

**REPORT OF PROCEEDINGS OF
THE HOUSE OF KEYS
(LEGISLATION AND OTHER MATTERS)**

**Douglas, Tuesday, 30th July 2002
at 10.00 a.m.**

Present:

The Speaker (the Hon J A Brown) (Castletown); Hon A R Bell and Mr L I Singer (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Hon S C Rodan (Garff); Mr P Karran, Hon R K Corkill and Mr A J Earnshaw (Onchan); Mr G M Quayle (Middle); Mr J R Houghton (Douglas North); Mr A C Duggan (Douglas South); Hon R P Braidwood (Douglas East); Hon A F Downie and Hon J P Shimmin (Douglas West); Hon D J Gelling (Malew and Santon); Hon J Rimington, Mr Q B Gill and Hon Mrs P M Crowe (Rushen); with Mr M Cornwell-Kelly, Secretary of the House.

The Speaker took the prayers.

Apologies for Absence

The Speaker: Hon. members, I have granted leave of absence to the following members: the hon. member for Douglas South, Mr Cretney; the hon. member for Douglas East, Mrs Cannell; the hon. member for Douglas North, Mr Henderson; the hon. member for Glenfaba, Mr Anderson; and the hon. member for Peel, Mrs Hannan. I also extend apologies from the Chaplain to the House, who, I am sure you will be pleased to know, is home and is recovering well and hopes to be with us at our next session.

Several Members: Hear, hear.

Tribute to the Late Mr John James Bell, former MHK

The Speaker: Hon. members, since the last sitting of the House, it is with sadness that we have witnessed the passing of a former Member of the House of Keys, Mr John James Bell. Mr Bell first served his Island in the political arena as a Douglas Town Councillor from 1963 to 1968 and from 1969 to 1971, and then as a Member of the House of Keys for Douglas South on two occasions, first from 1964 until 1966 and then, after a short interval, again from 1968 to 1978. He was one of the last members to be able to serve both as a member of the local authority and as a Member of the House of Keys. During his time as a Member of the House of Keys, he served as Chairman of the Airports Board and was a Member of the Boards of Education, Social Security, Agriculture and Fisheries, and Health Services, as well as being a member of the Tourist Board, the Police Board and the Assessment Board. Mr Bell also served on a number of committees of Tynwald and attended a Commonwealth parliamentary conference in New Delhi in 1964, where he represented the Island. Mr Bell was, for those of us who knew him, a staunch and proud Manxman. A bit of a colourful character, he was also known for his debating skills in the House.

Mr John James Bell was born and grew up in Douglas, served his Island as a businessman, being the chairman and managing director of John J Bell Limited and of the Milne's Hotel (1975) Limited, and as a parliamentarian served his Island with dedication and with vigour. He was energetic and always full of ideas. On behalf of the House, I extend our condolences to his wife and family in their time of loss. Hon. members, let us please stand for a moment as a mark of respect and in remembrance of a former colleague and Member of the House of Keys.

Members stood in silence.

The Speaker: Thank you, hon. members.

Right of Members to Ask Questions – Statement by the Speaker

The Speaker: Now, hon. members, before I move on to the item on today's order paper, I wish to make a statement in relation to a matter which is causing me some concern and which I know is now a cause of concern publicly. The issue relates to the right of members to ask questions in the House. Due to recent events and public statements made by some hon. members in relation to those events, the impression has been given out that hon. members are having their right to ask questions in the House curtailed or that there is a concerted effort by the government to curtail hon. members' right to ask questions in the House. I have, on a number of occasions since becoming Speaker, made it clear that the right of hon. members to ask questions is paramount and that such rights are only governed by our standing orders. However, because of recent comments that have been made in relation to the asking of questions, I wish again to make it absolutely clear what governs the asking of questions in the House.

Hon. members, the asking of questions in the House by hon. members is a fundamental right of a Member of the House of Keys. The only control over whether a question can be asked is governed in our standing orders of the House, as approved by the House, and under our standing orders the Speaker is the sole judge as to whether a question is in order and complies with our standing orders. If the question is in order, then even the Speaker has no right to stop the question being put. No other person can deny the right of a member to ask a question in the House, whether it be any individual, the government or a government minister. The right to ask questions in the legislature is unquestionably a fundamental right of a parliamentarian, and I can assure hon. members that I will continue to uphold that fundamental right within this House. I therefore hope that my statement today clarifies this matter once and for all and that all hon. members will feel reassured by my statement and will not feel the need, in future, to feel concerned about their rights to ask questions in the House.

