Speakers' Rulings and Statements

The Gibraltar Parliament

Contents

Preface

This publication updates the booklet that was first published by Speaker Alcantara in 1996.

The purpose of this journal remains to provide immediately available access to rulings and statements made by Speakers.

It provides an extract or precis of rulings and statements deemed useful in readily accessible form. It is not in itself an authoritative source. That source resides in the pages of Hansard or the select committee report from which the ruling is extracted.

This publication will be updated on a regular basis to include new rulings.

Melvyn L Farrell
Speaker

Gibraltar
February 2021

Speaker Vasquez 1970 - 1989

Amendment to motion

As I understand I am being asked to rule whether at this stage of the proceedings the Hon Leader of the Opposition has the right to propose an amendment to this motion before this House.

My ruling is that having already spoken on this motion he may not move an amendment for in doing so he would be technically speaking twice on the same motion contrary to Standing Order 46(7).

1970

Speaker Vasquez

Motion for Adjournment

Rule 24A

Motions for adjournment - definite matter of urgent public importance.

I am now required by rule 25A(3), to satisfy myself that the matter he is raising is one which is definite, urgent and of public importance. It is a rule which cannot and must not be abused. It is there to be used for specific purposes.

I am satisfied that it is a definite matter since it deals with one subject and one particular case and does not involve hypothetical circumstances. That is what is meant by a "definite matter". [Consideration given to the question of urgency and public importance]

I am now required by Standing Orders to ask whether the Hon Member has the leave of the House to move the adjournment for the purpose of discussing this matter. May I explain if it is the unanimous wish of the House to grant leave to the Hon Member to move the adjournment there is no need to go any further. But it must be the unanimous wish of the House.

1970

Speaker Vasquez

Answers to Questions

Ruling made on the particular questions placed before Speaker and set on the general principles resolved on which general principles are applied.

That is Speaker is not ruling on whether on general terms Chief Minister is bound to answer questions on foreign affairs but whether the particular question before him is admissible in accordance with Standing Orders.

1974

Speaker Vasquez

Contempt

"Article in Gibraltar Chronicle"

"1. It is my duty at this stage to rule whether an article complained of constitutes prima facie a contempt of this House.

2. I have taken careful notes of the matters brought to my attention by the Hon the Chief Minister with the support of the Leader of the Opposition and after reading the article complained of and appearing in the front page of the Gibraltar Chronicle of the 29 March 1974, I rule that a prima facie case of contempt of this House has been established.

3. In the circumstances and in accordance with the Rules of Practice I have to advice the Hon Chief Minister that the course now open to him is to have a motion to the effect that this House considers that the article complained of constitutes a contempt of the House and stating the action to be taken as a result.

(e.g. naming the Editor and requesting that he should come to the Bar of the House).

May I congratulate this House on the dignified way in which this matter has been dealt with. I think I am entitled to do that. I will now put the question which is that this House resolves that the article under the title "Grumblings of the House" published in the Gibraltar Chronicle on Friday 29 March 1974 constitutes a contempt of the House of Assembly and further dissolves that the editor of the said newspaper be so informed, in writing".

1 April 1974

Speaker Vasquez

Questions – Foreign Affairs

It is clear that under the Constitution, Ministers are not responsible for foreign affairs, in that it is not one of the matters defined under the Constitution as falling within their responsibility, and consequently, prima facie, questions which refer exclusively to external affairs are inadmissible.

I am satisfied that in question No. 183 of 1973 the questioner was merely seeking information from the Chief Minister as to advice he had given to HM Government, and in accordance with the provisions of Order 15 of the Standing Orders of this House I am satisfied that the question was admissible.

I would like to emphasise that I have given a ruling on a particular question, that is question No. 183 of 1973, that no general ruling can be made on the subject and that each question will have to be considered and ruled upon on its own merits.

October 1974

Speaker Vasquez

Division - Voting

I have to consider the character of the question upon which the division was taken, secondly, I have to consider whether the interest therein of the Member whose vote is being challenged is direct and pecuniary and not an interest in common with the rest of Her Majesty's subjects and, finally, I have to decide whether the vote was given on a matter of state policy. Insofar as the present instance is concerned, since the motion to disallow the vote was not made as soon as the number of Members voting on the question had been declared in accordance with the provisions of Standing Order No. 54, I have come to the conclusion that I have no ruling to make since my only power under this Standing Order lies in deciding, whether such a motion, if moved at the correct time, should be proposed or not.

5 December 1979

Speaker Vasquez

Answers to Questions

I think I have ruled on this once before. The Minister is answerable for his Ministerial responsibilities and not as chairman of any particular firm.

I think I must rule on this one, that he is not entitled to part with information which he has exclusively as chairman of the company and not as part of his Ministerial responsibility.

25 March 1980

Speaker Vasquez

Personal Pecuniary Interest

"A member should always declare the fact that he has an interest on the matter under debate or discussion. Once he has done this he is free to participate in the debate as any other member would be.

Furthermore our Standing Orders state that where a Member has a direct personal pecuniary interest on any subject, he should declare that interest and shall not vote on the Question, but a motion to disallow a Member's vote on this ground shall be made only as soon as the numbers of Members voting on the Question have been declared".

Letter from Speaker - 24 September 1985.

The new Rules as they stand now, requires a Member who has a direct pecuniary interest on any subject to declare that interest and not to vote on the question.

The consequence of a Member not declaring such an interest.

If such a motion is moved, that is, to disallow a Member's vote, in accordance with the provisions of Standing Order No. 54, I, as Speaker, must decide whether such a motion should be proposed having regard to certain principles.

Speaker Vasquez

Answers to Questions

No, with respect, I think we have had, and I think the Hon Leader of the Opposition will verify this, we have had this question many times. Government is not answerable for the day-to-day management and investments of a private company in which they have a share and may I go a bit further, most certainly the accounts of GSL are tabled every year and that will give the Opposition an opportunity to question anything they wish on the accounts. However, the Government, and although it may surprise new Members, is not answerable for the activities of a private limited company in which they are shareholders.

24 January 1989

Speaker Peliza 1989 - 1996

Parliamentary Privilege

Statement by the Speaker arising from a letter sent to the Leader of the Opposition by a firm of solicitors in relation to certain comments made in the House reflecting on a client of theirs.

February 1990

Speaker Peliza

Motion of No Confidence

A motion of No Confidence is a motion when:

- it is expressly framed in those terms (e.g. "That this House has no confidence in the policies of Her Majesty's Government"); or

- the Government expressly make clear, in advance of or during the debate, that it will treat a vote in favour of the motion as a vote of no confidence.

Letter from House of Commons - 5 February 1990

Speaker Peliza

Molestation of Members

Molestation can account to contempt. Examples given:

- Sending insulting letters to Members in reference to their conduct in Parliament (House) or letters reflecting on their conduct as such Members;

- Sending a letter to a Member threatening him with the possibility of a trial at some future time for asking a question in the House.

It will be noted from the above that conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege.

This statement should make everybody aware that when any of the rights and immunities, both of the Members, individually, and of the assembly in its collective capacity, which are known by the general name of privileges are disregarded or attacked by any individual or authority, the offence is called a breach of privilege or contempt and is punishable under the law of Parliament as may be applicable in Gibraltar.

15 February 1990

Speaker Peliza

Anticipation

Notwithstanding this motion is affected by the Rule on Anticipation, I allowed it. Hence, for the sake of good order I must acquaint Honourable Members with the manner of debating to be followed when taking the Appropriation Bill consequent of my acceptance of the admissibility of the motion.

March 1993

Speaker Peliza

Supplementary Questions

The same admissibility rules and practices apply (as to original questions) but can only be asked for the purpose of further elucidating any matter of fact arising out of an oral answer. Furthermore, it will not introduce any matter not included in the original question and must not be made a pretext for a debate.

Questions have to relate to public affairs with which Ministers and ex-officio Members are concerned or to matters of administration for which the Government is responsible.

15 March 1993

Speaker Peliza

Ruling of the Speaker

Standing Order 51 makes it amply clear that the Speaker is responsible for the observance of the rules of order and his decision should not be open to appeal and shall not be reviewed by the Assembly except upon a substantive motion after notice.

