



ETHICS COMMITTEE

Report No. 142

Matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm

Introduction and background

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). 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 Legislative Assembly and other persons.¹
3. The matter in this report concerns an allegation that a letter dated 29 October 2012 to the Leader of the Opposition, Ms Anastacia Palaszczuk MP, from a legal firm, Gilshenan & Luton (acting for Mr Michael Caltabiano) threatened or intimidated her and improperly interfered with the free performance by the member of her duties as a member.
4. In accordance with Standing Order 269, the Leader of the Opposition wrote to the Speaker on 30 October 2012 requesting that the Speaker refer the matter to the committee. The Speaker referred the matter to the committee on 31 October 2012.
5. On 1 November 2012, the committee wrote to the parties advising that the committee had resolved to suspend its inquiry into this matter as there was a related Crime and Misconduct Commission investigation underway. This approach was consistent with the custom and practice of past Ethics Committees.
6. On 13 March 2013, the secretariat received a submission from Gilshenan & Luton. This submission was not considered, as the matter was suspended at the time. The submission was returned to Gilshenan & Luton on 2 May 2013.
7. The committee subsequently decided to recommence its inquiry into this matter. The rationale for this decision was the subject of the committee's Interim Report No. 136 tabled on 12 September 2013.²
8. On 12 September 2013, the committee invited the Leader of the Opposition and Gilshenan & Luton to provide a submission to the committee. The committee received a submission from Gilshenan & Luton on 30 September 2013. No additional information was received from the Leader of the Opposition.

¹ *Parliament of Queensland Act 2001*, section 104B

² Ethics Committee, *Interim Report No. 136 – Proceeding with suspended matters*, available at <http://www.parliament.qld.gov.au/Ethics>

The referral

9. After referring the matter to the committee, the Speaker made the following statement in the House:

Honourable members I inform the House that yesterday I received correspondence from the Leader of the Opposition concerning correspondence from a legal firm.

The Leader of the Opposition has complained that the correspondence seeks to intimidate or threaten her in her role as a member.

After reading Members' Ethics and Privileges Committee Report No. 82 and the material in this matter, I have referred the matter to the Ethics Committee.

I draw to the attention of members that as this matter is now before the committee, Standing Order 271 now applies and the matter should not be referred to in the Assembly.³

Definition of contempt

10. 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.

Nature of the contempt of threatening or intimidating a member

11. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (the Standing Orders) provide that the Legislative Assembly may treat the following as a contempt:
- assaulting, threatening or intimidating a member or an officer of the House acting in the discharge of the member's or the officer's duty;
 - assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee; and
 - sending to a member a threatening letter on account of the member's conduct in the House or a committee.⁴
12. To attempt to intimidate a member in his or her parliamentary conduct by threats of legal action has been held by the United Kingdom House of Commons and the Parliament of Victoria, Legislative Assembly Privileges Committee to be a contempt.⁵

³ Queensland Legislative Assembly, Record of Proceedings (Hansard), 31 October 2012, p.2252

⁴ Standing Rules and Orders of the Legislative Assembly, Standing Order 266(9), 266(17) and 266(20), available at <http://www.parliament.qld.gov.au/documents/assembly/procedures/StandingRules&Orders.pdf>

⁵ Parliament of Victoria, Legislative Assembly Privileges Committee, *Report on the Complaint by the Member for Preston*, July 2006

House of Commons, Complaint of a letter addressed to the Honourable Member for Liverpool, Scotland Exchange, HC 1981-2 233

House of Commons, Standards and Privilege Committee, Privilege: John Hemming and Withers LLP

13. Erskine May in *Parliamentary Practice* states:
Attempts by improper means to influence Members in their parliamentary conduct may be considered contempts.
*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.*⁶
14. The Clerk of the Australian Senate has previously advised the Senate Committee of Privileges that:
*[t]he taking or threatening of legal action can constitute a contempt of Parliament or a contempt of court if the effect or tendency is to interfere with the conduct of proceedings in Parliament or court proceedings.*⁷
15. The former Select Committee of Privileges of the Queensland Parliament noted in its report on the alleged intimidation of a member 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".*⁸