Mr Peter Karran MHK – Allegations re Island Studios Limited – Report by the Speaker

The Speaker: Hon. members, the resolution passed by the House on 11th July 2002 was as follows: 'That Mr Speaker be requested, in line with standing order 49(3), to seek proof of the comments made by the hon. member for Onchan, Mr Karran, by way of supplementary questioning raised on 25th June 2002 under question 8 referred to in this hon. House on Thursday, 11th July 2002, and report to a special sitting of the House the Keys convened as soon as possible.'

The *Hansard* report of the supplementary question referred to is as follows - and I quote - 'Mr Karran: Vainstyr Loayreyder, a supplementary. Is the Chief Minister aware that the police were recently called out to the new film studio because of an altercation over a dishonoured cheque? Has the Chief Minister been advised by the Minister for Trade and Industry if the company building the film studio is insolvent? If he has, when was he told that that was the case?' The full text of the *Hansard* pages KQ 204 and KQ 205 in relation to question 8 is attached to the printed copy of my report at appendix 1.

Standing order 49(3) provides - and I quote - 'The right to ask questions shall be governed by the following rules, as to the interpretation of which Mr Speaker shall be the sole judge. If a question contains a statement, the member asking it shall personally be responsible for the accuracy of the statement, *prima facie* proof of which may be required by Mr Speaker.'

Clearly, the matter raised in the House is of considerable importance to everyone and not least to the hon. member for Onchan, Mr Karran. Therefore, in the circumstances, I decided that the most convenient and expeditious way of proceeding would be to hold hearings as soon as possible, at which all evidence of relevance, whether written or oral, could be presented. I accordingly instructed the Secretary of the House, whom I shall refer to hereafter as the

Secretary, to write to the two hon. members who had principally been concerned with regard to the supplementary questioning - that is the hon. member for Onchan, Mr Karran, and the hon. member for Douglas West, Mr Downie - inviting them to attend before me in the Millennium Conference room on Tuesday, 16th July. The Secretary's letter explained the procedure to be adopted, that is that they could bring any evidence and witnesses they felt appropriate, and the letter also advised that I had no objection to legal representation if that was desired. The Secretary's letters of 12th July, delivered that day, are at appendix 2 of the printed copy of my report. Appendix 2 also contains all the correspondence received prior to my report being finalised relating to this inquiry that has been passed between the Secretary of the House and Mr Karran, Mr Downie and the Chief Constable.

Hon. members will note that the wording in standing order 49(3) relating to proof and the wording used in the House's resolution about proof are not the same. The standing order refers to *prima facie* proof, whereas the resolution refers only to proof. A question for consideration therefore was: does the resolution alter the standard of proof to be required in this case or does it remain at *prima facie* proof? Is the requirement for evidence which shows only, in legal terms, a case to answer or is it for evidence which establishes facts according to the 'balance of probabilities' test used in civil proceedings? At the outset of my inquiry, the answer could have made a difference, and members giving evidence might, with some justification, have objected if they had not been alerted to the issue. The Secretary therefore wrote a further letter to the two hon. members concerned on 15th July, drawing attention to the possible problem and offering the opportunity for them to comment on it. In addition, in my introduction at the hearings, I specifically invited each hon. member to comment on this matter. In view of the evidence I received, I did not, in the event, need to decide the question, and for the sake of simplicity and to give the hon. member for Onchan the benefit of the doubt, I have reached my conclusions on the less exacting basis of *prima facie* proof.

I was assisted at the hearings by the Secretary, who is the Counsel to the Speaker of the House, and by Mr Lo Bao from the Clerk of Tynwald's Office, who took notes, and the Senior *Hansard* Clerk, who recorded the proceedings. The transcript is at appendix 3 of the printed copy of my report.

