

SELECT COMMITTEE ON PRIVILEGES

Examination of alleged misuse of position by a  
Committee Chair and unauthorised  
dissemination of committee proceedings

AUGUST 2008

**Report**

SELECT COMMITTEE ON PRIVILEGES

## **Committee Membership**

Richard Mulcahy MLA (Chair)

Mick Gentleman MLA (Deputy Chair)

Vicki Dunne MLA

## **Secretariat**

Tom Duncan (Secretary)

Janice Rafferty (Assistant Secretary)

## **Resolution of Appointment**

On 1 July the Legislative Assembly resolved—That:

- (1) a Select Committee on Privileges be established to inquire into and report on the actions of Mr Stefaniak as the Chair of the Standing Committee on Legal Affairs in relation to a letter written to Mr Corbell on 16 June 2008 as part of the Committee's inquiry into the ACT fire and emergency services arrangements;
- (2) the Committee is to consider:
  - (a) whether Mr Stefaniak acted without the authority of the Committee when he made the request to Mr Corbell for certain documents as outlined in his letter of 16 June 2008;
  - (b) how Mr Corbell became aware of the fact that the Committee had not authorised the letter; and
  - (c) whether this constitutes a breach of privilege by Mr Stefaniak; and
- (3) the Committee shall report by 26 August 2008;

SELECT COMMITTEE ON PRIVILEGES

- (4) the Committee shall be composed of:
- (a) one member nominated by the Government;
  - (b) one member nominated by the Crossbench; and
  - (c) one member nomination by the Opposition;
- to be notified to the Speaker by 4pm, Tuesday, 1 July 2008.

## TABLE OF CONTENTS

Committee Membership .....	i
Secretariat .....	i
Resolution of Appointment.....	i
<b>FINDINGS AND RECOMMENDATIONS .....</b>	<b>v</b>
<b>Introduction .....</b>	<b>1</b>
Sources of the Legislative Assembly's Privileges .....	1
Contempt .....	2
Contempt – Criteria to be taken into account when dealing with matters of contempt.....	5
Precedents – Senate.....	6
Conduct of the inquiry .....	7
Circumstances of the reference .....	8
Matters under investigation .....	10
Other findings and recommendations in relation to the inquiry .....	18
<b>APPENDIX 1: The committee's hearings .....</b>	<b>21</b>
<b>APPENDIX 2: List of Submissions .....</b>	<b>22</b>
<b>APPENDIX 3: Letter from Chair of the Standing     Committee on Legal Affairs to the Minister for     Police and Emergency Services.....</b>	<b>23</b>
<b>APPENDIX 4: Transcript of hearing of 20 June 2008 .....</b>	<b>25</b>

SELECT COMMITTEE ON PRIVILEGES

## **FINDINGS AND RECOMMENDATIONS**

### **FINDING NO 1**

The committee finds that Mr Stefaniak acted without authority of the Standing Committee on Legal Affairs when he made his request to Mr Corbell, Minister for Police and Emergency Services, for certain documents as outlined in his letter of 16 June 2008.

### **FINDING NO 2**

The committee finds that Ms MacDonald revealed private deliberations of the Standing Committee on Legal Affairs to Mr Corbell, Minister for Police and Emergency Services, in breach of standing order 241(b). Specifically, Ms MacDonald revealed to Mr Corbell that the letter and request for documents he received had not been authorised by the Standing Committee on Legal Affairs.

### **FINDING NO 3**

The committee therefore finds that Ms MacDonald's actions do not meet the criteria for contempt.

### **FINDING NO 4**

The committee finds that Mr Corbell, Minister for Police and Emergency Services, did not commit a contempt when conveying details about committee proceedings to the Speaker on 27 June 2008.

### **FINDING NO 5**

The committee finds that Mr Stefaniak did not commit a contempt when writing a letter to Mr Corbell, Minister for Police and Emergency Services, without the Standing Committee on Legal Affairs agreeing to the letter.

**RECOMMENDATION NO 1**

The Committee recommends that, as far as practicable, where a committee of the Assembly is requesting a person, paper or record, that request should be made at a properly constituted meeting of a committee and when conveying the request, the Chair should indicate in any communication that the committee is exercising its power under standing order 239.

**RECOMMENDATION NO 2**

The committee recommends to the Speaker that regular training in relation to committee practice and procedures be provided for the Secretary of the Standing Committee on Legal Affairs and all other committee secretaries to ensure that these staff are able to assist in providing expert advice and assistance in the administration of parliamentary committees.

**RECOMMENDATION NO 3**

The committee recommends that the *Guide for Committee Secretaries* be updated to include the issues identified in this report about the practice of committee requests for persons and papers.

**RECOMMENDATION NO 4**

The committee recommends to the Speaker that steps be taken to remind the Chair and members of the Standing Committee on Legal Affairs of the appropriate practices and processes to be observed in relation to actions taken on behalf of the committee.

