



## MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

### Report No. 82

*Matter of Privilege Referred by the Speaker on 18 April 2007 Relating to an Alleged Intimidation of a Member by a legal firm*

#### **Introduction and background**

1. The Members' Ethics and Parliamentary Privileges Committee (the MEPPC or the Committee) is a statutory committee of the Queensland Parliament established under the *Parliament of Queensland Act 2001* (the POQA or the Act). The current Committee was appointed by resolution of the Legislative Assembly on 11 October 2006.
2. Section 93 of the POQA provides that the MEPPC's area of responsibility includes the powers, rights and immunities (parliamentary privilege) of the Legislative Assembly, its committees and members. The Committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House, and inquires into and reviews other significant issues regarding parliamentary privilege.
3. On 18 April 2007, the Speaker referred to the Committee an allegation (raised by the Member for Moggill and Leader of the Liberal Party, Dr Bruce Flegg MP) that a letter dated 26 March 2007 to the Member for Moggill from a legal firm, acting on behalf of their clients, was an attempt to improperly interfere with the free performance by the member of his duties as a member.

#### **The reference**

4. On 18 April 2007, the Speaker referred the following matter of privilege to the MEPPC:

**Mr SPEAKER:** I refer to the matter of privilege raised by the Leader of the Liberal Party yesterday morning regarding correspondence from a legal firm received by the member on account of his activities in the House. The member also wrote to me on the matter yesterday and I have considered the member's correspondence. I have also discussed this matter with the Clerk who also had correspondence with the legal firm prior to the legal firm writing to the member. For the information of the House I table that correspondence.<sup>1</sup>

...

I note that in a letter from the Clerk to the legal firm dated 20 March 2007, six days before the correspondence from the legal firm to the Leader of the Liberal Party, the Clerk warned the legal firm about the parliamentary privilege applying to members' activities in the House, the privilege status of tabled documents and the possible contempt that could apply to any interference in proceedings or the rights of members.

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<sup>1</sup> Tabled papers no. 1266, 1267 and 1268. Queensland Legislative Assembly, *Register of Tabled Papers – 1<sup>st</sup> Session 52<sup>nd</sup> Parliament*.

There could be an argument that the letter to the Leader of the Liberal Party is reasonably carefully worded so as not to offend any privilege, possibly as a result of the warning that had been already issued. Nonetheless, members, I am deeply concerned about the ignorance of the privilege of proceedings of this House demonstrated in the original correspondence to the Clerk and how the requests in that correspondence were inappropriate. That the letter to the Leader of the Liberal Party followed without any express recognition of the member's rights compounds that matter. I am also more generally concerned about letters from lawyers to members regarding members' activities in the House. Those in the legal profession may not realize how inherently intimidating an action a legal letter in itself is, especially if the tone is not moderated or rights recognised. I appreciate that private legal rights are involved and that solicitors act in their clients' interest and the approach should be balanced.

In short, this is a matter that does raise issues of privilege and is best examined in detail with an opportunity for full detailed consideration and submission. I have therefore decided to refer the matter to the Members' Ethics and Parliamentary Privileges Committee for its consideration, not just of this particular matter but any wider issues involved that the committee believes should be considered and reported on.<sup>2</sup>

### ***Chronology of significant events leading up to the reference***

5. During a question without notice to the Premier on 15 March 2007, the Member for Moggill tabled an Information Memorandum dated February 2007.<sup>3</sup> The body of the document included a statement that the memorandum was confidential and was being supplied only to parties who had entered into a confidentiality agreement.<sup>4</sup>
6. On 20 March 2007, the principal of the legal firm acting on behalf of the subject of the tabled document wrote to the Clerk of the Parliament asking that the Clerk not permit access to the tabled document, identify any persons who had accessed the document, preserve all copies and not make further copies of the document, and not take any further steps without notice to the legal firm.<sup>5</sup>
7. On 20 March 2007, the Clerk replied to the legal firm advising of the principles of law at issue preventing him from taking the action requested by them (namely ss 8 and 9 of the POQA). The Clerk also drew to their attention that any interference with a parliamentary proceeding, or a member's rights, may constitute a contempt of Parliament.<sup>6</sup>
8. On 26 March 2007, the legal firm, acting on behalf of its clients, wrote to the Member for Moggill asking that the member identify the person who supplied the document to him, identify any persons (other than the Clerk) to whom he had supplied a copy of the document, and undertake not to make further copies of the document, keep confidential any copies, and (other than following written notice to their client) refrain from distributing or disclosing the document or its contents.<sup>7</sup>
9. On 17 April 2007, the Member for Moggill raised the matter of privilege in the House<sup>8</sup> and wrote to the Speaker the same day asking that the matter be referred to the MEPPC. The Speaker referred the matter raised by the member, together with any wider issues involved, to the MEPPC.

