

**Question time; impartial Speakers and dissent from rulings  
some comments on the House of Representatives' experience<sup>1</sup>**

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The essential element of chairing any meeting is that the person in the role of chair must ensure that the rules governing the conduct of the meeting are applied fairly to all participants. If a Presiding Officer fails to do this, he or she cannot be regarded as impartial – even if his or her other dealings with members are exemplary. Presiding Officers must apply the standing orders fairly and equally at all times, but this is particularly challenging during the highly charged political atmosphere of question time. While question time is an important opportunity for holding the government of the day accountable, and authors of learned tomes on parliamentary procedure regard it accordingly, players (i.e. members) and observers expect there to be political winners and losers.

The observers – particularly the media – are powerful drivers for bellicose question times. The players (members) usually give good value with a mix of borderline relevance of answers, provocative questioning, personal and political abuse and spirited behaviour generally. From a procedure which was designed to allow members to get information (and written questions largely continue to fulfil this objective) question time is now seen as a vehicle for testing the performance of Ministers and Shadow Ministers, and for a battle of political ideas and skills. Proposals for procedural reforms aimed at improving matters have not been heeded by either side of politics.<sup>2</sup>

In this political battleground, the standing orders themselves have become weapons – used for tactical purposes by members on both sides of the House. Raising points of order (i.e. questions about the application of the standing orders), challenging the Speaker's rulings on points of order and (occasionally) dissenting from a ruling, have

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<sup>1</sup> This article was first published in *Parliament Matters* (No.15, February 2006).

<sup>2</sup> Procedure Committee reports presented in 1986, 1992, 1993 and 1995 have proposed reforms of question time – all without achieving positive responses.

become arsenals in the political battle. Regardless of the decision made on a point of order – one side wins and the other loses. The losing side is almost certain to interpret the ‘defeat’ (i.e. the ruling) as evidence of the Speaker’s failure to be impartial.

There is a certain apparently inexorable logic to the outcome of this struggle. It goes like this: Oppositions raise more points of order than governments. Points of order (from both sides) are likely to be part of the strategic, political contest rather than genuine concerns about the application of the standing orders. Speakers are unlikely to allow points of order which are political rather than being based on a respect for the standing orders. Occasionally, Member will take points of order that are direct contradictions of points of order they have raised on other occasions, depending on the political circumstances. Points of order from both sides are therefore likely to be disallowed. Because the opposition has raised more points of order, the opposition has more points of order disallowed. The Speaker is elected from the government side. In disallowing (the statistically more likely) points of order raised by the opposition, the Speaker is condemning the opposition to ‘defeat’ – at least on this point – and therefore allowing the government a (veritable) win. Therefore perception is that the Speaker has assisted the government and is not impartial.

This thesis would be an excellent scenario to place before a class of student logicians. While a bright secondary school child would probably identify (multiple) errors – apparently quite intelligent observers do not. (In this case, some of the players have become observers).

While only the naïve would accept this scenario as fact – question time can be a cause for concern. Members may be frustrated because attempts to access information fail or the occasion may be unsatisfactory because of less altruistic political/tactical reasons. The noisy atmosphere certainly causes some observers to be concerned.

Points of order continue to be raised. One response is a motion to dissent from the Speaker’s ruling. In the House of Representatives this response appears to obey a

(rough) statistical rule. Dissents are moved about two or three times a year<sup>3</sup> (from the opposition side only) but disapproval of rulings is as frequent as rulings themselves (from both sides but obviously not at the same time – in keeping with the winners and losers analogy).

While successive Speakers might find this distasteful or even distressing, they probably regard it as part of the job description. This does not mean Speakers take dissent motions lightly. The characterisation of dissents as political tactics (while only partly tongue-in-cheek) does not mean they are not important. It is a serious issue to challenge the Speaker's interpretation of the standing orders. (In the House of Representatives dissents from chairs other than the Speaker are statistically far less common than those from Speaker's rulings.) Indeed, some Westminster parliaments (e.g. the United Kingdom, Canada and India) do not allow the practice. In 1986 the House of Representatives Procedure Committee recommended that the standing orders allowing dissent from rules be removed from the standing orders. The recommendation was not accepted.

