



ETHICS COMMITTEE

REPORT NO. 153

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 23 APRIL 2014 RELATING TO AN ALLEGED ATTEMPT TO IMPROPERLY INFLUENCE THE CONDUCT OF A MEMBER

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 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 The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. The matter in this report concerns an allegation (raised by the Premier) that Mr Scott Elms attempted to improperly influence the Member for Gympie, Mr David Gibson MP, in his conduct as a Member by bribe or threat.
4. In accordance with Standing Order 269, the Premier wrote to the Speaker on 23 April 2014, asking that the Speaker refer the matter to the committee.
5. On 23 April 2014, after examining the information before her, the Speaker referred the matter to the committee for its consideration. The Speaker's correspondence to the committee enclosed the Premier's letter and a copy of a letter the Premier received from the Clerk of the Parliament on 22 April 2014.
6. The Member for Gympie wrote to the committee on 13 May 2014, providing information about the matter.
7. The committee decided to suspend its inquiries into the complaint on 22 May 2014, until after the Queensland Police Service (QPS) had concluded its investigations in to the matter.

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

8. On 11 September 2014, the committee resolved to re-commence the matter after receipt of information from the Police Commissioner that the QPS had closed its investigation into the matter.
9. The committee invited both parties to provide a submission to the committee. The committee received a submission from Mr Elms on 26 September 2014.
10. On 8 October 2014, the Premier wrote to the committee advising that he does not have any further information to provide to the committee.

Definition of contempt

11. 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.*

Improperly influencing the conduct of a Member

12. Section 37 of the POQA provides that the House may treat the following as a contempt:
 - *attempting to compel a member by force, insult or menace to take a particular position in relation to a proposition or matter pending, or expected to be brought, before the Assembly or a committee;*
 - *sending a threat to a member because of the member's performance of his or her parliamentary duties; and*
 - *the offering of a bribe to or attempting to bribe a member.*
13. Standing Order 266 also provides that the following may be treated as a contempt:
 - *offering or attempting to bribe a member to influence the member's conduct in respect of proceedings in the House or a committee (SO 266(8));*
 - *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 (SO 266(9)); and*
 - *assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee (SO 266(17)).*
14. 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.²

² D Limon and W McKay (ed.), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usages of Parliament*, 22nd Edition, Butterworths, London, 1997, p.124.

15. The former Select Committee of Privileges of the Queensland Parliament noted, in its report on the alleged intimidation of a member, that the tendency to impair independence referred to in Erskine May "is not to be merely coincidental. It must be precisely what the person accused of contempt intended by their conduct."³

The Privileges Committee also stated 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".⁴

16. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are—
- Did Mr Elms offer or attempt to bribe, threaten or intimidate the Member for Gympie?
 - Was Mr Elms' conduct intended to influence the Member for Gympie in the free performance of his duties as a Member of Parliament?
 - Were any offers or attempts to bribe, threaten or intimidate the Member for Gympie "improper" in that they had some element of public mischief, corruption or breach of public trust?

Did Mr Elms offer or attempt to bribe, threaten or intimidate the Member for Gympie?

17. The allegation referred to the committee relates to Mr Elms making reference to rumours about the Member for Gympie's past in particular about Mr Gibson's conduct during his military service with a view to encourage the Member to use his influence in planning outcomes regarding the proposed Rainbow Shores (RS) Development.

18. The Member for Gympie did not provide any evidence of a direct threat from Mr Elms. However, in his letter to the committee he states:

Since the meeting at Rainbow Shores offices with Mr Elms in 2010, I felt by the manner in which he engaged with me that he acted like he had something over me and was willing to use it for his benefit to influence the approval process of RS2...I felt that there was a clear inference that if I didn't deliver on an outcome for RS2 including access to Ministers, Mr Elms would expose my past. Whilst there was never a direct threat from Mr Elms that this would occur I felt it being implied in the tone of emails, and in the 'whispering campaign' that was occurring where he was telling people there was something in my past but never revealing the facts. All of this I felt was a deliberate incremental attempt to exert power and influence over me for the benefit of Mr Elms and the Rainbow Shores Development.

