag the Principal Auditor. Not only do they not protect the Principal Auditor, or fully support the Principal Auditor, who operates under their, in their manifesto, independently under the Constitution of Gibraltar, they now seek to trash him, and they seek to erode those constitutional protections.

535 Madam Speaker, their 2023 manifesto is a monument to double-speak and insincerity. It is layered over their statements just a few weeks ago, which are obviously in deep contradiction with what is going on today, here.

540 Madam Speaker, it is incredible that we have this situation. We have seen, Madam Speaker, over the last few weeks, and days within those weeks of missing the point. Again, because I think the Chief Minister is a very intelligent, capable individual, I believe he does so deliberately - It cannot be an accident. There has been an attempt at confusion and smokescreen. An invitation to, over the last seven and a half weeks, to come and stare at the weeds and stay there, do not look up because you might see the field of manure around you. Stay in the weed.

545 There have been seven and a half weeks of an invitation to get into a forest of paper and minutiae, to confuse and distract from the festering swamp all around us and the examples of waste and abuse, not just in this report, but in the previous report, and in other things that are all around us, festering. So, accidental or deliberate? Well, deliberate, probably. To mask those conclusions, to mask the growing litany of issues, and to mask the real points of this motion, Madam Speaker.

And so, the features over the last seven weeks, kangaroo court or star chamber, choose what you will, they are both the same. Government, judge, jury, executioner. We know there is an execution at the end of it. It is only a question of time, unless one of the Ministers on the other side turns.

So, enter a process, imagine as you will, enter a process that is entirely predetermined because of the way this parliament works, because of the way that they have an inbuilt executive majority. So, we know there will be a verdict of guilty, but of course we say that verdict of guilty will be not worth the paper it is written on.

There were stages when the Chief Minister went into detail, like things like, so he produced the audit rules of a National Audit Office. And he says, well, he came up with an argument that somehow they are applicable to standards in public audits in Gibraltar. So we say, as we will explain, they are inapplicable, they are plainly inapplicable to those matters. And then there are things that I will mention, if I will, at this stage in overview, but I am going to get into the detail of some of these as I go along today.

On the Public Accounts Committee, just because the Principal Auditor has a view, it does not make him biased. It is a view on an audit issue, it is a view on a parliamentary issue, it is a view that can make his function work better, it is a view. They do not agree, we have a different view, it is a view, it is not something that is worth condemning, censuring in a motion, it is a view, that is all it is. The Principal Auditor, does not have the power to bring anything about, he makes recommendations, that is all.

As I say, this is the aggressor complaining that the Government is the victim and bemoaning the standards that are applicable today and that is why he said, at one point in his intervention, that they were going to pass a law to make it clear even though it was clear, according to his leading counsel it was clear because it is convenient to argue it that way that it is clear and therefore you do not need it, but I am going to do it anyway. That may suggest that maybe it is necessary. But anyway, that aside, he has had 14 years to put these reforms in place. And anyway, by the way, his 2023 manifesto says he was going to put the reforms in place, and he would agree with the Principal Auditor. Maybe different ones.

The Government has a duty to cooperate with the Principal Auditor as a Government. And of course, it is obvious from the exchanges with the Principal Auditor that there is an element of backwards and forwards in the normal way, with public officials and the Principal Auditor.

Our gripe is not with those public officials, by the way. Our gripe is with the political Government. Because it is the political Government that has brought the motion to this House. It is not the civil servants that are bringing this motion to the House, it is the political Government.

So ultimately, are things said in the report that are untrue on spending, were these things spent or not, were the payments made? That is one of the issues. Madam Speaker, no one is above the law or accountability. So, no one is saying that they should not correct errors.

But the issue is, as I have said, that the Government are going well beyond that to trash the post-holder, collapse the constitutional protections, and destroy institutional confidence. Abusing Parliament along the way.

It is not the Principal Auditor who has risked Gibraltar's reputation. That is akin to accusing the person who reveals abuse and wrongdoing as being the perpetrator. And perhaps they should look closer to home.

And, as I have indicated, Madam Speaker, it is not wrong to correct the Principal Auditor. It is wrong to then take it upon themselves to come to this House to make the judgement in the name of Parliament. Because that is what this motion would do. It would say, this is not the Government doing it. This is why they are here. Because they have gone from not being satisfied with trying to correct the record in an unacceptable way, by the way, because they have done so in language that was unacceptable. They did not need to trash the Principal Auditor if they wanted to correct factual issues. They could issue press releases and say, for the following reasons, these things are not the case.

But not content with that because that bears the letterhead of the Government , they have come here because this now bears the stamp and seal of the Parliament.

So let us then say it is not just the executive saying so, it is the Parliament that is rejecting the report or parts of it. It is the Parliament that is censuring the Principal Auditor. Well, that is absolutely, in our view, unacceptable.

Madam Speaker, they have taken advice from Jonathan Fisher KC, who I looked up, and I saw from the amendments that they intend, in the counter-report, the famous counter-report, they are going to publish the report. Well, maybe they should publish the instructions as well, because it would be important to understand what Mr Fisher has been told, in respect of which he has replied in that particular way. And it would be interesting, has he been given the whole story or just some of the story, maybe a loaded story, a politically partisan story maybe.

Well, let us see what we get with this unacceptable counter-report anyway. That is not worth the paper it is written on. If the motion is not worth the paper it is written on, the counter-report is worth still less. But Mr Fisher, who I looked up and saw his personal profile, it says:

Jonathan Fisher KC is a leading barrister specialising in financial crime and corporate crime cases.

Well, maybe he has got the right speciality. Maybe his gut reaction was to go for that speciality.

He is recognised as one of the UK's most experienced white-collar crime specialists. He has got experience in tax and regulatory tribunals. Jonathan has a strong advisory practice in all types of financial crime and corporate crime cases.

OK, so he is a financial crime, corporate crime tax guy. Not obviously a constitutional expert or audit specialist. Again, I revert to my story of before. You need a heart bypass, you go and see the knee specialist.

Well, maybe by the time the Chief Minister replies at some point in this session, he will pluck another legal opinion out of a constitutional expert this time, given that the heart of this debate is constitutional. I say that in jest because I am not commending to him that he should spend any more of the taxpayers' money in this charade. I am not. Let us be clear.

Madam Speaker, as I was flying back from my daughter's graduation, thinking I was landing to reply, the day after the Chief Minister started, because that was my understanding of our exchanges, I may have got it wrong, I read the Chronicle on the plane. I was struck with the fact that he had identified in day one that he was going to make nine points and that he was going to expand on them. But of course, as I already said, that nine points, through hubris, has grown to 13. Maybe he got so excited as he was going along the way, or maybe whoever was drafting his speeches, helping him, got really excited and added points to them.

Madam Speaker, all this is, is an attempt to give this a semblance of respectability. A semblance of respectability to a wholly predetermined process on that side of the House. Trying to create a different image because the Government suffered significantly after the publication of this report, because of the public opprobrium, rightly so, because of the issues that were raised in this report. And this, now, is an attempt to, how can we make sure we try to get a crack at persuading people? Not sure it is working, by the way, but time will tell. But, how can we do it? So, let us make sure we, let us organise a, someone came up with a brainwave in Cabinet one day, let us organise a motion which will say whatever we want it to say, set aside the report, now set aside parts of the report.

Let us come up with our own report. Great idea, Chief Minister. What a whiz! And let us come here and pass the motion. And how can we do it to make sure that we get all the media time possible? Well, let us make sure, Chief Minister, that you do it in stages, that you speak for a couple of hours, then you stop, make sure you stop from time to time.

And dominate the press, the written media and the TV every day and here we are, two months  
650 after we started having our first say on this issue. Well, Madam Speaker, time will tell as to whether their efforts to try to present this in a different way have worked.

We say that the issues are so clear and the outrage so plain that the right-thinking people of Gibraltar will reject the Government's efforts to masquerade and trash our constitutional protections. And time will tell to prove that.

655 Madam Speaker, that the report risked damage to Gibraltar's reputation was again an exaggeration. I mean, a lot of the things that they were saying are just impossible to fact-check because of the way that they are presenting the legal opinion. It is going to be published, apparently, in due course.

But why is it not published now, with the instructions, so we can fact-check what it said?  
660 Because if it is so obvious, well, let us have a look at it. And the Chief Minister says, it cannot be a coincidence that the Principal Auditor supports the Public Accounts Committee.

Well, look, ultimately you either support the Public Accounts Committee, or you do not. There are two views on it. I mean, if the Principal Auditor happened not to think that there should be a Public Accounts Committee, I certainly would not be getting up and saying, "Aha! This shows that  
665 the Principal Auditor is politically partisan to the GSLP." It is just, look, it is either A or B. It is a legitimate view, one way or the other.

That is all it is and to elevate it to this level is completely unnecessary. At the end of the day, while they are in Government, it is not going to happen. So, calm down. You know, and if it was such an aberration that it was politically partisan and worthy of a motion, well, why did they not  
670 say so in the last report?

We debated this last report last year. They did not say this, we debated the Public Accounts Committee. My hon. Colleague, Mr Clinton, presented a motion on the PAC. Well, why did they not amend it to say it is absolutely heinous and politically partisan for the Auditor to have said that there should be a Public Accounts Committee? Well, this is convenient as part of the emerging  
675 modern narrative. You know, in history, students of history can tell you, the Hon. Dr Garcia and I, who studied history at university, there is sometimes an element of revisionism in history. And, you know, last year, no, that was not the point. But now it fits with the narrative, the post-April narrative, because pre-April he was a hard-working civil servant who we had to thank or who could say whatever he wants whenever he wants. But post-April, no, post-July, there is a need for revisionism of history. And in this revisionism, he is a heinous, politically partisan individual who is obviously supporting the GSD. Well, of course, it is convenient. That is why it was not said last year. Say it this year. That is the issue.