## INTRODUCTION

### Sources of the Legislative Assembly's Privileges

1.1 The powers and privileges of the ACT Legislative Assembly derive from the *Australian Capital Territory (Self Government) Act 1988* which states at section 24 that:

... the Assembly may make laws:

- (a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives ...
- (b) Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives ...

1.2 The Assembly has not made a law under this section. Thus the powers and immunities of the Assembly are the same as those of the House of Representatives with one exception – that, as a result of subsection 24 (4) of the Self Government Act, it has no power to imprison or fine a person who might be found to be in contempt of the Assembly or its committees.

1.3 The privileges of the House of Representatives evolved in turn from those of the British House of Commons as at 1901 via section 49 of the Australian Constitution, which states:

The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

1.4 The privileges of the Commonwealth Parliament are further defined in the *Parliamentary Privileges Act 1987*. Also within that Act (section 16) is a definition of what constitutes “proceedings in Parliament” which are “all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.”.

1.5 All persons participating in “proceedings” as defined above are covered by “privilege”.

1.6 Decisions of the House of Representatives and the Senate on privilege matters are important sources on the law and practice of privilege and contempt.

## Contempt

2.1 A legislature’s power with regard to contempt is analogous to that of the courts and reflects the need of a legislature, or a court, “to ... protect themselves from acts which directly or indirectly impede them in the performance of their functions.” Note that “the power [to punish contempts] does not depend on the acts judged and punished being violations of particular immunities”.<sup>1</sup>

2.2 The relationship between immunities and the power to punish contempts is described in *Odgers’ Australian Senate Practice* as:

---

<sup>1</sup> *Odgers, Australian Senate Practice*, 11<sup>th</sup> Edition, p. 61.

The power of the Houses in respect of contempts ... is not an offshoot of the immunities which are commonly called privileges, nor is it now the primary purpose of that power to protect those immunities, which are expected to be protected by the courts in the processes of the ordinary law.<sup>2</sup>

2.3 Erskine May, the guide to British parliamentary practice, describes contempt as:

... any act or omission which obstructs or impedes ... (it) ..... in the performance of its functions, or which obstructs or impedes any Member or officer ... in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results ..... even though there is no precedent of the offence.<sup>3</sup>

2.4 Contempt of parliament is further defined in the *Parliamentary Privileges Act 1987* at section 4:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a member of a member's duties as a member.

2.5 *House of Representatives Practice* goes on to say that this "provision should be taken into account at all stages in the consideration of possible contempts. It is important to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts".<sup>4</sup>

---

<sup>2</sup> *Odgers, Australian Senate Practice*, 11<sup>th</sup> Edition, pp. 30-1.

<sup>3</sup> *Erskine May, Treatise on the Law, Privileges, Precedence and Usages of Parliament*, 22<sup>nd</sup> Edition, p.108.

<sup>4</sup> I Harris, *House of Representatives Practice*, 5<sup>th</sup> Edition 2005, p. 706.

2.6 The Houses of the Commonwealth Parliament, while treating contempt seriously, have tended to exercise their powers “with great circumspection”. The Senate Privileges Committee has generally confined its investigations to “serious matters potentially involving significant obstruction of the Senate...” and “... now regards a culpable intention on the part of the person concerned as essential for the establishment of contempt.”<sup>5</sup>

2.7 Standing order 241 of the Assembly provides:

Disclosure of proceedings, evidence and documents

- (a) A committee may receive and authorise publication of evidence given before it or documents presented to it;
- (b) a committee’s evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a Member of the committee or Assembly employee if necessary in the course of their duties) unless they have been:
  - (i) reported to the Assembly; or
  - (ii) authorised by the Assembly or the committee;
- (c) A committee may resolve to:
  - (i) publish press releases, discussion or other papers or preliminary findings; or
  - (ii) divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment where it is clearly necessary to assist the committee in its inquiry; and
- (d) A committee may resolve to authorise a Member of the committee to give public briefings on matters related to an inquiry. An authorised Member may not disclose evidence, documents, proceedings or reports which have not been authorised for publication. The committee shall determine the limits of the authorisation. (*Amended 6 March 2008*)

---

<sup>5</sup> *Odgers*, 11<sup>th</sup> Edition, pp. 61-3.

2.8 However, the publication or disclosure of evidence not authorised for publication, of private deliberations and of draft reports of a committee before their presentation to a House of Parliament in other jurisdictions has been pursued as matters of contempt.<sup>6</sup>

2.9 It is reasonable to conclude from the above that for an action to constitute a contempt it should include:

- (a) an *improper interference* with the free exercise by a committee of its authority or functions; and
- (b) an *intention* by the person responsible for the action to improperly interfere with the free performance of a committee's responsibilities.

