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# Letter to the Editor

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## Motion of No Confidence; Motion for Review of interpretations of Section 5 of the Cook Islands Constitution Act 1964

*The following letter was sent to the Editor of CI News with copy to the CI Herald*

**D**ear Editor  
Last Wednesday two motions were intended for the Parliamentary Order Paper one by the Leader of the Opposition expressing no confidence in the Cabinet the other a long one from MP James Beer exploring issues regarding the Prime Minister's NZ citizenship/UN Membership issue. The first was widely expected by the anticipating public and there must have been some confusion why the matter seemed to have just disappeared.

### Rejected

Neither made it to the Order Paper although they have been re-logged with a protest to observe the protocols. The first appeared to have been rejected by the Speaker. The second definitely was and the only reasoning supporting that biased action was that the motion was 'too long'. The first has since appeared on the Order Paper. It remains to be seen whether the other will and if it does whether in the meantime procedure is being manipulated to delay it appearing while Government moves to blunt its message, and if it does appear, how procedure is manipulated to prevent it being debated because it is clear that while it has been denied Parliament and the public, Government is fully aware of it as evidence by the Minister of Internal Affairs glowing Ministerial Statement in Tuesday's sitting on our ILO membership and how it endorses our global, independent status and NZ's support which the PM also was quick to seize upon and confirm.

Length of course has nothing to do with whether it is acceptable or not. Had it dragged on for pages

in which the main thrust may have become obscure well, yes, but it was no longer than other motions that have appeared on the Order Paper (e.g Colagate) and one only needs to go and view typical UN resolutions to see how they are structured to know that Mr Beer's motion conformed with all necessary requirements and precedents.

### Admissibility and bias

Motions are required by the Standing Orders to be submitted to the Speaker as to admissibility. That does not mean that the Speaker is empowered to consider the political implications of a motion's content, confer with the Government and take a partisan position resulting in rejection.

### Censure-Servants of Parliament not Government

What the Speaker needs to be again reminded of is that she, and the Clerk, as with the other officers of Parliament, are the servants of Parliament and that her performance so far is bringing her seriously close to a censure motion requiring her removal. Sure the Government in the vote will come to her rescue because they demonstrably need her there but the indignity and humiliation of having her impartiality questioned, while probably not be a first in the Commonwealth, carries with it all the opprobrium of a failed incumbent. She is not alone because the Clerk labours until similar handicap but his position is more invidious because while he may want to be doing the job well he has to take instructions from the Speaker and the Speaker it seems is under the mistaken impression that she has to take instructions from the government.

### Purse Seine Fishing Petition

A typical example which fuels this perception would be the Clerk's statements on television the other evening relating to the Purse Seine Fishing Petition. He avowed that he was not sure when that petition could come before Parliament because a) Parliament had a heavy load of business (irrelevant); b) he had to check for any multiple signatures (wrong); c) going forward to Parliament had to be sanctioned by the Speaker (wrong again). Clerk, read your Standing Orders.

Your job is clear and it is simple-just do it. The fact that Parliament has a heavy workload should not, and could not, impede the required progress of the Petition to the Table and a Select Committee. Any checking for multiple signing, if suspected, is a function that can be performed by the Select Committee. Do you think the Clerk of the NZ Parliament checks every signature on a 300,000 petition? Of course not. The Select Committee on the 5 year term petition back in 1982 focussed on this as it searched for every reason to discredit the petition. If the present

petition conforms to the Standing Orders there is no reason why it cannot immediately proceed to the House and the Speaker does not need to be sanctioning anything. That is your job.