### ***Subsequent action by the legal firm***

10. In a letter to the Speaker dated 20 April 2007 (copied to the Member for Moggill and the Clerk) the legal firm unreservedly apologised to the member and the Parliament for the impression that had been created by their correspondence.

### ***Matters before the MEPPC***

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<sup>2</sup> Queensland, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 April 2007, at 1269.

<sup>3</sup> Tabled paper no. 1154. Queensland Legislative Assembly, *Register of Tabled Papers – 1<sup>st</sup> Session 52<sup>nd</sup> Parliament*.

<sup>4</sup> Note 3, at 3.

<sup>5</sup> Tabled paper no. 1266 Queensland Legislative Assembly, *Register of Tabled Papers – 1<sup>st</sup> Session 52<sup>nd</sup> Parliament*.

<sup>6</sup> Tabled paper no. 1267. Queensland Legislative Assembly, *Register of Tabled Papers – 1<sup>st</sup> Session 52<sup>nd</sup> Parliament*.

<sup>7</sup> Tabled paper no. 1192. Queensland Legislative Assembly, *Register of Tabled Papers – 1<sup>st</sup> Session 52<sup>nd</sup> Parliament*.

<sup>8</sup> Queensland, Legislative Assembly, *Parliamentary Debates (Hansard)*, 17 April 2007, at 1163.

11. The allegation before the MEPPC is that, by letter dated 26 March 2007 to the Member for Moggill, a legal firm - acting on behalf of their clients - attempted to improperly interfere with the free performance by the member of his duties as a member.
12. Also before the committee are the wider issues of privilege associated with correspondence from legal firms addressed to members of the Legislative Assembly regarding members' activities in the House.

### ***Alleged contempt***

#### **Definition of contempt**

13. Section 37 of the POQA defines the meaning of "contempt" in the Assembly as follows—

- (1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
- (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
  - (a) the free exercise by the Assembly or a committee of its authority or functions; or
  - (b) the free performance by a member of the member's duties as a member.

14. The Member for Moggill alleges that the legal firm's correspondence to him constitutes a contempt of Parliament stating—

Members of Parliament must be able to conduct parliamentary business without the implied threat of legal action. Equally people must know that they can bring information to members of Parliament without the threat of public disclosure of their role.<sup>9</sup>

#### **Nature of contempt of intimidation of a member**

15. To attempt to intimidate a member in his or her parliamentary conduct by threats has been held by the United Kingdom House of Commons to be contempt.<sup>10</sup> Sending a threat to a member because of the member's performance of his or her parliamentary duties is one example of contempt contained in the POQA: s 37(2), example 3. The *Standing Rules and Orders of the Legislative Assembly* (Standing Orders) lists threatening a member on account of the member's conduct in the House, and sending to a member a threatening letter on account of the member's conduct in the House, as examples of contempt: Standing Order 266, examples 17 and 20 respectively.
16. The former Select Committee of Privileges of the Queensland Parliament noted in its report on the alleged intimidation of a member<sup>11</sup> that—

It is important to note that merely attempting to intimidate or threaten is of itself not necessarily a breach of privilege. The alleged threat or attempted intimidation are a contempt only if they constitute "improper means to influence Members in their parliamentary conduct." (Erskine May at p. 128)

It is further noted in Erskine May at page 129:

"Conduct not amounting to a direct attempt improperly to influence Members in the discharge of their duties, but having a tendency to impair their independence in the future performance of their duties may be treated as a contempt."

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<sup>9</sup> Letter dated 17 April 2007 from the Member for Moggill to the Speaker of the Queensland Parliament.

