



ETHICS COMMITTEE

Interim Report No. 136

Proceeding with suspended matters -

Matter of privilege referred by the Speaker on 25 October 2012 relating to an alleged deliberate misleading of an Estimates Committee by a Chief Executive Officer; Matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm; and Matter of privilege referred by the Speaker on 31 October relating to an alleged deliberate misleading of the House by a Minister or, in the alternative, a Chief Executive Officer of a committee

Introduction

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 17 May 2012.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.¹
3. The committee has three matters before it involving Mr Michael Caltabiano that it suspended on the basis that those matters are related to criminal investigations being conducted by the Crime and Misconduct Commission (CMC).
4. In Interim Report No. 134, the committee advised the House that it had recently departed from established custom and practice and resolved to apply a new test in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.² The new test was formulated having regard to independent expert legal advice. As foreshadowed in Interim Report No. 134, the committee has considered whether or not to recommence the three Caltabiano matters and the purpose of this report is therefore to provide an update to the House on the status of those matters.

¹ S.104B *Parliament of Queensland Act 2001*.

² Ethics Committee, Interim Report No. 134: Proceeding with suspended matters, July 2013.

5. Under Standing Order 215, the committee is empowered to provide a progress (interim) report to the House in relation to its deliberations prior to its final report on the matter. This report is an interim report to draw these matters to the attention of the House and the general public in relation to the status of the suspended inquiries involving Mr Caltabiano.

Expert independent legal advice – Peter Davis QC

6. In his advice to the committee, it was the view of Mr Davis QC that “the starting position ought to be that the Ethics Committee should, notwithstanding any investigations by any other law enforcement bodies, proceed with its investigation unless there is some reason it ought not to do so”.
7. In coming to this position, Mr Davis QC considered the case of Gordon Nuttall where contempt proceedings were contemplated to be heard by the Parliament at a time very close to a trial. Mr Davis QC concluded that the Nuttall case involved ‘quite special circumstances’ such that it was appropriate for the committee to avoid taking action which could compromise judicial proceedings.
8. Mr Davis QC advised that in the case of Nuttall, contempt proceedings were likely to be heard at a time very close to trial which would cover at least one factual issue which had to be proved by the Crown in the criminal trial. Nuttall’s second trial was to follow shortly afterwards. Mr Davis QC stated:

There was then a real risk of prejudice to the criminal trials and a danger perhaps even of disruption to those trials caused by media reports of the contempt proceedings. The Parliament should, and did in Nuttall’s case, avoid taking action which could compromise judicial proceedings.

9. Mr Davis QC noted that previous cases have indicated that publicity concerning contempt proceedings taken over a year before a criminal trial are not likely to impact upon criminal proceedings.³ Further, Mr Davis QC advised that proper directions by a judge could in those circumstances, address potential prejudice caused by a jury becoming aware of the outcome of contempt proceedings in Parliament.
10. Mr Davis QC also addressed the committee’s concerns regarding privilege in relation to evidence taken by the committee which is privileged and cannot be used in legal proceedings. Mr Davis QC stated:

In my view, this does not raise a concern. It is now quite common for legislation to overcome common law privilege (for example the privilege against self-incrimination) and require a person to speak, but then impose a qualified privilege prohibiting the use of that information in later proceedings.

A new test

11. The committee resolved to apply a new test in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.
12. The committee accepted Mr Davis QC’s advice that the starting position for the committee should be that, notwithstanding any investigations by any other law enforcement bodies, the committee should proceed with its investigation unless there is some reason it ought not to do so.
13. The committee also accepted that it should undertake an assessment of whether there is any real risk of interference or prejudice with investigations or any potential proceedings on a case by case basis.

³ *Knight & Ors v The Queen* [2013] QCA 144; *The Queen v Patel* [2012] QSC 419 at [40].

14. The committee resolved that as a first step upon becoming aware of a related investigation by law enforcement body it should seek advice from the relevant law enforcement body as to the likely risk of interference or prejudice to the investigation at that point in time.
15. The committee was also advised by Mr Davis QC, that in the event contempt and criminal investigations overlap in a re-commenced matter, the committee should reconsider suspension and consequently reserves its right to seek such advice from the relevant law enforcement body at any subsequent significant points in the committee's inquiry.
16. The committee resolved that the second step it should consider is the timing of public processes of a contempt matter (e.g. reporting to the House) and any potential impact those processes might have on a jury trial.