2.10 In conclusion, it is important to distinguish between the ordinary meaning of contempt and its use in a parliamentary or legal context. Contempt, in the ordinary sense of holding something in extremely low regard or finding it despicable, is not relevant here. In a parliamentary context contempt is as defined above. Thus a person may find an action contemptible in the ordinary sense without that action raising an issue of contempt in the parliamentary sense.<sup>7</sup>

## **Contempt – Criteria to be taken into account when dealing with matters of contempt**

3.1 Standing Order 278 of the Assembly states:

The Assembly will take into account the following criteria when determining whether matters possibly involving contempt should be referred to a Select Committee on Privilege and whether a contempt has been committed, and requires the committee to take these criteria into account when inquiring into any matter referred to it:

---

<sup>6</sup> *Odgers*, 11<sup>th</sup> Edition, pp. 61-3.

<sup>7</sup> Select Committee on Privileges, *Possible unauthorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document*, p. 6.

- (a) the principle that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Assembly;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
  - (i) knowingly committed that act, or
  - (ii) had any reasonable excuse for the commission of that act. (*Inserted 6 March 2008*)

## Precedents – Senate

4.1 Among the many decisions the Senate Committee of Privileges made when undertaking these and other inquiries was that it should not make a finding of contempt against any person unless the committee found a culpable intention – even though it was entitled to make a finding on any basis it chose.<sup>8</sup>

4.2 In an introduction to the individual cases it canvassed the whole spectrum of improper disclosure, and developed a hierarchy of matters which it should take into account when determining the seriousness or otherwise of unauthorised disclosure of all types of material that had come before other committees. The most serious of these was, unsurprisingly, unauthorised disclosure of in camera evidence.<sup>9</sup>

---

<sup>8</sup> Senate Committee on Privileges, 22<sup>nd</sup> Report, June 2007, paragraph 1.8.

<sup>9</sup> *ibid*, paragraph 1.10.

4.3 Parliamentary committees may expect that, unless unauthorised revelations of proceedings are of such moment that they make impossible the continuation of an inquiry, such revelations will not be considered by the Committee of Privileges as raising a question of contempt on the basis that they constitute unauthorised disclosure. Purported revelations of committee deliberations which are actually misrepresentations of committee proceedings may still be caught under the provisions of Resolution 6(7):

A person shall not wilfully publish any false or misleading report of the proceedings of the Senate or of a committee.<sup>10</sup>

4.4 Unauthorised disclosure and publication of the deliberations and draft reports of a committee, regardless of the stage at which disclosure occurs, should be a matter for internal discipline unless the disclosure and publication of those deliberations or draft reports:

- (a) also discloses actual or identifiable in camera evidence; or
- (b) discloses deliberations which may have an adverse effect on, or raise the expectations of, individuals who are the subject of or may be affected by the observations or recommendations in a committee's report.<sup>11</sup>

## **Conduct of the inquiry**

5.1 The committee held two public hearings where Mr Corbell MLA, Minister for Police and Emergency Services and Mr Stefaniak MLA were examined.

5.2 The committee wrote to all members of the Standing Committee on Legal Affairs, Mr Corbell MLA, Minister for Police and Emergency Services, and the secretary to that committee seeking submissions on the inquiry.

5.3 Submissions were received from Mr Stefaniak, MLA, Ms MacDonald MLA, Dr Foskey, MLA, Mr Corbell MLA, Minister for Police and Emergency Services, and Ms Jaffray, the Committee Secretary. All committee correspondence was authorised for publication.

---

<sup>10</sup> *ibid*, paragraph 3.32.

<sup>11</sup> *ibid*, paragraph 3.51.

5.4 A list of hearings is at Appendix 1 and a list of submissions is at Appendix 2.

5.5 Standing order 280(g), which the Assembly first adopted in March 2008, requires that as soon as practicable after the committee has determined findings to be included in the committee's report to the Assembly, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the committee, in writing and orally, on those findings. The committee is required to take any such submissions into account before making its report to the Assembly.

5.6 Accordingly the committee provided a copy of the findings to Mr Stefaniak, Mr Corbell, Minister for Police and Emergency Services, Ms MacDonald and the committee secretary, Ms Robina Jaffray on Thursday, 21 August 2008 for response to the committee by Monday, 25 August 2008.

## **Circumstances of the reference**

6.1 On Monday 16 June 2008 the Chair of the Standing Committee on Legal Affairs wrote to the Minister for Police and Emergency Services as part of the committee's inquiry into ACT fire and emergency services arrangements. A copy of that letter is at Appendix 3. The inquiry had been self referred by the committee on 22 May 2007. The letter was sent prior to a scheduled public hearing by the committee on Friday 20 June 2008 at which the Minister for Police and Emergency Services had been scheduled to appear.