<sup>10</sup> Actions that have been proceeded against include: impugning the conduct of members and threatening them with further exposure if they took part in debates; and threatening to end investment by a public corporation in a member's constituency if the member persisted in making speeches along the lines of those in a preceding debate. Sir Donald Limon, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22<sup>nd</sup> edition, Butterworths, London, 1997, at 123-4.

<sup>11</sup> Privileges Committee, *Report on A Matter of Privilege – Alleged Intimidation of a Member*, Government Printer, Brisbane, 1993, at 7.

It should be noted, however, that this “tendency to impair” independence is not to be merely coincidental. It must be **precisely what the person accused of contempt intended** by their conduct. [Emphasis added]

### Establishing a *prima facie* case of possible contempt

17. The Committee has established procedures for dealing with privileges references, which ensure that procedural fairness (natural justice) is afforded to all parties. These procedures are set out in Chapter 40 of the Standing Orders. The Committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 to the Standing Orders.
18. On 23 May 2007, the Committee considered the reference from the Speaker, which comprised the material provided by the Member for Moggill in support of his complaint, the material tabled by the Speaker in the House, and also the letter of apology from the legal firm to the Speaker dated 20 April 2007.
19. On 24 May 2007, the Committee invited written submissions from the Member for Moggill and the principal of the legal firm to enable the Committee to determine whether or not the allegation gives rise to a *prima facie* case of breach of privilege or contempt. In accordance with procedure, the Committee provided both parties with the relevant Hansard extracts.
20. By letter to the Committee dated 1 June 2007, the legal firm repeated its unreserved apology contained in the letter to the Speaker dated 20 April 2007 and outlined why, in their view, the firm’s actions did not constitute a contempt of Parliament, stating—

Neither this firm nor our client **intended** to improperly interfere with the free exercise by Dr Flegg of his parliamentary duties and we unreservedly apologise for any contrary impression that may have been created by our earlier correspondence. [Emphasis added]

21. The legal firm explained its letter dated 26 March 2007 addressed to the Member for Moggill in the following terms—

The correspondence was written out of a concern that our client’s rights had been compromised, not by the publication of the document in the parliament by Dr Flegg (we are conscious in that respect of the operation of ss 8 and 9 of the *Parliament of Queensland Act*) but by the giving of the document to Dr Flegg, and, potentially by Dr Flegg should he have published it again, other than in his capacity as a member of Parliament (by he having given it to other persons for example). The *Parliament of Queensland Act*, whilst acting to protect a [member’s] duties we believe would arguably not apply were a person able to clearly demonstrate a member was acting outside of his parliamentary duties.<sup>12</sup>

22. Referring specifically to the terms of their letter to the Member for Moggill, the legal firm stated—

- (a) it refers Dr Flegg to the tabling by him of the Information Memorandum;
- (b) it notes that our client did not provide Dr Flegg with a copy of it, nor authorise its publication. The commercially sensitive and confidential nature of the document and the Important Notice are then restated;
- (c) disappointment with Dr Flegg’s actions in that context are then expressed;
- (d) Dr Flegg is then asked to advise and undertake in certain terms. Relevantly the letter does not “demand” as such letters commonly do, and except as to advise that an urgent response would be appreciated, does not set a timeframe in which Dr Flegg was required to act. There was, relevantly, no threat;
- (e) the letter does not contain any [ultimatum], [threat] of detriment, declaration of intention to hurt or punish, menace of bodily hurt, or injury to reputation or property such as may [restrain Dr Flegg’s] freedom of action or an indication of something undesirable coming;
- (f) The requests made of Dr Flegg and the undertaking are, we submit, entirely reasonable ones each having the effect of preserving our client’s rights in respect of the document. Relevantly, the undertaking not to distribute or disclose the document is not an absolute one. That is, it does not seek from Dr Flegg an undertaking that would be inconsistent with his

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<sup>12</sup> Letter dated 1 June 2007 from Mr Michael O’Connor to the MEPPC.

right as a member to conduct himself in Parliament without restraint. What is sought is an undertaking that he not further disclose the document "*without first having given reasonable notice to our client in writing*" of his intention to do so. In that sense Dr Flegg retained control over his intentions in respect of the document: what was sought was notice from him should he [intend] to act, thus giving our client the opportunity to take further advice.<sup>13</sup>

