

WATER PETITION GRIEVANCE TO THE OMBUDSMAN

Grievance

The public petition *Anti-chemical the Water Supply of Rarotonga* (Water Petition) was endorsed by the Clerk, and subject to additional review by Crown Law before it was tabled in Parliament Jun-July 2020. A petition is only tabled in Parliament when it has fulfilled technical requirements – when it is ‘in order’.

Once the petition is tabled, the function of Parliament is to then refer the petition to a select committee for consideration. This process is referred to in Standing Orders as *disposal*; and referral to a select committee is the only permitted method of disposal.

S/O 82: All petitions shall be ordered, without question put, to lie upon the Table and shall then stand referred to a select committee appointed by Parliament.

The Speaker’s role is to ensure that the business of Parliament is conducted according to Standing Orders. However, on the presentation of the Water Petition, the (then) Speaker Niki Rattle failed to conduct the business of the House according to Standing Orders.

“...the [Water Petition] will not be received by Parliament and will not be referred to a select committee.”

In failing to discharge her duties — by not ‘receiving’ the petition — the Speaker denied the petitioners the democratic right to have a grievance considered.

The interpretation of Standing Orders was subsequently debated by MPs.

Responding to the Speaker’s mishandling, the petition organisers provided to the Speaker advice obtained from local and international experts in Parliamentary practice and the Westminster form of governance.

Following the resignation of Niki Rattle, and on the advice of the re-appointed Clerk of Parliament, the petition organisers now seek the assistance of the Ombudsman to direct the Clerk to resume the business of the Water Petition.

Remedy

The remedy sought, as per The Ombudsman Act 1984, Section 19(3)(c) – *That the [Speaker’s] decision should be cancelled or varied.* Accordingly, that the Ombudsman direct the Clerk of Parliament to take the procedural action necessary for Parliament to conclude the business of the petition — by referral to a select committee.

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APPENDIX: PETITION HISTORY

First mishandling – Parliament 17 June 2020

1. 17 June 2020: On behalf of the 1433 signatories - people of Rarotonga - this Petition was presented by the Honourable Selina Napa, MP for Titikaveka during the Parliamentary sitting. It was duly taken from her hands and laid upon by the table by the Acting Clerk.
2. In accordance with S/O 81, the motion was put to a vote that the full-text of the petition be read (aloud) by the Clerk. The motion was defeated, and the petition was not read.
3. The House broadly misinterpreted S/O 81, presuming that the petition would not then be considered by a select committee. However S/O 82 requires all petitions to be referred to a select committee.
S/O 82: All petitions shall be ordered, without question put, to lie upon the Table and shall then stand referred to a select committee appointed by Parliament.

First mishandling rectified — Parliament 1 July 2020

4. 1 July 2020: Two weeks after the first incident of mishandling, the Speaker settled the debate on the interpretation of Petition Standing Order 81, to wit:
*"...a petition that is in order will be referred to a select committee **whether or not it has been read under Standing Order 81**".* Hansard Report (1 July 2020, 49th Session)

Second mishandling – Parliament 1 July 2020

5. During this same sitting, the Speaker chose to engage with the subject of the petition:
"As Speaker, I am ruling the Petition out of order as the first Prayer of Relief is outside the power of Parliament. The first Prayer of Relief is for Parliament to cease immediately any action to use chemicals to treat the water supply of Rarotonga.

This is asking Parliament to issue an injunction. This is not within the power of Parliament. Accordingly, the Petition will not be received by Parliament and will not be referred to the Select Committee." *ibid.*
6. Standing Orders afford the Speaker no discretion to make a 'ruling' on the subject matter or the wording of a petition. Petition Standing Orders simply require the Speaker to refer all petitions to a select committee.

Attempt to rectify second mishandling – Parliament 29 Sept 2020

7. 29 Sept 2020, Member of Parliament Selina Napa brought the issue of the mishandling of the Petition to the attention of the House.
8. MP Tina Browne reminded MPs that the Petition has been subject to a series of mistakes:
"...I would like all of us Members to return to the time when this Petition was presented to the House. Mistakes started at the beginning when a Motion was put before the

House for us to vote whether it will go to a Select Committee or not, and this is not what Standing Order 81 says, all it says is whether this will be read or not.