Speakers are unable to defend themselves from claims of partiality – generally not participating in debates on dissent.<sup>4</sup> Some have tried to prevent matters getting too abusive by not allowing adverse reflections on the chair during debate on the dissent motion. On many occasions members themselves have urged their colleagues to respect the chair – including, at times, across political lines. [e.g. In 1982 the then backbencher, Mrs Joan Child chided the Prime Minister (Mr Fraser) for what she saw as an attempt to intimidate the Speaker (Sir Billie Snedden – Liberal Party). Mrs Child, who was later to become the first female Speaker of the House and a Labor member, having failed to have a point of order on the matter recognised during question time, rose on the adjournment debate and noted 'The Speaker of this House must be above confrontation, intimidation and downright bullying. Honourable members of the House must respect the role of Speaker'.<sup>5</sup>

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<sup>3</sup> The statistics for dissent motions in recent years are: 2005-2; 2004-3; 2003-2; 2002-3; 2001-1; 2000-1; 1999-3; 1998-3; 1997-4; 1996-5; 1995-3; 1994-1; 1993-1; 1992-2.

<sup>4</sup> Though some exceptions are outlined in *House of Representatives Practice*, 5<sup>th</sup> edition, p. 190

<sup>5</sup> H.R. Deb. (26.8.82) 1053.

While dissents from ruling are uncommon and (presumably) uncomfortable for a Speaker, they are unlikely to be accepted because of two reasons. First, having been elected and therefore by definition, the Speaker has the support of the majority in the House. Second – and this might be seen as somewhat controversial – Speakers generally have a fairly sound understanding of the standing orders. Some might apply the standing orders in such a narrow (or, alternatively, broad) way that there will be a new footnote entered into *House of Representatives Practice*. Indeed, that publication includes a list of chair's decisions on quorums which are, with masterly tact and discretion, described as 'irregular and their validity as precedents must be carefully assessed in the context of the particular situation'.<sup>6</sup> To be fair, several of these decisions were not made by the actual Speaker.

It has been mentioned that the failure of a dissent motion might lead to grumblings about a Speaker's (supposed) partiality. In the past, such judgments have been published or spoken at some risk.<sup>7</sup> Recent Speakers may be more phlegmatic about (or less sensitive, or more accustomed to) such criticisms. However, there is one published remark which should be addressed – partly because it is inaccurate and partly because it was made by someone who others might think speaks with authority. The intention is not to support the Speaker (who needs no such support) but to correct a point of procedure.

In January 2005, Dr Ken Coghill, (who had been Speaker of the Victorian Legislative Assembly from October 1988 to October 1992), published an article 'The Speaker Rules, or does he?' for the prestigious Democratic Audit of Australia,<sup>8</sup> in which he criticised the Speaker, the Hon David Hawker, about a ruling made in the House on 7 December 2004. The article implied that the Speaker's ruling – which resulted in a dissent motion - was partisan. Further, the article treated the dissent motion as though it had been a want of confidence or censure motion – a very different procedural item.

This confusion is sometimes shared by the participants in moving a dissent motion. Comments are made to the effect that the carriage of a motion of dissent would

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<sup>6</sup> *House of Representatives Practice*, 5<sup>th</sup> edition, p.268

<sup>7</sup> See *House of Representatives Practice*, 5<sup>th</sup> edition, p.196

<sup>8</sup> January 2005, <http://democratic.audit.anu.edu.au>

require the Speaker to resign. This is not the practice in the House of Representatives. The Speaker is a Member of the House and, like all Members, is subject to the direction of the House. The passage of a want of confidence motion would be an entirely different matter.

Dr Coghill wrote:

‘If they fail to get support for a ruling, they have effectively lost the confidence of the House and have little chance of remaining in office. Remember Speaker Jim Cope whom Prime Minister Gough Whitlam failed to support.’<sup>9</sup>

Dr Coghill fails to distinguish between a House supporting a presiding officer’s decision on one hand and accepting the presiding officer’s competence on the other. A motion of dissent from ruling is an expression of opinion on the merits of a decision, a motion of want of confidence an expression on the capacities of the Chair. It is quite consistent for a House to disapprove of a specific ruling by carrying a dissent motion without in any way registering a lack of confidence in the presiding officer who made that ruling.

