



## INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

### Report No. 103

*Matter of Privilege Referred by the Speaker on 25 November 2009  
Relating to an Alleged Unauthorised release of Committee Documents*

#### **Introduction and background**

1. The Integrity, Ethics and Parliamentary Privileges Committee (the IEPPC 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 23 April 2009.
2. Section 93 of the POQA provides that the IEPPC'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 25 November 2009, the Deputy Leader of the Opposition, Mr Springborg, attempted to table in the House documents allegedly provided to him by Dr Christine Jane Eastwood, a complainant to the Parliamentary Crime and Misconduct Committee (PCMC).
4. The Speaker, the Hon John Mickel MP sought the urgent advice of the PCMC on the status of these documents. The PCMC subsequently advised the Speaker that four of the seven documents constituted correspondence between the committee and the complainant, which the committee had not given its consent or authorisation to release. Another document, the covering statutory declaration contained notes which refer to other documents and exchanges with the committee.
5. Mr Speaker subsequently ruled that the tabling of these five documents would offend Standing Order 209 and would not allow the documents to be tabled. Mr Speaker also decided to refer the matter to the IEPPC in accordance with Standing Order 268(2) as a possible contempt.
6. The committee sought further information by writing to the Deputy Leader of the Opposition and the PCMC.

#### **The reference**

7. On 25 November 2009, Speaker Mickel made the following statement in referring the matter of privilege to the IEPPC:

**Mr SPEAKER:** Honourable members, in question time today the Deputy Leader of the Opposition attempted to table in the House documents allegedly provided to him by a Dr Christine Jane Eastwood. On the face of it, at least some of these documents appeared to be copies of documents provided to the Parliamentary Crime and Misconduct Committee. Therefore, I ruled that the documents not be considered tabled until such time as there is a determination that there has been no breach of standing order 209. I sought the urgent advice of the committee on the status of these documents.

The committee has now advised me that four of the seven documents constitute correspondence between the committee and the complainant, which the committee has not given its consent or authorisation to release. Another document, the covering statutory declaration in its latter portions, contains notes that refer to other documents and exchanges with the committee. I find that the tabling of these five documents would offend standing order 209 and I will not allow documents contravening standing order 209 to be tabled.

Furthermore, I have decided to refer this matter to the Members' Ethics and Privileges Committee in accordance with standing order 268(2) as a possible contempt. I have instructed the Clerk to forward all the documents attempted to be tabled to the Members' Ethics and Privileges Committee.

### ***Definition of contempt***

8. Section 37 of the POQA defines the meaning of "contempt" of 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.

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

9. The committee has established procedures for dealing with privileges references, which ensure procedural fairness and 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.
10. On 24 March 2010, the committee found that they had sufficient material before it from the Deputy Leader of the Opposition and the PCMC to deliberate on the matter. This material included Mr Springborg's submission to the Committee dated 19 February 2010 and correspondence from the PCMC dated 23 March 2010.

### ***Unauthorised disclosure of committee documents***

11. Standing Order 209 of the Legislative Assembly's Standing Rules and Orders provides:

*Reference to proceedings and disclosure of evidence and documents*

...

(2) *The evidence taken by a committee or sub-committee and documents presented to it, and proceedings and reports of it, which have not been reported to the House, shall not, unless authorised by the House or the committee, be disclosed or published to any person other than a member or officer of the committee...*
12. The Standing Order is one expression of a greater principle of parliamentary law and practice: the proceedings of parliamentary committees are confidential until the committee reports those proceedings to the House or otherwise orders their release or publication. This rule is designed

to promote the better functioning of the committee process and to affirm that the House is entitled to the first advice of the conclusions of its committees.<sup>1</sup>

13. It has been established that the premature or unauthorised release of committee proceedings is a contempt of Parliament. In this context “proceedings” includes evidence taken by committees by way of in camera hearings, submissions presented to the committee, documents presented or submitted to the committee and draft reports by the committee and **correspondence between the committee and witnesses**, departments and Ministers.
14. Standing Order 266(12) provides that an example of a contempt includes:  
*Divulging the proceedings or the report of a committee or a subcommittee contrary to Standing Orders.*
15. Previous Ethics Committees have stressed that “any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament and the IEPPC continues to view any unauthorised disclosure most gravely”.<sup>2</sup>
16. The Committee examined the issue of unauthorised disclosure of committee documents in two parts:
  - (a) the initial disclosure to Mr Springborg; and
  - (b) the attempted subsequent publication by Mr Springborg attempting to table the documents in the House.