The first hearing took place at 2.00 p.m. on 16th July 2002, at which Mr Karran gave evidence. I also gave permission for Mr Karran to be accompanied by Mrs E Christian, whom he had requested to have in attendance to take notes for him. At the outset, Mr Karran complained that the Secretary had not given him full procedural details of the format of the meeting. I am not sure what further detail could have been provided, given that it was very much for Mr Karran to decide how he wished to put forward his evidence. It is also worth noting that Mr Karran is well versed in how such parliamentary hearings are undertaken when witnesses are called to give evidence. Mr Karran, if he had concerns, made no enquiries of the Secretary prior to attending the hearing beyond those in his letter of 14th July. However, to avoid any doubt about it, I instructed the Secretary to write to Mr Karran immediately after the hearing of 16th July, inviting him to give me the names and addresses of the persons on whose reports he had relied in saying what he had said at Question Time. Mr Karran subsequently confirmed that he would not do so. The proceedings at the hearing would therefore have been no different had the procedure been spelt out beforehand to any greater extent than it was.

It will be seen that, in terms of what was said, the evidence was brief. When Mr Karran attended the hearing, he presented me with a large sealed envelope without any explanation, and when I opened it, it contained a letter to me from Mr Karran dated 16th July 2002, headed 'Introductory Statement', along with papers later described by Mr Karran as a 'sworn affidavit', none of which I had seen or been advised of previously. There was uncertainty as to the official status of the document, that is as to whether in fact it was sworn. I subsequently instructed the Secretary to seek confirmation as to the official status of the affidavit as there was no official

marking to certify that it had, in fact, been duly sworn. The Secretary was then given confirmation of its status by the advocate, Miss Hannan, that she had, in fact, had it sworn, and her letter of confirmation is attached at appendix 2. Mr Karran's letter to me and his accompanying affidavit and exhibits are at appendix 4 of the printed copy of my report. The affidavit, in essence, raises two issues: (1) what places or events Mr Karran was actually referring to in his supplementary question; and (2) whether there is *prima facie* evidence about those places or events.

It will be seen that Mr Karran's affidavit argues that he made no reference to Island Studios Limited and that the only direct references to it in the House have been made by the hon. member for Douglas West, Mr Downie, or by myself. This is, of course, correct, but such references were made only after the sitting of 25th June and, in my case, only after I had viewed the *Hansard* record of the sitting of 25th to enable me to make the statement in the House on 11th July in response to a letter I had received from the hon. member for Onchan, Mr Karran. However, in Mr Karran's short supplementary question, there are references both to 'the new film studio' and to 'the company building the film studio'. It is beyond debate that there is only one place in the Island which could be described as 'the new film studio', namely the studio officially opened on 13th July 2002 at Jurby Road in Ramsey. The venture is very well known, and it must be almost as well known that it is run by Island Studios Limited, whose name is prominently displayed in connection with it. The public record exhibited to Mr Karran's affidavit shows that the same company received a Department of Trade and Industry grant. Moreover, much publicity has recently surrounded the development of the Island's film industry, and the subject is clearly in the public domain and has been so for some considerable time.

The question therefore is: is the fact that Mr Karran did not name Island Studios Limited in his supplementary question sufficient to justify the conclusion that he did not refer in the House to that company? In my opinion, it is not. Not every reference in speech or in writing is complete and explicit, and if it were, communication would become unnecessarily lengthy and cumbersome. We often speak in abbreviated terms when our listeners know well enough what we are referring to.

Mr Karran then made reference to the police being called out recently to the new film studio about an altercation over a dishonoured cheque. To put it at its lowest, this is very likely to convey the meaning that a serious financial irregularity involving criminal conduct might have occurred at Island Studios. This is because for the police to be involved implies that a criminal offence may have been committed. That is even more the case when the context of the supplementary question is considered. The main question, it will be recalled, related to companies receiving government grants being 'in serious financial difficulties', and it asked what procedures were in place to safeguard public moneys. The same, I consider, is true of the second part of Mr Karran's supplementary question, which referred to the solvency of the company building the film studio. It does not require any great research to discover which company has, in fact, been building the film studio, and the information would be known or soon discovered in the sections of the business community concerned with construction work. Especially in the context of the main question, the supplementary question bears a clear implication that the company in question was, indeed, insolvent, with all that that, in commercial terms, implies for the business and its directors, and for public funds.

