



INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 110

Matter of Privilege Referred by the Speaker on 11 June 2010 Relating to the Discharge of a Member from a Parliamentary Committee

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. The matter concerns an allegation that the Leader of the Opposition improperly interfered with the performance of the Member for Beaudesert's duties through recommending the member's discharge from a parliamentary committee, allegedly as a disciplinary measure.
4. In accordance with Standing Order 269, the Member for Beaudesert wrote to the Speaker on 18 May 2010, asking the Speaker to refer the matter to the IEPPC.
5. Recent amendments to Standing Order 269(5) allow that, in relation to the procedures for raising and considering complaints, the Speaker may request information from the member the subject of the complaint. Accordingly, the Speaker sought further information from the Leader of the Opposition and the Opposition Whip regarding the member's complaint. The Speaker duly received submissions dated 3 June and 2 June respectively.
6. On 11 June 2010, after examining the information before him, the Speaker decided to refer the matter to the IEPPC.
7. On 18 August 2010, the committee resolved to invite the Leader of the Opposition and the Member for Beaudesert to provide a supplementary submission to the committee.
8. On 23 and 27 August 2010 respectively, the Leader of the Opposition and the Member for Beaudesert wrote to the committee providing individual supplementary submissions.

Chronology of events leading to referral

9. According to the Member for Beaudesert, on 25 January 2010, the Member, then a member of the Liberal National Party (LNP), compiled an email outlining the direction needed for the LNP which the Member sent to all 34 LNP members, the LNP president, the state director, the Leader of the Opposition's chief of staff and the LNP's media adviser.
10. On 27 January 2010, an extract of this email was aired in the media. Various internal party matters followed as did media attention.
11. Following public comment by the Member for Beaudesert in the media on Friday 29 January 2010, that the Deputy Leader of the Opposition should reconsider his position within the LNP, the member received a letter on Wednesday 3 February 2010 from the Leader of the Opposition dated 29 January 2010 stating:

'I wish to advise you that in view of the events of the week, I have advised the Speaker that I have replaced you as the LNP representative on the Law, Justice and Safety Committee of the Queensland Parliament.'
12. According to the Member for Beaudesert, on Thursday 4 February 2010, the member wrote to the Leader of the Opposition warning him that, according to the procedures of Standing Orders, neither had the member given a formal resignation to the Speaker nor had the matter been ratified by parliament as a whole. In the letter, the member also asked that the Leader of the Opposition reconsider his course of action until after the recommendations from the alcohol fuelled violence investigations were tabled given the extensive amount of work the committee had completed.
13. Material tabled by the member also alleged that numerous MPs had called the member prior to a spill motion and advised they had been intimidated and threatened by an Opposition staff member that if they supported his move against the Deputy Leader they would lose their parliamentary committee or shadow minister positions.

Parliamentary law and practice – privilege and contempt

14. Section 37 of the *Parliament of Queensland Act 2001* (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**.
[Emphasis added]
15. Accordingly, in the context of this matter in order for contempt to be established there must be an "improper interference" with "the free exercise by a committee of its authority or functions" or "the free performance by a member of the member's duties as a member".
16. It is long established that it amounts to a contempt to obstruct members in the discharge of their duties or responsibilities. For example, molesting a member coming to or from the House or a committee, or on account of their conduct in the House or a committee and impugning or reflecting by writing on account of their actions in the House or committee have all been

regarded as contempts. Similarly, to attempt to intimidate a member in their parliamentary conduct by threats or improper influence have also been held to be contempts.¹

17. McGee² notes that in New Zealand, '*The House regards as most serious any improper attempt to prevent, dissuade or inhibit anyone (member, officer, witness or petitioner) from participating fully in its proceedings*'.
18. Despite over a century of organised political party activity, there is little precedent regarding the intersection of privilege and contempt and the machinations of political parties, including the discipline of their members.
19. A search was conducted which showed no procedural precedents in Australasian jurisdictions for the nomination or discharge of a member from a parliamentary committee or other parliamentary office because of party related discipline or similar.

