



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

REPORT ON A MATTER OF PRIVILEGE — MATTER REFERRED TO THE COMMITTEE ON 3 DECEMBER 1999

REPORT NO. 40

1. INTRODUCTION AND BACKGROUND

On 22 April 1999, the Legal, Constitutional and Administrative Review Committee (“the LCARC”) tabled its *Final Report on Consolidation of the Queensland Constitution* following an extensive inquiry into the matter. The LCARC engaged Associate Professor Gerard Carney as their consultant for the inquiry.

Subsequent to the tabling of the LCARC report, Professor Carney made a submission dated 15 September 1999 to the Queensland Constitutional Review Commission (the “QCRC”). In his submission, Professor Carney stated:

*I need first to advise the Commission that I was the consultant to the Legal, Constitutional and Administrative Review Committee, for their extensive report on the consolidation of the Queensland Constitution. Accordingly, there is little that I can say on the process of consolidation which the Committee undertook except to endorse the Committee's report and draft Bills. There are, however, a number of points which I wish to make at the end of this submission.*¹

In the concluding paragraph of his submission to the QCRC, Professor Carney stated:

*The task facing the Commission is an enormous one, especially given the need to report to the Premier by 1 February 2000. I wish the Commission well in its deliberations and consultations. I am happy to elaborate further on any of the matters raised in this submission. I can be contacted at Bond University on 07-55952003.*²

On 17 November 1999 an e-mail was received in the electorate office of a Member of the LCARC by way of ‘cc’, apparently sent by Mr Richard J Wood. The e-mail was in the form of a submission from Mr Wood to the QCRC dated 15 September 1999 and represented that Mr Wood had been the consultant to the LCARC in relation to its inquiry into the consolidation of the Queensland Constitution. Mr Wood's e-mail submission appeared to be a direct copy of Professor Carney's submission to the QCRC.

The LCARC considered the matter at a subsequent meeting. As a preliminary step, the LCARC contacted Professor Carney who confirmed that the text of the e-mail submission was the same as his own submission to the QCRC dated 15 September 1999. Professor Carney advised the LCARC that he had not given permission to any person to use the text of his submission.

In brief, it appeared that Mr Wood had plagiarised Professor Carney's work and had misrepresented himself as the consultant to the LCARC.

On 2 December 1999, the LCARC wrote to the Speaker concerning the matter and by letter dated 3 December 1999 the Speaker referred the matter to the Members' Ethics and Parliamentary Privileges Committee (“the MEPPC”) for consideration.

2. PRIVILEGES ISSUE AND CONTEMPT

The MEPPC has responsibility under the *Parliamentary Committees Act 1995* for the privileges of the Legislative Assembly, its committees and Members, including the consideration of allegations of contempt of Parliament.

¹ Carney G, Submission to the Queensland Constitutional Review Commission, 15 September 1999 at 1.

² Note 1 at 7.

It is important to stress that the apparent plagiarism of Professor Carney's work is not of itself a matter which falls within the jurisdiction of the MEPPC. What is at issue is that as a result of the plagiarism and the publication of that plagiarism, Mr Wood may have also fraudulently misrepresented himself as a consultant to the LCARC.

This matter is unusual and appears to be without exact precedent. However, contempts do not require precedent. They merely have to be an act or omission that obstructs or impedes or is likely to obstruct or impede the House, a committee or a Member in the performance of their functions and duties. *Erskine May's Parliamentary Practice* states:³

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

Acts which lower the authority of the House may also constitute contempts if they have the capacity to obstruct or interfere with the functions of the Parliament.⁴

The current matter is akin to a number of contempts that have been found in the past by the House of Commons. For example, representing oneself to be a parliamentary agent without possessing the necessary qualifications⁵ was found to be a contempt, and sending a letter purporting to be from a member⁶ has been commented upon critically.