### ***Initial disclosure***

17. Mr Springborg’s submission dated 19 February 2010, states that Dr Eastwood disclosed the documents to Mr Springborg, as well as to other parliamentarians, via email on 16 November 2009. Mr Springborg’s submission provides evidence of this email. This is corroborated by Dr Eastwood’s statutory declaration which states that she has:  
*“...forwarded these documents to various Members of Parliament including the Opposition Leader, the Premier, the Attorney-General and the Shadow Attorney-General”.*  
Mr Springborg did not identify any other persons as having disclosed the documents to him and the committee had no evidence before it, nor any reason to believe, that the initial disclosure came from anyone other than Dr Eastwood.
18. On 11 March 2010, the Committee wrote to the PCMC to ascertain whether in replying to Dr Eastwood’s original submission, that Committee expressly notified Dr Eastwood of the operation and effect of section 209 of the *Standing Rules and Orders of the Legislative Assembly*? The PCMC advised in its response that it had not referred Dr Eastwood to Standing Order 209 in any correspondence with her prior to the initial disclosure.
19. Accordingly, the Committee is of the view that it is highly unlikely that Dr Eastwood was aware that disclosing these documents to Members of Parliament could amount to a potential breach of Standing Order 209 at the time of the initial disclosure.

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<sup>1</sup> McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 650.

<sup>2</sup> Members’ Ethics and Parliamentary Privileges Committee, Report No. 42, *Report on a matter of privilege—Unauthorised release of correspondence between a committee and ministers*, Queensland Legislative Assembly, Brisbane, 2000 (tabled on 7 June 2000) p.1; MEPPC, Report No. 48, *Report on a Matter of Privilege—Unauthorised Disclosure of Committee Proceedings*, p. 2.

20. As a finding of contempt would require evidence of a deliberate intent on the part of Dr Eastwood to interfere with the operations of the House or its Committees, the Committee has resolved not to take the matter of the initial disclosure any further.
21. The committee wishes to take this opportunity to remind all other committees of the need to advise persons corresponding with a committee that any evidence or documents presented to committees should not be disclosed or published until the committee authorises such disclosure or publication or reports to the House pursuant to Standing Order 209.

### ***Attempted subsequent publication***

22. In order to establish whether Mr Springborg has committed a contempt, in attempting to table the relevant documents, the committee examined the following three questions—
  - Was there a disclosure of a proceeding of a committee?
  - Was the disclosure unauthorised?; and
  - If yes, did the unauthorised disclosure amount to a deliberate interference with the operations of the PCMC?

### ***Was there a disclosure of a proceeding of a committee?***

23. Hansard of 25 November 2009, at p. 3553 clearly indicates that Mr Springborg attempted to disclose documents that were later confirmed to be documents of the PCMC. Mr Speaker's letter to the committee dated 1 December 2009, states that he was subsequently advised by the PCMC:

*..that four of seven documents constituted correspondence between the committee and the complainant, which the committee had not given its consent or authorisation to release. ... the statutory declaration contains notes which refers to other documents and exchanges with the committee.*

*I ruled that the tabling of these five documents would offend Standing Order 209 and I will not allow documents contravening Standing Order 209 to be tabled.*

24. In his submission, Mr Springborg did not deny attempting to table these documents.
25. Mr Springborg indicated that he believed that the documents were not proceedings of the PCMC. His submission argued that he carefully considered the Standing Orders and the documents and formed the view that no proceedings had commenced as the documents indicated that the matter was not under active consideration by the PCMC pending express permission from Dr Eastwood to proceed.
26. Mr Springborg's submission stated that:

*As evidenced from the material, I submit that it was entirely reasonable for me to conclude from the documents and from direct conversation with the informant that there were currently no proceedings before the committee. Using the definition of 'proceeding' as per the Macquarie Dictionary: 'a particular action or course of action.'*

27. Standing Order 209 (4) clearly lists examples of proceedings, including written submissions to a committee and correspondence between the committee and witnesses:

*Standing Order 209(4)*

*(b) written or oral submissions presented to the committee;*

*...*

*(e) correspondence between the committee and witnesses, departments and Ministers; and*

*...*

28. Further, a footnote next to the word 'proceedings' in the title to SO 209, links to examples of "proceedings in the Assembly" that are listed in the *Parliament of Queensland Act 2001*, including (c) presenting or submitting a document to the Assembly, a committee or an inquiry. These are reprinted on the same page as SO 209.
29. The relevant documents clearly fall within the definition of 'proceedings' as per the *Parliament of Queensland Act 2001* and as stated in the Standing Orders. In seeking to interpret Standing Orders the definitions and examples in the parent legislation and those referred to within the Standing Orders themselves must take precedence over a dictionary definition.
30. Having considered all the evidence available to it, the Committee is of the view that had Mr Springborg been able to table these documents then it would have amounted to a disclosure of the proceedings of a committee.
31. However, for Standing Order 209 to be breached there would need to be an actual disclosure or publication of committee documents to persons other than a member or an officer of that committee. Standing Order 209 does not include any reference to an attempt to disclose or publish.
32. Accordingly, the committee finds that there was no disclosure or publication of the documents as Mr Springborg was ultimately prevented from tabling the documents by virtue of the Speaker's ruling.
33. The committee is of the view that consideration should be given as to whether a deliberate attempt to table documents which would otherwise offend standing orders should be added to the list of examples of conduct that can be treated as a contempt at Standing Order 266. The committee recommends that the Standing Orders Committee consider amending Standing Orders accordingly.

***Was the disclosure unauthorised?***

34. Mr Springborg's submission does not indicate that he was authorised by the PCMC to disclose the documents.
35. On 1 December 2009, the Speaker advised the committee that the PCMC had not authorised the disclosure of the documents.
36. Accordingly, the Committee finds that the (attempted) disclosure was not authorised by the PCMC.

***Did the unauthorised disclosure amount to a deliberate interference with the operations of the PCMC?***

37. It is clear from the record of proceedings dated 25 November 2009, and from Mr Springborg's submission to the committee that he intended to table the documents.
38. In his submission, Mr Springborg seeks to justify his intended action by arguing:

*It would be restrictive in practice and questionable if a witness or informant of a Committee was prohibited from going to a Parliamentarian and expressing concerns about the way their matter is being handled by a committee and the Parliamentarian being prohibited from raising these concerns in the Parliament.*

Mr Springborg further states in his submission, at page 3, that he believes that the documents were not in breach as he had determined that there was 'no proceedings by a parliamentary Committee had commenced'.

In his submission Mr Springborg further states that:

*Any other interpretation could only be seen as allowing for a Parliamentary Committee to be used to suppress information that would otherwise be in the public interest to be discussed and raised in the Parliament.*

In addition, Mr Springborg asserts that:

*Parliamentary Privilege is founded on the fundamental democratic privilege that it is in the long term interest of maintaining democratic society that a Member of Parliament has the right [and indeed the duty] to raise matters of public concern in the House freely and openly.*