6.2 At the commencement of that public hearing, when the Chair of the committee asked a question about a document that had been requested by the committee, the Minister responded:

**Mr Corbell:** Mr Chairman, before I answer that question, can I place on the record my concern that this committee made a request of me for documents earlier this week, which I am advised was not authorised by the committee. Mr Chairman, you wrote to me earlier this week and requested a range of documents. Indeed, you asserted the use of this committee's powers to call for documents. I understand that that call for documents was not actually authorised by the committee prior to that request being made of me.

I am deeply distressed by that, Mr Chairman, because I treat all requests for documents seriously, and I am concerned that the committee's request for documents was made without the concurrence of the committee. I just want to clarify whether that situation has now been rectified.

6.3 The Chair of the committee responded to the query as follows:

**The Chair:** Mr Corbell, I note what you say. Might I say also that the letter you got was probably quite routine. If you go back through various other correspondence and verbal requests which have been made during these hearings, I think that is painfully obvious. The committee has considered your letter; the committee has considered your comments; we have held a meeting. You have received a letter as a result of that meeting of the committee this morning. The committee acceded to one of your requests in your letter, which I have already mentioned.

6.4 There followed a fairly robust exchange between the Minister and the Chair concerning the matter over several minutes of the public hearing. This is shown in full at Appendix 4.

6.5 On Friday 27 June 2008 the Minister for Police and Emergency Services, Mr Corbell, MLA, wrote to the Speaker in accordance with standing order 276 raising a matter of privilege. On 1 July 2008 the Speaker made a statement in the Assembly, indicating that, having considered the matter, he was prepared to give the matter precedence over other business. Mr Corbell, Minister for Police and Emergency Services, moved a motion to establish a select committee to investigate the matter. An amendment was moved by Mr Smyth, MLA to add a new paragraph that would entail the committee also examining how Mr Corbell, Minister for Police and Emergency Services, became aware of the fact that the committee had not authorised the letter. The amendment was agreed to.

## Matters under investigation

- (a) **Did Mr Stefaniak, MLA act without authority of the committee when he made the requests to Mr Corbell, Minister for Police and Emergency Services, for certain documents as outlined in his letter of 16 June 2008?**

7.1 From the submissions lodged by Members of the committee and the committee Secretary, it appears that there has developed a practice within the Standing Committee on Legal Affairs whereby the committee Chair would, without reference to the other committee members, request the Secretary to draft a letter seeking information from the relevant person (in this case a Minister). In accordance with this practice, the committee Secretary then usually, but not always, copies the letter to other members of the committee to ensure that they are happy for this course of action to occur.

7.2 As can be seen from the committee Secretary's submission, this practice did not occur in relation to the letter sent by Mr Stefaniak on 16 June 2008. She states in her submission:

Normally my practice as a committee secretary is to ensure that committee members are aware of all correspondence. However, on this occasion I omitted to provide copies to all committee members, prior to sending the letter to the Minister. I therefore did not give the correspondence as much consideration as I normally would have.<sup>12</sup>

7.3 The committee Chair stated he was not aware that the letter had not been sent to other committee members. His submission states:

Whilst looking at my emails between 16 and 19 June I recall not seeing any circulation of my letter to the Committee, but I thought nothing of it as I regarded it as routine, especially as all of these documents to my recollection, had been referred to on a number of occasions and, indeed, requested at various times during the Inquiry.<sup>13</sup>

---

<sup>12</sup> Submission of Robina Jaffray, p. 1.

<sup>13</sup> Submission of Mr Stefaniak, MLA, p. 1.

7.4 This committee has been asked by the Assembly to examine whether Mr Stefaniak, at the time of writing the letter, acted without the authority of the committee. Although it appears that the committee may have later followed up all or most of the requests with a subsequent letter, that is in the committee's view immaterial to the question that the Assembly has asked this committee to address.

7.5 The committee notes that it appears that an error was made by the committee secretary in not clearing the letter of 16 June 2008 via email with the other members of the committee. Nevertheless, the committee noted that, in giving evidence before the Privileges Committee, Mr Stefaniak appeared on another occasion to make the effort to check with the committee secretary prior to signing a very strong letter in relation to the inquiry stating that:

I asked the committee secretary several weeks ago "Have you actually made sure our colleagues agree with that, in light of this particular inquiry?" and she said that she had.<sup>14</sup>

7.6 Mr Stefaniak claims that he did not consider the request being made in the letter of 16 June to be anything other than routine.<sup>15</sup> However, as can be seen from the evidence given by Mr Corbell, Minister for Police and Emergency Services, the letter was in fact requesting, for a second time, a copy of the Stuart Ellis report, a document that both Mr Stefaniak and Mr Corbell, Minister for Police and Emergency Services, agree is central to the committee's inquiry.

7.7 The committee considers that it is clear that Mr Stefaniak, when making the request for the documents on 16 June 2008, clearly acted without authority of the committee. Whether this request was made knowingly and is a contempt is discussed later in the report.