25 May 1993

Speaker Peliza

Precincts of the House

I have directed as empowered by section 2 of The House of Assembly Ordinance, that the precincts of the House of Assembly be re-designated to include the lobby of the House, the pavement of the western side of Main Street, in front of the House, and the whole of the area of the Piazza and the public highway on its three sides.

3 December 1993

Superseded by Speaker Canepa's Ruling of the 9 May 2019.

Speaker Peliza

Communication to Opposition

As you will understand it would be improper and even audacious for me to act against a practice established by the House even before I was appointed Speaker, without the sanction of a resolution from the House.

Communication to Opposition - 29 December 1994

Speaker Peliza

Motion on a matter sub-judice

Having considered it from all aspects, on balance, I came to the conclusion that it was in the national interest, as provided for in *Erskine May*, that the motion be allowed to be tabled, especially as it deals with issues that affect the legitimate functions of the Government, the welfare of elderly people belonging to Gibraltar and the supremacy of the House of Assembly as Gibraltar's parliament based on the communal and individual democratic right of the electorate.

18 December 1995

Speaker Alcantara 1996 - 2004

Dress

The Standing Orders are silent on the question of dress and *Erskine May* does not help. During the long hot summer without air conditioning in this House I think that it is permissible for any Honourable Member who suffers from heat to take off his jacket, provided he retains his shirt and tie, particularly if the tie is that of the Commonwealth Parliamentary Association.

As the master of this vessel, I shall be the last to discard my coat.

28 June 1996

Speaker Alcantara

Unparliamentary Language

"Subject to the rules of the House, a Member has to take responsibility himself for what he says about persons outside the House. In discharging that duty he may find it necessary to reflect upon such persons in order to bring out why their words or actions are - in his view - contrary to the public interest. His words in debate are protected by parliamentary privilege so that he can expose abuses without fear of action being taken against him in the courts".

Letter from Clerk of the Overseas Office to the Speaker dated 11 February 1975.

The mentioning of names of a relative of a Member of this House is not improper if mentioned by name. It is improper if mentioned by relationship to the Member.

5 July 1996

Speaker Alcantara

Motions - Anticipation

Hon Members will have noticed that there are two notices of motions dealing with the same subject matter, i.e. the granting of the Freedom of the City to Sir Joshua Hassan.

The first was tabled by the Hon the Leader of the Opposition on 21 June and the second by the Hon the Chief Minister on 27 June.

Standing Order 47(1) provides that a matter already appointed for consideration by the House cannot be anticipated by a motion, as long as the former remains upon the Order Paper. The motion tabled by the Leader of the Opposition remains upon the Order Paper and I must therefore rule that the motion by the Hon the Chief Minister cannot be moved.

I should mention that there were no grounds for not accepting the tabling of the motion by the Hon the Chief Minister as putting it in the Order Paper safeguards the moving of his motion had the first motion been withdrawn.

5 July 1996

Speaker Budhrani 2004 - 2012

Misleading the House

When the House adjourned earlier this afternoon, the Hon Fabian Picardo invited me to revisit my ruling on the point of order he had raised during the Chief Minister's speech. In response to Mr Picardo's contention that the Chief Minister ought not to make an allegation that a Member had misled the House, unless he was in a position to substantiate that allegation, I ruled that that was what the Chief Minister had been seeking to do by citing the facts and figures that he did. I am grateful to Mr Picardo for drawing to my attention the passage at pages 440 and 441 of *Erskine May's Parliamentary Practice 23rd Edition*, which reads: "expressions which are unparliamentary and call for prompt interference include, (in paragraph 3) charges of uttering a deliberate falsehood." The footnote to which, refers to a number of rulings in the past by Speakers of the House of Commons and reads: "the suggestion that a Member is deliberately misleading the House is not parliamentary and the proper course if such an allegation has been made is to table the appropriate motion."

My earlier ruling therefore stands corrected.

26 June 2006

Speaker Budhrani

Order Paper

May I start off with a ruling which has been circulated a few minutes ago to the Members. This arises from the last sitting when the Chief Minister sought clarification of the effect of section 35, subsection (3) of the Gibraltar Constitution Order on the business in the Order Paper. Views were expressed by the Chief Minister and by the Leader of the Opposition and by the Hon Fabian Picardo, I expressed my own view and I think we left the matter that we would all give some thought. I have looked at the Constitution, the rules of Standing Orders of this House, I have consulted *Erskine May* and I have come to conclusions which reflect what I thought at the time. In short, you have my ruling in writing and I shall just leave it at that.

Ruling

Section 35 of the Constitution and the Order Paper

When this House last sat, the Hon. the Chief Minister sought clarification of the effect of section 35(3) of the Gibraltar Constitution Order 2006 on the business set out in the Order Paper.

He expressed his views on the matter, as did the Hon. the Leader of the Opposition and the Hon. Fabian Picardo. Although I expressed my own view on that occasion, at the invitation of both sides of the House I have given the matter further thought in the intervening period.

I have not derived much assistance from *Erskine May* because the duration of a Parliament at Westminster is divided into annual sessions and the sittings of the House of Commons are ordered on a 'daily' basis while ours, of course, are not.

Section 37(3) of the Constitution provides - "There shall be at least three meetings of the Parliament in any calendar year except a calendar year in which a general election is held when there shall be at least two meetings of the Parliament."

Section 37(2) - "...the meetings of the Parliament shall be held at such place and begin at such time as the Chief Minister may from time to time by Notice published in the Gazette appoint..." (see also Standing Order 1(1)).

SO 2 (1) - "Members of the Parliament shall ordinarily be summoned to meetings thereof by written notice sent at least seven days, exclusive of Saturdays, Sundays and public holidays, before the meeting by the Clerk.

SO 2(2) - "The notice paper of the meeting of the Parliament shall include all business to be transacted according to notice given, including business remaining over from the previous meeting. Unless otherwise resolved, the business shall be transacted in the order printed."

SO 7(1) - sets out the order in which the business of the Parliament shall be transacted.

A meeting of the Parliament, once convened, continues from day to day at intervals agreed by the members until all the business on the Order Paper has been concluded, whereupon the House adjourns *sine die*. Although the House conducts its business in terms of several sittings spread over a number of weeks during each meeting, there is only one Order Paper for each meeting.

As far as legislation (other than Private Members' Bills) is concerned, this is dealt with under Government Business on the Order Paper. Section 35(3) of the Constitution provides: "Every bill shall be published in the Gazette, and the Parliament shall not proceed upon any bill until the expiration of six weeks after the date on which the bill was so published..."

SO 28 reflects that position — "No bill shall be read a first time until the expiration of six weeks after the date on which the bill was published in the Gazette..."

SO 29 — "Printed copies of all bills shall be sent by the Clerk to every member as soon as possible after publication and in any event not less than five weeks prior to the first reading thereof..."

Although the bill cannot be read for the first time until six weeks after publication, the Clerk is then required without further ado to place the bill on the Order Paper for the meeting of the Parliament then current unless, of course, Government business has already been concluded and the House has moved on to the next item.

In so placing the bill on the Order Paper, the Clerk (for the purpose of preparing the revised agenda for the next sitting within the meeting) refers to the requirements of Section 35 (3) of the Constitution by listing under the appropriate heading those bills which by the date of the particular sitting will not have complied with the six week rule.

In short, a bill finds its way onto the Order Paper immediately after publication although it may not be proceeded with until the lapse of six weeks after publication.

15 June 2007

Speaker Canepa 2012 - 2019

Naming of Civil Servants across the floor of the House

I personally think that it is not acceptable that the names of individual civil servants in a Department should be given across the floor of the House. I think it is quite unnecessary and the hon. Member would have to really convince me, privately, that that should be the case. I cannot see why, in this House, the names of individuals should 'willy-nilly' be given for public information. Information has been given about the grades that have been filled, I do not think it is necessary, and I so rule, that I am not going to allow individual names.

29 October 2013

Speaker Canepa

Government Ministers misleading the House

This is the first time that I am formally ruling on a matter raised by the Leader of the Opposition. It is not very often that the Speaker, either, here in this Parliament or perhaps in any other parliament is asked to make a ruling. Accordingly, I have checked with the Office of the Clerk of the House of Commons as to whether a Member of Parliament is entitled to rise and respond to a ruling.