2.1 Particulars of the alleged contempt

While it cannot be said that persons who fraudulently misrepresent themselves as being consultants to parliamentary committees necessarily directly obstruct or impede the House in the performance of its functions, there is a tendency to produce such a result indirectly by bringing the committee, its inquiry or report into

³ Limon D & McKay WR (eds) *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (Erskine May's Parliamentary Privilege)*, Butterworths, London, 1997 at 108.

⁴ For a general discussion of this issue, see MEPPC Report No. 15 at 26-28.

⁵ Note 3 at 121, 876. In the United Kingdom there are parliamentary agents registered with the Parliament who promote private bills and petitions—a little like lobbyists in the USA.

⁶ Note 3 at 125.

disrepute and thus lowering the authority of the House, and such acts may constitute a contempt.

Therefore, the issue for the MEPPC to determine in this instance was whether Mr Wood fraudulently misrepresented himself as a consultant to the LCARC, and if so, whether in so doing Mr Wood committed a contempt.

3. CONSIDERATION BY THE MEPPC

The MEPPC met in relation to this matter on 8 December 1999 and commenced an inquiry into the matter. The committee secretariat took some time to locate Mr Wood. The committee secretariat advised Mr Wood by telephone on 14 December 1999 that the committee held correspondence to forward to him in relation to the matter which required his response. Mr Wood advised the committee of the post office box number to which he wished the material to be forwarded, and the committee's letter dated 14 December 1999 was posted to that address. The committee's letter:

- enclosed a copy of the correspondence forwarded by the Speaker;
- enclosed the rules relating to witnesses;
- outlined the possible contempt of Parliament, in the terms above; and
- invited Mr Wood to provide a written submission to the committee by 6 January 2000.

3.1 Procedural fairness

The MEPPC has established procedures of long-standing for dealing with privileges references, which ensure that procedural fairness is afforded to all parties. These procedures include requesting any person the subject of complaint to provide a written explanation of the allegations contained in the complaint.

However, the committee's letter inviting Mr Wood's submission was subsequently returned to the committee on 20 January 2000 "unclaimed". The committee made a number of other unsuccessful attempts to contact Mr Wood in order to afford him an opportunity to respond to the allegations.

The committee was advised variously that Mr Wood was travelling, had provided no forwarding address or contact details, and was unable to be contacted. The committee is obliged to eventually report to the Legislative Assembly on matters referred to it. The committee

considered its options to effect service of the committee's documentation on Mr Wood. After taking reasonable and practicable attempts to contact Mr Wood to no avail, and after careful consideration, the committee determined that it was inappropriate to incur further expense on the public purse to establish Mr Wood's whereabouts.

Under the committee's established procedures⁷ the committee has an obligation to report to the Legislative Assembly in respect of any complaint referred to it if the person does not, within a reasonable period, respond to a request given to them to provide a written explanation. The committee therefore had little practical choice but to consider the matter on the basis of the evidence before it without the benefit of Mr Wood's response.

The committee takes this opportunity to place on the public record that the deliberate obstruction of a parliamentary committee's inquiry is itself viewed seriously by the committee. On this occasion, the committee merely notes for the public record that under the provisions of the *Parliamentary Committees Act* and the *Constitution of Queensland Act 1867*, the committee is empowered to call for persons, documents and other things and the failure to comply may be treated as a contempt.

3.2 Standard of proof

The standard of proof in contempt matters has been discussed by the MEPPC at length in previous reports⁸ and will not be revisited in detail here. Suffice to say that the burden of proof is the civil standard of proof "on the balance of probabilities". In other words, the MEPPC must be satisfied that it is more probable than not that the allegations are correct.

4. ANALYSIS AND CONCLUSIONS

4.1 Observations regarding the "submission"

In relation to the e-mail submission purporting that Mr Wood had been the consultant to the LCARC, the committee observed that:

- the header at the top of Mr Wood's e-mail submission contained the words "Australians for Constitutional Monarchy" together with that organisation's Queensland postal address, telephone and fax numbers, and internet address;

⁷ See MEPPC Report No. 36, September 1996 at 3.

⁸ See MEPPC Report No. 3, January 1999 at 4; Report No. 4, January 1997 at 4; Report No. 13, December 1997 at 14.