## **FINDING NO 1**

**The committee finds that Mr Stefaniak acted without authority of the Standing Committee on Legal Affairs when he made his request to Mr Corbell, Minister for Police and Emergency Services, for certain documents as outlined in his letter of 16 June 2008.**

---

<sup>14</sup> Mr Stefaniak, MLA, Committee transcript, 14 August 2008, p15.

<sup>15</sup> Submission of Mr Stefaniak, MLA, p 1.

**(b) How did Mr Corbell, Minister for Police and Emergency Services, become aware of the fact that the committee had not authorised the letter?**

7.8 As stated above in paragraph 5.2, in trying to get all points of view in relation to the reference from the Assembly, the committee sought submissions from the members of the committee, its secretary and Mr Corbell, Minister for Police and Emergency Services. Mr Corbell's, Minister for Police and Emergency Services, submission contained no information on how he became aware of the fact that the committee had not authorised the letter. For this reason, the committee decided to call Mr Corbell, Minister for Police and Emergency Services, to seek the information it needed to complete its inquiry.

7.9 The committee had noted that in Ms MacDonald's submission she indicated she had told Mr Corbell, Minister for Police and Emergency Services certain information. In her submission she states that, after having a conversation that was initiated by Mr Corbell, Minister for Police and Emergency Services, on 19 June 2008 where Mr Corbell, Minister for Police and Emergency Services, informed her that he would be providing some but not all the documents requested by the committee, and after ascertaining with the committee secretary that the letter to Mr Corbell, Minister for Police and Emergency Services, had been sent without discussing it with the committee, she informed Mr Corbell, Minister for Police and Emergency Services, that:

...Mr Stefaniak has sent the request for documents without discussing it with the committee.<sup>16</sup>

7.10 When Mr Corbell, Minister for Police and Emergency Services, appeared before the Privileges Committee he confirmed this evidence, stating that:

Later that day, she (Ms MacDonald) made contact with me and advised me that she had made some inquiries and she had ascertained that the committee had not formally resolved to write to me on that matter.<sup>17</sup>

---

<sup>16</sup> Submission of Ms MacDonald, MLA, p 2.

<sup>17</sup> Mr Corbel, MLA, Minister for Police and Emergency Services, Committee transcript 13 August 2008, p 4.

7.11 The committee has considered whether Ms MacDonald's conveying of information to Mr Corbell, Minister for Police and Emergency Services, was a contempt, as it could be considered to be breaching standing order 241. The committee notes that it was open to Ms MacDonald herself to raise a matter of privilege when she found out from the committee secretary that the letter had not been authorised.

7.12 In defence of Ms MacDonald, Mr Corbell, Minister for Police and Emergency Services, contended that she had not revealed to him anything that the committee actually did, and hence, could not be taken as having breached privilege. He stated:

The reason is that she had disclosed something that did not happen. I think that if she had disclosed that the committee had deliberated on the matter and had decided to do X, Y or Z, yes, that would be a breach of privilege.

7.13 The committee does not accept this argument. It is certainly possible that disclosure of an omission may be so peripheral or inconsequential to the proceedings of a committee that it does not fall within the meaning of standing order 241(b). We made no finding of general principle in this regard. However, in this particular case, Ms MacDonald revealed to Mr Corbell, Minister for Police and Emergency Services, that important matters pertaining to the hearing he was about to enter had not been discussed by the Standing Committee on Legal Affairs. The committee believes that this amounts to disclosing proceedings within the meaning of standing order 241(b).

## **FINDING NO 2**

**The committee finds that Ms MacDonald revealed private deliberations of the Standing Committee on Legal Affairs to Mr Corbell, Minister for Police and Emergency Services, in breach of standing order 241(b). Specifically, Ms MacDonald revealed to Mr Corbell, that the letter and request for documents he received had not been authorised by the Standing Committee on Legal Affairs.**

7.14 It is clear that Ms MacDonald knowingly revealed this information, however, the committee is not satisfied on the basis of the evidence that she had any intention to improperly interfere with the free performance of the Standing Committee on Legal Affairs responsibilities in doing so. To the contrary, the committee accepts that Ms MacDonald saw Mr Stefaniak's actions impeding the work of the committee and her own role as a member, and took the actions she did with the intention of ensuring that the committee functioned properly.

7.15 Moreover, the committee is satisfied that this act was required in order to ensure that Mr Corbell, Minister for Police and Emergency Services, was aware of the legal invalidity of the instruction that he had received from Mr Stefaniak. As such, the committee finds that Ms MacDonald had a reasonable excuse for the commission of this act within the meaning of standing order 278(c)(ii).

### **FINDING NO 3**

**The committee therefore finds that Ms MacDonald's actions do not meet the criteria for contempt.**

7.16 The committee also considered whether Mr Corbell, Minister for Police and Emergency Services, breached standing order 241(b) when he disclosed the information he received from Ms MacDonald to the Speaker, and if so, whether this amounted to contempt.