Discharge of a member from a parliamentary committee

20. Section 81 of the POQA provides the membership of a statutory committee is constituted as follows—
 - (1) A statutory committee must consist of 7 members nominated as follows—
 - (a) 4 members nominated by the member who is recognised in the Legislative Assembly as the Leader of the House;
 - (b) 3 members nominated by the member who is recognised in the Legislative Assembly as the Leader of the Opposition.
 - (2) The chairperson of a statutory committee must be the member nominated as chairperson by the member who is recognised in the Legislative Assembly as the Leader of the House.
21. The provision is designed to ensure that a formulae of balance between government and non-government membership on committees is maintained.
22. Standing Order 195(1) also provides for the appointment and discharge of members as follows—
 - (1) unless otherwise provided, members shall be appointed or discharged from committees by motion without notice.
23. The Speaker's ruling on 11 June 2010, states that s. 81 of the POQA gives the power of nomination to the Leader of the House and Leader of the Opposition, it does not confer 'ownership' of the committee position to the Leader of the House or Leader of the Opposition, as the Assembly as a whole determines such matters. The Speaker, in his ruling, further clarifies that the Leader of the Opposition has no right to remove or 'replace' members on a committee, simply a right to move that members be removed or replaced.
24. Mr Speaker indicated that the majority of this matter relates to internal political party machinations, including discipline of a party member who also happens to be a member of parliament. However, in this instance Mr Speaker stated the actions in disciplining a member for party political reasons has touched upon or involved the member's duties and responsibilities as a member of a parliamentary committee. Accordingly, the Speaker found that the matter should be referred to the IEPPC.

¹ Erskine May 23rd Edition (2004) at 143-8.

² McGee 3rd Edition (2005) at 651-2.

25. In terms of the actions of the Leader of the Opposition, the Speaker acknowledges that it was the decision of the House that finally removed the member from the committee.
26. However, Mr Speaker states that the difficulty is that the member's removal from a parliamentary committee at the apparent behest of the Leader of the Opposition as a punishment for internal party activity, particularly during the course of a committee inquiry, and despite the member's request to delay removal until the completion of the matter, may have affected the operation of the committee and certainly affected the member in his role and duties as a member of the committee.
27. Mr Speaker concluded that the question of whether the Leader of the Opposition's actions were improper or not involves complex questions and issues that deserve full consideration and investigation by the IEPPC in detail given the significance of the issues both now and into the future.

Establishing a prima facie case of possible contempt

Issues to be resolved (broken down from elements of contempt)

28. The three elements to be established as to whether the allegation, on the face of it, gives rise to a contempt are as follows:
 - Whether the Leader of Opposition's actions in nominating the discharge of the Member for Beaudesert from his role as a member of the parliamentary committee interfered with the free exercise by the committee of its authority or functions, or the Member's performance of his duties?;
 - (If yes) whether this interference was improper?³
 - (If yes) whether the Leader of the Opposition intended to interfere with the free exercise by the committee of its authority or functions, or the Member's performance of his duties?

Whether the Leader of the Opposition's actions in recommending the discharge of the Member for Beaudesert from his role as a member of a parliamentary committee interfered with the free exercise by the committee of its authority or functions, or the Member's performance of his duties?

29. In the Speaker's ruling on 11 June 2010, the Speaker stated:

...

*... the difficulty is that the member's removal from a parliamentary committee at the apparent behest of the Leader of the Opposition as a punishment for internal party activity, particularly during the course of a committee inquiry, and despite the member's request to delay removal until the completion of the matter, may have affected the operation of the committee **and certainly affected the member in his role and duties as a member of the committee.** [Emphasis added].*

30. It is clear that the process of nomination and appointment of members to parliamentary committees is established by section 81 of the POQA and the process of appointment and discharge by motion without notice is contemplated by SO 195. The committee notes that in practice motions without notice to make adjustments to the membership of committees occur relatively frequently.

³ McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 653-655.