The concept of innuendo is well known. The Concise Oxford English Dictionary, to go no further, defines it as: '(1) an elusive or oblique remark or hint, usually disparaging; (2) a remark with a double meaning, usually suggestive.' The supplementary questions did, in my opinion, refer to Island Studios Limited and to the company building the studio. Mr Karran identifies the latter company himself as Stonegate Properties - it appears from the company searches exhibited to the affidavit that the correct word is 'Property' - and there is every reason, as I have said, why others could be expected to do the same. What was said in the questions therefore bore the natural and probable meaning that Island Studios Limited were, or had been, under

suspicion of financial malpractice of a criminal nature and that Stonegate Property Limited was insolvent and that, in both cases, public money had been, or was likely to be, lost.

I then turn to the question: is there *prima facie* proof? The test in standing order 49(3) is objective: it is not whether the hon. member asking the question reasonably believed that what he was saying was supported by *prima facie* proof; the test is rather whether or not, as a matter of fact, there is such proof. A member may thus act honestly and in good faith, but if the *prima facie* proof required by standing order does not exist, the member is nonetheless in breach. Here I have noted that the term 'evidence' implies much less than does the term 'proof'; evidence may be of various kinds and have varying degrees of credibility, depending upon a number of circumstances, but proof is the product of clear evidence. But as a practical matter, and since it is the less exacting test, I have, on this occasion, treated the two as having the same meaning for the purposes of standing order 49(3).

The reports on which Mr Karran relies are entirely from third parties who are not named and whom Mr Karran continues to refuse to name. Section (iii) of the affidavit, at page 4, makes it plain that, as far as the hon. member is concerned, the facts have yet to be established and that he has no more than encouragement to make further enquiries. It may be that the credibility of the reports Mr Karran has received is such that there is, in the terms of the definition cited on page 6 of his affidavit, 'evidence. . . sufficient to call for an answer', but we do not know. The hon. member has declined, both in his affidavit and in later correspondence with the Secretary, to bring the witnesses to be seen and heard. As the case stands, there is nothing more put forward than anonymous hearsay. The quality of that evidence could be anything ranging from mere rumour to well-informed reports. I repeat that it is not here a question of establishing what the hon. member honestly believed, but what was, in fact, likely to be the case; and, in the absence of knowing where on that wide spectrum this evidence is to be located, I can in no way describe it as *prima facie* proof.

I should add that I am not impressed by the claim, at paragraph (v) of Mr Karran's affidavit, that the businesses of the anonymous witnesses 'might suffer a backlash' if they were identified. Certainly Mr Karran did not seem to consider this to be a matter for consideration when asking his supplementary in reference to this matter. I do not accept, subject as it is to the control of strict financial regulations and the scrutiny of both the Public Accounts Committee and of external auditors, that the allocation of government business in the Isle of Man can be used as a means of exercising improper pressure to suppress information especially information, which could inevitably enter the public domain in any event.

Whilst not questioning Mr Karran's integrity and honesty, the affidavit in itself cannot be taken as absolute evidence or *prima facie* proof. The exhibits to the affidavit show, indeed, various pieces of circumstantial evidence: that Stonegate Property Limited was struck off the companies register in March this year, but not why; that various companies have largely common directors and shareholders, which is hardly unusual in commercial life, especially in our small community, and therefore cannot in itself be taken as sinister; that Island Studios has evidently received £705,600 from the Department of Trade and Industry and gave security for it; and that in June 2001 the then Minister for the Department of Trade and Industry, Minister North, wrote in respect of Island Studios as follows: 'All our requirements have been met and we are pleased to support this much-needed facility'. But I can find no *prima facie* proof of the matters referred to in the questioning.

It is worth, at this point, clarifying the status of an affidavit. An affidavit is a means of providing evidence of facts; it is the written equivalent of oral evidence given on oath in the witness box, which is why it has to be sworn. However, the making of an affidavit in itself does not close the matter; it may need to be tested or probed in cross-examination. The essential point is that an affidavit in itself is not evidence of anything; the mere fact of the affidavit being on

oath is not enough in itself to establish statements for which there is otherwise no basis. Therefore, if the basis of the affidavit is based on anonymous hearsay, then there is no way to tell whether it is well-founded belief or fantasy, or something in-between, especially if those who have made the original statements are unwilling to substantiate their statements, as in this case. In other words, such an affidavit is written words without any substance.