7.17 Since the information revealed was the same as that revealed by Ms MacDonald, the committee finds that Mr Corbell, Minister for Police and Emergency Services, revealed private deliberations of the committee to the Speaker in breach of standing order 241(b).

7.18 As was the case with Ms MacDonald, it is clear that Mr Corbell, Minister for Police and Emergency Services, knowingly revealed this information, however, the committee is not satisfied on the basis of the evidence that he had any intention to improperly interfere with the free performance of the Standing Committee on Legal Affairs responsibilities in doing so. The committee accepts that Mr Corbell, Minister for Police and Emergency Services, took the actions he did with the intention of ensuring that the committee functioned properly.

7.19 Moreover, the committee is satisfied that this act was required in order to ensure that the committee functioned within its powers and to protect Mr Corbell's, Minister for Police and Emergency Services, legitimate rights as a witness in committee proceedings. As such, the committee finds that Mr Corbell, Minister for Police and Emergency Services, had a reasonable excuse for the commission of this act within the meaning of standing order 278(c)(ii).

#### **FINDING NO 4**

**The committee finds that Mr Corbell, Minister for Police and Emergency Services, did not commit a contempt when conveying details about committee proceedings to the Speaker on 27 June 2008.**

7.20 To be clear, the committee believes that Mr Corbell's, Minister for Police and Emergency Services, breach of standing order 241(b) was merely of a technical nature. Although Mr Corbell, Minister for Police and Emergency Services, could have raised the issue for examination directly with the members of the Standing Committee on Legal Affairs without breaching standing order 241(b), in the circumstances, it was not unreasonable for Mr Corbell, Minister for Police and Emergency Services, to raise the matter with the Speaker.

#### **(c) Did Mr Stefaniak's actions constitute a breach of privilege?**

7.21 In considering this issue, the committee was mindful of standing order 278 which stipulates, inter alia, that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees. The committee noted that the actions of the Chair in sending the letter did not appear to seriously affect the work of the committee. Indeed, at the meeting of 20 June the Legal Affairs Committee appeared to ratify the request to the Minister for what appears to be a crucial document for the inquiry (ie the Stuart Ellis report).

7.22 The committee was more concerned about the effect of sending the letter on the Minister for Police and Emergency Services, and whether the act of sending the letter offended against one the Assembly's stated contempts in standing order 277 (g), namely that it was an attempt to wilfully publish a false or misleading report of the proceedings of a committee.

7.23 The Minister indicated in evidence to the committee that he viewed the request for the Stuart Ellis report quite seriously. As he stated in evidence:

Mr Stefaniak was demanding some fairly sensitive documents, including one that had been previously requested and that I had indicated I was not going to release. I assumed that, because I had already said no, the committee was not taking no for an answer in relation to at least one of those documents, the Stuart Ellis report, and that this amounted to a call for documents. I treated it as such and gave the detailed reasoning as to why I did not believe that some of those documents should be released.<sup>18</sup>

7.24 In considering this matter, the committee has to have regard to the whether such publication of a false proceeding of a committee proceeding (in accordance with standing order 277(g)) was wilful. This is because standing order 278(c) instructs this committee to take into account the criteria of whether a person who commits an act which constitutes a contempt knowingly committed that act.

7.25 It is noted that Mr Stefaniak may have thought that the letter of 16 June had been seen by other members of the committee. However, Mr Corbell's, Minister for Police and Emergency Services, view of this possibility is that it is not relevant.

7.26 When it was put to Mr Corbell, Minister for Police and Emergency Services, that, as submissions had indicated that an error had been made by the committee secretary, would his view of Mr Stefaniak's actions change, he replied by stating:

What I would say in response to that is that the fact that the committee secretary prepared the correspondence would reinforce my view that Mr Stefaniak sought to make the request on behalf of the committee in that he utilised the resources of the committee – the secretariat – to prepare the correspondence. It also reinforces my view that Mr Stefaniak did not have proper regard for the seriousness of the request that he was making. He should have known, and indeed the committee did know, that I had previously refused to provide one of those documents, the Stuart Ellis report. And probably the most contentious document in all the committee hearings is that document. So it is at the heart of the

---

<sup>18</sup> Mr Corbell, MLA, Minister for Police and Emergency Services, Committee transcript, 13 August 2008, p 3.

committee hearings because that document has been used to inform a range of government decisions around ESA governance and operational activities....I would have thought he should have raised the matter with his committee members so that he had the imprimatur of the committee to again push the issue and request the documentation. ..Whether or not the committee secretary made an error in not providing this documentation to other members I think is beside the point. The point is that the request was made by the chair without proper regard for the implications of that request and perhaps the importance of seeking other members' agreement to that course of action.<sup>19</sup>

7.27 Having regard to all the evidence before it, the committee does not consider that Mr Stefaniak knowingly committed contempt in the terms outlined in standing order 278. The committee does consider that the committee that he chairs is not being administered in the way that it should be, but that will be the subject of further comment later in this report.