31. In the Leader of the Opposition's (Mr Langbroek's) submission to the Speaker, Mr Langbroek states that:
- ... the Member's position on the Law, Justice and Safety Committee was determined in accordance with the provisions of Chapter 29 of the Standing Orders on 9 February 2010.*
32. Mr Langbroek's submission also refers to section 81 of the POQA which relates to the membership of statutory committees being comprised of members recognised by the Leader of the House and the Leader of the Opposition.
33. Similarly, the Opposition's Whip's submission to the Speaker notes that:
- ... representation on these committees is decided respectively by the Government, Leader of the Opposition and "Independent Whip" and put forward to parliament for ratification.*
- On a number of occasions during the term of the parliament, changes are made to the committee representatives on both the government and the opposition side for various reasons by the respective party leaders and approved by the parliament on a motion by the Leader of the House.*
34. Accordingly, the committee acknowledges it could be argued that the action of the Leader of the Opposition in nominating that a member be discharged from performing duties on a particular committee is a routine process of the House and therefore the act of nominating that person be discharged from a committee cannot be viewed as interfering with the performance of a member's duties.
35. In his submission to this committee the Leader of the Opposition further prosecutes the above argument by making the following points:
- It is specifically contemplated [See Chapter 5 Part 5] that membership of these committees may change before consideration of a particular matter by the committee is completed. This is indicative that membership for the committee is not for any specific period ...*
- ... To suggest that a failure to nominate a Member to membership of a committee in the first case could constitute an improper interference with a Member's duties is as illogical to suggest that the withdrawal of a nomination by an indication that a certain Member is no longer the nominee of the Leader of the House or the Leader of the Opposition is also an improper interference...*
- ... Parliament has vested specific power in two recognised parliamentary positions namely Leader of the House and the Leader of the Opposition to nominate members of Statutory Committees. The exercise of that power is not an interference with a Member's duty, merely a recognition of the power that the Parliament itself has created and which it has exercised by its own Motion ...*
- ... There is therefore no basis in the suggestion that has apparently been advanced that the exercise of its own powers by the Assembly can constitute a contempt of the Assembly. That proposition once logically examined is impossible to support. To support the proposition would suggest that all members of the Assembly in supporting a motion passed by the Assembly are themselves committing a contempt of the Assembly.*
36. Membership on a statutory committee (such as the Law, Justice and Safety Committee in this case), is for the life of that particular parliament or until discharge by order of the House. It is true to say that at the start of a new session of parliament that the act of failing to nominate a member (who may express an interest in serving on a particular committee) to a committee in the first instance could not be seen as an interference with that member's duties. However, the committee is of the view that it is a separate question as to whether once a member has commenced performing duties on a committee a nomination resulting in their discharge could amount to interference with those duties.
37. The committee agrees there should be no suggestion that in supporting the motion of a change in committee membership those members supporting the motion have committed a contempt. It is clear that each member has an exclusive right to support or not support a motion on the

floor of the House. However, the committee considers that the question remains as to whether the act of nominating that person being discharged from a committee ultimately could have the effect of interfering with the performance of the member's duties on that committee.

38. An alternative argument is that the act of nominating that a person be discharged from a committee without their consent while an inquiry is underway could be the ultimate act of interference with the free exercise by the committee of its functions and/or with the performance of a member's duties.
39. In this case the Member for Beaudesert requested that the Leader of the Opposition reconsider his course of action until after the recommendations from the alcohol fuelled violence investigations were tabled given the extensive amount of work the committee had completed. There is no evidence before the committee that the functions of the Law, Justice and Safety Committee were hampered, however the Member for Beaudesert's request adds weight to the view that the act of nominating that member to be discharged from the committee interfered with the performance of his duties in completing that inquiry.
40. In conclusion, in considering all of the material currently before the committee, on balance, the committee finds that the actions of the Leader of the Opposition amounted to interference with the free performance of the Member for Beaudesert's duties as a member of the relevant committee. The issue of whether that interference was "improper" however remains.

(If yes), whether this interference was improper?

41. The Speaker in his ruling on 11 June 2010, states that whilst:

[the actions of the Leader of the Opposition] certainly affected the member in his role and duties as a member ...

...

Whether the Leader of the Opposition's actions were improper or not I think involves complex questions and issues that deserve full consideration and which should be investigated and considered by the Integrity, Ethics and Parliamentary Privileges Committee in detail given the significance of the issues both now and into the future.

