
The Speakership: A New Zealand Perspective

Rt. Hon. Lockwood Smith, MP

Due to elections and retirements half of the Canadian provincial and territorial Speakers have changed since October 2011. While there are differences in the role and standing orders of each jurisdiction there are many more similarities across Canada and indeed throughout the Commonwealth rules. This article looks at how question period, points of order and other issues are dealt within the New Zealand House of Representatives.



The role of the Speaker is inextricably entwined with the evolution of parliamentary democracy, which was so hard fought for over so many centuries in England. King John did not affix his seal to the *Magna Carta* at Runnymede in 1215 because he had some great vision of democracy. He desperately needed extra taxes for his failed military campaigns and the Barons had had enough. They were not going to pay any more without something in return.

Likewise, when Edward I summoned the 'Model Parliament' eighty years later, in 1295, he needed more taxes to fund his campaigns against the Scots, including William Wallace. It was under Edward III that the Commons met separately for the first time and in 1376 the 'Good Parliament' elected the first Speaker, Sir Peter de la Mare. I must say he did not last that long – John of Gaunt had him arrested just a year later.

In those early years the Speaker chaired the House of Commons and spoke to a monarch on behalf of the Parliament. Sir Thomas More made the first known request for the right of freedom of speech in Parliament

in 1523. He sought it from Henry VIII. It is something I still do formally today. The first act of a newly elected speaker in New Zealand is to seek from the Governor-General confirmation of the appointment and, on behalf of the Members, lay claim to all the privileges of the House, especially to freedom of speech in debate.

In the 1600's Charles I tried to bypass Parliament and levy forced loans without parliamentary approval. So desperate for money did he become that in 1640 he summoned the Long Parliament. Frustrated at not getting his way, he forced his way into the Commons in 1642 to arrest five senior Members. History has it that Speaker William Lenthall sent Charles I packing with the words:

May it please your Majesty, I have neither eyes to see nor tongue to speak in this place, but as this House is pleased to direct me, whose servant I am here.

The English Civil War followed five months later and Charles I was eventually to lose his head. Since that time, no monarch has entered the U.K. Commons or our Debating Chamber here in New Zealand. In that courageous action, Speaker William Lenthall established the Speaker as Parliament's man and set the standard for future speakers in protecting the rights and privileges of Parliament.

Of course the monarchy was restored in 1660 with Charles II followed by James II, but religious tensions saw Parliament at odds with the Crown until the glorious revolution in 1688 and the passage of the *Bill of Rights Act*. It was the start of the constitutional monarchy and, in 1690, the Commons took control over the Crown's use of revenue as well as taxation.

Dr. Lockwood Smith is Speaker of the New Zealand House of Representatives and MP for Rodney. A scientist by training, prior to entering politics he was the New Zealand Dairy Board's Marketing Manager for Central and South East Asia. During the 1990s he served in various National-led governments as Minister of Education, Minister of Agriculture and Trade Minister. He was elected Speaker on December 8, 2008. This is a revised version of a public lecture given at the New Zealand Centre for Public Law in Wellington on May 11, 2010.

Those crucial separations of power so fiercely fought for over hundreds of years, remain today and establish, to my mind, the breadth and depth of the Speaker's role. The role is not just chairing or presiding over the House. It is, in its full context, about ensuring the House of Representatives is free and able to function effectively both as a legislature and in the vital role of holding the Crown or Executive to account. This view of the Speaker's role guides my interpretation of Standing Orders and also my role as "Minister" responsible for the Parliamentary Service.

It provided the basis for my departure from some recent Speakers' Rulings over the conduct of the House – especially question time; the urgent need to re-examine the key Standing Orders having been triggered by a perceived disenchantment (to put it mildly) of the public with the performance of Parliament.

Speaker Margaret Wilson, in a paper for the *New Zealand Universities Law Review* in 2007, wrote this about the Standing Orders. "The Standing Orders are often general and capable of different interpretations. The Speaker is guided in his or her judgement on how and when to apply the rules through previous Speakers' Rulings that have precedent value".