All of this is just a sharp tool Madam Speaker, to scare people off. But worse still, to scare some people off, some people who hold important posts, so that there is less accountability, not more.  
685 So gone are the days of the new dawn, if we ever had one. We are now firmly into the night and the new dark.

They say that there is a fundamental contradiction between agreeing the accounts and then making the value for money criticisms. But, Madam Speaker, first of all, there is no contradiction. They are two very different things.

690 You can look at the accounts, form a view on them, and then you can produce value for money reports on specific things which you may have views and recommendations on, some of which they accept, some of which they do not accept. If you agree with me, I accept it. So, this motion actually says, I mean, it is incredible, that to the extent of the part on which we are agreed, that the Principal Auditor agrees with me, that is okay. So, if you agree with me, you are a good guy. If  
695 you do not agree with me, politically partisan, terrible individual, poison.

Madam Speaker, it is not a fundamental contradiction. They are different things and indeed, not only is it not a fundamental contradiction, it is precisely evidence of the reverse of what they are asserting because rather than this producing evidence of bias, it is evidence of neutrality, surely.

When a Principal Auditor produces a report in which he gives approval to the accounts, but in aspects of value for money makes recommendations and criticisms of the Government, it is a balanced report. In some aspects of the report, it is a very long report. In some aspects of the report, he acknowledges information flow to him, he acknowledges that things have been done in reply to him, to his enquiries. He acknowledges that there has been progress, that he has also made other criticisms. That is neutrality that is not bias. If it was bias, everything would be bad.

So, that completely collapses their arguments, and this is not new. There is a track record here. This is not this report. This is why I am saying there is an element of revisionism here because they did not like this one. For whatever reason, this one made them really angry. Last year, there was another report. So, this is not the first time that things have been said. There has been another report where other things were said.

That report was produced, the 2016–2017 and 2017–2018 reports were published in January last year. It was a delayed report, which was 900 pages long. There was a delay to that, which he explained. But he said he had issued his findings in a very extensive report, which ran to 903 pages, covering matters such as departmental audits, arrears of revenue, value-for-money audits, obstruction of obtaining information on Government companies, overspends on the music festival and the Gibraltar Savings Bank. And there are exchanges with officials about lack of information in relation to £25 million, for example.

There is quite a big segment about the engineered delay on why these reports are taking so long. Now, the Chief Minister may not agree with that view. And he explained why but the fact is, the Principal Auditor has a view. There is nothing wrong in him saying it. He is the auditor. He is allowed to say, I remind him, according to him, not so long ago, whatever he wants, when he wants. What he said was that, in effect, the Government were, as we said at the time, blocking financial accountability by systematically delaying taking certain legislation. The law, Madam Speaker, provides that the Minister of Finance, the Chief Minister, can extend time for the delivery of accounts to the Principal Auditor.

As reflected in last year's report, the Chief Minister extended the time until the Bills for Supplementary Appropriation for both financial years had been passed in Parliament. By subsequently not taking Bills in Parliament until July 2021, the Government blocked and delayed financial accountability by years. So, to give a clear example, the Supplementary Appropriation Bill for 2016–2017 was first published on 12 January 2018, and was not passed until three and a half years later, in July 2021.

That resulted in massive delays to the work of the Principal Auditor, and was the major reason why we only got to hear of the eyebrow-raising issues last year. So, it jumped two General Elections, 2019 and 2023, through that delay. The Supplementary Appropriation Bills for financial years 2019–2021 and 2021–2022, so we still do not have the Principal Auditor's report for those years, they were initially published on 17 February 2022 and 18 May 2023, but they were not proceeded with by the Government before the 2023 Election. So, they had to be re-Gazetted after the election, and they were re-Gazetted.

Madam Speaker, last year's Principal Auditor's report, and this goes to the theme that this is not isolated, and that is why it is relevant to these amendments, not isolated, there were complaints about the £4.8 million contracts for Meddoc that were awarded, that raised, what we said at the time, issues of good governance and transparency, because between 2015 and 2018, Meddoc were awarded three contracts to supply healthcare and elderly services to the GHA and the Care Agency. Those contracts were of a value in excess of £4.8 million. In the case of one of those contracts, there were variations that enlarged that contract to an additional value of more than £900,000. After an extensive investigation, the Principal Auditor concluded that he could not say that Meddoc had been the most competitive bid, and that there had been a breach of tendering rules, and he said why in his report, and that became the subject of questions in this Parliament in the following months.

There was raised in that report the double invoicing of the Europa Sports contract, a contract to finish, to renovate a tunnel under the Europa Sports Hall, because it was awarded outside the



tender process, and was then not supervised properly. So, the conclusion of the Principal Auditor in a spot-check value-for-money audit was that it was badly supervised and revealed a lax regime, because there were duplicated invoices that led to the contractor being overpaid, because the invoices had been paid twice. Well, thank God for the Principal Auditor looking at these things for value-for-money. He said that there was insufficient technical supervision or approval of the invoices submitted, that most of the invoices were approved by the Chief Minister personally, that there was no formal contract governing the project, that neither the GSLA, the Housing Ministry, the Sports Ministry nor the Office of the Chief Minister had contractual oversight, scrutiny or responsibility.

This was not an isolated experience, because there were other examples in the report of a similar nature, of lack of supervision.

There were concerns expressed last year in relation to the stock-taking at Pathology, because of a total of £4.5 million on purchasing lab equipment, scientific apparatus and solutions and reagents and testing equipment and the Principal Auditor concluded that there was a lack of controls that could lead to the waste of taxpayer money.

Now all of these things were said in his last report. So we simply do not buy that the... and he was not... they may have had a ding-dong with us about whether certain things were right or wrong, they may have corrected what they viewed as issues that needed correcting in answers to questions in this House, but what did not happen was a motion in this Parliament going the way that they want to go today. And that is the big difference, Madam Speaker.

If they really do believe that somehow the Principal Auditor has misbehaved, well, look, the Principal Auditor is not above accountability. He is subject to discipline by the proper entity and the entity that has disciplinary control over him is not the Government. It is the constitutionally created Specified Appointments Commission in consultation with the Governor. Not them. It is not for censure for him here. Or if they thought that they had some legal ground to set aside part of the report, well then go to the court.

But do not create a circus, a sideshow here. Where the Chief Minister plays the process and plays the calendar because he rarely tells us when we are going to sit. It almost becomes a favour to be told when we are going to sit. Selects the jury and the judges and drafts the verdict and then pays the prosecutor for self-serving advice so that he can stand up in this House. That is what he does. That is all that this is. Because, Madam Speaker, the real point of all this is the attack on the auditor. The unprecedented hatchet job.

A Principal Auditor with a long track record in public service who has no chance to defend himself because senior civil servants, in my experience, take very seriously that they should sign the Official Secrets Act. They take very seriously that they are not going to make public comment on things. Even when they retire. It takes a lot for a senior civil servant, even after retirement, to say something publicly. So he knows that the Principal Auditor is not going to defend himself. He cannot defend himself. He is not here in this House and yet he accuses him of all these things.

And by the way, let me just say now, not at the outset, but into my speech, that this nonsense of the Principal Auditor being politically biased, I am not sure I have ever spoken to Tony Sacramento. I mean, I may have in my younger days when I was on that side of the House. It may be that I came across him and he will forgive me if I cannot remember but I certainly have not sat down to speak to him. I do not have a relationship with him. I have not spoken to him about any of this. Indeed, I would absolutely make sure, now that I know that this issue is here, not to speak to him about these issues. And yet, somehow he is politically biased, I do not know how he votes. I have no idea.

So, this is an attack which is manufactured for political ends and inconsistent with the immediate past. They can congratulate Mr Sacramento and indeed, what the Chief Minister even said on the famous "Viewpoint" programme when he was somewhere else, because he did say that some of the elements of the reports were unobjectionable. Mr Sacramento has been subjected to some incredible language to serve their ends. So, to serve their ends, Madam Speaker, they have been willing to deploy the most reckless of language on a Principal Auditor, a

career civil servant they congratulated for dedicated service six weeks before this report, to attack his impartiality, to imply that he has views like the Opposition, carrying out an entire hatchet job in the darkest ways of the GSLP when they are the ones doing it as a classic distraction.

Madam Speaker, I have tried to make a note of all the hyperbole that we have endured in the description of Mr Sacramento or his report. I confess I was running out of paper because the list became so long but: ludicrous; utterly disreputable; designed to contain allegations but not explanations; shocking; improper insinuations; scurrilous; idle and unsubstantiated; misleading and unbalanced; risks defaming officials by alleging lack of propriety; democratically despicable; poisoned; "jaundiced instrument" that is the report; an element of collusion; inhuman; improper and unbefitting; unforgivable; witch hunt; heinous; blatant discrimination; fundamental attack on our democracy; worst possible witch hunt to pursue those with an inclination to the left; attempt to mislead the House; huge risk that the report created for Gibraltar as a jurisdiction; a breakdown of trust; unconstitutional; hurts the fabric of our nation; and undermines the trust and faith in institutions.