The test for 'improper'

42. In order to define 'improper', we first look to the relevant Act pursuant to s. 32 of the *Acts Interpretation Act 1954* (AIA). There is no definition of 'improper' or 'improper conduct' in the Standing Orders or *Parliament of Queensland Act 2001*.
43. Pursuant to s. 14B of the AIA, in the absence of an express definition, the ordinary meaning is to be preferred and the use of extrinsic materials is permitted in relation to words that may be ambiguous.
44. The Butterworth's Legal Dictionary defines 'Improper Conduct' as:

*Behaviour which in all the circumstances of a case is an **inappropriate or incorrect way of discharging duties, obligations and responsibilities**. Conduct may be improper regardless of whether it is conscious or unconscious. Improper conduct is **a breach of the standards of behaviour which would be expected of a person by reasonable people with knowledge of that person's duties, powers and authority and the circumstances of the case**: *R v Byrnes* (1995) 125 183 CLR 501; 130 ALR 529. The term 'improper' is not a term of art, but simply refers to conduct which is inconsistent with the proper discharge of the person's duties, obligations, and responsibilities: *Willers v R* (1995) 125 FLR 22 at 225; *Corporations Law (repealed)* s 229; *Southern Resources Ltd v Residues Treatment & Trading Co Ltd* (1990) 56 SASR 455. [Emphasis added]*

45. Applying the terms of the dictionary definition of improper conduct the test is whether the actions of the Leader of the Opposition were an inappropriate or incorrect way of discharging his right to nominate that Mr McLindon be discharged from the committee.
46. In order to assess whether the exercise of the rights of the Leader of the Opposition were inappropriate or incorrect, we can turn to the principles in the Code of Ethical Standards for Members for guidance.
47. The Code of Ethical Standards (the Code) states that members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of parliament and avoid any action which may diminish its standing authority or dignity.⁴
48. In addition, the Code states that members are elected to act in the public interest and to make decisions solely in terms of the public interest.⁵
49. On 18 August 2010, the committee resolved to seek further submissions from the parties to address the issue of whether the Leader of the Opposition's act in nominating that the Member for Beaudesert be discharged from his duties on the Law, Justice and Safety Committee was improper, specifically in the context of the test established for 'improper' i.e. whether the Leader of the Opposition's actions failed to strengthen public trust and confidence in the integrity of parliament and/or were not made solely in terms of the public interest.

Application to the facts of this matter

50. The Member for Beaudesert's submission to the Speaker states that:

... the Leader of the Opposition's actions in replacing my position as Committee Member to the Law, Justice and Safety Committee on the basis that the process undertaken breached Standing Orders and was levelled at me as an internal party political disciplinary action ...
51. The Member for Beaudesert's submission indicates that his discharge from the committee was a part of a wider discipline or punishment measures within the party.
52. Further, it is noted that following a public comment in the media by the Member for Beaudesert on Friday 29 January 2010 that the Deputy Leader of the Opposition should reconsider his position within the LNP, the member received a letter on Wednesday 3 February 2010 from the Leader of the Opposition dated 29 January 2010 stating:

I wish to advise you that in view of the events of this week, I have advised the Speaker that I have replaced you as the LNP representative on the Law, Justice and Safety Committee of the Queensland Parliament.
53. In his submission to the Speaker, the Member for Beaudesert argued that the Leader of the Opposition's actions were improper:

[In relation to removal from committee and request for matter to be referred]

... the basis that the process undertaken breached Standing Orders and was levelled at me as an internal party political disciplinary action which currently stands as a concerning precedent.
54. In his submission to the committee, the Member for Beaudesert indicated that:

⁴ Code of Ethical Standards, Legislative Assembly Queensland, 2004, at 3.

⁵ Code of Ethical Standards, Legislative Assembly Queensland, 2004, at 3.

It is my opinion that the removal of a committee position from an elected Member of Parliament as an internal party political disciplinary action severely undermines the public's trust and confidence in the integrity of the Parliament.

55. The Member for Beaudesert argues that his own confidence in parliament has been eroded:

The actions that have taken place have also undermined my trust and confidence in the integrity of the Parliament, and in particularly the parliamentary committee process, which is disheartening given I am a member of the very institution which I would prefer to defend.

56. The member goes on to suggest:

It also sets a very dangerous precedent in that there is no qualitative measure as to what would constitute a Member of Parliament to be taken off a committee in the first instance and the appointment could well be held as political leverage, and potentially blackmail, against a Member of Parliament.