Question Period

It would be fair to say that, as a former scientist and not a lawyer, I am more guided by primary analysis than precedent. A progression of Speakers' Rulings over the past decade had seen question time become more of an exercise in avoiding questions than answering them.

Speaker Wilson acknowledged this in her law review paper when she wrote: "Ministers have become skilled at turning the questions and their answers into attacks on the Opposition."

This was justified with the argument that: "Given the current Standing Orders, the Ministers are not required to answer the question but to address it"

The progression in Speakers' Rulings probably started in 2001 when Speaker Jonathan Hunt ruled: "The Standing Orders require a Minister's reply to address the question. But an adequate answer might not result. The Speaker could not judge that."

Speaker Wilson elaborated on this in 2005 with her ruling: "An answer must be relevant to the subject matter of the question. But answer is a neutral word. The quality of the answer required by the Standing Order comes from the use of the word address. That is the test of adequacy."

What was the outcome of these Speakers' Rulings? A journalist writing in a blog in 2008 claimed: "If a Minister got to their feet and in answer to a question farted loudly, the Speaker would say that they had addressed the question." That kind of disdain puts our Parliament at risk. Parliamentary democracy is a fragile thing. History is littered, and not just old history, with Parliament's powers being usurped by armed force with all the consequent loss of rights and freedoms for the citizens involved.

So what do the New Zealand Standing Orders actually say about Ministers answering questions. The relevant Standing Order is 383 which states: "An answer that seeks to address the question asked must be given if it can be given consistently with the public interest."

I have asked myself what that means from two perspectives. What did the writers of those words intend? From the perspective of the Speaker's wider role in protecting the rights of the House of Representatives against the power of the Crown, what do those words mean?

I will never forget, about 3 years ago, having dinner with a senior colleague at Bellamy's. It must have been a day when Ministers had successfully avoided answering most of the questions. With a sigh, my colleague said that of course the Standing Orders only require Ministers to address the questions anyhow.

I said, "well no – they actually require an answer to be given". My colleague took a bet with me for a bottle of wine and was most surprised when he checked the Standing Order. He lost his bottle of wine.

The Standing Order says that an answer must be given, and to me the word answer is not a neutral word as a Speakers' Ruling has suggested.

Answer relates directly to a question. What is more, why would the writers of the Standing Order have included the words "if it can be given consistently with the public interest", if they had not intended that Ministers should answer questions?

That then brings me to the phrase within the Standing Order "that seeks to address the question". Far from being a "test of adequacy" as in the existing Speakers' Ruling, I see the phrase merely as recognising that for some questions there is no answer.

Where a question is more of a political statement, that part of the Standing Order is helpful in that it requires the Minister's response to address the same subject matter.

Having analysed the Standing Order somewhat differently from my recent predecessors, I have then

applied my second test – what interpretation of the Standing Order best serves the rights of the House of Representatives in holding the Crown to account – the Speaker William Lenthal test if you like.

In thinking about this I am mindful that Parliament has changed over the years. With the advent of MMP, Parliament is now more a place of political parties than a House of Representatives.

Some have even suggested that question time today should be accepted as political theatre, where Members and parties can trade political blows, verbally that is – we are not quite the Ukraine, to establish who and which party is the most politically adept.

But I come back to that vital role of the House of Representatives, that of holding the Crown to account. A Speaker allowing that role to be diluted is, in my view, not protecting the hard fought for rights and privileges of Parliament so courageously upheld by William Lenthal.

So how do I apply my interpretation of Standing Orders to question time – I hope with some common sense, impartiality and, above all, fairness.

Essentially, I recognise three types of question.

- the question that is a thinly disguised political statement
- the question that seeks an opinion
- the question that asks for information.

Strictly, some of the political statements could be ruled out as being inconsistent with the Standing Order covering the asking of questions. But that would involve the Speaker intruding too much into the flow of question time.