Madam Speaker, the hyperbole was at such a level of hysteria that I struggle to think, and I have not been able to find, that any public officer in our history has ever been described in this Parliament by an elected member of this House in that way, let alone by a serving Chief Minister. What a disgrace, Madam Speaker, what a let-down for public servants, the hard-working public servants who have got to hear that, who hold Mr Sacramento in esteem and respect, who know what he is, how dangerous it is for them to receive that subliminal message, that if you turn and disagree with the Government, the Government will use all its weight and power against you, and, ironically, your own resources by using taxpayers' money to instruct expensive lawyers against you. What a disgrace, Madam Speaker, that we are in that kind of Gibraltar, because beware, Big Brother is watching you.

Madam Speaker, in a famous court case which your Ladyship, Madam Speaker, will be familiar with, Lord Reid said during a hearing that a judgement which results from an unfair trial is written in water. This motion is written in water, because this is a kangaroo court. Let us be clear. It is at times confusing, because we have the language of having a debate, but not really, because we know where this is going, because the motion reads like a charge sheet, and the language is one of a trial, really, because it is really, really accusatory and biased towards the Principal Auditor. You had the original motion that accused the Principal Auditor of bias, of transparent bias, and rejected the criticisms and the report itself, so the whole thing.

Now you have got an amended motion which still seeks to set aside parts of the report, now says we are going to produce a counter-report on our own, not sure how, but reads like a real charge sheet of things that they want to achieve, so misinterpretation of the Savings Bank. He is charged with that. He is charged with constitutionally unfounded and without statutory authority making recommendations. He is charged with making procedurally unfair defamatory insinuations against "Wildlife". He is charged with mischaracterising the housing allocation process. He is charged with not accepting how the reforms were being done in the industrial cleaners, or ultra vires views on the Public Accounts Committee.

Perish the thought that anyone should have views. I thought that was the attitude of Eastern European Governments, to chastise people for views - It is just their view.

The report comments about Government-owned companies are ultra vires, a policy intrusion, and then seeks to defend *ex gratia* payments in particular in relation to a number of individuals but ignores all the other *ex gratia* payments. It reads like a charge sheet. It is accusatory.

There were a number of instances when the Chief Minister used, commented or suggested that there were letters that proved his case. Not that this is a case, but to adopt that language. But if he says that there are letters that prove differently, why are they not produced and published? Now. Not with a counter-report, now. And the opinion and the instructions? Now, not with a counter-report. But in fact, this is entirely a kangaroo process, where he chooses the jury, the prosecutor, the judge, the conclusion is certain and the effect of a motion, Madam Speaker, is to condemn, censure, accuse. This is not about correction. This is about persecution because

this is the only place where he is certain of a verdict. There is no other place in Gibraltar where he is certain of a verdict. Or at least certain, in inverted commas, depending on whether a Minister sees the light. But, assuming they do not, it is the only place where he is certain of a verdict. So, if there are all these letters let them be published, and so on.

860 Madam Speaker, some of the matters that we will get into, as we go on, just show a legitimate disagreement, a legitimate view, a legitimate comment by the Principal Auditor on important issues which are a matter for him. So, in particular, when we get to the Savings Bank audit, and so on, he has a legitimate view on these issues. He is the Principal Auditor. When we come to look at the detail, we will all see how he is right to be able to take a view on the Savings Bank and he is  
865 expressing legitimate frustration at delay. He may have disagreed with Madam Speaker on issues of timing or tabling.

Again, you know, it is a legitimate view. Both, in different roles, Madam Speaker, are called upon to express views within respective domains - that is not worthy of censure, It is a view - that is all it is.

870 Madam Speaker, the Chief Minister indicated just a few moments ago that he would, I think, suggest to take a ten-minute recess. I think now would be a good point, if he wanted to move that adjournment.

**Chief Minister (Hon. F R Picardo):** Madam Speaker I am grateful to the Leader of the  
875 Opposition I have absolutely no intention of seeking to intervene in the speech I am dealing with it as if it were a budget speech but I would move I was going to suggest a 20 minute break because there is something i have to do but I would suggest that we do it now and that we recess for 20 minutes and return at 5.40 p.m.

880 **Madam Speaker:** All right we will return at 5.40 p.m.

*The House recessed at 5.17 p.m. and resumed its sitting at 5.41 p.m.*

885 **Madam Speaker:** Yes, the Hon. Leader of the Opposition.

**Hon. Dr K Azopardi:** Thank you, Madam Speaker. I am going to get into the weeds, if I may now, of the report. And first, worth that we consider what the report says and what the main conclusions of the report are.

890 Now, that report was published in early July. And what the report showed in headline form was payments or the award of contracts to persons close to the GSLP in circumstances of deep concern to the auditor raising issues of political patronage or favouritism or the perception of political advantage. A number of questionable *ex gratia* payments, unexplained and unjustified in the auditor's eyes.

895 He described the actions of the Chief Minister and Senior Officials as unconstitutional or improper in some respects, in particular respects. He described a culture of obstructionism of the auditor and failures to respond to requests for information. He was critical of massive, poorly controlled overtime, breaches of tendering procedures, weaknesses in controls of Government contracts, opaque and unaccountable spending of millions of pounds, poor value for money and  
900 irregularities in or seemingly arbitrary decision making.

That was the thrust of what was a long report and a number of value for money sub-reports in that Principal Auditor's report that highlighted those conclusions. So, Madam Speaker, very quickly after that report was published, literally three or four days later, the Government went out on an onslaught to the Principal Auditor and we highlighted equally in our own press remarks  
905 that weeks previously they had praised the Principal Auditor.

But there were a number of issues that were raised and some of them the Chief Minister has given explanations about. So, for example, there was that payment of £260,000 plus legal costs made in 2022 to a GSLP executive member to settle a claim, which the auditor recorded in his report, was one where public officers thought there was a defence to and against the backdrop of his concern that claims submitted for unrelated overtime had numerous anomalies. He went on to say that some of the claims should not have been entertained.

He highlighted payments made to the Director of Media. He highlighted offers of appointments to the GDC of an individual closely related to a Government Minister. He raised issues of tendering in respect of a number of contracts and in particular used the phrase in relation to one that there was a perception of favouritism or corruption that could be created. That could lead to loss of trust in the procurement process.

Beyond all that, Madam Speaker, what we said at the time was that, of course, this is not isolated. Remarks and recommendations have been made before, and it has been our longstanding view that there need to be much tougher controls on conflicts of interest and on whether contracts can be awarded to certain individuals close to governing political parties. We say that's necessary because we need to ensure a tighter regime on the eligibility to tender and award of high value contracts. This should be open, conflicts declared and tender procedures followed.

It is, as I say, our longstanding policy and equally there is a similar need to adopt more robust protocols on the grant of ex gratia payments or settlements to persons closely connected to the Governing Party. Again, that would be basic good governance, Madam Speaker, because that would improve existing controls. When making payments or entering into settlements or granting contracts to certain individuals or entities in which politically connected individuals have interests, the circumstances should be public and objectively justifiable.

There were a number of critical press releases against the Principal Auditor by the Government that had by then decided by mid-July to play the man and not the ball. There was a press release where the Chief Minister said all of this had even led to death threats against him. We said at the time that of course we reject that anyone should receive threats of that type, which are reprehensible in nature but what the Chief Minister or the Government should not do is park the causes for that at the door of the Principal Auditor like they did in July because it created exaggerated imputations by the Government which created a sideshow, not about the substance of the issues in the report but rather about other things.

Madam Speaker, the report talked about that £19 million a year in overtime that was paid by the Government and the concerns that the Principal Auditor had as to the controls and his view that there might be excessive or uncontrolled overtime. The report highlighted in parts of it that there had been a transaction where £50.5 million pounds had been transferred through various entities. We issued a press release at the time asking to be told what that was for. The Government responded saying rather blandly that it was invested but without telling us where that money was. Again, due to the efforts of the Principal Auditor, luckily people know that there was that transaction. What we still do not know, however, and has not been answered so far in the debate, maybe it will at some point, is where is that £50.5 million pounds, where has it been invested and for what purpose?

So, Madam Speaker, their lines of attack have been trailed in a number of press releases, and I am going to go into that detail. I think it was day one, the Chief Minister said, before he went into the detail of it, he said that they just celebrated their 50th anniversary. At least one party on that side had just celebrated their 50th anniversary.

Madam Speaker, this is a common phenomenon with Members opposite that you almost need to fact check everything that they say. Not even that is wholly accurate, or maybe it is, but who knows. You have got to even fact check their birthdays if they told you. If they told you their name was Fabian, Nigel and Gemma, you would still have to fact check. Because there was a tweet by GSLP social on the 21st of September, saying that they had celebrated their 50th anniversary as a

party the day before, the day before being the 20th of September. Well, the GSLP website on the 21st of September, the day after their 50th anniversary, had this - It says:

960 Our history. So, Joe Bossano founded the Gibraltar Democratic Movement in 1977. The GDM then became the Gibraltar Socialist Labour Party in 1978. And it has revolutionised and transformed local politics ever since.

Well, if it was 2027, then it is... if it is 77, the 50th is 27. If the GDM became the GSLP in 1978, it is 2028. So, how did the party happen on the 50th anniversary in 2025? Fact check.

965 Well, I looked at the website because I was intrigued, because as a slight anorak of history, I do remember Sir Joe Bossano. I was very young, but not that I remember him standing in 1976 with the Gibraltar Democratic Movement. I was only nine years old, but I do remember, as a student of history and as a political anorak, I knew that he had been the Leader of the Opposition for a short period of time, after the 1976 Election, the GDM got four seats elected. I remember at  
970 some point in my memory, I remembered that Sir Joe had once said in an interview that they were able to get four seats in the 1976 Election, having formed the party weeks before. I remember him saying that in an interview.