The position in the House of Commons is that a Member will not be allowed to rise and respond, or even reserve his position, as this would in effect be challenging the ruling. The correct formal step for a Member who is dissatisfied would be to table a formal motion stating his opposition to the ruling clearly.

Now as to the matter at hand.

As Members are no doubt aware, the Leader of the Opposition has been in correspondence with me, seeking my adjudication on an allegation that Government Ministers had misled Parliament when answering questions in relation to the Sunborn Floating Hotel.

Having studied our Standing Rules and Orders, consulted the edition of *'Erskine May'* currently in use and after consulting the Office of the Clerk of the House of Commons, I responded with a ruling which I think should be placed on the record so that all Members should be aware of the salient points contained therein.

In the Leader of the Opposition's letter of 17th July 2013, he asked that I rule on:

'whether:

(a) the deliberate misleading of Parliament by a Member is capable of amounting to a contempt of Parliament; and

(b) you have the power on a complaint by another Member that a Member of Parliament has deliberately misled Parliament and therefore acted in contempt, to rule that a prima facie case has been established?'

The following extracts from my replies to the Leader of the Opposition constitute my ruling:

(1) *Erskine May*, at page 203, sets out the breaches of parliamentary privilege which could amount to a contempt. These include circumstances where the business of the House is obstructed or impeded.

Up until the present time, and noting the Leader of the Opposition's dissatisfaction with the answers given to his questions, but in no way judging the issue, I fail to see how it can be held that the business of the House was impeded so as to constitute a contempt. Nor, again, do I consider that the business of the House was obstructed or impeded.

(2) There is no provision in our Standing Rules and Orders to deal with cases regarding allegations of a Minister misleading Parliament when answering a question. This is also the position in the House of Commons. In not giving the Speaker the power to adjudicate on allegations or complaints that a Minister has misled Parliament when answering

questions, the Speaker is being safeguarded, probably intentionally, from being placed in an untenable situation. Never-ending instances would, no doubt, arise whenever a Member was not satisfied with an answer, when the Speaker would be expected to adjudicate on allegations that Parliament had been misled.

(3) I have also asked the Office of the Clerk of the House of Commons as to what courses of action in Parliamentary terms are open to the Opposition, should they consider that the Government have misled Parliament. They have replied that:

> 'Purely procedurally, if a Government Minister is accused of misleading the House then:
>
> (a) Either the Opposition could approach the matter politically, with motions of censure, confidence etc, or
>
> (b) If they felt that a particular Member (in this case a Minister) had misled the House then another Member could make a complaint in the normal way for the matter to be treated as a matter of privilege and referred to the Committee of Privileges.'

Since we do not have a 'Committee of Privileges' in our Parliament to whom the matter can be referred, only (a) above would seem to be relevant.

That is the end of my ruling, and I am providing all Members with a copy of this ruling.

21 November 2013

Speaker Canepa

Parliamentary Privilege

On the 6th July 2015, the Chief Minister wrote to me requesting that I rule on the calls made by the Leader of the Opposition for the Chief Minister to repeat outside Parliament what he said in the House about him during his winding-up speech at the end of the debate on the Second Reading of the Appropriation Bill, whereupon the Leader of the Opposition would issue defamation proceedings against him. Specifically, the Chief Minister requested that I should rule as to whether such a threat constitutes an abuse of parliamentary privilege.

In this connection, I wish to refer to, and place on record, the ruling which my predecessor the Hon Major Robert Peliza made in similar circumstances on Thursday 15th February 1990.

On that occasion the Speaker ruled as follows:

> 'Matters touched upon at the last meeting of the House have given rise to correspondence being addressed to Members which could inhibit their legitimate activities as elected representatives in this House of Assembly. I thus believe it prudent to bring to the attention of Honourable Members and the public generally, the privileges with which elected Members are vested for the purpose of carrying out their duties in this House and by my doing so discourage and dissuade people breaching these privileges and, in the process, unwittingly perhaps, making themselves liable to the consequences of any such acts of contempt.
>
> "Parliamentary privilege" is defined in *Erskine May*, as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals".
>
> Section 36 of the Gibraltar Constitution Order 1969, states: "The Legislature may prescribe the privileges, immunities and powers of the Assembly and its Members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the Members thereof"; and
>
> Part V of the House of Assembly Ordinance - Powers and Privileges of the Assembly states:
>
> > "Section 61. There shall be freedom of speech and debate in the Assembly. Such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Assembly.
> >
> > Section 62. No civil or criminal proceedings may be instituted against any Member for words spoken before, or written in a report to, the Assembly or to a committee thereof or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise".
>
> The privileges extended to Members individually are far reaching and legally complex. The subject cannot be examined widely and extensively in a short statement as the one I am making today. Furthermore each situation has to be considered on its merit if and when it arises.

Thus to meet the situation that has obliged me to make this statement I must draw attention to the freedom of speech that elected Members are protected by whilst carrying out functions connected with proceedings in the House.

Members are protected from interference through any form of physical, oral or written intimidation which could be considered to obstruct Members of the House carrying out the duties for which they are elected.

Members who may feel being so obstructed may report the matter to the Speaker, who taking into account the facts and circumstances of the case, will follow up the report as he may deem necessary bearing in mind that the House collectively in its judicial capacity is the Court that will pass final judgement if so required.

As past examples of what may constitute molestation of Members on account of their conduct in the British Parliament, I quote cases embodying this type of contempt:

"(a) Challenging a Member to fight on account of their behaviour in the House or any committee thereof or even on account of remarks made outside the House which touched proceedings in the House;

(b) Writing letters to Members taking notice of speeches said to have been made in the House and threatening to contradict them from the Gallery;

(c) Sending insulting letters to Members in reference to their conduct in Parliament or letters reflecting on their conduct as such Members;

(d) Threatening to inflict pecuniary loss upon a Member on account of his conduct in Parliament;

(e) Inciting the readers of a newspaper to telephone a Member and complain of a question of which he had given notice;

(f) Calling in a newspaper for the arrest of a Member and describing him as an arch-traitor;

(g) Sending a letter to a Member threatening him with the possibility of a trial at some future time for asking a question in the House".

It will be noted from the above that conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege.

This statement should make everybody aware that when any of the rights and immunities, both of the Members, individually, and of the Assembly in its collective capacity, which are known by the general name of privileges are dis-regarded or attacked by any individual or authority, the offence is called a breach of privilege or contempt and is punishable under the law of Parliament as may be applicable in Gibraltar.'

Such was Sir Robert Peliza's ruling.

It is my considered view that when a Member of Parliament is challenged to repeat outside this House whatever he may have said in the course of the proceedings in Parliament, there is no difference in principle whether the challenge is made by a member of the public, by a barrister acting on behalf of a member of the public, or by a Member of Parliament.

Accordingly, I am of the opinion that the ruling that I have read out applies, in its entirety, in this case.

22 July 2015

Speaker Canepa

Questions - Procedure

I think that it has become necessary for me to explain briefly to Hon Members how I intend to proceed at question time from now on, within the standing rules and orders applicable to questions.

I have no problem in allowing whatever number of supplementary questions require an answer from Ministers provided that they are relevant and not made a pretext for a debate. But, should the questioner make a statement, instead of asking a supplementary question, or make what I consider to be too long a preamble before asking the supplementary question, then, having allowed the Minister to reply, I will move on to the next question on the order paper. As I have previously said, I expect supplementary questions to be, in the main, short, sharp and to the point. Needless to say, however, I will always exercise discretion.

If Hon Members begin to debate during the course of supplementaries, particularly about what they allege may or may not have happened during the last 20 years or so, then I will take it that the questioner does not wish to seek any further information on the subject matter of his original question, which is one of the most important reasons for asking questions, and I will therefore call the next question on the order paper.

Although I do not have any powers under the Standing Rules and Orders to curb the length of Ministers answers to supplementary questions, I would like to urge them not to make such answers longer than is absolutely necessary.