Background to the matter of privilege referred by the Speaker on 25 October 2012 relating to an alleged deliberate misleading of an Estimates Committee by a Chief Executive Officer (Caltabiano No. 1)

17. The matter concerns an allegation that Mr Michael Caltabiano, then Director-General, Department of Transport and Main Roads, deliberately misled the Transport, Housing and Local Government Committee during an Estimates Committee on 18 October 2012.
18. On 24 October 2012, the Hon Scott Emerson, Minister for Transport and Main Roads, wrote to the Speaker requesting that the Speaker refer the matter to the Ethics Committee.
19. On 25 October 2012, the Speaker referred the matter to the committee. Also on this date, the Speaker wrote a second letter to the committee attaching a letter from the Leader of the Opposition regarding the same matter. The Speaker provided a copy of the letter from the Leader of the Opposition to Mr Caltabiano.
20. On 26 October 2012, the Chair of the Transport, Housing and Local Government Committee, Mr Howard Hobbs MP, being aware of the Speaker's referral of the matter to the committee wrote to the Chair forwarding on relevant correspondence received by that committee in relation to the matter.
21. On 30 October 2012, the committee received correspondence from the CMC advising that it was undertaking a related investigation and seeking the committee's position regarding the continuation of its inquiry into this matter.
22. On 1 November 2012, the committee resolved to suspend its current process in relation to the matter (and the two other Caltabiano matters) until such time as the CMC advised the committee of the outcome of its investigation. This decision was in accordance with the abundance of caution approach taken by past Ethics Committees.
23. In July 2013, the committee tabled Interim Report No. 134 which set out the new test to be adopted by the committee in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.
24. As foreshadowed in Interim Report No. 134, the committee began to consider whether or not to recommence this matter (and the two other Caltabiano matters) with reference to the new test.
25. In order to apply that test, the committee sought advice from the CMC as to whether there is any real risk of interference or prejudice with investigations or any potential proceedings in the event the committee was to decide to recommence its inquiry into this matter.
26. On 5 August 2013, the committee received written advice from Dr Ken Levy, the Acting Chairperson of the CMC. Dr Levy also met with the committee on 22 August 2013 to discuss the matter.

27. On 23 August 2013, the CMC announced at a public hearing before the Parliamentary Crime and Misconduct Committee that it had concluded its investigation of Mr Caltabiano and that a brief had been referred to the Director of Public Prosecutions.

Applying the facts of this matter to the new test

28. In applying the facts of this matter the committee had regard to the following factors:
- (a) The CMC has advised of a remote chance of interference; and
 - (b) While the CMC has reported on its investigation to the Director of Public Prosecutions; no criminal charges have been laid; and any publicity arising from any contempt proceedings is unlikely to be sufficiently proximate to a potential trial date.
29. Accordingly, the committee has unanimously resolved to recommence its inquiry in relation to this matter.

Status of the first inquiry

The committee has resolved to recommence its inquiry into the matter of privilege referred by the Speaker on 25 October 2012 relating to an alleged deliberate misleading of an Estimates Committee by a Chief Executive Officer.

Background to the matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm (Caltabiano No. 2)

30. The matter concerns an allegation (raised by the Leader of the Opposition) that a letter dated 29 October 2012 to the Leader of the Opposition, Ms Anastacia Palaszczuk from a legal firm, Gilshenan & Luton (acting for Mr Michael Caltabiano) intimidated the Leader of the Opposition and improperly interfered with the free performance by the member of her duties as a member.
31. On 30 October 2012, Ms Anastacia Palaszczuk MP, Leader of the Opposition, wrote to the Speaker requesting that the Speaker refer the matter to the Ethics Committee. The matter was referred to the committee on 31 October 2012.
32. On 1 November 2012, and in light of the correspondence received from the CMC in relation to the committee's first inquiry pertaining to Mr Caltabiano, the committee resolved to suspend its current process as it was somewhat related to the first inquiry regarding Mr Caltabiano until such time as the CMC advised the committee of the outcome of its investigations. This decision was in accordance with the abundance of caution approach taken by past Ethics Committees.
33. In July 2013, the committee tabled Interim Report No. 134 which set out the new test to be adopted by the committee in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.
34. As foreshadowed in Interim Report No. 134, the committee began to consider whether or not to recommence this matter (and the two other Caltabiano matters) with reference to the new test.
35. In order to apply that test, the committee sought advice from the CMC as to whether there is any real risk of interference or prejudice with investigations or any potential proceedings in the event the committee was to decide to recommence its inquiry into this matter.