So, where a question is essentially a political statement, I expect the Minister to “seek to address the question” in responding. But such a question can expect a political statement in response.

Again, where an opinion is being sought in the question, the reality is that there is no particular answer. Any answer given, however, should address the subject matter of the question.

It is where Ministers are tested with a clear, concise question seeking information that I apply the full force of the Standing Order that an answer must be given if it can be given consistently with the public interest. You may well ask how everyone has reacted to all of this.

To give Ministers credit, apart from some initial dismay that their opportunity to play the political evasion game, after years of suffering from it, was to be

somewhat constrained, Ministers have really stepped up to the mark. Answers by and large are much more informative.

Even government departments are putting more work into preparing information for Ministers to answer questions. There have been some glaring embarrassments where they have failed to do this.

Even Members asking questions are now seeing benefit from shorter, more succinct questions that can put a Minister on the spot where an answer is expected. Achieving a greater proportion of more succinct, telling questions, I would have to accept, however, is still work in progress.

Interestingly, there has even been an international reaction. It is not uncommon for me to receive emails from people in Australia and Canada who comment on the day’s question time. And, at last year’s Commonwealth Parliamentary Speakers’ Conference, in New Delhi, New Zealand’s question time was a matter of significant interest.

But it is our own public, whose Parliament this is, whose reaction is most important to me. I sense a positive response and more people now seem to be watching question time on the Parliamentary Channel where it is live at 2.00 pm and replayed at both 6.00 pm and 10.00 pm.

Points of Order and Tabling of Documents

It would be fair to say, however, that the positive public response I am picking up, may link also to two other changes that have been made, changes to both the tone of the House and time wasting in it. The tone of the Chamber had been a growing problem in recent years. It had been, at times, plain nasty and no one likes to see their Parliament like that.

My analysis indicated that part of the nastiness stemmed from a misuse of points of order. Under our Standing Orders, any Member can raise a point of order and, because a point of order takes precedence over other business, it is a powerful tool. A point of order can stop the Prime Minister in his tracks.

In recent years, a growing trend had been to use points of order to interrupt speakers and score political points. In allowing spurious points of order to be heard, the Speaker could not prevent other Members from wading in, and wanting to speak to the point of order. Things would go rapidly from bad to worse, and inevitably end up in nastiness.

The remedy for this was relatively easy. The Standing Orders require a point of order to be put tersely and

the Member to speak only to the point of order raised. I require Members to establish quickly the issue of order, and if I do not hear it I sit them down. I will not tolerate the business of the House being interrupted with spurious points of order, intended to score political points.

The outcome has been twofold. The tone of the House is much better through the elimination of spurious points of order and, of course, far less time is wasted.

A further action has also had significant impact, and that has been clamping down on the tabling of documents. A practice had developed in recent years of using Standing Order 374, 'documents tabled by leave', simply to score more political points.

Leave would be sought to table documents containing all sorts of political dynamite and often the claimed document did not even exist. The Member, seeking leave under a point of order, often had no intention of tabling anything. They were just playing politics and sometimes not very honest politics either.

Again, the remedy was not difficult. A change to Standing Orders required documents to be tabled and I have ruled that where the House gives leave to table a document, it must be tabled that sitting day. Furthermore, I would no longer seek the House's permission for leave to table documents readily available to Members, such as recent media reports, *Hansards* or answers to written questions.

The intent of Standing Order 374 was to enable the House to be informed on matters not readily available to it. It was not intended to facilitate political party point scoring.

The net result of these changes is not only a markedly better humoured house, but time wasting has been reduced to the point where question time now lasts typically an hour, rather than the 1hr 40 minute parade of point scoring of the recent past.

Administrative Issues

With Parliament costing approximately \$520 a minute to run, less time wasting cannot be a bad thing.