### Appointment process of Clerk in NZ

Take note that there has recently been the appointment of a new Clerk in the NZ House of Representatives. The press releases read: *The Clerk is an independent statutory officer, appointed by the Governor-General. This independence*

*supports a strong Parliament and ensures the Speaker and all MPs have access to impartial procedural advice .and this, The Clerk of the House of Representatives is an independent statutory officer, appointed by warrant by the Governor-General on the recommendation of the Speaker, after consultation with the Prime Minister, the Leader of the Opposition, and such other members as the Speaker considers desirable. Our provisions are similar except there is no consultation with the Leader of the Opposition and other members. This has not been a problem in the past because the independence of the position and impartiality and competence of the incumbents were fairly well assured but now it seems it should be addressed.*

### Minister of Parliamentary Service-misconception

There is another creeping development (much like the incorrect term 'independence' employed to describe internal self-government) which further undermines Parliament's independence and that is the role of a Cabinet Minister where Parliament is concerned. You cannot have an independent Speaker and parliamentary staff if they think there is a Minister to answer to. Prime Ministers, in more recent times, in assigning Ministerial responsibilities, have created the fiction of a Minister for the Parliamentary Service. There is no such thing and it just further confuses. The Speaker is the head of the Parliamentary Service and she should answer only to Parliament. She, along with the Clerk, would discuss and negotiate the estimates and

allocation in the Parliamentary Service vote but she cannot engage in budget debates in the House nor answer questions in Parliament on that vote. That is where the Minister comes in. But that is the extent of his involvement. He is not the boss down at Parliament. The Speaker is and the sooner that is realised it should have a salutary effect on the independence and morale down there. For further clarity and confirmation go to Sections 4 and 5 of the Legislative Service Act 1968-69. Also as the interpretation section makes clear the Minister is purely and simply, and only, the Minister responsible for the expenditure and estimates of the Parliamentary Service so the sooner he also understands that the better for all concerned.

#### **Nice people**

Do not misunderstand me. Both the Speaker and the Clerk are nice people in their private capacities. It is just that both are hopelessly out of their depth and beholden and dependent on their patron, the CIP government, which gives a strong impression that it tenders biased instruction, guidance and advice rather than they seeking an impartial, untainted source

elsewhere which would then allow them to grow into the position which they probably have the ability to do if freed from political direction or intimidation from the Government. If they wish to survive what I predict and to avoid that inevitable looming challenge to their tenure they need to throw off these shackles of subservience to Government, come to the realisation that they are not serving Parliament as they should and tell Government to go to hell because they have a job to do and want to do it, and do it properly. Government, with its majority, might then entertain the idea of mounting its own censure motion but would be doing so at its peril and just do further irreparable damage to its already rapidly vanishing credibility.

#### **Recording transgressions**

My advice to the Opposition is to start preparing a chronicle of the Speaker's breaches of propriety and protocol in readiness for a censure motion if it comes to that. That would be

an interesting test of the Speaker-whether she would allow such a motion to advance to the Order Paper. Disallowing it would be the ultimate display of her unsuitability for how otherwise is the House to ever articulate its displeasure at her management of the House and procedure?

#### **Self-improvement**

In addition to the foregoing my further advice to the Speaker and the Clerk is to try and get a better understanding of the Constitution and the Standing Orders which will reduce the numerous procedural errors I hear over the radio and start reading some of the very useful material you have in your own library especially those relating to the office of the Speaker. And for the Speaker, please stop those dreadful schoolmistress type homilies and remember you are not an elected member. And when it comes to Manihiki matters let the Prime Minister speak for the people of Manihiki - he is their representative not you because the two of you sound very much like a tag team. And for heaven's sake read S/O 157 and stop the excessive, inappropriate and misuse of the term 'honourable'.

#### **Abuse of the rules or infringement of the rights of the minority-Appropriation Bills, Question Time, Private Members Day, Proposing the Question and asking for speakers**

These continue, all to the disadvantage of the Opposition and all to the advantage of the Government and all with the cooperation of the Speaker

Another Appropriation Bill is now before the House. Last year's was guillotined on Government motion before even the first of the ten days allocated to the Committee of Supply stage. This meant that no member, but particularly the Opposition, had any opportunity to question the spending of the \$224million authorised by that measure and there is every indication that the government will try the same thing again this year. Should that be attempted it will be interesting to see whether the Speaker refuses to allow it on the grounds that it is an abuse of the rules and the rights of the minority because this abuse has not bothered her previously (S/O 307).