7.28 The committee also considers that Mr Stefaniak did not breach Mr Corbell's, Minister for Police and Emergency Services, privileges, although the committee does not discount the fact that Mr Corbell, Minister for Police and Emergency Services, may have been impeded but did not form the view that he was substantially impeded as a consequence of receiving and later discovering that the letter he had received had not been approved by the committee when he received it some time after 16 June 2008. The committee was of the view that whilst Mr Stefaniak's conduct impeded the work of the Minister, it was not of the view that the Minister had been substantially impeded in his work.

## **FINDING NO 5**

**The committee finds that Mr Stefaniak did not commit a contempt when writing a letter to Mr Corbell, Minister for Police and Emergency Services without the Standing Committee on Legal Affairs agreeing to the letter.**

---

<sup>19</sup> Mr Corbell, MLA, Minister for Police and Emergency Services, Committee transcript, 13 August 2008, p 6.

## Other findings and recommendations in relation to the inquiry

8.1 In conducting the inquiry, the committee has had an opportunity to examine the practices and procedures for the operation of the Standing Committee on Legal Affairs. In examining that practice, it should be noted that all the members of the Privileges Committee have been, or are currently, a committee chair.

8.2 It is apparent that the methods used and the process of running the Standing Committee on Legal Affairs are very different from those employed in administering other standing and select committees of the Assembly, based on the experiences of the members of the Privileges Committee.

8.3 The committee was somewhat concerned that fairly significant decisions, namely the decision to seek for a second time a document that had previously been refused by the Minister, would be taken based on a handwritten note to the secretary asking her to draft a letter to the Minister. It is this committee's view that decisions requesting documents should be done at a formally constituted meeting of a committee. As the submission of Ms Jaffray points out, the standing orders of the House of Representatives specifically state that:

(b) The chair of a committee or sub-committee shall direct the secretary of the committee or sub-committee to invite or summon witnesses and to request or require documents to be produced as determined by the committee or sub-committee.<sup>20</sup>

8.4 Based on the evidence given, it is clear that this practice is not being observed by the Standing Committee on Legal Affairs. The Committee secretary pointed out in her submission that:

Many letters are written without their being formally considered by a committee at a private meeting and a more prescriptive process may constrain committees in their day-to-day activities.<sup>21</sup>

---

<sup>20</sup> Submission of Ms Jaffray, 25 July 2008, p 3.

<sup>21</sup> Submission of Ms Jaffray, 25 July 2008, p 4.

8.5 The committee considers that the practices of requesting documents appear not to be as rigorous as they should be. It should be noted that the power given to committees under standing order 239 to send for persons, papers and records is one of the most fundamental tools of a committee in seeking information to conduct the various inquiries that they undertake. As such, it should be used in such a way as to ensure that all requests are duly authorised by the committee and not made on the individual initiative of committee members. The committee therefore considers that it should make a recommendation that formalises this procedure, so it is clear to everyone – the Chair, the committee, the committee secretary and the Minister who is receiving the request – what exactly is occurring.

### **RECOMMENDATION NO 1**

**The committee recommends that, as far as practicable, where a committee of the Assembly is requesting a person, paper or record, that request should be made at a properly constituted meeting of a committee and when conveying the request, the Chair should indicate in any communication that the committee is exercising its power under standing order 239.**

8.6 The committee system in this Assembly is often seen as one of the Assembly's best attributes. It is important that this reputation is kept intact, and the committees continue to operate in the highest traditions of parliamentary democracy.

8.7 The committee considers that, as a result of its findings and the evidence given in this inquiry, that there would be benefit for further training in relation to committee practice and procedure. This would help ensure that instances such as the one the subject of this inquiry do not again occur.

### **RECOMMENDATION NO 2**

**The committee recommends to the Speaker that regular training in relation to committee practice and procedures be provided for the Secretary of the Standing Committee on Legal Affairs and all other committee secretaries to ensure that these staff are able to assist in providing expert advice and assistance in the administration of parliamentary committees.**

**RECOMMENDATION NO 3**

The committee recommends that the *Guide for Committee Secretaries* be updated to include the issues identified in this report about the practice of committee requests for persons and papers.

**RECOMMENDATION NO 4**

The committee recommends to the Speaker that steps be taken to remind the Chair and members of the Standing Committee on Legal Affairs of the appropriate practices and processes to be observed in relation to actions taken on behalf of the committee.