Establishing a prima facie case of possible contempt

16. 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 Chapters 44 and 45 of the Standing Orders. The committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 of the Standing Orders.⁹
17. The committee found that it had sufficient material before it to deliberate on the matter. This material included the correspondence received from the Speaker, enclosing the Leader of the Opposition's letter of 30 October 2012, and submissions received from Gilshenan & Luton on 30 September 2013, enclosing their initial submission of 13 March 2013.
18. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are:
- could the letter from Gilshenan & Luton to the Leader of the Opposition be classified as a threatening or intimidating letter on account of the member's conduct in the House?
 - (if yes), did the words in the letter amount to improper interference with the Leader of the Opposition's duties as a member?; or
 - were the words in the letter intended to or likely to amount to an improper interference with the free performance of the Leader of the Opposition's duties as a member?

Could the letter from the legal firm to the Leader of the Opposition be classified as a threatening or intimidating letter on account of the member's conduct in the House?

19. The committee notes that Gilshenan & Luton's letter of 29 October 2012 to the Leader of the Opposition referred to her letter to the Speaker, which raised concerns about Mr Caltabiano's answers to questions at an Estimates Committee Hearing on 18 October 2012 (see Ethics Committee Report No. 141). Gilshenan & Luton's letter also insisted that the Leader of the Opposition "not repeat any such allegations or statements in any forum"¹⁰ which could be

⁶ Erskine May, 1997, *Parliamentary Practice*, 22nd Edition, p. 124

⁷ Senate Committee of Privileges, 67th Report, 1997, pp. 12-13

⁸ Privileges Committee, Report on A Matter of Privilege – Alleged Intimidation of a Member, 1993, p.7

⁹ Standing Rules and Orders of the Legislative Assembly, Chapter 44 and 45 and Schedule 3

¹⁰ Letter from Gilshenan & Luton to the Leader of the Opposition dated 29 October 2012

interpreted as including in Parliament. Accordingly, the committee finds that Gilshenan & Luton's letter relates to the Leader of the Opposition's conduct in the House.

20. The Leader of the Opposition stated, in her letter to the Speaker, that Gilshenan & Luton's letter of 29 October 2012 could be interpreted as being threatening or intimidating.¹¹ The Leader of the Opposition drew particular attention to the following statements, which she contended could be reasonably interpreted as a threat of legal action:

Our client considers ... passages stated by you in ... correspondence to the Speaker of the Legislative assembly to be not only factually erroneous in character, but also highly defamatory in nature

*... instructed to insist that you not repeat any such allegations or statements in any forum and further that you inform and instruct your colleagues likewise.*¹²

21. In their submission of 30 September 2013, Gilshenan & Luton submitted that the contents of their letter could not be classified as threatening. Gilshenan & Luton stated that "for there to be a threat made out there must be a suggested consequence" and contended that there was nothing in their letter which would fall within that definition.¹³
22. The committee notes that Gilshenan & Luton's letter did not contain any express threat of any consequences or subsequent action, if the Leader of the Opposition did not comply with the legal firm's request.
23. The committee accepts, however, that the Leader of the Opposition felt threatened and intimidated by Gilshenan & Luton's letter.
24. In reaching this view, the committee noted the Members' Ethics and Parliamentary Privileges Committee's (MEPPC) comments in its Report No. 82, relating to the Member for Moggill, in which the MEPPC agreed with a statement from the then 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.*¹⁴

25. Having considered the material before it, the committee finds that a reasonable person, fully informed, could consider that Gilshenan & Luton's letter of 29 October 2012 was a threatening or intimidating letter on account of the Leader of the Opposition's conduct in the House. Accordingly, the committee finds that the first element is satisfied.