15 September 2016

Speaker Canepa

Disclosure of Financial Information of Government owned Companies

On 13th September 2018, the Hon. Roy Clinton wrote to me requesting that I make a ruling to compel the Government to disclose financial information regarding wholly owned Government companies.

The nub of the argument put forward by Mr Clinton is that it is in the public interest for the financial information in question – in particular, full accounts – to be disclosed. There is another argument, which is that this financial information is received and held by the Government 'in accordance with its constitutional and public duties and that they are answerable to Parliament in respect of that information'.

In my view, there is no clear basis for the Speaker to make the requested ruling. The underlying reason for this conclusion had to do with the Speaker's role, which is to chair the proceedings of Parliament and to ensure that parliamentary procedure is followed in accordance with Standing Orders.

Specifically, as regards the public interest, the question as to who decides what is in the public interest is a substantive one for politicians (particularly the Government of the day), and not for the Speaker to decide. It is my considered view that the Speaker would be overreaching his position were he to make such a ruling since the public interest is ultimately to be determined by the Crown on the advice of Ministers.

As regards the Government's accountability to Parliament, there can be no question that ministers are responsible to Parliament for the conduct of their ministry and for the Government as a whole. Ministerial responsibility is central to the parliamentary system, because it ensures the accountability of the government to the legislature and thus, ultimately, to the people. However true this may be as a general proposition, the accountability of companies with separate legal personality, boards of directors, accounts, etc., is a distinct matter, except of course to the extent that a minister may himself be a director of one of those companies or is responsible for its day-to-day operations. Even here, however, it is not clear that it is for the Speaker to compel disclosure of full financial information.

30 January 2019

Speaker Canepa

Neutral Motions

Before we proceed with this morning's parliamentary business, I want to make a ruling.

Members will recall that I have for some time now been encouraging you to use the mechanism of a neutral motion.

The Chief Minister, on 14th March 2019, gave notice that he intended to table a motion requesting that 'This House notes the Tax Treaty between Gibraltar and Spain entered into on 4th March and signed by the Rt Hon. David Lidington MP, the Chancellor of the Duchy of Lancaster, on behalf of Gibraltar, given the United Kingdom's responsibility for Gibraltar's external relations.' The next day, 20th March 2019, the Hon. Roy Clinton gave notice that he intended to amend the Chief Minister's motion.

It is my considered view that the motion tabled by the Chief Minister is couched in neutral terms. The Standing Orders of this House do not provide for neutral motions. Accordingly, Standing Order 55 applies, and this states:

1. In cases of doubt the Standing Orders of the Parliament shall be interpreted in the light of the relevant practice of the Commons House of Parliament of Great Britain and Northern Ireland.

2. In a matter for which these Standing Orders do not provide, the said practice shall be followed, but no restrictions which the House of Commons has introduced by Standing Order shall be deemed to extend to the Parliament or its Members until the Parliament has provided by Standing Order for such restriction.

In the case of the House of Commons, Rule 24(b) of the House of Commons Standing Orders Public Business 2018 provides – and I have consulted a copy of these, which I have with me:

Where, in the opinion of the Speaker or the Chair, a motion, That this House, or, as the case may be, the committee has considered the matter, is expressed in neutral terms, no amendments to it may be tabled.

This is corroborated by *Erskine and May* in its 24th edition at page 409, which states:

> No amendments may be tabled to a motion that the House has considered a matter expressed in neutral terms pursuant to Standing Order 24B.

I then instructed the Clerk to seek guidance from the Clerk of the House of Commons enclosing a copy of the Chief Minister's motion together with the Hon. Mr Clinton's proposed amendments, and after receiving their advice it is my ruling that where a motion is expressed in neutral terms no amendments to it may be tabled.

Therefore, in the light of the above ruling, I have concluded that the Hon. Mr Clinton's amendments would undermine the neutrality of the Chief Minister's motion and are therefore not admissible. This does not mean that the hon. Member cannot rehearse his arguments during the course of the debate on the motion or indeed table a substantive motion in due course.

It is not the practice after a ruling of the Speaker for any Member to stand and speak on the matter.

25 March 2019

Speaker Canepa

Precincts of the House

Members will recall that at the meeting of 11 April 2019, I made reference to a ruling of Mr Speaker, Sir Robert Peliza on the designation of the precincts of the House. My reference to this ruling arose from the demonstration at the entrance to the Lobby of Parliament, since I was concerned that access to the House was being impeded.

In 1993 Sir Robert Peliza designated the precincts of the House to include the Lobby, the pavement on the western side of Main Street, in front of the House, the whole area of the Piazza and the public highway on its three sides. He had issued this ruling as a result of a demonstration that had occurred just before the House met on 28 October 1993. Groups of people had carried out a demonstration and displayed placards within the Lobby during the course of which Members, particularly the Chief Minister, were stopped and questioned in circumstances that could have led to obstruction. The Speaker was empowered under Section 80 of the House of Assembly Ordinance to designate the precincts of Parliament from time to time.

On reflection, it is my considered view that this designation is perhaps too extensive and unnecessary. In so far as the western pavement is concerned one also has to take note of the fact that two thirds of the area is currently taken up by commercial premises.

What is important is that, as well as the Lobby, the area directly in front of the three arches on the western pavement should be kept clear at all times.

The Clerk has recently held a series of meetings with the Royal Gibraltar Police and the Gibraltar Law Officers. As a result of these meetings, I have received written confirmation from the Commissioner of Police that there will be police presence prior to and at termination of every session of Parliament, in the immediate area of the entrance to the lobby of Parliament, to ensure the clear and unobstructed passage of the Speaker, Members and any staff members.

Given the assurances that I have now received, regarding adequate policing, I am now amending the ruling made by Sir Robert Peliza in 1993. As empowered by the Parliament Act, I now rule that the precincts of Parliament will include the Lobby and the area directly in front of the three arches on the western pavement.

9 May 2019

Speaker Farrell 2019 – 2023

Motions

Hon. Members will have noticed that there are two notices of motions dealing with the Public Services Ombudsman. The Hon. Roy Clinton gave notice of his motion on 27th November, and the Hon. the Chief Minister did so on 19th December. Yesterday, the Hon. Roy Clinton made representations to me on the basis that both motions were on the same subject and that therefore the Hon. the Chief Minister's motion infringed Standing Order 47(1) on the grounds that it constituted anticipation, and as such should therefore be ruled as being out of order.

Using a ruling by Speaker Alcantara as a precedent, there were no grounds for not accepting the tabling of the motion by the Hon. the Chief Minister, as putting it in the Order Paper safeguards the moving of his motion had the first motion been withdrawn.

The Hon. the Chief Minister's view is that it does not infringe Standing Order 47(1), since the wording of some parts of the motion is different to that of the Hon. Roy Clinton. Moreover, he added that Government motions are transacted ahead of Private Members' motions in the Order of Business and therefore it has to take precedence.

My attention was drawn to a ruling made by a former Speaker in which it was declared that two motions on the granting of the Freedom of the City to Sir Joshua Hassan dealt with the same subject and ruled that the second motion by the then Chief Minister of a later date could not be moved.

Both the motions which are the subject of the present discussion are lengthy and generally similar, although the wording and phraseology varies. There are, however, several paragraphs, the contents of which should be noted. In summary, these are as follows.

The Hon. Roy Clinton resolves that the relevant Act be amended to allow for own motion investigation, whilst the Chief Minister's resolves that the Act be reviewed to enable the office of the Public Services Ombudsman to launch investigations of its own motion.

The Hon. Roy Clinton makes specific references to two Departments, namely the Housing Authority and the Civil Status and Registration Office, included in the Public Services Ombudsman recommendations contained in the 2018 Annual Report, whilst the Chief Minister's does not.

The Hon. Roy Clinton speaks about the Public Services Ombudsman's office being created for the public to complain about any act of maladministration. The Chief Minister's motion is silent on this.

The Hon. Roy Clinton calls on the Ombudsman's recommendations to be acted upon in a timely manner; or, if not, that a proper explanation is given by heads of Departments on a case by case basis. The Chief Minister is silent on this.

On the basis of the aforementioned, and whilst I recognise that there is merit to the Hon. Roy Clinton's argument, I am not sure whether Standing Order 47(1) has been breached.