The two Solicitors from Government were asked to clarify Standing Order 82. The reply was since it did not pass under 81 then there is no need to proceed to the Select Committee under 82. I believe this is the second mistake.

For that reason, the Speaker was involved in this when in fact she should not have been involved. When I read 82, it is mandatory, it says it shall be referred and it is supposed to go straight to the Select Committee. I have not read in that Standing Order any proviso that says except if the Speaker so rules. Therefore, this issue has gone from one mistake to another mistake and to another mistake.” Hansard Report (29 Sept 2020, 49th Session)

9. MP Tina Browne affirmed that democratic right for the people to petition:
“...these Standing Orders are avenues offered to our people opportunities to exercise their democratic rights in this House and what we have done is to stop them. It is no excuse with respect Mr Prime Minister to say, oh well there is another avenue you go to the Select Committee on To Tatou Vai. In my mind, it is no excuse to say whether the decision has been made even if it is the wrong decision then we cannot revisit the matter.
It is fundamental in our Constitution that we are a democratic country and all of us Members in this House should be promoting that democracy and not gagging petitioners at the first door.” *ibid.*

Third mishandling – Parliament 29 Sept 2020

10. In this same Parliamentary session, the Speaker misused the doctrine of ‘separation of powers’.
“Perhaps if we can go back to the decision that was put at that Sitting where the Speaker was to report back as what that decision was. That was not made solely by the Speaker, we did seek legal advice and we were advised that in the separation of powers, Parliament cannot tell the Government to stop doing something, because in the Petition it said that it wanted to stop Government from what it was doing. ... So the decision that was given that day; was the Parliament was not in a position in telling the Govt to stop doing what they are doing and there is no other pathway for that Petition to come back to Parliament.” *ibid.*

‘Separation of powers’

11. Separation of powers is a doctrine of constitutional law under which the three branches of government (executive, legislative, and judicial) are kept separate. This is also known as the system of checks-and-balances, because each branch is given certain powers enabling it to maintain and balance the influence of the other branches.
12. This doctrine is not compromised when a Speaker refers a petition to a select committee. The Speaker is fulfilling a basic administrative function, and referral does not commit Government to any course of action unique to that petition.

Petitions in the Westminster system

13. The Speaker's decision runs counter to the function of petitions in the Westminster form of governance.
14. Jurisdiction of the House: the Legislature is called upon to receive, dispose of (refer), and consider petitions. This includes petitions that are concerned with Government policy.
"Petitions with the motive of reversing Government policy can be received, for it is always open to Parliament to legislate for such a change."
<https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-36-petitions/#Referralsselectcommittee>
15. However-worded, the prayer of a petition is simply a 'request'. It is for the select committee (and not the Speaker), to give this request due consideration.
"It may be that if it went to a Select Committee the Select Committee will come back with certain recommendations like we do on the Bills. However, we will not know that because they have not been given that opportunity. Therefore, I would like to support the question from the Member of Parliament Selina Napa – when is the opportunity to have this Petition properly tracked through Parliament in accordance with the Standing Order? Thank you." - MP Tina Browne, 29 Sept 2020, 49th Session.
16. A petition seeks change; it requests that Government takes some action. The requested action may include a change to Government policy.
17. In the absence of a guide specific to the Cook Islands, I refer to a description provided by the New Zealand Parliament:
"[A petition's] whole purpose is to seek some relief for wrongs suffered, some amendment to the law or some change in Government policy. In short, a petition seeks action. Thus, it is fundamental that a petition must ask the House to take some action regarding its subject matter...The request is, therefore, an essential ingredient in a petition, for this is the means by which the petitioner tells the House what he or she wants it to do in response to the grievance. A petition without a request for action is irregular and will not be received."
<https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-36-petitions/#Referralsselectcommittee>

Conclusion

18. The petitioners are requesting a change in Government policy: to reconsider water treatment methods; and for the supply of water to remain free-of-charge.
19. The petition organisers seek assurances from the Clerk and the Speaker that Standing Orders will be followed, a select committee so appointed, and the petition referred for consideration.
20. The outcome of this process impacts not only our current petition; but also the fate of any future petitions presented to the Parliament of the Cook Islands.