39. The Committee found it difficult to reconcile Mr Springborg's arguments with the Legislative Assembly's power to regulate its own proceedings and with the clear wording and intent of Standing Order 209.
40. The Committee also found it difficult to reconcile those statements in the context of Mr Springborg's experience. Mr Springborg has been a member of the Legislative Assembly since 1989 and during that time ethics committee's, including those that Mr Springborg has been a part of, have been at pains to emphasise the seriousness of disclosing 'proceedings' of a committee.
41. Mr Springborg has extensive experience as a member of the ethics committees (from: 2 April 1996–3 March 1998, 30 July 1998–27 February 2003, 11 October 2006–8 February 2008 and 12 February 2008–21 March 2009). Furthermore, during that period Mr Springborg deliberated on SO.209 matters. For example, Mr Springborg was on the ethics committee when Reports No's. 42 and 48 were brought down which both dealt with SO 209 issues and highlighted examples of 'proceedings' of committees.
42. The Committee is of the view that Mr Springborg's arguments regarding public interest and parliamentary privilege are without any authority and, if anything, only serve to point to an intention to disclose the relevant documents, regardless of whether they were proceedings of a committee or not, and an intention to interfere with the operations of the PCMC.
43. On the material before the committee, the Committee finds that by attempting to table the documents in question Mr Springborg intended to disclose proceedings of the PCMC which were not authorised to be disclosed by that committee.
44. The Committee is of the view that had he been successful in disclosing or publishing those proceedings Mr Springborg would have committed a contempt of deliberately interfering with the operations of the PCMC. The Committee wishes to stress the seriousness of interfering with the operations of any committee, particularly the PCMC given the sensitive nature of documents and the potential impact that release of such documents might have on the rights and interests of parties involved.
45. However, in this instance, Mr Springborg was prevented from disclosing or publishing by virtue of the Speaker's ruling against tabling the documents.

### **Conclusion**

46. The committee finds that there is no breach of privilege or contempt in this matter. The committee recommends that the House take no further action in regard to the matter of the alleged contempt.
47. However, this committee joins with previous ethics committees in emphasising the seriousness of unauthorised disclosure or publication of 'proceedings' of a committee.
48. The committee recommends that the Standing Orders Committee consider amending Standing Orders to add a deliberate attempt to table documents which would otherwise offend standing

orders to the list of examples of conduct that can be treated as a contempt at Standing Order 266.

49. The committee finds it difficult to reconcile Mr Springborg's statements in his submission with his extensive experience as a Member of the Legislative Assembly and his experience on previous ethics committees including deliberating on Standing Order 209 matters dealing with the definition of "proceedings" of the House or its committees.
50. The Committee finds Mr Springborg's arguments regarding public interest and parliamentary privilege are without any authority and, if anything, only serve to point to a reckless intention to disclose the relevant documents and to interfere with the operations of the PCMC.
51. The Committee recommends that the Deputy Leader of the Opposition should make a statement in the House unreservedly apologising for attempting to table the documents on 25 November 2009.

### **Conclusion**

**The committee finds no contempt in relation to the alleged unauthorised release of committee documents by a Member.**

### **Recommendation 1**

**The committee recommends that the House take no action in relation to the matter.**

### **Recommendation 2**

**The committee recommends that the Standing Orders Committee consider amending Standing Orders to add a deliberate attempt to table documents which would otherwise offend standing orders to the list of examples of conduct that can be treated as a contempt at Standing Order 266.**

### **Recommendation 3**

**The committee notes that it is difficult to reconcile Mr Springborg's statements in his submission with his extensive experience as Member of the Legislative Assembly and his experience on previous ethics committees including deliberating on Standing Order 209 matters dealing with the definition of "proceedings" of the House or its committees.**

**The committee requests that at the next opportunity the Member unreservedly apologise for attempting to table the documents on 25 November 2009.**

### **Recommendation 4**

**The committee reminds all members of the seriousness of unauthorised disclosure or publication of 'proceedings' of a committee.**

Mr Kerry Shine MP  
Chair  
March 2010

**Membership — 53rd Parliament**

Mr Kerry Shine MP, Chair  
*Member for Toowoomba North*

Mr Tim Nicholls MP, Deputy Chair  
*Member for Clayfield*

Mr Glen Elmes MP  
*Member for Noosa*

Hon Margaret Keech MP  
*Member for Albert*

Ms Carolyn Male MP  
*Member for Pine Rivers*

Mr Curtis Pitt MP  
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