For Parliament to operate effectively, Members do need administrative support. This is provided by the Parliamentary Service for which the Speaker is effectively the Minister. Support for Members has been the subject of some comment in recent times following the expenses scandal in the United Kingdom, and the Prime Minister's and my decision to publish Ministers' and Members' expenses here in New Zealand.

A comprehensive account of the role of the Speaker as Minister responsible for the Parliamentary Service was given by Speaker Wilson in her law review paper of 2007.

She had inherited a situation where the administrative practice for Members' support had not been updated with legislative change and did not entirely match the law. She put much work into remedying that problem. And while I have inherited the role perhaps in more controversial times, I am the beneficiary of her work.

Speaker Wilson, in her 2007 paper, also hinted at a tension between the impartial role of the Speaker in the House and the direct involvement with political parties in the administration of their support through Parliamentary Services. This is an interesting issue.

It has been put to me that may be an independent, outside authority, should establish the support needed for Members to fulfil their roles.

Certainly, the remuneration of Members is set by the independent Remuneration Authority, and that is how it should be. That Authority, in its salary determinations, takes account of any Members' support from Parliamentary Services that the Inland Revenue Department has ruled is of a remunerative nature.

The wider Members' support, however, is currently determined by the Speaker who issues a determination on travel, accommodation, attendance and communication services to be provided to Members under the *Civil List Act 1979*. The Speaker also issues directions to the Parliamentary Service on the nature of the administration and support services under the *Parliamentary Service Act 2000*.

There will undoubtedly be ongoing scrutiny of this, and where Members' support is covered by expense payments from taxpayer money, and not deducted from Members' salaries, those expense payments should be transparent.

But if one comes back to the full role of the Speaker as the claimant for, and the protector of, the rights and privileges required for a fully functional parliamentary democracy to operate, then I would argue the Speaker has a continuing responsibility for these issues of Members' support.

A part of the privileges of the House is the exclusive right to control its own operation. The issues are not as simple as they may appear on the face of it. Ministerial Services provides support for the Executive, and it is important that Opposition, and other non-Executive Members are not disadvantaged in the support they receive through Parliamentary Services.

I would also argue that the nature of administrative support should reflect the fact that we still do have a House of Representatives. The change to the MMP electoral system may well have pushed political parties more deeply into the heart of our Parliament, but it is ultimately Members who represent their people, and the administration of support services must facilitate that representation.

Just as requiring Ministers to answer appropriate questions in the House may have made the Speaker's role a little more challenging, so too the role of determining and administering Member support should not be abandoned just because it is inevitably controversial.

The Speaker claims the rights and privileges of the House from the monarch's representative. The Speaker has a responsibility to secure the resources necessary to support it.

The impartiality and fairness required in chairing the House should be no more difficult to apply to determining that necessary support. Some might ask what change I want to try and encourage next.

Political Parties and Debate

One of the unintended consequences of giving political parties a far greater role in Parliament with an MMP electoral system, has been a change in the nature of debate.

It is fair to say it was probably never great, but at least at times we did have some really interesting debates. Now, most so called debate consists of time limited set pieces with each party having an allocated number of speeches.

With the enormous control parties now have over their Members through the power of the Party List, debate has tended to become more a repetitive parroting of parties' political positions.

So bad has it got, we even see Members get to their feet and read a typed speech, obviously written by the party's research unit, and may be not even seen by the Member until just before the so-called debate.

In the House, Members are expected to reflect the views of those they represent, which hopefully is wider than just a political party, and seek to persuade other Members to the soundness of those views and the thinking behind them.

Sadly, these days that is a rare event. And one small step towards remedying the problem might be to discourage Members from reading pre-prepared speeches. Such a move would not magically restore great debate.

However, any move to encourage less of the endless repetition of party positions would be healthy for our House of Representatives.

Editor's note: Since this presentation was made the New Zealand Government, in consultation with the Speaker, has decided to move the responsibility for determining the support arrangements for individual members to the independent Remunerations Authority. Some responsibility for determining support for the political parties and their leaders remains with the Speaker.