19. In his letter to the committee, Mr Elms, denied that he has ever "offered or attempted to bribe, threaten or intimidate the Member" and referred to the QPS advice that it is no longer investigating the matter.
20. In addition, Mr Elms argued that he had no need to offer any bribe because the Member for Gympie had already written to the Chamber of Commerce supporting the RS2 development.
21. On the material before the committee, while there is some evidence that the Member for Gympie felt intimidated, there is no evidence of any direct offer to attempt to bribe the Member for Gympie nor any direct threat.

³ Privileges Committee, Report on A Matter of Privilege – Alleged Intimidation of a Member, 12 November 1993, p.7.

⁴ *Ibid.*

Was Mr Elms' conduct intended to influence the Member for Gympie in the free performance of his duties as a Member of Parliament?

RS2 Planning Application

22. While the Member for Gympie has indicated that he felt threatened and intimidated by the questioning and actions of Mr Elms, it is not apparent how this would in any way interfere with the performance of the Member for Gympie's duties as a member in the Legislative Assembly.
23. While it is clear the RS2 plan was a significant project in the Member for Gympie's electorate, there is no obvious link between the planning application and associated court processes and any parliamentary proceeding.

New Rainbow Beach Master Plan

24. When the RS2 appeal was dismissed in June 2013, the Member for Gympie called a public meeting where it was resolved to 'request the government to recommence the master planning process for Rainbow Beach.' On 28 March 2014, the draft Rainbow Beach Master Plan was released for public comment.
25. The Clerk's letter of advice to the Premier that accompanied the referral in this matter, detailed the theoretical possibility that the Master Plan might find its way before the Legislative Assembly. This is because as a piece of Subordinate Legislation, it could be tabled in the House and then potentially subject to a disallowance motion. However, there is no evidence before the committee that either Mr Elms or the Member for Gympie were conscious of such a possibility, let alone any reference to the Member for Gympie's potential participation in such a debate.
26. The committee was not presented with any evidence of any matter relating to the Rainbow Shores project being brought before the Legislative Assembly or its committees.
27. Furthermore, there was no evidence presented of any request by Mr Elms of the Member for Gympie to raise matters pertaining to the draft Rainbow Shores Master Plan in the House or its committees aimed at influencing any level of Government involved in its approval process.

Were any offers or attempts to bribe, threaten or intimidate the Member for Gympie "improper" in that they had some element of public mischief, corruption or breach of public trust?

28. While there is no evidence to support the second issue, for completeness the committee considered the third issue.
29. There was no evidence before the committee that Mr Elms' conduct was improper in that it had some element of public mischief, corruption or breach of public trust.

Conclusions

30. On the information before the committee, the committee finds that while the Member for Gympie felt intimidated by Mr Elms, that he might publish rumours about the Member's past, there is no evidence of any conduct intended to influence the Member for Gympie in the free performance of his duties as a Member of Parliament.
31. The committee also finds on the face of the material before it that there is no evidence of public mischief, corruption or breach of public trust.

Conclusion 1

On the information before the committee, the committee finds:

(a) while the Member for Gympie felt intimidated by Mr Elms in relation to rumours about the Member for Gympie's past there is no evidence of any direct attempt to threaten or intimidate the Member;

(b) there is no evidence of any conduct intended to influence the Member for Gympie in the free performance of his duties as a Member of Parliament; and

(c) there is no evidence of public mischief, corruption or breach of public trust.

Recommendation 1

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



Michael Crandon MP
Chair

October 2014

Membership — 54th Parliament

Mr Michael Crandon MP, Chair
Member for Coomera

Mrs Jo-Ann Miller MP, Deputy Chair
Member for Bundamba

Mr Ian Kaye MP
Member for Greenslopes

Mr Michael Pucci MP
Member for Logan

Ms Jackie Trad MP
Member for South Brisbane

Mr Peter Wellington MP⁵
Member for Nicklin

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⁵ On 7 May 2014, the Member for Nicklin advised the Speaker, in accordance with Standing Order 272(1) of his intention to stand down from the committee for consideration of this matter. On 8 May 2014 the Speaker advised the committee, in accordance with Standing Order 272(2) that the Member for Woodridge, Mrs Desley Scott MP would replace the Member for Nicklin for consideration of this matter.