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REPORT OF THE

STANDING ORDERS COMMITTEE

**REPORT UPON
QUESTIONS ON NOTICE**

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JUNE 1992

REPORT OF THE STANDING ORDERS COMMITTEE

June 1992

5 This report deals with the order of the House passed on May 14¹. The order asks the committee to consider 3 matters, paras 1 and 3 of which are linked to the President's ruling on ministerial responsibility which states clearly the extent and degree of that responsibility and which is further explained in this committee's report on that ruling.

In essence, a minister answering for another accepts responsibility for the accuracy of the information contained in a reply. The committee suggested that the onus of responsibility is discharged by a minister who has unwittingly provided false or inaccurate information when that minister informs the House accordingly and corrects the reply.

15 The committee further suggested that only in cases where the [Council] minister was party to providing a false or misleading reply would the issue of penalizing the minister arise. Such a view is consistent with the well-established notion that the House will move to protect itself in cases where an element of deceit is discernible in the acts or omissions of a member *vis-a-vis* the House.

20 It needs to be pointed out that whatever form of words a ministerial reply may adopt, the principles in the ruling apply. The House would be entitled to assume that the Council ministers are aware of the ruling and ensure that it is adhered to.

The committee has familiarized itself with the reasons given by Hon Peter Foss and others in supporting the further reference of this matter back to the committee.

30 The committee believes that inserting express provision in standing orders has no greater effect than ongoing compliance with the previous ruling supplemented by subsequent report. The committee repeats its previously expressed opinion that nothing would be added to the way in which the House treats the manner and form of ministerial responsibility by augmenting the quantity of standing orders in preference to reliance on a presidential ruling.

35 Paragraph 2 of the order asks the committee to consider whether replies that simply refer to an answer given in the Assembly be outlawed.

Mr Foss, in debate on the motion, argued that a reply by reference to an earlier Assembly reply offended against the presumption that neither House notes or takes account of the other's proceedings and, in some cases at least, missed the point of the Council member's question.

5 SO 94² forbids direct or indirect reference to Assembly debates of the same session or to matters about to be debated in the Assembly. Presiding Officers have tended to hold that for a measure to be "impending", there needs to be a reasonable prospect that the measure will come up for debate. For example, the rule would be applied more strictly if reference were made, in the Council, to a government Bill on the Assembly's Notice Paper than to a private MLA's bill that required a Governor's message before it could proceed.

Both legs of SO 94 are intended to prevent 2 things:

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- (1) inclusion in Council debates of recycled Assembly material, with consequent absence of spontaneity or fresh argument in the Council, or hijacking Assembly business;
 - (2) breakdown of the longstanding custom that, primarily for reasons of inter-house relations, neither takes official notice of, or interest in, the other's proceedings.

20 Clearly, questions are neither debates nor matters scheduled for debate and thus are not caught by SO 94. The committee could not recommend that SO 94's ambit be widened to include questions and replies.

25 The committee remains hopeful that its previously expressed view would be heeded by ministers in both Houses, viz, that replies are given in narrative form and not by reference to the number of a question and reply given in the Assembly. However, in the event that the House believes that specific prohibition should be included in standing orders, it is suggested that SO 138 (c) be revoked and the following substituted:

- (c) *Replies shall be concise, relevant, free from argument or controversial matter, and not contain a reference to a reply given in the Legislative Assembly, whether or not given in the same session, to the same or a similar question.*

1. That the Standing Orders Committee reconsider the May 7 1991 letter of Hon Peter Foss to the President and report whether standing orders should or might be made which ensure that:

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- (1) by the form of an answer to a question on notice, on the face of it the minister takes responsibility for the answer;
 - (2) the answer does not refer to answers given in the Legislative Assembly;
 - (3) generally answers reflect the substance of the President's ruling on the responsibility borne by ministers for answers in the Legislative Council;

and to report the same to the House no later than June 4 1992.

2. 94. *No member shall allude to any debate of the current session in the Assembly, or to any measure impending therein.*

Standing Orders Committee

Minority Report upon Questions on notice

It was the practice of this House required under Standing Orders for questions on notice seeking information and answers to those questions to be made verbally.

Under those circumstances, there was never any doubt that the Minister answering was aware of the answer because the Minister actually gave the answer in the House.

Furthermore, because the manner in which it was given was similar to that for questions which were not on notice they tended to be answered in the same manner as questions not on notice.

