

OPINION

I am asked to advise V. Sivakumar, the Speaker of the Legislative Assembly of the State of Perak, on the constitutionality of his purported removal on 7th May 2009. It is common ground that the Legislative Assembly was summoned that day by His Royal Highness, the Sultan of Perak ("HRH") pursuant to Article 36(1) of the Constitution of Perak. It is also not in dispute that the meeting on 7th May 2009 was the First Sitting of the Second Session of the 12th Legislative Assembly of Perak, marking the commencement of the 2nd session of a 5-year Parliamentary term.

A. FACTS

2. Sivakumar's alleged removal must be seen in the context of the extraordinary events that took place on the floor of the Assembly on 7th May 2009. As to what occurred, I have relied on the live coverage of the events as reported in Malaysiakini, and the Chronology of Events published in the 8th May issue of the Sun newspaper. Hopefully, a combined reading of these 2 contemporary accounts would present an accurate summary of the facts. The time-line, as I understand it, is set out in Appendix A hereto.

3. From the facts narrated in Appendix A, it is clear that:-

- (i) Sivakumar took the Speaker's chair, Pakatan occupied the government bench (that is, on the right of the Speaker) and BN sat on the opposition bench (that is, on the left of the Speaker) when the Assembly was ready to start proceedings at about 10.00 a.m. on 7th May;
- (ii) The Speaker ordered 10 assemblymen to leave the Assembly;
- (iii) The said 10 Assemblymen refused to leave;

- (iv) The Speaker therefore did not start the meeting;
- (v) The Speaker was forcibly removed from his chair;
- (vi) Ganesan purported to act as replacement Speaker, purportedly after being elected;
- (vii) Some 5 hours after the scheduled hour, and after the Speaker's forced removal, the Raja Muda of Perak ("RM") delivered the royal address;
- (viii) Ganesan thereafter adjourned the sitting sine die; and
- (ix) The Assembly has not sat since that adjournment.

4. On these facts, the critical issue in law is: when was this session of the Assembly opened. In other words, when was the Assembly in a position to transact business and take legally binding decisions.

B. WHEN DID THE SESSION OPEN?

5. As stated in Paragraph 1 above, the 7th May sitting was summoned by HRH under Article 36(1). It was the 1st Sitting of the 2nd Session of the 12th Legislative Assembly. In such circumstances, when did the Sitting begin. Prima facie, two Standing Orders ("SO") may be of indirect assistance. The Standing Orders were enacted in 1998 by the Legislative Assembly of Perak pursuant to Article 44(1) of the Perak State Constitution. They have the force of law. First, SO 1, which deals with the proceedings of the first meeting of the Assembly after a State Election, reads:

"On the first day of the meeting of the Assembly after a State General Election, members having assembled at the time and place duly appointed and being seated in accordance with the provisions of Standing Order 2, the

*Secretary of the Assembly shall read the Proclamation of His Highness Paduka Seri Sultan Perak Darul Ridzuan by which the meeting was summoned, **and thereafter the order of business on such day shall be....**"*

SO 1 contemplates HRH not gracing the 1st sitting of the 1st Session. If HRH however attends, then HRH reads the Proclamation and gives a royal address. Only thereafter is the order of business for the day. However, SO 1 has no application to the sitting on 7th May 2009 because it was **NOT** the first sitting after the General Elections.

6. Secondly, SO 13, which relates to the order of business on ordinary sitting days, reads:-

"Order of Business

"13(1) Unless the Assembly otherwise directs, the business of each sitting shall be transacted in the following order:-

- (a) Formal entry of Mr Speaker;*
- (b) Prayers;*
- (c) Taking of oath by any new member;*
- (d) Messages from HRH;*
- (e) Announcement by Mr Speaker*
- (f) Petitions;*
- (g) to (p) – specific matters which are not relevant for present purposes.*

(2) The Assembly may, upon a motion to be moved by the Menteri Besar or in his absence a member of the State Executive Council to be decided without amendment or debate which may be made without notice and shall take precedence over all other business, decide to proceed to any particular business out of the regular order.

The sitting on 7th May 2009 was not an ordinary sitting. It was the 1st sitting of the 2nd Session, summoned under Article 36(1) of the Perak Constitution, and was graced by the RM, representing HRH. In consequence, neither SO is on close scrutiny applicable to the 7th May sitting. In any event, any direction on the order of business made under SO 13(1) or (2) can only be by an Assembly that had lawfully opened for business.