Question time is an important opportunity for private members to ask questions of Ministers on public affairs but the Speaker wrongly allows the allocation of valuable time for this procedure to be wasted by Ministers asking questions of the Opposition.(S/O 92).

Thursday is Private Members day. Last Thursday there were plenty of Papers for Consideration which could have been useful vehicles for healthy debate but the Speaker went straight to government business thus denying Private Members a full sitting in which they should have had command of the business of the House S/O 65(2)(c)

Too frequently we hear the Speaker failing to propose the question and asking for speakers and often moving directly to the lazy approach of 'That the motion be agreed to' without restating what that motion actually is. That should change.

#### **World Press Freedom**

Recently there was, was there not, a World Press Freedom day remembrance? This is a day where we are to remember the evils of censorship and state control of the freedom of expression but what do we do when we have a case of self-censorship? Where the newspaper determines what the public should be reading. Do we have a case of that here where Mr Beer's motion is concerned? It might appear so when your failure to report the material that was twice, if not thrice, represented to you and that was most relevant to current controversy meanwhile giving copious space to the Prime Minister's apocryphal denials and backtracking. A perusal of last week's issues of your newspaper would reveal that there were any number of items of little or no significance to the Cook Islands which could have easily been sacrificed in order to publish Mr Beer's motion but you chose not to do so nor do a story about it.

#### **Why Mr Beer's motion needs to be out there**

If you read his motion you would, or should, have understood that there are issues therein which go to the core of the interpretation of entrenched provisions of our Constitution. Those which deal with the Head

of State and external affairs and defence. What you would not know (but it should make no difference) is that I have had ongoing dialogue with the NZ High Commission here, and through them the NZ Ministry of Foreign Affairs and Trade in Wellington, on this very subject. a subject which should be exercising the minds of some of our legal fraternity here if they could only get to know of it but how could they if you won't publish it? What is becoming clear, however, from statements by the Prime Minister and Minister of Internal Affairs at Tuesday's sitting is that Government has not only been privy to Mr Beer's motion but is also very aware of this dialogue. Surely one in your position should have asked yourself what was it here that was so potentially important, explosive and /or damaging that caused the Speaker to reject it outright and to ponder whether perhaps this was something that should be explored. Whether you did or you did not you obviously took an editorial decision to deny your readers, the legal fraternity and the NZ Government one, how the dysfunctional system operates down at Parliament, two, that there were serious constitutional interpretive questions which needed investigation and three, that press freedom also starts with you and that arbitrarily withholding material which should be in the public domain is not exactly setting a shining example.

Of course if you now hurriedly, and belatedly, rush into print with Mr Beer's motion without this letter you will be exposing that there was a bias. Whether you can see the bigger picture or not remains to be seen but be informed that this letter and attachment are being copied to the NZ High Commission because there are further issues being raised that New Zealand needs to be considering. I am also copying in the Herald which does not have the same reluctance to publish contentious material or do the investigative work people should be expecting from you, the national daily.

#### **Erosion of standards and values-Kirk/Henry exchange**

I have written previously about the gradual erosion

of the standards and values expected of the Cook Islands in exchange for the privilege of NZ citizenship as so eloquently enunciated in the Kirk/Henry exchange of letters. One such value would be a healthy respect for the democratic institution of a properly run Parliament which here is being increasingly muzzled or restricted by a Speaker that allows government to abuse the rules and deny the people's representatives the opportunity to fully perform their representative role. There must come a time when the

accumulation of abuses reaches the point where NZ is confronted by the question whether that exchange of letters is becoming so much meaningless, flowery, rhetoric and that perhaps it needs to be reminding the Cook Islands (warning might be more appropriate) of just what exactly is expected of them. It might be useful also for the

High Commission here to more vigilantly monitor the abuses and straying from these values that are occurring and begin its own chronicle because if matters are allowed to drift the way they are the Cook Islands government could well think it can continue the erosion with impunity.