So, fine, out of interest, I went to their website. I did realise, however, in advance of this debate, that I went back to their website. The website no longer says what it said on the 21st of  
975 September. Now it says, Sir Joe Bossano founded the Gibraltar Democratic Movement in 1975. The GDM then became the Gibraltar Socialist Labour Party in 1977. So, kind of, let us make that align.

Well, so, and I thought to myself, how did that conversation go? You know, so over summer, I am having a really tough time with the Principal Auditor's reports, public or programme, nobody  
980 thinks good of us. What shall we do, guys? Well, let's throw a party, you know, because that will distract things. So, we need a bit of good news to distract. *"Un poco de sparkle, no? Vamos a ponerle the cake, let's bring out the cake with the candles"*. And someone says, *"pero, pero our website says that we're only 48 or 49, how can we celebrate the 50th anniversary?" "No te preocupe, cambiamos el website. No se entera nadie."* Well, fine.

985 The problem is you have got to fact check everything that is said from the Members opposite. It may be accurate, look, I do not know. The Hon. Father of the House will know. It does not really accord with my recollection that he said that the party was founded in a few weeks in 1976. But, look, if they want to say they are 50, that is okay. They are the longest running party in active politics today. I accept that Madam Speaker. Happy 49th birthday.

990 Madam Speaker. The Principal Auditor is both a Public Officer and an Officer of the Parliament. As Public Officer, he is appointed by the Specified Appointments Commission, and he is under the disciplinary control of the Governor on advice of the Specified Appointments Commission. He has powers to exercise in respect of the Government under Section 74, which I am going to go and look at now. And, of course, as officer of the Parliament, he has powers and privileges. Ultimately,  
995 this is not about whether he got something wrong or is identifiably wrong, but whether it is right to actually censure him in this way and to do what the motion suggests should be done, which we say is unacceptable and well beyond the pale of the response of a reasonable Government.

1000 Madam Speaker, before Tony Sacramento retired from the Service, there was a press release issued, which I assume was from the Audit Office, from the Government Service, which observed that he began his Civil Service career in 1975 and was transferred to the Audit Department in 1984, first doing a stint of 17 years in the Audit Department. After that, he spent five years in Treasury before returning to the Audit Office in 2005 as Deputy Principal Auditor and during that second spell, he was then seconded as Director of Social Security for six years. He then succeeded the Principal Auditor in 2017. So, by the time he retired in August this year, he had spent 50 years  
1005 in the Civil Service. Well, he had spent, it says, the press release, he spent 37 years at the Audit Office. I can only speak to the accuracy, reading as I am. He said that in addition to auditing the full range of public sector accounts, he had placed particular emphasis on value for money audit and that focus had helped to highlight where public funds could be used more efficiently. That is

part of his role. He observed that there was increased level of public attention on the reports, but that that was important to bring greater accountability and transparency to Government expenditure.

He said in that press release in April, that:

I am focused on finalising the 2018-19 report before I commence pre-retirement leave on the 1st of June.

So, when the Chief Minister said in one of his interventions that, well, he could have said that he was finishing his report, so that Public Officials were more responsive in some of the answers. Well, he did say, he said it publicly, the Audit Office said it publicly in April, that he was going on the 1st of June and intended to finish his report. So, I am not sure it was a secret, it was entirely in the public domain that that is what he was going to do.

Madam Speaker, Section 74 of the Constitution is the one that is most relevant to the auditor. I would first say that we would start the description of the sections that affect the Principal Auditor at Section 25, because Section 25 of the Constitution makes him an Officer of the Parliament.

And the Officers of the Parliament, it says, the Constitution:

...have the powers that are prescribed by Act.

And we will come to those Acts. Section 56 of the Constitution makes clear that the appointment of the Principal Auditor is a specified appointments commission appointment.

And Section 56(3) says:

The Governor acting in accordance with the advice of the Specified Appointments Commission shall exercise disciplinary control over any Public Officer appointed under this section.

So, the balance of relationships, Madam Speaker, is that it is an appointment by the Specified Appointments Commission and disciplinary control by the Governor. There is no disciplinary control by the Government in relation to the Principal Auditor, for good reason because he has an important independent constitutional function to follow.

Section 74 of the Constitution is in similar, although not identical terms, as the 1969 Constitution because it changed in one important material way that the reports can be laid in Parliament without going through the filter of the Governor. But Section 74 says this:

The Public Accounts of Gibraltar and of all courts of law and all authorities and offices of the Government shall be audited and reported on by the Principal Auditor and for that purpose the Principal Auditor or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts.

So, I just pause there, if I may, because there, there are two duties. The duty to audit and report and then also the duty of the Government to give the Principal Auditor access to all books, records, reports and documents relating to those accounts. So, these are duties that flow in different directions.

74(2) says:

The Principal Auditor shall submit and lay his reports before the Parliament.

Reports in the plural and that is also relevant to the debate that we are having in some respects in relation to the Savings Bank audit because what we would say is, again it is a legitimate comment for him, he can take a view, he is the Principal Auditor, ultimately this is not the place for there to be a determinative view one way or the other on the question. But given that the Chief Minister has ventured forward his opinion, or rather assertively attempts to obtain a paragraph in his motion on it, I will venture my view. My view is that section 74(2) needs to be read widely in view of section 25(4) of the Constitution and other duties under other acts. And so

given the potential liability of the consolidated funds to the Savings Bank, and we are going to come to that in a second, it brings the Savings Bank very clearly within the section and so legitimately it could be read widely so that if a Minister defaults in not presenting or laying the Savings Bank audit then the auditor could do so.

Again, on the usual principle that constitutions should be read expansively if what they are trying to do is to secure freedoms and checks and balances on unbridled power. That is the important principle.

Section 74(3) of the Constitution says this:

In the exercise of his functions under this Constitution the Principal Auditor shall not be subject to the direction or control of any other person or authority.

And I am going to talk to this section if I may, because we are concerned that the Government, in its objective, are seeking to usurp the functions of the Principal Auditor under this section of the Constitution and affecting them.

So, I want to make that very clear, we are debating a motion that the Parliament has deemed admissible and of course we accept that and that is why we are here in that respect. But equally we make the argument that in the way that the Government has proceeded, the Government is usurping the functions of the Principal Auditor or at least are attempting to do so.

Now the reason for 74(3): 'so in the exercise of his functions under this Constitution, the Principal Auditor shall not be subject to the direction or control of any other person or authority', the reason is obvious. The reason is, you know, the Principal Auditor, especially in a small community, the Principal Auditor is called upon to take all the information from the Government and with his team, because there is a team there behind him, he makes a report which can be fairly soft on the Government, or it can be critical. So, he has got a very important role, the Principal Auditor, and of course he should not be subject to the direction or control of any other person or authority and that means any other person or authority, anyone, that includes the Government.

The reason is to secure that independence, because it is important to secure that check and balance on constitutional power. So that is a crucial feature of our constitutional architecture. That was part of the constitutional bargain and the letter of our law, our supreme law since 1969, going on to the most recent Constitution.

Madam Speaker, different constitutional principles stem from our Constitution, but in a nutshell, they are these. Of course, section 74 defines what the Principal Auditor can do, but it is within the framework of a Constitution which includes the principle of separation of powers.

What does that mean? It means that the Legislature, the Executive and the Judiciary are independent, they take their own decisions, and you cannot conflate or encroach on the territory of each. The same principles apply when you have a ring-fenced constitutional officer that has a specific role earmarked on the Constitution. Because by doing it in the Constitution you are introducing, injecting it in our higher law that no Parliament can amend. This is the point. Our Parliament can amend any law. Our Parliament cannot amend the Constitution except in the human rights part if there is consensus between us. It cannot amend those sections because that is an enshrined check and balance on the power of the Executive. And constitutional powers, ring-fenced powers of the Principal Auditor cannot be usurped by the Government.

So, Madam Speaker, I just want to take you briefly to two particular cases that will highlight the issue of separation of powers and the principle that applies. So one is a case of the Privy Council called 'Lyanage', I am not sure if I am pronouncing that properly, but it is from the Supreme Court of Ceylon. But that is a case where the Privy Council said in a case where there was an attempt to pass legislation which allowed people to be arrested and tried in a particular way with minimum penalties, it says that:

1115 The acts directed as they were involved a usurpation and infringement by the legislature of judicial powers inconsistent with the written Constitution of Ceylon, which while not in terms vesting judicial functions in the judiciary, manifested an intention to secure in the judiciary a freedom from political, legislative and executive control.

Now what we say is that section 74 manifests that intention that the Principal Auditor should not be subject to any Government direction or control in relation to his work.

1120 In that particular case, the Privy Council went on to say this on general principles, dealing with the Constitution of Ceylon, but as the people know, the Constitution of Overseas Territories and indeed a lot of countries that are now independent Commonwealth states all follow the same model as Gibraltar. They have the same parts, their language is the same because understandably when the Foreign Office enacted and introduced the first written constitutions in Nigeria or Ghana  
1125 in the 1950s, they rolled them out as templates. We all use templates as lawyers and so they use the templates and there are differences when you look at granular issues in different constitutions, there are differences, but in general terms the structures are the same and largely the principles are the same. So, the Privy Council said this.

1130 These provisions manifest an intention to secure in the Judiciary a freedom from political, Legislative and Executive control. They are wholly appropriate in a Constitution which intends that judicial power shall be vested only in the judicature. They would be inappropriate in a Constitution in which it was intended that judicial power should be shared by the Executive or the Legislature. The Constitution's silence as to the vesting of judicial power is consistent with its remaining where it had lain for more than a century in the hands of the judicature. It is not consistent with  
1135 any intention that henceforth it should pass to or be shared by the Executive or the Legislature. During the argument, analogies were naturally sought to be drawn from the British Constitution, but any analogy must be very indirect and provides no helpful guidance. The British Constitution is unwritten, whereas, in the case of Ceylon, their lordships have to interpret a written document from which alone the Legislature derives its legislative power.