7. Accordingly, in my opinion there is no express SO that deals with the 7th May sitting. In such event, reliance can be placed on SO 90 which allows Commonwealth Parliamentary practice and usage to be used as guidance on issues where the SO's are silent. Thus, it is proper to consider the practice of the British Parliament. Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* is the authoritative and leading text on Parliamentary procedure in the Commonwealth. The learned authors of the 23rd Edition (2004) state:

*"In every session but the first of a Parliament, as there is no election of a Speaker, nor any general swearing of members, **the session is opened at once by the Queen's speech, without any preliminary proceedings in either House.** Until the causes of summons are declared by the Queen, either in person, or by commission, **neither House can proceed with any public business**....."*

*.....This practice is observed **because no business can be transacted until Parliament has been opened by the Crown**¹*

(my emphasis)

¹ Page 287.

8. The learned commentators of Halsbury's Laws of England² state:-

"(v) *Proceedings at the Opening of Parliament*

713 *The Queen's Speech*

Neither House of Parliament can proceed with any public business until the session has been opened either by the monarch in person or by Lords Commissioners acting on her behalf. On this occasion the causes for the summoning of Parliament are communicated to the two Houses in the Queen's Speech,.....In the first session of a new Parliament the Speech is not delivered until a Speaker of the House of Commons has been elected and an opportunity has been given to members of both Houses to take the oath. In each subsequent session there are no such preliminary proceedings and the Speech is delivered on the first day....."

(my emphasis)

"717 Proceedings in the House of Commons after the opening of Parliament

After the opening of Parliament, the House of Commons resumes its sitting at 2.30pm. Various sessional orders are made.....; certain other business may also be transacted...."

9. Finally, Griffith and Ryle on *Parliament : Functions, Practice & Procedures.* (2nd Ed. 2003) takes the same position:-

"The Speech having been read, the Queen and her courtiers depart; the Commons return to their Chamber and the Lords remain in theirs. Both Houses are now free to proceed with

² [4th Ed] Vol. 34 (1997 Reissue), Paragraphs 713 and 717

*the work of the session, **because no business can be transacted until Parliament has been opened by the Crown**".³*

(my emphasis)

10. Accordingly, in law the first session of any Legislative Assembly of Perak summoned under Article 36(1) cannot transact any business or pass any resolution prior to the royal address, which on 7th May 2009, was only delivered between 3.16 pm and 3.47 pm. Thus, any purported resolutions or decisions taken before the royal address are null and void and of no legal effect. The importance in law of the commencement of a parliamentary sitting reflects the practice of any meeting of any body or organization, whether a company, society, union or club. Even in such bodies, until the Chairman of the meeting calls it to order, the meeting cannot transact any business. Any purported business transacted before the chair begins a meeting are of no legal effect. The law of meeting reflects common sense. It is therefore not surprising that Parliamentary practice and usage is also similar.

11. It is not in factual dispute that the purported resolution to remove Sivakumar as Speaker was purportedly passed at about 10.30 a.m. on 7th May 2009, well before the royal address. The legal power to remove the Speaker is found in Article 36A(2)(d) of the Perak State Constitution. The purported resolution to remove Sivakumar presented by BN assemblymen therefore had to be submitted under Article 36A(2), which states that the Speaker shall vacate his office –

"(d) if the Assembly at any time so resolves."

It is a condition precedent for an Assembly to pass a resolution under Article 36A(2)(d) that that Assembly must have been "*opened*" and was in a legal position to transact business, including deliberating and passing such a resolution. In other words, the House must be sitting legally. Because the Assembly was not "*opened*" at 10.30 a.m. on 7th May 2009, the Assembly could not under the Constitution pass

³ Page 259.

the resolution pursuant to Article 36(2)(d). In consequence, Speaker Sivakumar was not lawfully removed on 7th May 2009, and continues under the Constitution and in law to be the sole, lawful Speaker of the Legislative Assembly of Perak.



Tommy Thomas
18th May 2009

APPENDIX A

	<u>A.M.</u>	
1.	9.30	As representative of HRH, the Raja Muda of Perak ("RM") arrives. He inspects the guard of honour. RM does not immediately enter the floor of the Assembly.
2.	9.55 – 10.03	<p>On the floor, V. Sivakumar, the Speaker, takes his seat. He immediately announces that Menteri Besar Zambry, 6 other suspended assemblymen, and 3 independent assemblymen whose resignations he had previously accepted (that is, a total of 10 assemblymen) have to leave the Assembly.</p> <p>Speaker states that the 3rd March sitting under the tree had approved the suspensions of the 4.</p> <p>Speaker states that he will not start the sitting until all 10 assemblymen leave. Zambry and the 9 assemblymen refuse to leave.</p> <p>Shouting starts.</p>
3.	10.20	<p>Zambry moves motion to remove Speaker. Speaker rejects the motion because Zambry has already been suspended.</p> <p>The Assembly plunges into chaos.</p>