- the concluding paragraph of the e-mail submission indicated that Mr Wood could be contacted at "Headquarters" on 07-38314848;⁹ and
- the facsimile signature "Richard J Wood" appeared at the end of the e-mail submission, above the signature block "Richard J Wood BBus LLB, Queensland Campaign Manager".

As the committee did not have the benefit of Mr Wood's version of events the committee, after very careful consideration of the evidence before it, believes that it is more probable than not that:¹⁰

- Mr Wood downloaded Professor Carney's submission from the Internet and altered it in three respects—
 - ◇ by replacing the Bond University header with that of the Australians for Constitutional Monarchy (ACM);
 - ◇ by replacing Professor Carney's telephone number at the end of the submission with that of the "Headquarters" of the ACM; and
 - ◇ by deleting Professor Carney's signature block at the end of the submission and substituting it with his own.

In short, Mr Wood plagiarised Professor Carney's submission to the QCRC.

- Mr Wood published the plagiarised submission by circulating it in e-mail form to a number of persons/organisations — one of which was a Member of the LCARC.

Parliamentary committees choose persons of high calibre as their consultants. They often appoint consultants to assist in bringing credibility to their inquiries and findings. If persons of little calibre or of flawed reputation fraudulently claim to be consultants to parliamentary committees, such conduct is not only offensive to the dignity of the committee and the House but may also harm the standing in the community of parliamentary committees.¹¹

⁹ This is the Brisbane telephone number of ACM, which is also shown on Mr Wood's business card which identified Mr Wood as "Queensland Campaign Manager".

¹⁰ Mr Wood made no submission to the committee and in his conversation with the committee's Research Director at the commencement of the committee's inquiry, Mr Wood asked no questions and made no comment as to the facts of the case.

¹¹ Parliamentary committees are unlikely to seek persons who plagiarise submissions to be associated with their inquiries.

4.2 Finding of fact

The committee accepts the following material facts as having been established.

- During its inquiry into the Consolidation of the Constitution the LCARC engaged one consultant only to assist it in its inquiry (Associate Professor Gerard Carney).
- Subsequent to the LCARC's inquiry, Professor Carney made a submission to the Queensland Constitutional Review Commission. In that submission Professor Carney made an appropriate disclosure that he had been "... the consultant to the Legal, Constitutional and Administrative Review Committee, for their extensive report on the consolidation of the Queensland Constitution."
- Professor Carney's submission was published on the QCRC's website.
- In plagiarising Professor Carney's submission, Mr Wood fraudulently misrepresented himself as "the consultant to the Legal, Constitutional and Administrative Review Committee, for their extensive report on the consolidation of the Queensland Constitution" when it is clear that the LCARC had only one consultant for its report—Professor Gerard Carney.
- Deliberately misrepresenting oneself as a consultant to a parliamentary committee is a most serious matter which not only has the capacity to obstruct or interfere with the functions of the Legislative Assembly, its committees or Members, but also adversely reflects upon the dignity of the Parliament.

5. FINDING

After careful consideration of the evidence available to the committee, the only logical finding open to the committee is that, on the balance of probabilities, Mr Wood fraudulently misrepresented himself as the consultant to the Legal, Constitutional and Administrative Review Committee in relation to its inquiry into the consolidation of the Queensland Constitution, and in so doing committed a contempt of the Parliament.

6. RECOMMENDATION

The finding of a contempt by this committee is in itself a serious matter. However, the committee also recommends that following the tabling and publication of this committee's report, the House resolve that the Speaker on behalf of the House forward copies of the committee's report to the following:

- **the Law Society of Queensland;**
- **the Bar Association of Queensland;**
- **Mr Wood's current and immediately past employer;**
- **the Legal, Constitutional and Administrative Review Committee;**
- **the Queensland Constitutional Review Commission;**
- **Australians for Constitutional Monarchy; and**
- **Professor Gerard Carney.**

John Mickel MLA

Chairman

15 March 2000

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