In the absence of any Gibraltar clarifying references, I have looked to Erskine May. In its 25th edition, it states on anticipation – and I paraphrase – at the second paragraph of paragraph

20.13: 'Stated generally, the rule against anticipation, which applies to other proceedings as well as motions, as strictly enforced in earlier times, was that a matter must not be anticipated if contained in a more effective form of proceeding than the proceeding by which it was sought to be anticipated, but it must be anticipated if contained in an equally or less effective form.'

In layman's language, that means, for example, a Bill or any other Order of the Day is more effective than a motion, which in turn has priority over an amendment, which is in turn more effective than a Written or Oral Question. If such a motion were allowed, it could indeed forestall or block a decision from being taken on a matter already on the Order Paper.

It should be noted that at the Meeting of Parliament held on Friday, 7th October 2016, Parliament debated two motions that were substantially similar. In fact, Hansard records the Hon. Roy Clinton saying:

Mr Speaker, it is regrettable that the Government has seen fit to bring this counter motion in what the New People describes as an attempt to hijack my prior motion for the creation of a Public Accounts Committee.

Given the precedence set by Speaker Canepa in allowing both motions to go ahead and the advice contained in Erskine May, I am allowing both motions to stay on the Order Paper.

20 December 2019

Speaker Farrell

Questions

I need to interject again.

Whilst it is the Speaker's duty to allow MPs to effectively scrutinise and challenge the executive, I do not think it is right that the House should be turned into a sort of court of law. I am alluding to what the Chief Minister said earlier, where he is now being subjected to cross-examination as if he were a defendant in the dock. I do not think it is quite parliamentary, to be very honest.

27 July 2020

Speaker Farrell

Response to Government Statements

I need to say a few words about the way that we are conducting the response to the Chief Minister's Statement. I need to read this out to you because I have properly anticipated that this might well crop up.

It is a well-established practice when a ministerial statement is made that the hon. Members of the Opposition may ask questions for clarification purposes. In so doing, this should not be made a pretext for a debate. Furthermore, Members of the Opposition are not permitted to make political statements in the course of their questioning.

I am going to give a number of examples where my predecessor had to make clear what the position was. My ruling is in keeping with the position taken by the former Speaker, Adolfo Canepa, on numerous occasions in the past.

On 29th June 2016 he said:

> I would invite Members of the Opposition, in particular the Leader of the Opposition and the hon. the independent Lady, to ask questions for clarification purposes.

On 20th October 2016, the Speaker said:

> I explain for the benefit of the virtually new Members of the Opposition that it is the practice, when a ministerial statement is made in Parliament, to allow the Members of the Opposition to ask questions for clarification, if they so wish.

On 20th September 2018, the former Speaker said:

> In keeping with established practice, when a ministerial statement is made hon. Members of the Opposition may ask questions for clarification purposes. They may ask questions but are not entitled to make a political statement.

On 31st January 2019, again on a point of order in response to a ministerial statement, he said:

> You can ask a question on points of clarification.

By way of further explanation and in light of Standing Order 55(1), I shall quote from *Erskine May* and House of Commons procedure. *Erskine May*:

> Questions may be asked and brief comments made upon ministerial statements, but they should not be made the occasion for immediate debate.

Again, on the matter of procedure, from the House of Commons, it says here:

> What is a ministerial statement? Government Ministers may make oral statements to Parliament which usually address major incidents, government policies or actions. These take place after Oral Questions and any granted Urgent Questions.

The important thing here is that after making a statement the Minister responds to questions on its topic from MPs. That is the House of Commons.

Something quite interesting: I sought guidance from the Principal Clerk of the Table Office on 17th February 2020 and he says to me, in response to the email:

> Whenever a Minister makes a statement, any Member of the House may ask questions afterwards. The Official Opposition and the second largest opposition party spokesman have reserved slots to do this. Others are called by the Speaker. The only limit is time. The current Speaker generally restricts the statement and questions afterwards to 45 minutes in total.

Those are statistics but the point I am trying to make here is that the Hon. Leader of the Opposition has the right to pose questions on the Statement for clarification purposes. He cannot go back and make a statement regarding what took place in a session on Monday about the answering of the questions by the Hon. the Chief Minister and the way that he did so. That is a question and answer session; this is a session where a statement is being made and I would urge the Leader of the Opposition, yes, to question the Chief Minister for clarification purposes on what he has said in the Statement. Beyond that, I have to rule that you cannot make a statement – that you have just made – covering all the ground that was covered for the time of the question and answer session. That is my ruling.

31 July 2020

Speaker Farrell

Response to Government Statements

On 15th January last, the Hon the Chief Minister made a Ministerial Statement to the House on the Framework Agreement reached between the UK, Gibraltar and Spain on 31st December 2020.

As is the practice, there followed a number of interventions by Members of the House. However, a point was reached when some degree of confusion began to creep into proceedings, namely which Members were permitted to speak and the purpose of their intervention. The Leader of the Opposition raised a point of order objecting to a Government Minister's proposed intervention on the grounds that the Minister already had collective knowledge of the Statement and therefore should not be expected to seek clarification on the matter in hand. The Leader of the Opposition further explained that he had not objected previously to the intervention by the Member on the Government bench because he was not a Minister This point of order was accepted and the Minister was unable to speak. The Chief Minister said that he believed it would be possible for the Minister to speak if he gave way.

In the absence of any guidance in Standing Orders, I felt it necessary to regularise the position and to Rule on how Statements are to be dealt with in the future.

The matter has been researched by reference to Hansard, and Parliamentary Practice and the Procedure in the House of Commons as provided for in Standing Order 55.

I therefore Rule as follows:

1. The Leader of the Opposition and any member of the Opposition, the Leader of any other political party in opposition or any Member that sits on the Government bench who is not a Minister are entitled to ask questions for clarification purposes ONLY.

2. In addition, the Leader of the Opposition or any other member of the Opposition that shadows a Ministry to which the statement refers is permitted a short contribution on the merits of a Statement. This also applies to the leader of any other political party in opposition. Exceptionally, I will use my discretion in matters of public and/or national interest.

3. Since as far back as 1984, in the time of Speaker Vasquez Hansard shows that on a number of occasions more than one Government Minister intervened in the course of an exchange on a Statement. In recent times, Speaker Canepa has also allowed more than one Minister to make a contribution.

   I therefore Rule that it is in order for any member of the Government to speak but ONLY to further clarify, expand upon or to make a relevant point following an earlier intervention by the Chief Minister, other Minister, any Member that sits on the Government bench who is not a Minister or in response to a question posed by any member in opposition.

4. In recent times, Speaker Canepa has allowed the Chief Minister to give way to enable an Opposition Member to speak. I do not disagree with this practice but it must be for appropriate and relevant reasons only. This would also apply to Government Ministers and any Member that sits on the Government bench who is not a Minister, as well as opposition members.
5. It is not in order for any Member of the House to use the opportunity to speak to make remarks or comments which are irrelevant and unnecessary and are outside the scope of a Ministerial Statement.
6. Furthermore, exchanges between Members of the House which descend into a form of debate will not be permitted.

5 February 2021

Speaker Farrell

Questions deadline

Mr Speaker: As hon. Members will know, it has been the practice in the past for Questions to be taken on the first day of a meeting. I have been asked to rule on whether Standing Order 13(2) provides for the tabling of further questions if other business is taken before Questions and in so doing provides a lengthy enough intervening period to submit further questions. Standing Order 13(2) states:

Notice of questions shall be given by delivering a copy in writing to the Clerk at least five days, exclusive of Saturdays, Sundays and public holidays, before the day on which it is intended to ask the question.

In my view, as a matter of textual interpretation of the Standing Orders, Standing Order 13(2) refers to the five-day rule being in relation to the proposed 'day' when a question may be answered and not to the date of the 'meeting'. Therefore, it is permissible to submit further questions, provided that the provisions of Standing Order 13(2) are met.

Furthermore, as long as answers to questions remain an unexhausted item on the Order Paper, the ability to submit further questions remains unaffected regardless of whether the Standing Orders are suspended during a meeting which is then adjourned.