1140 And in that particular case, the Privy Council decided that the words usurped the judicial power of the judicature and said:

In law, such usurpation would otherwise be contrary to the Constitution.

1145 What we are saying clearly in this case is that the attempt by Governments to encroach on and usurp the functions of the Principal Auditor is also unacceptable, unconstitutional action by the Governments. Madame Speaker, in a case called Hines and DPP, which is another Privy Council case, this time in relation to other legislation from the Court of Appeal of Jamaica, the Privy Council held that the principle of separation of powers was implicit in the Constitution and Parliament had  
1150 no power to transfer from the Judiciary to the review board, the majority of whose members were not qualified to exercise judicial powers a discretion to determine the severity of punishments to be inflicted. That is because they were considering legislation to deal with, again, punishments.

But in the course of the speeches of the Privy Council, they made these points of general principle applicable to separation of powers, to constitutions like ours and indeed to the situation  
1155 in which we are in now where there is a constitutional officer with demarcated powers. So, the Privy Council said this,

A written Constitution, like any other written instrument affecting legal rights or obligations, falls to be construed in the light of its subject matter and of the surrounding circumstances with reference to which it was made.

1160 Then it went on to talk about constitutions in different places and then it added some differences and then it said this in relation to similarities:

1165 Nevertheless, all these constitutions have two things in common which have an important bearing on their interpretation. They differ fundamentally in their nature from ordinary legislation passed by the Parliament of a state. They embody what is in substance an agreement reached between representatives of the various shades of political opinion in the state as to the structure of the organs of Government through which the plenitude of the sovereign power of the state is to be exercised in future.



1170 That is what section 74 is. It was in the 1969 Constitution which came about after constitutional conferences; it is in our 2006 Constitution which came about after the Select Committee worked for three and a half years the cross-party Select Committee after inter-Governmental negotiations with the UK after a referendum of the people of Gibraltar giving it the double legitimacy not just a bargain between representatives of various shades of a political opinion but carrying the legitimacy of the People of Gibraltar. That is the bargain that was enacted which we cannot tamper with that the Government should not usurp.

And the Privy Council continued:

1180 All of them were negotiated as well as drafted by persons nurtured in the tradition of that branch of a Common Law of England that is concerned with public law and familiar in particular with the basic concept of separation of legislative, executive and judicial power as it has been developed in the unwritten Constitution of the United Kingdom. As to their subject matter the peoples for whom new constitutions were being provided were already living under a system of public law in which their local institutions through which Government was carried on the legislature, executive and the courts reflected the same basic concept. The constitutions, [the Privy Council added]

1185 were evolutionary not revolutionary [which was our case, we are now on our effectively fourth constitutional instruments]. It is taken for granted [said the Privy Council] that the basic principle of separation of powers will apply to the exercise of their respective functions by these organs of Government. Nevertheless, so thus [he says] the Constitution does not normally contain any express prohibition upon the exercise of powers by the executive or of judicial powers by either the Executive or the Legislature. As respects to the judicature particularly if it is intended that the previously existing courts shall continue to function the Constitution itself may even omit any express provision conferring judicial power upon the judicature. But nevertheless, it is well established as a rule of construction applicable to constitutional instruments under which this Governmental structure is adopted that the absence of express words to that effect does not prevent the Legislative, the Executive and the judicial powers of the new state being exercisable exclusively by the Legislature, Executive and Judicature respectively. To seek to

1190 apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would in their lordships' view be misleading particularly those applicable to taxing statutes as to which it is well established as a principle that express words are needed to impose a charge upon the subject.

1200 Madam Speaker finally in that case the Privy Council went on to say that:

If consistently with the Constitution it is permissible for the Parliament to confer the discretion to determine [in this particular case] the length of custodial sentences for criminal offences upon a body composed of a review board it would equally be permissible to a less well intentioned Parliament to confer the same discretion upon any other person or body of persons not qualified to exercise judicial powers and in this way without any amendment of the Constitution to open the door to the exercise of arbitrary power by the executive in the field of Criminal Law [in that case].

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What we say is this officer has ring-fenced power which is a separation of powers constitutionally if acts are done to usurp his functions those acts are unconstitutional those acts are being perpetrated by the Government.

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Madam Speaker, I want to explain why we say and go on to now deal with the importance of the constitutional function of the Principal Auditor his audit function and to do that I need to get into the acts that regulate the powers of the Principal Auditor because what is at stake Madam Speaker is that the people's watchdog of their money is being assaulted by the Government and what is at stake is that if we were to not stand in this way the Government would acquire unbridled power because there is a value to these protections so let us look at those protections.

1215

Madam Speaker as well-known textbooks on constitutional law will tell you quoting Erskine May in England in the United Kingdom it was a central feature of the historical development of parliamentary influence and power that the Sovereign was obliged to obtain the consent of Parliament to the levying of taxes to meet expenditure of the state but the role of Parliament in respect of state expenditure and taxation has never been one of initiation because it was for the Sovereign to demand money and for the Commons to respond to the demand.

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1225 So, it was for the Government to demand money which it does at Budget time and for the  
Parliament to respond. In the United Kingdom, for about 150 years because the original legislation  
goes back to 1866, the equivalent to the Principal Auditor is the Comptroller and Auditor General  
who is also, like the Principal Auditor, an Officer of the House of Commons, his independence and  
I am now reading from this constitutional book it is Hood Phillips by the way. His independence of  
the executive and Parliament is ensured in a number of ways so and it goes on to describe them,  
1230 but one of the things it says is that:

Subject to any statutory duties he has complete discretion in the discharge of his functions subject to the proviso  
that he takes into account proposals from the Committee of Public Accounts.

1235 Well we do not have one but subject to that he has complete discretion so our Principal Auditor  
the equivalent being he has complete discretion, secondly the Auditor General in England through  
his staff at the National Audit Office, audits the Appropriation Accounts of central Government  
departments and various other public bodies such as the Regional Health Authorities or  
universities. The extent and nature of the audit was reformed by legislation, but the Auditor  
1240 General has statutory authority first to conduct a finance and regulatory audit that is to ensure  
that expenditure was made for the purposes authorised by Parliament and report upon the  
accounts drawing attention to any irregularity that may have occurred upon the accounts. He is  
also able to conduct special investigations to examine the economy efficiency and effectiveness  
of the use of resources so economy efficiency effectiveness of the use of resources to discharge  
1245 the functions of any of the bodies to which the National Audit legislation applies presenting the  
reports as value for money audits.

That is what the Principal Auditor has done he has looked at the accounts my hon. Colleague  
Mr. Clinton will speak to that he is more of an expert than I am, but he has produced some value  
for money audits that is what is done in England. It is not a big deal and in that and in those reports,  
1250 there are things that are said which are commends the Government things that are criticised.

Well of course it would be rather strange actually if you had a report that said everything is  
fine. I suppose that is what they want with these things they want the Principal Auditor to say  
everything is fine, you know that is cloud cuckoo land surely and they will not rest until that  
moment arrives because they bludgeon the Principal Auditor into submission that everything is  
1255 right is fine.

Madam Speaker there is a very recent publication called 'Holding Government to Account'  
which is actually a very interesting book which surveys the whole issue of the history of the  
evolution of National Audit in England in the United Kingdom and the tensions.

In England there are tensions also with the Government sometimes, but no Government has  
ever brought a motion to censure the Auditor General or to censure his report. I mean they may  
or may not take things on board, they may take it on board they may say, well we do not agree  
with this is a report it is not a legally binding contract. A legally binding verdict of a court it is a  
report and as a Government the day before and the day after the report you are still governing it  
has not affected the fact that you are still the Government. You can take the view I do not agree  
1265 with these things and say so in a reasonable measured way without assaulting publicly the  
Principal Auditor or doing what you are seeking to do. Tension is normal when you look at this  
book, it is obvious it is normal but Madam Speaker it would be useful to read into the record some  
paragraphs from this publication because Members may find it useful.

In this publication, there is an interview with a leading MP on the issue of the Public Accounts  
Committee and in relation to the National Audit Office and the process he says:  
1270

The National Audit Office and of course the Auditor General [here the Principal Auditor] is definitely seen as part of  
the infrastructure of democratic accountability.

1275 Richard Bacon MP told us and I quote:

it is perfectly proper to see the National Audit Office as one of the constitutional pillars of a well-constructed polity I have always been extremely aware that there is a painting when you come into St. Stephen's Hall. You go up the steps into central lobby look at the painting on the right it is Thomas Moore talking to Cardinal Wolsey and the quote underneath says: Sir Thomas Moore as Speaker of the Commons in spite of Cardinal Wolsey's imperious demand refuses to grant King Henry VIII a subsidy without due debate. The painting makes the point that the people shall not be taxed without a say and that is the centre of what we are doing on the Public Accounts Committee and of what the National Audit Office does. I carry these things around in my head every time I walk into the Public Accounts Committee of the Public Accounts Commission.

That is what our Principal Auditor has done he should be commended not censured for doing his duty as a public officer. The page continues:

Steve Richard said that a consequence of the 1983 Act is that there is a mechanism the new National Audit Office for the Select Committees to scrutinise and analyse, to the same extent had this ammunition for reports.