The Cope reference is spurious. The situation was a little more complicated than merely failure to support a ruling. Indeed a ruling was not at issue. The Speaker had asked a Member to apologise for reflecting on the Chair. The Member refused and the Speaker named him. No Minister rose to move a motion for the Member’s suspension; an Opposition Member did so and the motion was lost on division. Because the Speaker does not have the power to suspend a Member, the act of naming is an appeal to the House to take disciplinary action against the offender. Speaker Cope resigned because he interpreted the vote against suspension as an expression of lack of confidence in the occupant of the Chair.<sup>10</sup>

Moreover the comparison between the McLeay ruling on the Chaney question and the Hawker ruling on the Latham question is unsound. In the first case the question was clearly out of order for containing argument; it would not be difficult to find numerous instances of similar questions being ruled out of order because they contain

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<sup>9</sup> Ken Coghill ‘The Speaker rules, or does he?’ January 2005, <http://democratic.audit.anu.edu.au>, p. 2

<sup>10</sup> See HRP 197

opinions, assertions and imputations amounting to an argument. The other question was defective not because of its content but because of the incumbency of the target (and as is explained, the House had recently been reminded of the limitation on whom may be asked questions).

The facts of the incident discussed by Dr Coghill were that the Speaker disallowed a question to a Minister who had formerly been a Parliamentary Secretary (in a different portfolio). The question related to the Minister's former position as Parliamentary Secretary. The situation was complicated by the fact that the Minister had apparently dealt with Parliamentary Secretary matters after becoming a Minister in another portfolio. The Minister appeared willing to answer the question and those on the government side seemed in favour of this action. While this may have been attractive from a political perspective, House of Representatives standing order 98(b) states that 'a Member may orally ask a question of a Minister (**but not a Parliamentary Secretary**) ...'. [bold added]. The Speaker ruled that the standing orders prevented the Minister responding – stating that 'a parliamentary secretary is not to be held responsible to answer questions'.<sup>11</sup> He reminded members that they could ask questions of her as Minister if the questions related to her portfolio. Objectively (and despite the complications) this was a procedurally correct ruling. Indeed, it would have been difficult for the Speaker to be in error on this point, since he had made a statement on the matter only the day before, when he said '...I repeat that, in general, questions cannot be addressed to ministers about matters that may have occurred when they were a parliamentary secretary or during their service as a minister in another portfolio. ...'.<sup>12</sup> The ruling led to a motion of dissent which was not upheld by the House.

Dr Coghill did not agree with the ruling. He reported "In the course of the debate it became clear that even Abbott thought that the question should be allowed. By this stage even the Opposition was itching for a fight. Nonetheless, it was open to the Speaker to indicate to the House that having heard the further information and arguments, he was prepared to allow the question".<sup>13</sup> This statement begs a few

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<sup>11</sup> H.R. Deb. (7.12.2004) 6.

<sup>12</sup> H.R. Deb. (6.12.2004) 38

<sup>13</sup> Ken Coghill 'The Speaker rules, or does he?' January 2005, <http://democratic.audit.anu.edu.au> p.3

observations – Mr Abbott might have wanted the question allowed but if so, it would have been a political opinion, not a procedural one. The Opposition may have been ‘spoiling for a fight’ (a common enough event following a disallowed point of order) but is this a matter the Speaker should take into account in making a ruling? These are minor matters compared with Dr Coghill’s final statement. It was not open to the Speaker to change his mind, particularly in the light of his considered statement on the previous day. Such comments by a former Speaker, mistaken though they may be, have the potential to undermine respect for the Speaker, the House and the role of question time. The latter needs all the help it can get.

On 25 February 1982 the House of Representatives agreed to a motion moved by the then Leader of the Opposition (Mr Hayden) referring the conduct of question time to the Standing Orders Committee. In moving his motion Mr Hayden described question time (and other procedures) as having become ‘debased to the stage of becoming pretty much meaningless to the administration of the affairs of this country’. Many academic writers have addressed the issue of the value of question time and some have been uncomfortably close to Mr Hayden’s view.<sup>14</sup> Currently Dr Uhr appears to be less pessimistic about parliaments but is still writing - with great distinction - about parliamentary reform.<sup>15</sup>

If Mr Hayden’s view were true at the time – and even worse – if it is now true, there has been a lot of wasted effort over a long period of time. Perhaps those who care about parliaments should take comfort from continuing public and media interest in question time. Would so many people waste their time so wantonly?

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<sup>14</sup> e.g John Uhr, *Questions without Answers: An Analysis of Question Time in the Australian House of Representatives*, Parliamentary Fellow Monograph No. 4, May 1982.

<sup>15</sup> e.g ‘Reforming the Parliament’ Democratic Audit of Australia, September 2002, <http://democratic.audit.anu.edu.au>