#### **External relations and defence inseparable**

The words 'external relations and defence' in Section 5 are conjoined to the point that what applies to one applies to the other. If we can launch an initiative in the sphere of foreign relations then it follows that we can do the same in the sphere of defence and if we can do the former independently with, or without NZ's blessing then it follows does it not that we can do the same when it comes to defence similarly with or without NZ's blessing even if it meant taking some action which was hostile and anathema to NZ's

and its allies' interests? Imagine then our new best friend, China, offering us millions in aid to set up a naval and air base in say Penrhyn. I know it may seem remote but what is to stop this happening? Nothing it seems as the interpretation of Section 5 has evolved. And remember what was Prime Minister Henry's principal motivation for seeking UN Membership? Yes, access to more aid. Quite aside from the fact that we should be asking ourselves how we can develop our own opportunities and potential without being forever the international beggar, this denial to join the boys at the big table will only encourage the exploration of every other alternative so watch this space - anything could happen.

NZ has announced through its MFAT Legal Division that-

*In the conduct of its foreign affairs, the Cook Islands interacts with the international*

*community as a sovereign and independent state. Responsibility at international law rests with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations.*

Remember there is no difference between foreign affairs and defence in the interpretation and application of the said Section 5.

This statement is therefore diametrically opposed to the recommendation of the constitutional advisers in 1963 and the resolution of the Legislative Assembly which was the basis of the present Section 5 in the Constitution which on a plain reading, in my view, does not provide any support for this new interpretation. Furthermore Section 5 is an entrenched provision and any variation, modification or action inconsistent with it is, surely, ultra vires

*John M Scott*

## The Honourable Mr James Beer to move:

#### **That this House views**

with the gravest alarm recent reported remarks by the Prime Minister that our association

with New Zealand is hampering his idea of how the Cook Islands should be developing

its global relationship and how he would be prepared to renounce NZ citizenship to aid in that endeavour and also to seek UN membership

#### **denounces**

the Prime Minister and the Cook Islands Party government for being prepared to sacrifice Cook Islanders' New Zealand citizenship to achieve these objectives

#### **objects**

in the strongest possible terms to any suggestion that the Prime Minister or the Cook Islands Party government has any mandate from the people of the Cook Islands to be pursuing policies which would endanger the security or future of their citizenship

#### **reminds**

the Prime Minister and the Cook Islands Party government that they did not even win the popular vote at the last general election and can make no claim be speaking for the majority of Cook Islanders on any matter but particularly one as serious as this

#### **notes**

with derision the Prime Minister's hasty attempts at damage control and denial and his description of the reports as 'a mishmash of uninformed opinions'

#### **questions**

the Prime Minister's assertion that if there has been 'a longstanding policy to gain membership of the United Nations' where and how have the Cook Islands people been made aware of this and had the consequences and implications explained to them

#### **interprets**

the silence from the Cook Islands Party organisation that has accompanied these revelations as an endorsement of their leader's intentions and that it would meekly submit to such a betrayal of the peoples' trust

#### **condemns**

the Prime Minister's special trip to NZ to engage with the Prime Minister of New Zealand in furthering dialogue on the issue of UN membership

#### **regrets**

that it was unable to communicate its views to Prime Minister Key ahead of that meeting but

#### **requests**

the New Zealand Government

representative in Rarotonga to immediately inform his government that the Cook Islands people have never been consulted on this issue and that Prime Minister Puna had no authority to be discussing it with him

#### **protests**

that the loose interpretation that has been given Section 5 of the Cook Islands Constitution Act 1964 and the further ambiguity of the relevant provisions of the Joint Centenary Declaration of 2001 have given successive Cook Islands governments a false and misleading impression of their sovereignty and entitlement to independently engage and forge links with the international community beyond its constitutional competency and the intentions of the original framers of the Constitution and is directly responsible for the outrage which has greeted this latest foray of Prime Minister Puna's on the international scene and, for that reason

#### **therefore recommends**

that there be no new external affairs initiatives and current activities which can be halted without negative diplomatic, legal or financial consequences be deferred pending a thorough review of-

-the historical underpinnings

and rationale of the said Section 5,

-the explanations given to and the understanding of it by the people of the Cook Islands at the time of its enactment

-the reasoning behind its entrenchment and whether that protection has been breached