It follows that where questions have been submitted for answer in compliance with Standing Order13(2), and a meeting of Parliament is then adjourned to a day in the future without answers to the original questions having been concluded, additional questions can be submitted as long as they comply with the requirements of Standing Order 13(2).

In anticipation of this Ruling, I have allowed further questions to be tabled.

On a separate matter, I would like to speak about the process that we are going to be following for this particular question-and-answer session, given the large quantity of supplementaries that need to be answered. Parliament last had a question-and-answer session on 30th October 2020. Since then and for the reasons well known to all hon. Members, the House has met very infrequently. This has led to an accumulation of a considerable number of tabled but unanswered questions.

Today we are facing the prospect of dealing with 376 questions. This is indeed a very high number but not dissimilar to the numbers when Parliament used to meet two or three times a year.

In light of this, I would like to enlist the support and understanding of hon. Members to clear the backlog as expeditiously as possible. I therefore respectfully request that hon. Members keep their answers as concise as possible and the number of supplementary questions to a reasonable level.

As a yardstick, I am turning to Speaker Alcantara for guidance, who introduced the practice of allowing hon. Members to ask two supplementaries and three in respect of the Leader of the Opposition. I intend to follow this practice and will exceptionally allow the Leader of the Opposition a further supplementary for the purpose of elucidating any matter arising out of an Oral Question posed by an Opposition colleague. I will afford the Hon. Marlene Hassan Nahon the same courtesy. However, should a question raise matters of significant public interest, I will use my discretion and allow additional supplementaries.

Having said this, I will return to a more liberal practice when monthly meetings of the House are resumed.

Thank you.

16 March 2021

Speaker Farrell

Points of Order

The proceedings of the Gibraltar Parliament are regulated by its Standing Rules & Orders. These were last updated on 29 March 2007 following the enactment of the 2006 Constitution. Parliamentary practice also plays an important part in the governance of the House.

Except for two minor references, there is no provision in the current Rules covering points of order. In light of the differing views held by Members on the subject, I think I should clarify the position.

When a Member believes that the Rules or practice of the House have been breached or overlooked during proceedings, the Member has the right to bring this to the attention of the Speaker by raising a Point of Order.

The Member should indicate to the Speaker which Rule or practice has been breached or overlooked and should offer an explanation or present supporting arguments as necessary. It is the practice to allow the Member to whom the point of order is being directed to respond. The Speaker decides whether it is a valid point of order or not.

Points of issue may arise which fall outside the scope of current guidelines which are nonetheless valid and require to be addressed. The Speaker will give a ruling to cover any new circumstances.

It is the practice that after a ruling is given, Members are not permitted to stand and speak on the matter (this is a ruling by Speaker Canepa). Any Member who is not content or feels aggrieved may write to the Speaker or communicate with him directly behind the Speaker's Chair

The Speaker of the House of Commons allows the use of Points of Order to effect a factual correction of a Member's statement. This will be permitted in this House. However, when so doing the Member shall not introduce any new matter.

What will not be permitted is the use of Points of Order when a Member who is speaking refuses to give way.

Finally, it is the duty of the Speaker to intervene to preserve order in this House.

20 July 2021

Speaker Farrell

Written Answers – Follow-Up Questions

On the 23 September 2021, the Leader of the Opposition sought clarity in the interpretation of Standing Order 16 (2) which provides the procedure to be followed in the case of tabled oral questions which remain unanswered when the Parliament adjourns on the last day of a meeting.

The Leader of the Opposition specifically pursued clarification in respect of oral questions converted to written ones and whether Opposition Members would be permitted to ask follow-up questions at the next meeting of Parliament, should they choose to do so, in respect of any or all of the questions.

I have perused Standing Orders 16 (2) and 17(1) (v) which are relevant to the matter and given careful consideration to the points raised by the Chief Minister, the Leader of the Opposition and the Hon Edwin Reyes. My ruling is as follows:

"Follow up questions in respect of those remaining unanswered questions for which Opposition Members had opted to receive a written answer will be allowed to be tabled at the next meeting of Parliament.

Standing Order 17(1)(v) will not be applied in this particular case or any similar cases in the future.

The right to answer questions is governed by the rules contained in Standing Order 17. These rules do not make a distinction between written and oral questions. It therefore follows that any question, be it oral or written, to be asked in the normal course of parliamentary business, falls within the scope of Standing Order 17(1)(v), the application of which will remain as it is at present. i.e. the six month rule will apply.

The practice in relation to written statistical questions will remain unaffected.

In relation to questions on matters of significant public interest, I may be minded to use my discretion and depart from the scope of the Standing Order."

5 October 2021

Superseded by Speaker Ramagge's Ruling of the 25 June 2024.

Speaker Farrell

Unparliamentary Language - Use of 'lied'

I should like to make a short Statement before we return to the Budget speeches.

On 30th June 2022, in the course of the Budget speech of the Hon. Daniel Feetham, I had reason to stop the delivery of his speech after he used the words 'they have misled and lied to the people of Gibraltar'. I pointed out that the word 'lied' was out of order and would need to be withdrawn.

The Hon. Daniel Feetham suggested alternative language to the word 'lied', namely 'economical with the truth'. I accepted this as a way forward. He was, however, unwilling to withdraw the word 'lied'. In order to take the heat out of the moment, I suggested that the Hon. Daniel Feetham continue with his speech, which he duly completed, at the end of which he offered his apologies to me, which I accepted. There remains the matter of a ruling sought by the Leader of the Opposition in relation to the use of the word 'lied' when referring to a government. I have considered the matter and rule that the use of the word 'lied', although directed at the Government and not a particular Member, is nonetheless a word which can be regarded as unparliamentary and, accordingly, the Member should have withdrawn the word 'lied'.

In addition, I would like to remind Members of the following point. When the Speaker asks a Member to withdraw unparliamentary words, he or she is expected to do so. It is out of order and totally unacceptable for a Member to suggest that the Speaker has endeavoured to curtail a reply, speech etc. It is out of order and totally unacceptable for a Member to suggest that the Speaker is not acting impartially. It is out of order and totally unacceptable for a Member to question or challenge the authority of the Chair.

That ends my Statement.

4 July 2022

Speaker Farrell

Challenges to the Chair

It is my considered view that some Members of Parliament are disregarding the Speaker's rulings and decisions and often challenge his authority. Standing Orders are also being flouted. I cannot allow this state of affairs to continue.

Some hon. Members engage in rather lengthy preambles when asking a supplementary question. In this respect, I should like to draw the attention of hon. Members to Standing Order 16(5)(i), which says, inter alia, that supplementary questions are also subject to the same admissibility rules as are applied to original questions. In dealing with this recurring issue, I intend to proceed along similar lines to that which Speaker Canepa adopted on 15th September 2016. These are contained in the Speakers' Rulings and Statements booklet, which every Member should now have in front of them.

Hon. Members will know that a point of order is an appeal to the Speaker for clarification or for a ruling on a matter of procedure in the House. It cannot be used to challenge the authority and, in particular, the Speaker's impartiality, or as a means of making a complaint or expressing dissatisfaction about an answer given to a question.

It is the Speaker's responsibility to intervene when words or expressions are uttered which he considers unparliamentary or likely to create disorder in the House.

I now turn to the Hon. Elliott Phillips and his behaviour in this Chamber on 22nd December 2022. The word 'misleading' is unparliamentary and not permitted and requires to be withdrawn immediately. If a Member wishes to pursue accusations of the kind not permitted, the proper course of action is to table a motion about the conduct of another Member. The Hon. Mr Phillips will know that he was given the opportunity of withdrawing the offending word but chose not to do so and angrily and abruptly left the Chamber. A number of weeks have elapsed since the incident and therefore I cannot sanction the hon. Member, but I must warn him that any repetition will lead to speedy and appropriate action.

That ends my Statement.

18 January 2023

Unparliamentary Language

On 20th April 2023 in the course of an interview on a Viewpoint programme on GBC, the Hon Daniel Feetham was asked to comment on an incident which took place in Parliament on 26th November 2022. This related to an accusation by the Hon Roy Clinton that I had not been completely impartial when dealing with an expression used by the Hon Sir Joe Bossano and I quote: Well look, he can either believe it or he can lump it, when answering a supplementary question posed by the Hon Damon Bossino.