23. The legal firm submitted that their correspondence to the Member for Moggill did not amount impliedly to threatening conduct.<sup>14</sup>
24. On 3 July 2007, the Member for Caloundra, Mr Mark McArdle MP, acting in his capacity as Acting Leader of the Liberal Party, wrote to the Committee (at the Member for Moggill's request) on behalf of the Member for Moggill (who was away) regarding the Committee's invitation for a submission. The Member for Moggill, via the Member for Caloundra, relayed his ongoing serious concerns about the matter referred and the need to protect members of Parliament in the carrying out of their duties. The Member for Moggill advised that his letter of 17 April 2007 to the Speaker outlined all matters he wished the Committee to consider.
25. In his letter to the Speaker dated 17 April 2007, the Member for Moggill stated that the letter from the legal firm is a blatant attempt to interfere with his duties to the Parliament and to the people of Queensland. The Member for Moggill stated—

It is an important part of a member's role that he or she be able to receive input and material from the public without fear or favour and importantly without threats directed towards establishing the name of the relevant whistleblower or informant.

In my view any attempt to interfere in my representation of the people of Queensland is contempt of this Parliament.

It is for that reason that I was particularly concerned to receive a letter from the lawyers for GBG Project Management Pty Ltd. ...

Mr Speaker, this letter from GBG Project Management Pty Ltd (through [its] lawyers) is a blatant attempt to interfere with my duties to this Parliament and to the people of Queensland.

Members of this Parliament must be able to conduct parliamentary business without the implied threat of legal action. Equally people must know that they can bring information to members of Parliament without the threat of public disclosure of their role. ...<sup>15</sup>

26. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are listed below.
- Did the letter from the legal firm to the Member for Moggill constitute an attempt to threaten or intimidate the member?
  - If yes, did the alleged threat or attempted intimidation constitute improper means to influence the Member for Moggill in his parliamentary conduct?
  - If the alleged threat or attempted intimidation did constitute an improper means to influence the Member for Moggill in his parliamentary conduct, was this the intention of the legal firm?
27. The Member for Moggill interpreted the tone of the letter from the legal firm as an attempt to threaten or intimidate him, on account of his actions in the House.
28. The Committee notes the comments made by Speaker in referring the matter to the Committee, that "[t]here could be an argument that the letter to the Leader of the Liberal Party is reasonably carefully worded so as not to offend any privilege, possibly as a result of the warning that had been already issued [by the Clerk of the Parliament]".

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<sup>13</sup> Note 12.

<sup>14</sup> Note 12.

<sup>15</sup> Note 9.

29. The MEPPC accepts the legal firm's assurance that neither the firm nor their client intended to improperly interfere with the free exercise by the Member for Moggill of his duties as a member. The Committee notes the firm's unreserved apology to the Member for Moggill and the Parliament (but would emphasise that, in itself, an apology or retraction would not preclude the Committee from making a finding of a breach of privilege or contempt).
30. Nonetheless, the Committee agrees with the Speaker that: "Those in the legal profession may not realize how inherently intimidating an action a legal letter in itself is, especially if the tone is not moderated or rights recognised". These wider issues are dealt with below.

**Conclusion 1: The Committee finds no *prima facie* case of a breach of privilege or contempt in relation to the alleged intimidation of a member.**

**Recommendation 1: The Committee recommends that the House take no action in relation to the matter.**

### ***Correspondence from legal firms regarding members' activities in the House***

31. In addition to the complaint by the Member for Moggill, the Speaker also referred to the Committee the wider issues of privilege associated with correspondence from legal firms addressed to members of the Legislative Assembly regarding members' activities in the House.
32. The Committee takes allegations of attempts to interfere with the free performance by members of their duties as members very seriously. In assessing the particulars of the complaint referred by the Speaker, the Committee noted precedents for correspondence from legal firms relating to members' parliamentary activities (both correspondence addressed to members and correspondence addressed to their constituents) having been found to constitute an improper interference with a member's rights, or to have a tendency to do so.<sup>16</sup> Although there was no finding of a breach of privilege or contempt in this case, there are circumstances in which correspondence from a legal firm could be found to interfere with parliamentary proceedings or the free exercise by members of their duties as members, and potentially give rise to a finding of a breach of privilege or contempt.
33. There is anecdotal evidence that a number of members have received correspondence from legal firms, some of which may have raised issues of privilege. The Committee reminds all honourable members that if reported to the Speaker or Clerk, the Speaker may, where appropriate, instruct counsel to intervene on his behalf (as guardian of the privileges of the Parliament) and report the matter to the House. Any alleged contempt may then be referred to the Committee for investigation.
34. All members of the Legislative Assembly need to be aware of the scope of parliamentary privilege applying to their performance of their duties as a member, including the appropriate action to take if they receive correspondence from legal firms regarding their activities in the House. The Committee considers that members of the Legislative Assembly should be provided with this information as part of the new members' induction program. The issue of legal practice education is addressed below.