When attending the hearing, Mr Karran refused to answer questions in relation to the detail of his affidavit and has refused to identify those whom he says provided him with information regarding this matter. As Speaker, I have no powers to summons witnesses, and therefore I am unable to ascertain any further facts than those provided in my report. However, had I had powers to summons witnesses, then I would certainly have summonsed those whom Mr Karran stated provided him with information regarding this whole matter, which may well have provided the status of the evidence in relation to this matter.

The evidence of Mr Downie and his witnesses was taken at 4 p.m., also on 16th July 2002. I noted that all these witnesses were prepared to be identified and to answer the questions put to them. The *Hansard* transcript at appendix 3 of the printed copy of my report shows the evidence which I received from Mr Downie, the Chief Executive of the Department of Trade and Industry, Mr Ken Bawden, and from Messrs Westacott and Slattery. Mr Westacott is the chairman of Island Studios Limited, owner of Stonegate Property Limited and principle shareholder of Lough House Animations. Mr Slattery is a director of Island Studios Limited and Lough House Animations. The documents which they put forward are at appendix 5 of the printed copy of my report.

After hearing all the evidence from all parties, I further instructed the Secretary to write to the Chief Constable in relation to the point made by Mr Karran in the House on 25th June 2002, where he stated that 'the police were recently called out to the new film studio because of an altercation over a dishonoured cheque.' The Chief Constable replied by letter as follows: 'On the information provided, no record of any such instance can be traced on our system dating back to January 2002.'

I reached the following conclusions on the basis of all the further evidence: no police visit has been made to Island Studios in connection with a dishonoured cheque, and it even appears that none has been made otherwise, at least this year; the studio was constructed largely by Stonegate Property Limited, which was struck off the companies register because of an error in instructing the company's advocates, and it is now being restored to the register; Stonegate Property Limited was not insolvent when it was inadvertently struck off and will not be insolvent when it is restored; there is no evidence that Stonegate Property Limited has, at any time, been insolvent or that there was any basis for suggesting it.

As I have previously indicated, the right of hon. members to ask a question in the House that complies with standing orders is not in question. Members are able to, and must continue to be able to, ask questions without fear of intimidation. All members are in a special and privileged position when they are within the House. However, with that special and privileged position comes a grave responsibility for a member: members must ensure that they always act with reasonable care, always being conscious of any consequences when stating facts, or when they put questions, ensuring that they have adequate proof or *prima facie* proof in relation to the matter. This is even more essential where it concerns individuals and/or private businesses. The hon. member for Onchan, Mr Karran, says he has proof but cannot and has not provided me with any proof of substance to substantiate the allegation made and has only provided me with hearsay by his affidavit. Therefore, the proof provided does not provide *prima facie* proof as required by standing order 49(3) and certainly does not provide proof as termed under the resolution of the House dated 11th July 2002, which required me to seek proof.

In making this report, I am conscious that a meticulous attention to the requirements of standing orders has not always characterised our proceedings in every aspect. In some measure, the lack of formality may seem to assist the sensible and effective dispatch of business, but as hon. members know, I see these standing orders as having an important function, and I am to review, during the recess, areas in which there may be room for giving them fuller effect. Hon. members will be advised of the outcome of my deliberations in due course.

Clearly, this matter is of considerable public importance and interest. As there is no precedent in relation to procedures when dealing with such a matter as this, I have taken the view that transparency and openness is of paramount importance in such a matter, and I have therefore instructed that written copies of my report, along with all the written evidence presented to me, the *Hansard* of the proceedings of the evidence taken at the hearings, and all the correspondence relating to this matter received prior to the report being finalised are to be available in a written report, which will be available to the public from the reference library on the third floor of Government Office from 12 noon today.

In conclusion, hon. members, therefore, I am obliged to report to the House that *prima facie* proof of what was said by Mr Karran in a supplementary question to question 8 on 25th June 2002 has not been provided to me by the hon. member for Onchan.

Hon. members, that concludes the business that is before the House. The House will now stand adjourned until 10.30 a.m. on Tuesday, 15th October 2002, in Tynwald Court.

The House adjourned at 10.32 a.m.

CORRIGENDUM

House of Keys, Thursday, 11th July 2002, page K210, column 2, for line 20 please substitute:

Mr Braidwood: 'Put up or shut up.'