Conclusion 1

The committee finds that a reasonable person, fully informed, could consider that Gilshenan & Luton's letter of 29 October 2012 to the Leader of the Opposition was a threatening or intimidating letter on account of the Leader of the Opposition's conduct in the House, and therefore the first element of threatening or intimidating a member has been established.

¹¹ Letter from the Leader of the Opposition to the Speaker dated 30 October 2012, p.2

¹² Letter from Gilshenan & Luton to the Leader of the Opposition dated 29 October 2012, pp.1-2

¹³ Letter from Gilshenan & Luton to the committee dated 30 September 2013, p.2

¹⁴ Queensland Parliament, Members' Ethics and Parliamentary Privileges Committee, Report No.82, August 2007, p.6

(If yes), did the words in the letter amount to improper interference with the Leader of the Opposition's duties as a member? Or

Were the words in the letter intended to or likely to amount to an improper interference with the free performance of the Leader of Opposition's duties as a member?

26. In her letter to the Speaker, the Leader of the Opposition asserted that Mr Caltabiano's instructions to his solicitor to write to her could be interpreted as an attempt "to improperly interfere with the free performance of my duties as a member".¹⁵ The Leader of the Opposition also contended that Gilshenan & Luton's "further insistence that I inform and instruct my colleagues likewise" could also be construed as an attempt to impair the independence of all members of the Opposition in the future performance of their duties.¹⁶
27. Gilshenan & Luton stated the intention of their letter of 29 October 2012 was to reflect their client's concerns that the Leader of the Opposition had made "erroneous factual assertions".¹⁷ Gilshenan & Luton stated "... there was certainly no intention to in any way curtail the Leader of the Opposition from discharging her responsibilities as a Member of Parliament."¹⁸
28. Gilshenan & Luton accepted, however, that the Leader of the Opposition may have felt that their letter was intended to curtail her from discharging her duties as a member. Gilshenan & Luton also offered an apology for any distress or hurt suffered by the Leader of the Opposition as a result of their correspondence.¹⁹
29. The issue before the committee with respect to the second and third elements was whether the words in Gilshenan & Luton's letter of 29 October 2012 amount to, or were intended to or likely to amount to, an improper interference with the Leader of the Opposition's duties as a member.
30. During its consideration of this matter, the committee analysed precedents from Queensland and other jurisdictions. The committee notes that in 2007, the MEPPC considered an allegation that a letter sent to the Member for Moggill from 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. The letter sent to the Member for Moggill did not contain an express threat of legal action.²⁰
31. The committee also noted that in the matter relating to the Member for Moggill, the MEPPC accepted the legal firm's assurances that neither the firm nor client intended to improperly interfere with the free exercise by the member of his duties as a member. The MEPPC also noted the legal firm's unreserved apology. The MEPPC found no prima facie case of a breach of privilege or contempt, and recommended the House take no further action.
32. The committee is aware that privileges committees in other jurisdictions in examining similar matters have made findings of contempt only where there was an express threat of legal action.²¹

¹⁵ Letter from the Leader of the Opposition to the Speaker dated 30 October 2012, p.2

¹⁶ *Ibid*

¹⁷ Letter from Gilshenan & Luton to the committee dated 30 September 2013, p.3

¹⁸ *Ibid*

¹⁹ Letter from Gilshenan & Luton to the committee dated 13 March 2013

²⁰ Queensland Parliament, Members' Ethics and Parliamentary Privileges Committee, Report No.82, August 2007

²¹ Parliament of Victoria, Legislative Assembly Privileges Committee, *Report on the Complaint by the Member for Preston*, July 2006

House of Commons, Complaint of a letter addressed to the honourable Member for Liverpool, Scotland Exchange, HC 1981-2 233

House of Commons, Standards and Privilege Committee, Privilege: John Hemming and Withers LLP