Hansard shows answers to all questions commencing with the words "The Minister replied". This was then followed by the content of the answer. The content was also similar in form whether it was a question on notice or without notice. It made no reference to the source upon which the Minister relied nor usually did it refer to answers in the Legislative Assembly - presumably, in part, because that was unsuited to the more intimate manner in which questions on notice were then answered.

Then the predecessor to Standing Order 138 was made. This allowed a reply to a question on notice to be given "by delivering it in writing to the Clerk's Office".

Whereas with the verbal answer to a question on notice it was not possible to delegate the physical delivery of the answer, with a written answer delivered to the Clerk it was possible, and quite likely, that the Ministers would entrust the actual delivery to some other person.

I am sure that it was never intended by the House in making this change that the responsibility of the Minister should change, nor, for that matter that his involvement in the mental element of giving the answer should be diminished. The person who actually carries the written document to the clerk should have no greater involvement in the process than the secretary who types it. That person is no more than an amanuensis.

Unfortunately, with the passage of time, the original concept of the responsibility of a Minister appears in part to have been lost, and we now have the statement by the Leader of the House that questions may be placed in the answer book without him having seen them.

I cannot accept that it was ever intended that we should so depart from our previous practice that persons who are not even members of this House, let

alone Ministers, should be able to answer questions in this House, for that is what happens when such a person plays all the parts in causing an answer to be delivered to the Clerk. I cannot accept that a Minister does not at least have the responsibility to read a proposed answer so that he is in a position to be alerted to any inadequacies in it and so that he can truly be said to be providing the answer.

This to me, requires that the Minister should at least sign or initial the answer. This is not such a burden and it is one that we are prepared to place on members in such matters as the proposing of an amendment to a motion before the Council - even though in that case, the member is actually present in the House to move it. See Standing Order 174.

Another problem that has crept in, is the inclusion in an answer of statements indicating that the answer is provided by someone else. The House is not concerned to inquire or to know where a Minister gets his information from. Its concern is that the Minister, having made inquiry, is prepared to adopt that answer and to give it as his own.

I note that the practice has not come in with Ministers answering in their own portfolios and I see no reason why they should allow it in when they are dealing with another's portfolio. The constitutional position is that the Minister is responsible to answer to this House for that portfolio whether or not he is the Minister charged with responsibility for it at large in the Government.

I believe that Ministers should answer every question by merely giving the information sought. Hansard will preface the answer "The Minister replied". We understand, both with the Minister's own portfolios and with others', that the Minister will generally be relying on others for his information. That understood. It is still his answer in this House.

The President's ruling on this matter of responsibility leaves no room for doubt but despite that, some Ministers appear to see that the inclusion of the words "The Minister for X has provided the following answer" as being in some way exculpatory. It is not, and as it serves no purpose we should not allow it constantly to be inserted in an answer - if for no other reason than it wastes the House's resources, but more importantly because we will prevent a slow loss of appreciation of the true position with regard to Ministerial responsibility.

The last matter with which I am concerned, is the reference to answers given in the Legislative Assembly. I believe that the reasons for not being able to refer to the debates in the Assembly apply equally to questions. More importantly, I believe that it is another departure from the concept that the answer is given in **this** House by the Minister in **this** House. A reference to answers in the Assembly, quite apart from the inconvenience of it, and the fact that the question is seldom identical and the answer is seldom entirely appropriate, is a further lifting of the veil that should properly be drawn

between the Minister's answer in this House and the process by which he gives it.

In view of the foregoing. I recommend the following.

Standing Order 138 paragraph (a)

At the end of paragraph (a) the following words be added:-

"signed or initialled by the person taking responsibility for the reply"

and that is the only amendment that I believe should be made to that paragraph.

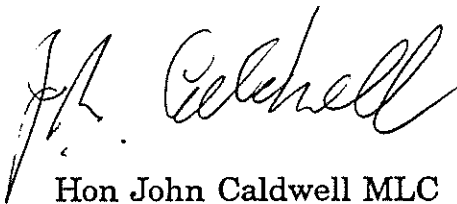
Standing Order 138 paragraph (d)

A new paragraph (d) be inserted as follows:-

"(d) replies shall not in their terms indicate that they are given by any person other than the person taking responsibility for them"

Standing Order 138 paragraph (c)

I agree with the wording of the amendment to paragraph (c) referred to in the majority report and recommend that it be implemented.



Hon John Caldwell MLC