57. The Leader of the Opposition's submission to the committee addressed the threshold issue of whether there was 'interference' only and did not go on to address the issue of whether it was 'improper'.

58. The committee finds from the correspondence from the Leader of the Opposition that the action of nominating that Mr McLindon be discharged from the committee was made on the basis of party matters that occurred in the previous week.

59. The committee notes that the practical reality of the nomination process is such that a number of factors come to bear on the decision to nominate or to discharge members of committees including members conduct in party matters. The committee is of the view that the way a member conducts himself or herself in party matters is an entirely appropriate and relevant consideration in influencing the party leader's decision on whether to recommend the discharge from performance of the duties of such an important parliamentary office as a member of a committee.

60. While the Member for Beaudesert refers to his discharge from the committee as "a concerning precedent" he does not adduce any evidence as to how the Leader of the Opposition's actions were in any way injurious to the integrity of parliament or contrary to the public interest other than his own opinion and assertions about the matter.

61. Importantly, there is no evidence before the committee to suggest that in this case the Leader of the Opposition's actions were in any way motivated to improperly obstruct or impede the Law, Justice and Safety Committee in performing its functions or the outcome of the inquiry being undertaken by that committee at the time.

62. Neither of the submissions make a case as to whether the Leader of the Opposition's actions failed to strengthen the public trust or confidence in the integrity of the parliamentary process or that the actions were in some way contrary to the public interest.

63. The committee is of the view that there is no direct evidence to indicate the Leader of the Opposition's actions failed to strengthen the public trust or confidence in the integrity of the parliamentary process or that the actions were in some way contrary to the public interest.

64. Accordingly, the committee finds that the Leader of the Opposition's actions in this instance were not 'improper'.

Whether the Leader of the Opposition intended to interfere with free exercise by the committee of its authority or functions, or the member's performance of his duties as a member of parliament?

65. It is clear that the Leader of the Opposition took deliberate and conscious action to nominate that the Member for Beaudesert be discharged from the Law Justice and Safety Committee.

66. However, the submissions of the Leader of the Opposition demonstrates that he saw his actions as exercising his powers and rights under the legislation as opposed to any intention to interfere with the performance of the member's duties.
67. There is no evidence before the committee that the Leader of the Opposition contemplated that his actions could amount to interference with the free exercise by the committee of its authority or functions, or the performance of the member's duties as a member of a parliamentary committee.

Conclusion

68. The committee finds 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.
69. However, the committee stresses that had there been evidence that the Leader of the Opposition intended to interfere with the free exercise of the Law, Justice and Safety Committee's authority or functions, then this committee may have found differently.
70. The committee wishes to draw to the attention of all members the following extract of the Speaker's ruling dated 11 June 2010:

The provision [in s. 81 POQA] gives the power of nomination to the Leader of the House and Leader of the Opposition, it does not confer 'ownership' of the committee position to the Leader of the House or Leader of the Opposition, as the Assembly as a whole determines such matters. The Leader of the Opposition has no right to remove or 'replace' members on a committee, simply a right to move that members be removed or replaced.
71. The committee confirms that the power to nominate the appointment or discharge of members of parliamentary committees in s. 81 of the POQA is a power that needs to be exercised with a proper purpose and intent and not capriciously.

Conclusion

The committee finds no breach of privilege or contempt in relation to the actions of the Leader of the Opposition in relation to this matter. However, the committee stresses that had there been evidence that the Leader of the Opposition intended to interfere with the free exercise of the Law, Justice and Safety Committee's authority and functions, then this committee may have found differently.

Recommendation 1

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

Recommendation 2

The committee draws to the attention of all members the following extract of the Speaker's ruling dated 11 June 2010:

The provision [in s. 81 POQA] gives the power of nomination to the Leader of the House and Leader of the Opposition, it does not confer 'ownership' of the committee position to the Leader of the House or Leader of the Opposition, as the Assembly as a whole determines such matters. The Leader of the Opposition has no right to remove or 'replace' members on a committee, simply a right to move that members be removed or replaced.

The committee confirms that the power to nominate the appointment or discharge of members of parliamentary committees in s. 81 of the POQA is a power that needs to be exercised with a proper purpose and intent and not act capriciously.

Mr Kerry Shine MP
Chair

September 2010

Membership — 53rd Parliament

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