33. The committee notes the similarities between this matter and the matter relating to the Member for Moggill in 2007. In particular, that in both those matters the letters in question did not contain any express threat of legal action. The committee also notes that, as was the case in the matter relating to the Member for Moggill in 2007, Gilshenan & Luton have given assurances that their letter was not intended to curtail the Leader of the Opposition from discharging her duties as a member and have offered an apology to the Leader of the Opposition.
34. Further, the committee finds that there is no evidence presented to the committee to indicate that the letter interfered with the Leader of the Opposition performing her duties as a member.
35. Having considered the material before it, the committee finds that there is no clear evidence that the words in Gilshenan & Luton's letter of 29 October 2012:
 - amount to improper interference with the Leader of the Opposition's duties as a member; or
 - were intended to, or likely to, amount to an improper interference with the free performance of the Leader of the Opposition's duties as a member.
36. Accordingly, the committee finds that elements two and three are not established.

Conclusion

37. Having considered the material before it, the committee finds that a reasonable person, fully informed, could consider that Gilshenan & Luton's letter of 29 October 2012 was a threatening or intimidating letter on account of the Leader of the Opposition's conduct in the House.
38. The committee finds, however, that there is insufficient evidence before it to conclude that the words in Gilshenan & Luton's letter of 29 October 2012 amount to, or were intended to or likely to amount to, an improper interference of the Leader of the Opposition's duties as a member.
39. Accordingly, the committee recommends the House finds that Gilshenan & Luton are not guilty of a contempt.
40. The committee recommends, however, that Gilshenan & Luton apologise directly to the Leader of the Opposition. A copy of the apology should be provided to the Chair of the committee for tabling in the House.
41. The committee considers that it is important for legal practitioners 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, particularly, the free exercise by members of their duties as a member.
42. In light of the issues raised by this matter, the committee will write to the Queensland Law Society and Queensland Bar Association requesting that they remind their members of the principles of law relating to the powers, rights and immunities of the Parliament.
43. The committee will also write to those law schools offering legal practice and bar practice courses in Queensland in relation to providing training for legal practitioners and law students about the principles of law relating to the powers, rights and immunities of the Parliament.
44. Further, the committee recommends that the House instruct the Clerk to place a prominent notice in the Queensland Law Society Journal reminding all members of the legal profession of the importance of the principles of law relating to the powers, rights and immunities of the Parliament.

Conclusion 2

The committee finds that there is insufficient evidence before it to conclude that the words in Gilshenan & Luton's letter of 29 October 2012 amount to, or were intended to or likely to amount to, an improper interference of the Leader of the Opposition's duties as a member.

Recommendation 1

The committee recommends the House find that Gilshenan & Luton are not guilty of a contempt.

Recommendation 2

The committee recommends that the Gilshenan & Luton apologise directly to the Leader of the Opposition. Gilshenan & Luton's apology to the Leader of the Opposition should be copied to the Chair of the Ethics Committee for tabling in the House.

Recommendation 3

The committee recommends that the House note that the committee will write to the Queensland Law Society and Queensland Bar Association requesting that they remind their members of the principles of law relating to the powers, rights and immunities of the Parliament.

Recommendation 4

The committee recommends that the House note that the committee will write to those law schools offering legal practice and bar practice courses in Queensland in relation to providing training for legal practitioners and law students about the principles of law relating to the powers, rights and immunities of the Parliament.

Recommendation 5

The committee recommends that the House instruct the Clerk to place a prominent notice in the Queensland Law Society Journal reminding all members of the legal profession of the importance of the principles of law relating to the powers, rights and immunities of the Parliament.



Mr Michael Crandon MP

Chair

March 2014

Membership — 54th Parliament

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Mr Peter Wellington MP
Member for Nicklin

Secretariat

Mr Michael Ries, *Research Director*

Mr Karl Holden, *Principal Research Officer*

Ms Andrea Musch, *Executive Secretary*

Contact

Telephone: 07 3406 7586

Facsimile: 07 3406 7691

E-mail: ethics@parliament.qld.gov.au

Internet: <http://www.parliament.qld.gov.au/ethics>