Madam Speaker. The political, again I quote from that book:

The political community was anxious at particular junctures that debt should only have been incurred for expenditure that Parliament had authorised and therefore that was acceptable to the wider political community.

And in the well-known constitutional book by Dicey, he summarised the constitutional orthodoxy on spending in this way:

What may it be asked is the real security that the monies paid by the taxpayers are expended by the Government in accordance with the intention of Parliament. The answer is that this security is provided by an elaborate system of control and audit. Under this system, not a penny of public money can be obtained by the Government without the authority or sanction of persons, quite independent, be it remarked, of the cabinet, whose duty it is to see that no money is paid out of the exchequer except under legal authority. To the same official ultimately comes the knowledge of the way in which the money thus paid out is actually expended and they are bound to report to the Parliament upon any expenditure which is or may appear to be not authorised by the law. The centre of this system of parliamentary control is the Comptroller and Auditor General.

It is the same here. The centre of that control is our Principal Auditor that the Government seeks to censure. Carrying on, Madam Speaker:

In 1962, [it says] a Treasury Civil Servant summarised the constitutional position of the Accounting Officer charged with responding to the Auditor General as being the official who would have to answer after the event to the Public Accounts Committee of the House of Commons.

And as late as 1982, Sir Douglas Henley described:

The constitutionally fundamental distinction of Appropriation Accounts as to show in some detail that Government departments have spent the funds voted to them by Parliament for the purposes and within the amounts prescribed by law. The task was one of discerning judgement against the body of law, which made the Talamud a mere monograph. The Victorian emphasis, therefore, was on the Offices of Auditor General and Comptroller together as a mechanism for control over public spending, backed by the PAC and by the creation of Accounting Officers who were personally accountable for any breaches of control. Gladstone himself put this emphatically when he spoke of the 1866 Act establishing the Comptroller and Auditor General as closing the circle of control.

Rather than it be something that is bemoaned about, it is a cause of celebration that the system is in place and should be working in this jurisdiction. Madam Speaker, in that same book, the authors say in relation to the tension that crucially the Public Accounts Committee argued strongly for extending the Auditor General's role. They argued that

The dividing line between an examination of the department's procedures and an examination of the effectiveness of the policy itself is, in our opinion, impossible to maintain.

1335 This is about the tensions. The Chief Minister is trying to create these fine distinctions. There were tensions in the UK. But the fine distinctions, which were the subject of tensions, are not the subject of motions of this type in the UK Parliament.

1340 The National Audit Act established value for money audit for the first time and defined it as the audit of economy, efficiency and effectiveness. And as Lord Butler put it in his interview, who was Cabinet Secretary and Private Secretary to the Prime Minister in the 1980s:

The creation of the National Audit Office was part of the modernisation of the British state, a move towards more efficient and managerial Civil Service.

1345 Madam Speaker, on the issue of the change to the scope in value for money, the authors put it in this way, in terms of the history:

1350 There were three main changes to the scope of value for money during the period; The first was the growing confidence with which the National Audit Office pursued its value for money responsibilities; Secondly, there was a continual deepening of the National Audit Office's methodological diversity. The National Audit Office expanded what it meant by value for money through its work on service users and the costs they were bearing from of failed Government policy.

1355 Let me just pause there. It was extended, not by legislation, but as a result of their work, organically, by practise, the National Audit extended its work because of failed Government policy, they took their view. No difference here. The Principal Auditor takes a view. He does value for money audits, can recommend, can make comments on it. And the authors carry on:

1360 Essentially, the audit of the effectiveness of politics fed back into consideration of its efficiency and economy; Thirdly, the National Audit Office became much more interested in a more systematic examination of what drove Government performance, led by the interest in how Government could stop repeating its mistakes.

Again, this is National Audit Office driven. Nothing to criticise the Principal Auditor for.

1365 The National Audit Office became more confident in the late 1990s and 2000s than it had been previously.

So, if there is growing confidence in our Principal Auditor, I suppose the only thing that could be said is he could have done it 20 years ago. Or 30 years ago.

1370 The National Audit Office in the 1980s had been cautious about how it exercised its responsibilities. Some of that caution survived into the 1990s. However, a series of reports illustrated the fact that the organisation was tackling increasingly difficult political issues. John Byrne [who I think was an Auditor General at some point] was much braver than we imagined at the time and was willing to tackle very tricky subjects. Clarke thought he was the bravest of the Auditor Generals, that he served during his NAO career, which lasted for 40 years.

1375 So again, because Clarke identified the reports on Operation TELIC, the official name for the invasion of Iraq, came under their purview. Given the politics, and this is a direct quote from the interview:

1380 Given the politics that was going on around that, given the stuff that was going on with Blair, the views of the Chair, he had all of that, but yet we reported on it. [the Auditor General - Yet we reported on it]. We built up to it. But that was quite a brave thing. That was the only NAO report that's been debated on the floor of the House of Commons. It landed in the middle of all of this controversy and people from both sides of the debate used it. He had to have a certain amount of confidence in the NAO to deliver it and get the messaging right.

1385 So, driven by the National Audit Office, on 40 difficult political subjects, no one bats an eyelid. It was the "only NAO report that's been debated on the floor of the House of Commons". This has never been done in the House of Commons, because the Government's not attempted it in the United Kingdom, as they are here.

1390 And then speaking about other tensions in relation to delay of information, the report, the book says:

1395 A significant turning point came with the arrival of Amias Morse. [Amias Morse was Auditor General, then became Sir Amias Morse.] Morse refused to let Civil Servants delay his reports and was much more willing to publish disagreed reports. This was crucial in shifting the balance of power between auditor and auditee and making audit teams feel supported at the highest level in making unpopular judgements. Taking his stand on professional competence, Morse was often willing to disagree with Permanent Secretaries and therefore the NAO's reports came out more quickly and the organisation became generally more assertive about its findings.

1400 Assertive. Taking on the Government and the Permanent Secretaries, changing the balance. Changing the balance.

Nothing wrong with that. Again, the thrust of what the Government are criticising our public auditor for, are things that not only go on in the United Kingdom but almost don't bat an eyelid. And here, they have created *calumnia* against the Principal Auditor. And then finally, Madam Speaker, on this document:

1405

The relationship between the Government and Parliament and the inevitable strains shaped the way the National Audit Office had developed over the past 40 years. The two opposing aspects of the role of the National Audit Office. That it serves as Parliament's chief instrument of accountability and is the Executive's preferred consultant.

1410

Worth pausing there. The Principal Auditor is an Officer of this Parliament, but he is a Public Officer as well. He is a Public Officer. Appointed by the Specified Appointments Commission and of course comes under the umbrella as a Public Officer of the Government. So the Executive's preferred, I suppose, person, Public Officer. But he is our Officer too, under the Constitution. It is the same in England. It is that opposing aspects of the role.

1415

Because qua his role, Principal Auditor, as an Officer of this Parliament, the Parliament is holding the Government to account. So, what he is doing in his Principal Audit Report, which he lays before this Parliament, is not for the Government. He does not lay it for the exclusive use of the Government. He lays it in this Parliament. So that we can then hold the Government to account. It is entirely consistent with a role and indeed necessary.

1420

Nothing that he has said, nothing, we are going to get into the detail, but a lot of what is being said against him, at its highest, could only be said that there might be things that he might have got wrong factually. Well, fine. That is not a cause for bringing down the House.

And then it carries on:

1425 Relationships between the executive and Parliament form the indispensable context for the National Audit Office role. For example, in the 2010s, the National Audit Office had to preserve its relationship with Government despite the open hostility between the Senior Civil Service and the Chair, Margaret Hodge, [of the PAC]. Likewise, splits in Parliament limit the National Audit Office's ability to speak freely. The National Audit Office was very cautious over Brexit, recognising that both PAC and Parliament were divided both between parties and across party lines. In 1988, John Byrne commented that the National Audit Office's role was naturally political. Naturally political. This is true in both the terms Bourne meant. [Bourne was an Auditor General]. That the Auditor General and the National Audit Office had to understand the political forces swirling around them. The failure to do so doomed the Audit Commission and make their way through that, [through the swirl] and that understanding the National Audit Office's role turns on understanding the role of the Legislature within the UK Constitution.

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So, this is about the importance of the Auditor, the necessary tension with the Government. The UK Auditor saying it is naturally political, or political in the small piece sense, not because he is taking political sides, but ultimately, it is about the audit of Government. It is a subject matter.

1440 The audit of Government, it might lead to recommendations, they are thorny subjects, it is about the verdict on policy, or as to the effectiveness of the policy, of the administration of policy, so someone might use it politically. That is not a surprise. But it cannot either be a cause for consternation by the Governments of the day.

It is what it is. And if you do not like the report, well, you do not like it. But you do not come to this House, or you do not try to usurp the functions of the auditor.

Madam Speaker, I have set out what the constitutional sections say about the Principal Auditor but as I explained, one of the sections says you have got the powers that you are given in legislation. I am going to go to that legislation now.

Madam Speaker, the first principal act that I want to go to is the Public Finance (Control and Audit) Act, which well known to my friend, Mr. Clinton, better known than... 1977... Yes, very good.

No need to fact check that. The Public Finance (Control and Audit) Act regulates, as it says in the title, the Control and Audit of Public Finances and creates a scheme of sections that set out provisions that regulate the Consolidated Fund or the Revenue of Public Undertaking Special Funds, Deposits, Accounting Officers, and so on but it also has a part in relation to the Principal Auditor.

I would first start with section 34 that says:

The accounts of the fund [i.e. the Consolidated Fund] shall be audited, certified and reported on annually by the Principal Auditor.