36. On 5 August 2013, the committee received written advice from Dr Ken Levy, the Acting Chairperson of the CMC. Dr Levy also met with the committee on 22 August 2013 to discuss the matters.
37. On 23 August 2013, the CMC announced at a public hearing before the Parliamentary Crime and Misconduct Committee that it had concluded its investigation of Mr Caltabiano and that a brief had been referred to the Director of Public Prosecutions.

Applying the facts of this matter to the new test

38. In applying the facts of this matter the committee had regard to the following factors:
 - (a) the CMC has advised that there is no apparent overlap between its investigations and this specific contempt matter; and
 - (b) therefore no criminal charges have been contemplated with respect to the alleged intimidation of a member;
39. Accordingly, the committee has unanimously resolved to commence its investigation in relation to this matter.

Status of the second inquiry

The committee has resolved to commence its inquiry into the matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm.

Background to the matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged deliberate misleading of the House by a Minister or, in the alternative, a Chief Executive Officer of a committee (Caltabiano No. 3)

40. The matter concerns an allegation that either the Minister for Transport and Main Roads, Hon Scott Emerson MP, deliberately misled the House on 30 October 2012 in an answer to a question without notice or, in the alternative, Mr Michael Caltabiano deliberately misled a committee on 18 October 2012.
41. In accordance with Standing Order 269, the Leader of the Opposition, Ms Annastacia Palaszczuk MP, wrote to the Speaker on 31 October 2012, requesting that the Speaker refer the matter to the Ethics Committee. The matter was referred to the committee on 31 October 2012.
42. On 1 November 2012, the committee resolved to suspend its current process in relation to the matter until such time as the CMC advised the committee of the outcome of its investigations. This decision was in accordance with the abundance of caution approach taken by past Ethics Committees.
43. In July 2013, the committee tabled Interim Report No. 134 which set out the new test to be adopted by the committee in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.
44. As foreshadowed in Interim Report No. 134, the committee began to consider whether or not to recommence this matter (and the two other Caltabiano matters) with reference to the new test.
45. As part of that test, the committee sought advice from the CMC as to whether there is any real risk of interference or prejudice with investigations or any potential proceedings in the event the committee was to decide to recommence its inquiry into this matter.

46. On 5 August 2013, the committee received written advice from Dr Ken Levy, the Acting Chairperson of the CMC. Dr Levy also met with the committee on 22 August 2013 to discuss the matters.
47. On 23 August 2013, the CMC announced at a public hearing before the Parliamentary Crime and Misconduct Committee that it had concluded its investigation of Mr Caltabiano and that a brief had been referred to the Director of Public Prosecutions.

Applying the facts of this matter to the new test

48. In applying the facts of this matter the committee had regard to the following factors:
 - (a) The CMC has advised of a remote chance of interference; and
 - (b) While the CMC has reported on its investigation to the Director of Public Prosecutions; no criminal charges have been laid; and any publicity arising from any contempt proceedings is unlikely to be sufficiently proximate to a potential trial date.
49. Accordingly, the committee has unanimously resolved to recommence its inquiry in relation to this matter.

Status of the third inquiry

The committee has resolved to commence its inquiry into the matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged deliberate misleading of the House by a Minister or, in the alternative, a Chief Executive Officer of a committee.



Mr Michael Crandon MP

Chair

September 2013

Membership — 54th Parliament

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Mrs Jo-Ann Miller MP, Deputy Chair

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Member for Greenslopes

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