**Conclusion 2: All members of the Legislative Assembly need to be aware of the scope of parliamentary privilege applying to their performance of their duties as a member.**

**Recommendation 2: The Committee recommends that the new members' induction program include information about the scope of parliamentary privilege as it applies to a member's performance of their duties as a member, including information about appropriate action to take if a member receives correspondence from a legal firm regarding their activities in the House.**

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<sup>16</sup> For example, see Legislative Assembly Privileges Committee, *Report on the complaint by the Member for Preston*, Government Printer, Melbourne, 2006.

### **Parliamentary privilege and legal practice education**

35. The letter to the Clerk of the Parliament dated 20 March 2007 and subsequent correspondence to the Member for Moggill indicates a limited appreciation by the legal firm of the relevant principles of law relating to parliamentary privilege generally (namely s 9 of the *Constitution of Queensland*<sup>17</sup> and ss 8 and 9 of the POQA<sup>18</sup>) and the possible contempt that could apply to any interference in parliamentary proceedings or the free exercise by members of their duties as members in particular.
36. Anecdotal evidence relating to correspondence from legal firms addressed to members of Parliament suggests a limited understanding by the legal community generally about the principles of law relating to the powers, rights and immunities of the Parliament, its committees and members. This may be in part be due to the limited number of cases involving members of parliament or parliamentary proceedings. However, the Committee also considers this to be due to an absence of a component covering parliamentary privilege as part of legal practice education.
37. Legal practitioners need to be aware of the relevant principles of law relating to parliamentary privilege generally and the possible contempt that could apply to any interference in parliamentary proceedings or the free exercise by members of their duties as members in particular. The Committee will be writing to the Queensland Law Society, the Bar Association of Queensland, and to those law schools offering legal practice and Bar practice courses in Queensland regarding the desirability of providing training for legal practitioners and law students about the principles of law relating to the powers, rights and immunities of the Parliament, its committees and members.

**Conclusion 3: Legal practitioners need to be aware of the relevant principles of law relating to parliamentary privilege generally and the possible contempt that could apply to any interference in parliamentary proceedings or the free exercise by members of their duties as members in particular.**

**Recommendation 3: The Committee recommends that the House note that the Committee will write to the Queensland Law Society, the Bar Association of Queensland, and to those law schools offering legal practice and Bar practice courses in Queensland regarding the desirability of providing training for legal practitioners and law students about the principles of law relating to the powers, rights and immunities of the Parliament, its committees and members.**

Anastacia Palaszczuk MP

Chair

August 2007

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<sup>17</sup> Section 9 (Powers, rights and immunities of Legislative Assembly), *Constitution of Queensland*.

<sup>18</sup> Section 8 (Assembly proceedings cannot be impeached or questioned) and Section 9 (Meaning of *proceedings in the Assembly*), *Parliament of Queensland Act 2001*.

### **Membership—52<sup>nd</sup> Parliament**

Ms Annastacia Palaszczuk MP, <sup>19</sup> Chair (from 1 November 2006)  
*Member for Inala*

Mr Mike Horan MP, Deputy Chair  
*Member for Toowoomba South*

Mr Phil Gray MP  
*Member for Gaven*

Mrs Linda Lavarch MP<sup>20</sup> (from 6 February 2007)  
*Member for Kurwongbah*

Mrs Jo-Ann Miller MP  
*Member for Bundamba*

Mrs Dorothy Pratt MP  
*Member for Nanango*

Mr Lawrence Springborg MP  
*Member for Southern Downs*

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<sup>19</sup> Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006.

<sup>20</sup> Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006; Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007.