For the sake of completeness I shall now proceed to inform Parliament of all the facts of this matter so that it can be included for the record in Hansard.

Given the very serious nature of the Hon Roy Clinton's accusation, I discussed the matter personally with the Speaker of the House of Commons, Sir Lindsay Hoyle and it was proposed that I should refer this to his Legal Counsel. I provided the relevant extract from Hansard.
A reply was received on 19th December 2022 as follows and I quote:

1. In general, I do not think the phrase "he can lump it" if used in the House of Commons, would ordinarily be viewed as unparliamentary and warranting intervention by the Chair. In this instance, it appears that the Member who used the phrase had already tried various other means of making his point, and resorted to this as perhaps an inelegant, but not necessarily unparliamentary, way of driving home his point.

2. I can see nothing in Mr Speaker Farrell's response which could be considered out of order. He is apparently trying to explain the context in which the comment was made, no doubt in an effort to reduce tensions in the Chamber, and his comments about Members are respectful and measured. **He does not appear to be taking a side in the substantive issue under discussion.**

3. While it is orderly for a Member to raise a point of order seeking clarification about a decision or ruling from the Chair, it is not for Members to challenge the authority of the Speaker; and in particular the Speaker's impartiality should not be questioned. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege. **Erskine May says that reflections on the character of the Speaker or accusations of partiality in the discharge of their duties have attracted the penal powers of the Commons.** Unquote.

Upon receipt of this advice from the House of Commons, I opted to deal with the matter internally. I spoke to Honourable Members Clinton and Bossino in the presence of the Hon the Leader of the Opposition behind the Speaker's Chair.

23 May 2023

Procedures for amendments to Codes of Conduct and Standing Rules and Orders

On the 15th March 2023, the Honourable Roy Clinton raised a point of order and sought a ruling in connection with the laying on the table by the Hon the Chief Minister of two documents namely the Code of Conduct for Members of the Gibraltar Parliament and the Ministerial Code.

The Hon Roy Clinton's argument centred on his view that under Standing Order 12 the tabling of such documents was not the appropriate mechanism for their formal adoption and that this should be done by Resolution of the House. The Hon the Leader of the Opposition, in supporting the Hon Member's position, pointed to the relevance of sections 36 and 39 of the Constitution.

The Hon Roy Clinton recognised that the Hon the Chief Minister had on reflection changed his position and this subsequently led to a motion being moved the following day giving effect by way of Resolution to the Code of Conduct for Members of the Gibraltar Parliament. This procedure was not applied in respect of the Ministerial Code. In coming to his decision, the Hon the Chief Minister had relied on the recommendations made in the Report to Parliament on Democratic and Parliamentary Reform of January 2013.

At my request, the Hon Roy Clinton wrote to me setting out the arguments in support of his request for a ruling. I provided the Hon the Chief Minister with a copy of such.

In considering this matter, I have looked into the various procedures followed in the House in the past and the current practice in the House of Commons.

On 19 April 1979, several amendments to Standing Rules and Orders were approved by Resolution of the House.

On 31 October 1979, the House approved by motion the report of a Select Committee which contained recommendations for the creation of a Register of Members' Interests.

On 2 March 2007, revised Standing Rules and Orders were approved by Resolution of the House following the coming into operation of the New Constitution.

On 15 February 2013, the Report to Parliament on Democratic and Parliamentary Reform was tabled. It contained a number of recommendations including two which referred to the Code of Conduct for Members of Parliament and the Ministerial Code.

In the case of the former, it was recommended that a Code should be drafted and that Parliament should determine its introduction by Resolution.

In the case of the latter, it was recommended that a review of the Code should be conducted and that it should be drawn up along the lines applicable to Ministers in the United Kingdom and that it should be kept under periodical review.

The position in the House of Commons in the context of the Codes is as follows.

The Code of Conduct for Members of Parliament is owned by the House in the sense that it is formally agreed by the House and the House as a whole has to approve changes to it.

By contrast, the Ministerial Code is not owned by Parliament. It is the responsibility of the Prime Minister and is approved by the Prime Minister. It is not laid before Parliament although the Code and its enforceability has been debated in the House of Commons.

In view of the foregoing, I rule that:

1. Amendments to or the revision of the Code of Conduct for Members of the Gibraltar Parliament; and

2. Amendments to or the revision of the Standing Rules and Orders of the Gibraltar Parliament,

can only be given effect by Resolution of the House after presentation of the appropriate motion.

In respect of the Ministerial Code, if I were to follow the procedure in the House of Commons and rule that the Code is a matter for the Hon the Chief Minister, this would conflict with section 11 of the Code which states that "The Ministerial Code shall be subject to annual review by the Gibraltar Parliament". I therefore rule that changes to the Ministerial Code should be treated in the same way as for the Code of Conduct for Members of the Gibraltar Parliament.

23 May 2023

Speaker Ramagge 2023 –

Outstanding Oral and Written Questions

The usual Order of Business, as prescribed by the Standing Rules and Orders of the Gibraltar Parliament ('the Rules') was followed, with the exception of the suspension of Standing Order 7(1) under Standing Order 7 (3) for the reading of a Ministerial Statement.

In due course Parliament attended to oral questions, these began on Wednesday 21st and continued into Thursday 22nd. At a given point on Thursday 22nd, the Hon the Chief Minister called for the tabling of written questions, and the answers to written questions numbered W7 to W13 of 2024 were laid. After this, but before the Order of the Day was called, the Hon the Leader of the Opposition objected to the remaining oral questions not having been taken before the laying of the written questions. The Hon the Leader of the Opposition pointed to the fact that the agenda indicated that at the close of the oral questions for the Hon the Minister for Health, the House would adjourn, and his understanding was that the outstanding oral questions would be taken when the House next convened on the following Monday. The Hon the Chief Minister indicated that the remaining oral questions were for two absent ministers and that his decision to move away from oral questions, was to give business efficacy to a House that meets every month. The Hon the Leader of the Opposition requested a ruling from the Chair as to whether the House was still in that part of the agenda that was question time, or whether the House had moved on, and if the House was still in question time, whether the oral questions which had remained unanswered could be answered on Monday.

Not in dispute that the oral questions which remained outstanding were two sets of questions for Minister Feetham and Minister Cortes. Also, not in dispute that Minister Feetham was absent from the House because he was in Paris on Government business regarding the removal of Gibraltar form the FATF grey list, and Minister Cortes was absent recovering from surgery which he had undergone on Wednesday 21st February, the previous day.

Had Ministers Feetham and Cortes been in Parliament on the Thursday the oral questions addressed to them would have been put. Given their absence the Hon the Chief Minister opted to move onto written questions.

Standing Rules and Orders

Rule 7 (1) sets out the order in which the business of Parliament is to be transacted. Rule 7(1) (viii) provides for 'Answers to Questions'. There is no distinction drawn between oral questions and written questions. In the practice of this House answers to questions are taken in two parts, the first part is oral questions, and the second part is written questions. The procedure which this House has followed historically is that once oral questions have concluded, written answers are then tabled and laid. I am of the view that, once written questions have been tabled and laid the House has moved beyond stage one, oral questions, into stage two, written questions, and it is not open at that point for either the chair or the opposition to reopen stage one.

The Hon the Leader of the Opposition complains that the opposition have been ambushed by the laying of written questions before the conclusion of the oral questions.

It is important to place the issue under discussion in its proper context.

The reason why the oral questions were not concluded was because the Ministers to whom they were directed were absent from the House for unavoidable reasons.

In the United Kingdom there is a limit to the number of oral questions. Members may table no more than two substantive questions for oral answer in any one day, of which not more than one may be addressed to any one Minister. Any questions laid in excess of these numbers are made questions for written answers. There is no limit to the number of written questions that a member may ask in any one day.

I immediately appreciate the necessity in the United Kingdom to limit the number of oral questions given that members of parliament number in their hundreds, a situation which is clearly distinguishable from our Parliament. However, it is important to remain cognisant of the fact that the need to limit the taking of oral questions in the United Kingdom, is born from the fact that if members were allowed to ask limitless oral questions the other business of parliament would be frustrated.