-the interpretations of it that have evolved since 1965

-the Joint Centenary Declaration of 2001 and its impact on those interpretations

-whether the validity of past independent international activity by the Cook Islands is compromised in any way

-the degree to which New Zealand accepts responsibility for our independent actions

-what the international community has been told and the accuracy of that advice

-whether the ultimate control of entrenchment and the expression of the peoples' will has been rendered meaningless by actions of Cook Islands executive governments, and

-whether Cook Islands governments past and present have abused the flexible interpretations and failed to address the wider issue of whether their actions were consistent with the original intentions and restrictions inherent in Section 5.

# Seven Billion Dreams, One Planet. Consume with Care

*Marking World Environment Day 5 June 2015*



We pledge to support our Pacific community so that our Pacific environment sustains our livelihoods and natural heritage in harmony with our cultures. Cook Islander Nanette Woonton is standing front left.

Mr. David Sheppard, Director-General, SPREP

**D**o more and better with less – that’s at the core of our thoughts this World Environment Day as our Pacific island community is part and parcel of the Seven Billion Dreams. One Planet. Consume with Care. theme for World Environment Day on 5 June.

As the world changes with modern technology and the internet, our values are changing too. Whereas humans inhabited the earth living sustainably many years ago, we in this present age are now consuming more natural resources that our planet can sustainably provide.

We only have one planet, we must “consume with care” to achieve a sustainable future. Adopting better lifestyles so we do more and better with less is what we need to try, instead of finding ways around it – like finding new planets to live on or geo-engineering to fix problems in a way that allows us to continue consumption in a business as usual scenario.

The statistics as found on the World Environment Day website are alarming – less than 3% of the world’s water is fresh

and drinkable, of which 2.5% is frozen in the Antarctica, Arctic and glaciers, and with over 1 billion people without access to fresh water.

There is also a crisis of loss of species: the 2012 IUCN Red noted that around 30% of species assessed globally are threatened with extinction.

Households consume 29% of global energy and consequently contribute to 21% of resultant CO2 emissions noting that we in the Pacific islands region contribute to less than 0.03% of the world’s total greenhouse gas emissions but are on the frontlines of climate change impacts.

We are running out of resources necessary for survival of humanity and we need to fix this.

It’s easy to sit back and tell others what to do, however there is a need to take action in your “own back yard”. At the Secretariat of the Pacific Regional Environment Programme (SPREP), our organisational values and code of conduct are clear – we must show and demonstrate environmental leadership and this is at the core of our SPREP family.

Our SPREP Youth Ambassador, Ms. Brianna Fruean promotes that people start small with what they can do as all the small achievements lead to something great. This is how we started at SPREP – introducing a recyclable waste area for our staff which is now working well.

We have also cut back on staff travel through the introduction of video conferencing, to reduce our carbon footprint, and this year we will install solar panels for our SPREP Campus in Apia to reduce our greenhouse gas emissions, show support for the Renewable Energy sector in the Pacific and help to increase awareness of renewable energy options and energy efficient practices.

For those of you that have attended our meetings or conferences, you may have noticed that we now aim for Green meetings – this means less paper, less waste, no Styrofoam and reusing water bottles to name a few actions. While there was some resistance from participants in the beginning who wanted hard copies of documents and printed materials – we now find that this is becoming an accepted way of

SPREP events.

This brings us to our SPREP publications where our preference is towards environmentally friendly ink and paper use wherever possible. We believe every small action possible can help.

At SPREP we are currently planning for the Pacific Climate Change Centre which will be the major centre in the region for coordination of climate change efforts, with the generous support of the government of Japan. Our aim is that this will be the “greenest” building in the Pacific, with low energy consumption, anaerobic treatment of sewage, photovoltaic panels and green roof thermal insulation. We aim for this centre to be a showpiece for leadership in energy and environmental design.

We hope everyone in our Pacific community step up to make pledges this World Environment Day. Our environment is at the heart of our Pacific way of life, our survival is dependent upon the resources she brings us.

Let’s pledge together to save our one planet and consume with care.