4.	10.28-10.55	<p>The Speaker orders the sergeant-at-arms to remove the 10 assemblymen.</p> <p>The sergeant-at-arms refuses to act on the instruction.</p> <p>Someone announces "<i>The motion to remove the Speaker has been passed by 31 assemblymen.</i>"</p>
5.	10.40	<p>The microphone of the Speaker, V. Sivakumar is turned off. Hee Yit Foong ("Hee") the Deputy Speaker and one of the 10 assemblymen ordered to leave, states that as the House has voted Sivakumar out of the office, she has taken over as Speaker.</p> <p>Hee orders the sergeant-at-arms to remove Sivakumar. Again, the sergeant-at-arms take no action.</p>
6.	10.56-11.05	<p>Zambry moves motion to appoint a non-assemblymen, one R Ganesan to be Speaker. This motion is backed by Barisan Nasional ("BN") and the 3 independents.</p> <p>Ganesan walks into the Hall to accept the Speaker's gown. Ganesan signs the appointment documents at the BN side of the Hall.</p> <p>V. Sivakumar, the Speaker, continues to physically occupy the Speaker's chair.</p> <p>BN assemblymen propose and support motion to change the membership of 3 house committees.</p>

7.	11.13	Ganesan's microphone is the only one working.
8.	11.15-11.20	<p>Zambry proposes motion to adjourn the House.</p> <p>BN assemblymen pass the motion.</p> <p>Ganesan "<i>adjourns</i>" the sitting.</p> <p>BN assemblymen return to their seats on the opposition bench.</p> <p>Pakatan assemblymen shout at BN to leave the House since Ganesan had "<i>adjourned</i>" it.</p> <p>BN assemblymen however remain in their seats.</p>
9.	11.15-11.25	<p>Sivakumar makes an announcement which is inaudible.</p> <p>He holds up a paper.</p> <p>This paper is a letter dated 6th May 2009 written by Sivakumar rejecting motions submitted by BN.</p>
	<u>P.M.</u>	
10.	12.20	Sivakumar asks Ganesan to leave the House.
11.	12.24	Ganesan takes his seat in a chair belonging to a sergeant-at-arms.

12.	12.25-12.40	<p>Pakatan assemblymen heckle Ganesan demanding that he leaves and pointing out that he is wearing a tag stating "<i>Pegawai</i>".</p> <p>There is pushing and shoving among the assemblymen on the floor.</p>
13.	12.55	<p>Ganesan announces for the second time that he "<i>adjourns</i>" the House for a hour.</p> <p>Despite the "<i>adjournment</i>", all the assemblymen remain in the House.</p> <p>Police officers enter the floor of the House.</p>
14.	2.15	<p>Pushing and shoving among the assemblymen.</p> <p>Punches thrown.</p> <p>Assemblymen climb up and stand on the tables.</p> <p>Pandemonium on the floor.</p>
15.	2.30-2.40	<p>Pakatan assemblymen surround Speaker's chair to block attempts to physically remove him.</p> <p>Sergeant-at-arms attempt to physically remove Sivakumar and evict him from Speaker's chair.</p>
16.	2.39-2.41	<p>Police officers in uniform and personnel wearing tags which read "<i>Official</i>" successfully remove Sivakumar from the Speaker's chair, and drag him physically out of the House.</p>

		<p>Sivakumar resists and shouts repeatedly <i>"I am the legal Speaker. Why am I being treated like this?"</i></p> <p>Several Pakatan Assemblymen are also dragged out: the ensuing melee results in several flower pots in the Assembly being smashed.</p>
17.	2.43	BN and Pakatan Assemblymen continue shouting as they face off each other around the empty Speaker's chair.
18.	2.52-2.55	The same group of <i>"officials"</i> escort Ganesan who takes his place in the empty Speaker's chair.
19.	2.55-3.05	<p>Ganesan speaks from the Speaker's chair.</p> <p>He asks for the removal of 2 assemblymen, but no action taken.</p>
20.	3.00	Zambry moves a motion that the next order of the House is to allow the RM to give his royal address.
21.	3.03	<p>Ganesan orders 2 assemblymen out of the House.</p> <p>The doa is recited.</p> <p>The police install a new chair for Ganesan as the Speaker's chair was damaged.</p> <p>Police and plainclothes personnel leave the House.</p>

22.	3.12-3.15	RM enters the House.
23.	3.15	RM whispers to Nizar and Ngeh. Pakatan assemblymen take their seats on the right side of the Speaker's chair.
24	3.16	RM starts his royal address.
25.	3.47	RM completes speech.
26.	4.00-4.05	RM leaves the House. Zambry proposes House to be adjourned Ganesan " <i>adjourns</i> " the Assembly sine die.