In Gibraltar there is no limit to the number of oral questions that can be tabled, but in keeping with the obvious necessity to have a properly functioning Parliament which is able to attend to all of its business, it must be right that the Leader of the House be able to move away from oral questions and into written questions, at the point where to continue with oral questions would necessitate adjourning and waiting for the return of absent members.

Erskine May (twenty fourth edition) at p. 382 reminds us that "the ordinary public business of the House consists of orders of the day" i.e. Bills, motions or other business which the House has ordered to be taken into consideration on a particular day.

Pursuant to section 37 (3) of the Gibraltar Constitution, Parliament is bound to sit a minimum of three sessions in any calendar year except in an election year when there must be at least two meetings of parliament. It has been the practice of the Hon the Chief Minister to convene Parliament once a month (with the exception of the month in or around easter and one month in the summer). It is important to ensure that apart from question time the House has sufficient time to deal with its ordinary public business. In this session apart from questions and various Bills there is a motion on the agenda to be moved by the Hon Mr Clinton, which I venture to opine is of public interest and in respect of which it is important to make sure that time is allocated in this session.

It is evident that the Rules envisage a situation where Parliament is not able to take all the oral questions in any one session. Rule 16(2) provides that if any question remains unanswered when the Parliament adjourns on the last day of a meeting, a written answer shall be sent to the member who put the question. There is a proviso attached to that rule that a member who gives proper notice, may require the question to be postponed for oral answer to the next session. Given that Parliament sits each month, there would not be an unreasonably long wait for the question to be answered orally, and the Hon member would not be deprived of the opportunity to have the question aired orally or to put relevant supplementaries on that question.

Conclusion

By way of conclusion and in summary I find that:

(i) At the relevant time the House had moved away from the oral question stage

(ii) Having tabled and laid written answers the time for putting oral questions was over, neither the opposition nor the Chair could insist at that stage that oral questions be reopened nor that they be postponed until the next sitting day.

(iii) The Leader of the House moved away from oral questions at the point he did, due to the legitimate absence of those Ministers to whom the oral questions were addressed

(iv) In those circumstances the Leader of the House was entitled to draw the oral stage of questions to a close in order to ensure that the House had sufficient time to deal with other, ordinary business

(v) The members who did not have their questions answered orally will be entitled pursuant to the rules, to have their questions answered orally at the next session in March should they so wish.

26 February 2024

Written Answers to Oral Questions and the Posing of Supplementary Questions

Last week the Hon. DJ Bossino wrote to me, and we had a discussion thereafter. The Hon Mr Bossino requested that I review my decision to hold oral question Clerk's No 141 ('Question 141') inadmissible for this session. As an alternative, he requested that he be allowed to ask a supplementary question to written answer W73/2024, which answer was in response to oral question 492/2024. The matter was a little more complex and nuanced than I have just surmised but I have written to the Hon. Member fully responding to the specific matters he raised, and I do not propose to rehearse that reply now.

That said, matters of important general principle arise from the exchange, and it is those matters which are the subject of this ruling.

The Relevant Rules

Rule 13 (1) provides that a question shall not be asked without notice unless the Speaker permits it in certain defined circumstances.

Rule 13 (2) provides for the period in which notice of questions must be given.

Rule 16(1) provides that questions shall be answered by laying a written answer but where a Member requires an oral answer to a question, an oral answer shall be given.

Rule 16(2) provides that if a question remains unanswered when Parliament adjourns, a written answer shall be sent to the Member.

There is a proviso to that section which allows for a Member within three days to require in writing that the oral answer be postponed to the next sitting.

Rule 16(5)(i) makes it clear that a member may put a supplementary question or questions for the purpose of further elucidating any matter of fact arising out of an oral answer given.

Rule 17(1) (v) Provides that a question shall not refer to any answer that has been given within the preceding six months.

Discussion

Trite that where a member opts ab initio to file written questions, there is no right to raise supplementary questions and the practice of this House quite properly reflects that rule.

There are two areas that I wish to address, both relate to the situation where an oral question remains unanswered at the close of a parliamentary session, and a Member has not requested it be carried over to the next session, in those circumstances it will, by default attract a written answer.

In the first scenario, if the written answer is filed after the close of the deadline for the filing of oral questions, should a Member nevertheless be allowed to file another question, which for ease of reference I will call a 'secondary' question. By secondary question, I mean not a supplementary question, but a question formulated as a result of the information received in the written answer but which does not infringe Rule 17(1)(v).

In my view, the short answer to that at present is 'no' because there are no provisions identifying a deadline by which written answers to converted oral questions should be provided, nor is there provision for the consequence of a dilatory answer. This creates a lacuna in procedure, which, in the absence of rules, requires guidance from the Chair and I will address the matter presently through this Ruling.

In the second scenario, if the written answer is filed in a timely fashion, would a Member be allowed in certain circumstances, to ask supplementary questions in the next session.

In support of this latter proposition, I am referred to a Ruling of 5th October 2021, by Speaker Farrell (as he then was), it is a short Ruling and for ease of reference I will read it.

The Ruling of 5 October 2021 seems to conclude that because there is no differentiation in Rule 17 between written and oral questions, supplementary questions would be allowed in respect of oral questions which had attracted a written answer, and specifically provides that in those circumstances Rule 17(1)(v) would not be applied.

With respect to Speaker Farrell, I take a different view. The fair and smooth running of Parliament can only be guaranteed if all members abide by the rules. In my view it is not open to the Speaker to opt not to apply a rule that has neither been repealed or amended. The Ruling talks of 'the right to answer questions' being governed by Rule 17, I presume that must be a typo as Rule 17 deals with the right to ask questions. In any event whilst Speaker Farrell is right that Rule 17 does not distinguish between oral and written questions, it is not Rule 17 which provides for supplementary questions; that is governed by Rule 16, and Rule 16 does draw a distinction between oral and written questions.

Evident from Rule 16(5)(i), that supplementary questions were intended to follow only oral and not written questions. The purpose of posing questions can only be to obtain answers, those answers will be obtained whether they are given orally or in writing. Therefore, the only real advantage of posing an oral question as opposed to a written question must be to have the

opportunity to expand on the subject matter of the answer by posing further relevant supplementary questions. The default position is that if oral questions remain unanswered at the close of a session, those questions will attract written answers but in order that a member be not deprived of the right to ask supplementary questions, the Proviso to Rule 16(2) affords Members the opportunity to carry their oral questions to the next session. The Proviso thus enshrines the right to ask supplementary questions, and it is that Proviso which persuades me conclusively that supplementary questions can only attach to oral questions. The Proviso would be redundant had the intention been to allow supplementary questions to attach to written answers. The rules are unambiguous in this regard.

Conclusion

1. Oral questions not answered in Parliament, and which by default attract written answers pursuant to Rule 16 (2) must be answered promptly, but in any event, no later than seven days exclusive of Saturdays, Sundays, and Public holidays next after the adjournment of Parliament.

   This will give Hon Members the opportunity to file further questions if they so wish. Those questions should not be supplementary questions and should not infringe R 17(1)(v).

   In the event that a written answer is received outside the above time limit and the time for giving notice of questions pursuant to Rule 13(2) has expired, a Member may apply to the Speaker for permission pursuant to Rule 13 (1) to ask a further question, provided the question does not infringe Rule 17(1)(v)

2. Supplementary questions will not be allowed to be asked in respect of oral questions that attract written answers. The right to ask supplementary questions attaches only to questions that are asked orally in Parliament.

3. For the avoidance of doubt, there is not, nor should there be, any point in time prior to an oral question being answered in Parliament when the Speaker can rule a question to be inadmissible. Quoting form Erskine may 356 24th Edition *"The Speaker is the final authority as to the admissibility of questions…. On his attention being drawn to an irregularity, the Speaker has refused to permit a question to be asked although it stood upon the paper"*.

   A question is allowed until such point as it is disallowed. If the Speaker becomes aware or realises that a question contravenes the rules, it is incumbent upon the Speaker to disallow that question.

   Given that this Ruling is binding as from today, and is introducing a slight change in procedure, I will leave copies behind the Speaker's Chair should any Hon Member wish to familiarise themselves with its contents before it is uploaded onto Hansard.

25 June 2024