The relevant part that deals with the Principal Auditor is from section 55 onwards, but important that I first pause over 52, which says that:

the Accountant General shall within a period of nine months, or such longer period as the Minister responsible for finance shall allow, after the close of each financial year, sign and transmit to the Principal Auditor accounts showing fully the financial position of the Government of Gibraltar at the end of each financial year.

Of course, that provision that says such longer period as the Minister responsible for finance shall allow was the one that then led to the extensions. That led to delay. So, there is an interplay of relationships and duties, Chief Minister as Minister for Finance, Accountant General, and Principal Auditor and that is how it works.

Section 55 of the Public Finance (Control and Audit) Act makes clear that the Principal Auditor cannot do certain things while holding the office of Principal Auditor, but 56 sets out his powers at length.

And 56, in essence, paraphrased says, because I am not going to read it all, but in essence, it says, that in the performance of his functions under the Constitution, and under the Act, the Principal Auditor shall have access to all accounts, books, cash, documents, security stamps, stores, vouchers or other Government property under the control or in possession of any public officer. So that's A. B, may call upon any public officer for any explanations and information which he may require in order to enable him to discharge his duties. Under C, can authorise any person who is an accountant to conduct an enquiry or examination. Under D, can cause searches to be done and seek extracts of books or records. Under E, may lay before the attorney general a case in writing as to any question of law, and the Attorney General shall give a written opinion.

Now, 57 talks about the nature of the audit of the Principal Auditor. And it says that the Principal Auditor shall have such powers as are reasonably necessary in order to satisfy himself, whether or not, and there is an A to F, I just want to pick out some of them, because under A, he has got the power to satisfy himself whether reasonable steps have been taken to secure the due collection of revenue; Under B, he has got the power to satisfy himself as to whether monies which have been appropriated and disbursed, i.e. spent, have been applied for the purposes for which they were appropriated. And the expenditure conforms with the authority which governs it. So, he has got the ability to satisfy himself as to spending. He then can satisfy himself as to whether monies that have been appropriated have been dealt with in accordance with proper authority, whether there has been reasonable precautions on custody and issue of cash, etc. He has to satisfy himself as to whether there are sufficient measures in place to secure effective control over expenditure.

And so, Madam Speaker, at least in terms of the spending aspects, he has got powers to satisfy himself whether things that were said that would be appropriated for the buying of pharmacy medicines are used for the buying of pharmacy medicines and haven't been used to buy whatever else. For example, not that I am making allusions there.

1500 He also can satisfy himself as to whether there is effective control. So, he has got wide powers to do that, to go in, review what people are doing, and then satisfy himself as to whether the spending is right, as you said you would spend, and it is effective. That is really the thrust of all this.

1505 He has got an additional power under Section 58 that if at any time it appears to the Principal Auditor that irregularities have occurred in the receipt, custody or expenditure of public money, or in the receipt, custody, issue, sale, disposal, etc., he may bring the matter to the attention of the Financial Secretary, which presumably now would be the Financial Secretary. He then has power in respect of other bodies, because under Section 60 of the Public Finance (Control and Audit) Act, it says this part, and this is headed Examination and Audit of Accounts of Corporate and similar Bodies. So we know he has got power over the Government, so this is about corporate and similar bodies, and I take us there, because one of the issues is about the Savings Bank and so on and so forth.

And it says, Section 60:

1515 this part shall apply to every person or body. [And then jumping to C], there are different categories of body. [Jumping to C], 61(c), whose operations may impose or create a liability on any public monies.

1520 And as we will see when I go to the Savings Bank, under Section 8 of the Savings Bank Act, there is a guarantee for the repayment of monies deposited in the Savings Bank by the Government, and therefore, because there is that potential liability on public monies, it comes under the purview of the Principal Auditor. And Section 61 says, 61(1),

1525 the Principal Auditor may audit and report on the accounts of any person or body to whom this part applies. So, within the purview.

And it also then says, 61(2),

1530 in the exercise of his powers under subsection 1, the Principal Auditor shall have, in relation to any person or body to whom this part applies, the same powers as are conferred on him under Sections 56 and 57, in relation to Public Officers, public monies, stamps and securities and other Government property.

1535 So if you are a body that comes within his purview under Section 60-61, automatically, he has got the wide powers that he had under 56-57. And that is the reality with any Body that falls within his ambit.

We may disagree about whether they do or they do not. That may be the subject of it. But I think in relation to the Savings Bank, there is, I assume, common ground on it.

But to the extent that they fall within it, then he has got those powers. And then it says under Section 63:

1540 On receipt of any report of the Principal Auditor under Section 62, the Minister responsible for finance shall request the person or body for its comments to be supplied within such time being not less than 14 days from the date of request as may be specified therein or on any matter to which the Principal Auditor has called attention in such report.

1545 So, the mechanics would be, if you come within his scope, he audits, sends the reports, Minister then consults the body.

Subsequently then, it says 64:

1550 A copy of every account and of any report of the Principal Auditor thereon transmitted to the Minister responsible for finance in accordance with the provisions of Section 62, together with the comments of any person or body and a copy of any document forming part of it shall be laid before the Parliament.

1555 So that is the structure that is created by this system. Madam Speaker, under the Gibraltar Savings Bank Act, Section 3 of that Act makes clear the Savings Bank is deemed to be a Body corporate resident in Gibraltar.

Under Section 8 of the Savings Bank Act:

1560 The repayment of all monies deposited in the savings bank together with interest thereon is guaranteed by the Government and accordingly if at any time or times, the assets of the Savings Bank shall be insufficient to pay the lawful claims of every depositor, the Minister shall cause such deficiency to be met out of the Consolidated Fund and the Financial Secretary shall certify such deficiency to the Minister without delay.

1565 So that satisfies the test in the Public Finance (Control and Audit) Act, comes within the purview of the Principal Auditor.

And in any event, Section 12 also makes clear that:

1570 Annual Accounts of the Revenue and Expenditure of the Savings Bank and of deposits received and repaid shall, after being audited and certified by the Principal Auditor in compliance with any relevant and applicable standards, be laid before the Minister no later than the 31st of October every year, be published in the Gazette.

1575 Now, there may be a disagreement as to whether you then lay this in Parliament under 74 or you lay it under the Public Finance and Control Act. I do not need to express a view, I will, but again, the main point is that even if there is a different view, the auditor is entitled to a view and that is all.

1580 Madam Speaker, I think I may have time - I agreed with the Chief Minister that because of a personal commitment that he has, I would signal to him when would be an appropriate time to adjourn if I didn't finish and I was still on my feet. And I think an appropriate time would probably be in a few minutes and I will signal that to him when I finish. Probably a point on this. I hope to get to at least this part. If I do, in the next half hour, then I will signal to him. I think it is important that I carry on for this short while because these points are linked.

1585 Madam Speaker, having taken the House through the relevant legislation, the main thrust of our position when we look at the report is we understand that there are things that are said that the Government does not like. Equally, we read it and we think there are parts that agree with some of the things that the Government are doing at least on reforms and so on. There are some, we view, scandalous things that are said in this report but ultimately, you would ask yourself the question, is the Principal Auditor not just doing his job? He is not a perfect human being. So, I would not expect in a report that long for it to be immaculate and entirely impossible for anyone to raise their hand and say, when you said you received it on Thursday, you received it on Friday.

1590 There may be things like that. But that does not mean or justify the assault on him that the Government are seeking to do. So, Madam Speaker, the theme for us, when you actually go through the detail, as I am getting into now, is that there will be things that are disagreements with the Government, that he has expressed views on, but that all it is, is legitimate comment, fair comment within his duty and powers and that is all.

1595 In relation to the Savings Bank, should he be able to lay reports? Directly? Well, he has got a value judgement, he has got a legitimate view. Let us look at it in a bit more detail. The Government might take a different view. Madam Speaker has had correspondence with him that is quoted in the reports. Again, there is no need for me to express views on these issues, other than to say they are views. Everyone within their roles is expressing views. He is the Principal Auditor. He has certain powers under the legislation that I have just quoted. His constitutional power. He may take a view. Until someone makes a firm declaratory judgement in a court of law that binds everybody, they are just views. The practises of this House will be determined by Madam Speaker. The Principal Auditor will express his views within the realms of what he does.

1600



1605 Was the comment that he made in relation to the POCA report strong? Yes, it was. He says that the Chief Minister acted unconstitutionally. That was a strong comment. Again, is it within the bounds of what the Principal Auditor can say? Well, yes, he can say whatever he wants - it is up to him.

1610 Madam Speaker, in relation to the issue of the laying of reports in this House, well, Section 74 makes clear that he should lay the reports in the House and indeed, the Standing Orders of this House were amended in 2007 after the Constitution came into effect, precisely to enable that Standing Order 12(3), which says:

The Principal Auditor and the Ombudsman may present their annual reports to the Parliament through the Clerk.

1615 Created that mechanics for them to do so because the 2006 Constitution was the first time that the Principal Auditor did not have to go through the filter of the Governor. And it also created, for the first time, it established him as an Officer of the Parliament. The whole point about that was that there was consensus on both sides of the House that the Standing Orders should be changed to create those mechanics.

1620 That consensus is obvious from looking at the motion in 2007, which was debated on 29 March 2007. It was a motion taken on a motion by the Chief Minister at the time, Peter Caruana, on the amendment of the Standing Orders and he said on that, and in respect particularly of this issue, which is the mechanics of introducing a rule that allowed the Principal Auditor to lay the reports directly through the Clerk, he said this:

1625 The section, the rule, is to recognise the fact that some people whose papers previously had to be laid can now lay it themselves because under the new Constitution, they have been made Officers of this House. So, for example, the Principal Auditor and the Ombudsman are now, by the terms of this Constitution, Officers of this House. They cannot come personally to lay the document, but they can lay it through the Clerk. In other words, rather than the  
1630 Principal Auditor sending the audited accounts of Gibraltar to the Government, so that a Minister tables them, the Principal Auditor can send the reports directly to the Clerk, officer of the House to officer of the House, with the request that they be laid on the table. And I would envisage that the Clerk will include that in the [inaudible] of the House, to work out a mechanism for doing that. But I suppose they can just be recorded as laid on the table through the Office of the Clerk, pursuant to this rule. I mean, the whole idea of making them officers of the House is that  
1635 people who serve constitutional functions that are supposed to be independent of the Government in the sense of almost being watchdogs of the Government, should not then have to channel their communications to Parliament through the Government themselves. Both the Public Services Ombudsman and the Principal Auditor exist primarily to assist in balancing the power between the state, so to speak, and the citizen. The Government and the citizen. And it is therefore appropriate that there should be a direct mechanism for them to lay documents in the House  
1640 and indeed to be accountable to the House directly.

So that was Peter Caruana at the time. The motion was supported by the Opposition. The Leader of the Opposition at the time, the Father of the House now, said, we are going to be supporting this. And in relation to that specific section, he said:

1645 The only other point that I think I wish to raise is that in the provisions in the new subsection 3 of Rule 12, for the Principal Auditor to present the report to Parliament, it says may and I believe it should say shall. Given that section 74(2) of the Constitution says shall.

1650 It is a good point, I thought, when I read this, by the way, it was not there.

1655 So, if it is mandatory by the Constitution, [Sir Joe continued] I do not see how we can make it discretionary by the rules of the House. Although I do not pretend to have legal expertise, I do not know whether there is a conflict. But whether we had it in the rule or not, it seems to me that there is no choice, given that the Constitution requires the Principal Auditor to present the report to Parliament. Although I do not think the Constitution actually says it has to be done through the Clerk. So it seems to me that doing it through the Clerk is what we are adding to the Constitution. Now, if the may were that the Principal Auditor may do it through the Clerk, or he may do it in some other way, then I do not see any conflict. But if what the may is saying, and I think that is what it is saying, it means grammatically, that he may present the report, or he may not, then I do not think the Principal Auditor has got a  
1660 choice.

Now, in response, the Chief Minister then said,

1665 As to the first point, Rule 12(3), perhaps we should just change the language. Perhaps it should simply read, the Principal Auditor and the Ombudsman shall present their annual reports to the Parliament through the Clerk, so that it makes clear that what we are purporting to regulate is the route-ology and not the actual laying.

As Sir Joe responds,

1670 Section 74(2) of the Constitution makes it mandatory on the Principal Auditor, but not on the Ombudsman. It says the Principal Auditor shall submit and lay his report before Parliament - that is what the Constitution says. He has to do it, and it seems to me, that if we say the Principal Auditor may present to the Parliament the report, then we seem to be saying in our rules, that he has got a choice of doing it or not doing it. The Constitution says he has no choice.

1675 The Chief Minister agrees. He says:

1680 No, it is not a matter of choice, that is clear. So we can only be providing in these rules the methodology of doing so. The methodology of it should not be up to him. It is up to us to say how this House wants to have papers laid before it by people who are not in it.

And then the Chief Minister continues. So there was an intervention by the Speaker at that stage who said:

1685 I think we really just need to move the words 'through the Clerk'. I think the way it is drafted, may, through the Clerk, falls incidentally. Put that at the end. May present to the Clerk.

And the Chief Minister says,

1690 Through the Clerk, making it clear that this is about the route and not about whether he needs to file it in the first place. So, if it were to read, the Principal Auditor and the Ombudsman may present their annual reports to the Parliament through the Clerk. I think it then reads as if it was intended to address the route rather than the action.

1695 That is where it ended. There was consensus in this House that there was no choice. The reports had to be laid if they fell within 74(2), of course. And consensus to amend that Standing Order as well.

1700 There may be disagreements, which is the height of this debate, as to whether the Savings Bank audit would fall within 74(2), or through the mechanism in another Act. If it is 74(2), then it would fall within the direct constitutional right to do so and if it is sections of the Public Finance and Control Act, not, although arguably, the way that the Standing Order now reads, it does not refer to his ability to present annual reports to the Parliament through the Clerk, only insofar as such reports that are deemed to be 74(2) reports. It says reports, generally, and there was consensus at the time. So why could it not really be meaning also other reports?

1705 Again, it is a matter of opinion. For the Principal Auditor has a view, in our view, not sufficient to censure the Principal Auditor simply because he takes a particular view in relation to the Savings Bank issue. Whether the Government have obtained a self-serving legal opinion or not, with all due respect, that self-serving legal opinion is neither here nor there, because ultimately, it is not the report of the Government. It is the report of the Principal Auditor.

1710 The Government's view on whether or not the Principal Auditor should lay it in this way or that way, is as good a view as ours. Really, there is only two people that are more relevant in this equation. There is the Principal Auditor, and then there is Madam Speaker, who has to construe the mechanics in accordance with the documents that are here, that is all. So, with all due respect, it is certainly not the case that you then elevate this to chastise the Principal Auditor in the way that the Government are seeking to do in their contributions. It is entirely inappropriate, given the respect that there needs to be for the role of the Principal Auditor.

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That is the point that I want to end on today, because this is a relationship where, of course, the Principal Auditor will sometimes have a convivial, friendly flow of evasion, sometimes will take a combative view of the administration and effectiveness of financial policies of the Government as they impact on the taxpayer, for whom they are holding the people's money on sacred trust, and for whom he has to audit whether they are doing a good job, in accordance with the law. So, of course, there is going to be conflict, but in that conflict, there needs to be an element of mutual respect, but they are breaking down the walls of that relationship of mutual respect.

In another Privy Council case, Lawrence and Attorney General, specifically the Privy Council dealt with this issue of respect in the context of a very acrimonious relationship between an Auditor General in another jurisdiction and a Prime Minister of the day, which led to disciplinary procedures for that particular Auditor General, thankfully not the situation we have here but in terms of general comment, in that particular case, the Privy Council said this:

The importance of the role of Director of Audit [in that particular case, our Principal Auditor] and of the role of Minister of Finance, makes it highly desirable, in the interests of good governance, that the holders of these two offices should have a due respect for one another. A lack of respect by the Director of Audit for the Minister of Finance and the senior civil servants in his department might endanger the objectivity that should inform the Director's audit reports. A lack of respect by the Minister for the Director might tend to diminish the respect paid by the Minister to the Director's reports. It seems to their Lordships plain, that a mutual lack of respect between the holders of the two offices would be inimical to good Governance.

And going on to deal with the legislation in that particular case, they commented that the constitutional provisions in that particular case were about buttressing the independence of the role of Principal Auditor. So, Madam Speaker, the reality here is, we will get into more detail as I continue tomorrow, but the Principal Auditor has wide powers. It is a very difficult job, especially in a small community. He does his best. He has worked for a long time in the Public Service.

To such an extent that his efforts are commended by the members opposite, a few weeks before he delivers this report. It cannot be a coincidence that what changes it is the publication of this report. But the publication of this report changes the narrative. It becomes a revisionist narrative. That somehow this is a politically biased civil servant, because they do not like what he says, when all he is really doing, as we get into more of the detail, is commenting as a Principal Auditor should because, as I have traced when I have gone through the detail of the National Audit legislation in England, these political tensions also arise in England. And yet, those tensions do not lead to this kind of debate. Because there is a need for that relationship of respect, but they are tearing it down. When all the Principal Auditor has tried to do, is do his job to the best of his ability.

That is not a cause for the Government's assault on him. It certainly does not justify it. The Government may be doing it for its own political ends, but the problem of doing it in the way that they are doing it, is that they are bringing the House down with all the constitutional protections to the Auditor, which they are seeking to attack.

Madam Speaker, I will deal in greater detail tomorrow now, as I understand, and I will give way to the Hon. Chief Minister to move the adjournment. I will deal with other issues of detail. I had hoped to finish today, but I understand the Chief Minister has a commitment. We have spoken and we have agreed that at an appropriate time in my contribution, I would stop and indicate to him that now is a good time. And I do so, so that he can move the adjournment.

### **Adjournment**

**Chief Minister (Hon. F R Picardo):** Madam Speaker, I am grateful to the Hon. Lecturer of the Opposition. He says I am going to bring the House down.

**Madam Speaker:** The Leader of the Opposition, please, let us keep going.

**Hon. Chief Minister:** He says I am trying to bring the House down. I am just going to try and wake it up, as I announce that the House should now adjourn to tomorrow at 4.30 p.m.

1770

**Madam Speaker:** I now propose the question, which is that this House do now adjourn to tomorrow at...

**Hon. Dr K Azopardi:** Madam Speaker, sorry. We had an exchange that it was at 3.30 p.m.

1775

**Hon. Chief Minister:** Yes, but I also told the Hon. Leader of the Opposition that there was something I cannot tell him about until tomorrow, and that has been shifted a little. When he hears what it is, he will see it is an extraordinarily serious matter.

1780

**Madam Speaker:** All right, I now propose the question, which is that this House do now adjourn to tomorrow at 4.30 p.m. I now put the question, which is that this House do now adjourn to tomorrow at 4.30 p.m. Those in favour? (**Members:** Aye.) Those against? Passed.

This House will now adjourn to tomorrow at 4.30 p.m.

*The House adjourned at 7.20 p.m.*