Richard J Mulcahy MLA

Chair

August 2008

## **APPENDIX 1: The committee's hearings**

The committee conducted hearings as follows:

### **Wednesday, 13 August 2008**

Mr Corbell, MLA, Minister for Police and Emergency Services

### **Thursday, 14 August 2008**

Mr Stefaniak, MLA

## **APPENDIX 2: List of Submissions**

The Committee received submissions from:

Mr Corbell, MLA, Minister for Police and Emergency Services

Mr Stefaniak, MLA, Chair of the Standing Committee on Legal Affairs

Ms MacDonald, MLA

Dr Foskey, MLA

Ms Robina Jaffray (2), Secretary to the Standing Committee on Legal Affairs

**APPENDIX 3: Letter from Chair of the Standing  
Committee on Legal Affairs to the  
Minister for Police and Emergency  
Services**



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

Bill Stefaniak MLA (Chair), Karin MacDonald MLA (Deputy Chair), Deb Foskey MLA

Mr Simon Corbell MLA  
Minister for Police and Emergency Services  
Legislative Assembly for the ACT  
GPO Box 1020  
Canberra ACT 2601

Dear Minister

*Inquiry into ACT fire and emergency services arrangements*

The Standing Committee on Legal Affairs confirms the further public hearing on Friday, 20 June 2008 in Committee Room 1.

The Standing Committee on Legal Affairs requests that you bring to the hearing the following documents:

- The report written by RFS Officer Tim McGuffog outlining preparations for the Bushfire Season 2007/2008.
- All Exit Interviews of RFS Chief Officers and Staff from 1/7/07- to date.
- Version 2 of the Strategic Bushfire Management plan or as much of the plan that is complete.
- The Yellow Edge Report.
- The Stuart Ellis Report.

Thank you for your willingness to appear.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bill Stefaniak".

Bill Stefaniak MLA  
Chair  
16 June 2008

Civic Square, London Circuit, Canberra ACT 2601  
GPO Box 1020, Canberra ACT 2601  
Secretary: Telephone: (02) 620 50127 Facsimile: (02) 620 50432  
Email: [committees@parliament.act.gov.au](mailto:committees@parliament.act.gov.au)

**APPENDIX 4: Transcript of hearing of  
20 June 2008**

**CORBELL, MR SIMON**, Attorney-General and Minister for Police and Emergency Services

**LEON, MS RENEE**, Chief Executive, Department of Justice and Community Safety

**MANSON, MR GREGOR**, Commissioner, ACT Emergency Services Agency

**PARRY, MR BRIAN**, Deputy Commissioner, Fire and Rescue, ACT Emergency Services Agency, and Chief Officer, ACT Fire Brigade

**THE CHAIR:** Thank you, minister, for attending today, and for bringing along the officials. I will read out the privileges statement to everyone. We will then get into some further questioning.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others necessary to discharge the functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing. Do you all understand that?

**Mr Corbell:** Yes, thank you, Mr Chairman.

**THE CHAIR:** Everyone else is nodding, including the two gentlemen sitting behind Mr Parry. Firstly, thank you for the documents you have provided. There is one document about which the committee has agreed to adhere—we had a meeting earlier today—to your request, as that document is very much in draft form. There are great gaps in it, and that has not been authorised for publication. That is the *Strategic bushfire management draft plan mark 2*, which has “draft” written all over it. The other documents have been authorised for publication.

You should now have received a letter from the committee requiring you to present the Stuart Ellis report. In terms of the exit statements, we will be asking you questions in relation to those. You have made comments in relation to that matter; there is a fair bit of correspondence in relation to those, I think over the past six months. The committee will deliberate further in relation to those.

With any documents, we are mindful of respecting confidentiality of any people mentioned in those documents. That is a longstanding tradition of this committee. The committee has requested—I think you were asked to bring it along, minister—the

EXAMINATION OF ALLEGED MISUSE OF POSITION BY A COMMITTEE CHAIR  
AND UNAUTHORISED DISSEMINATION OF COMMITTEE PROCEEDINGS

Ellis report. Have you got that document?

**Mr Corbell:** Mr Chairman, before I answer that question, can I place on the record my concern that this committee made a request of me for documents earlier this week, which I am advised was not authorised by the committee. Mr Chairman, you wrote to me earlier this week and requested a range of documents. Indeed, you asserted the use of this committee's powers to call for documents. I understand that that call for documents was not actually authorised by the committee prior to that request being made of me.

I am deeply distressed by that, Mr Chairman, because I treat all requests for documents seriously, and I am concerned that the committee's request for documents was made without the concurrence of the committee. I just want to clarify whether that situation has now been rectified.

**THE CHAIR:** Mr Corbell, I thank you for your comments. Might I say, of course, that the deliberations of the committee are quite confidential. Might I also say that I hear what you say—

**Mr Corbell:** But the issue for me, Mr Chairman, is that when I receive a letter from the committee, I presume that the committee has resolved to do that. I am advised that the committee did not actually resolve to request those documents before the letter was sent to me. It makes it difficult for me to know whether or not I should be supplying documents, because I now no longer have any confidence as to whether or not a request made by the committee under the committee's name has actually been authorised by the committee.

You have requested a series of documents, including a cabinet-in-confidence document, and you have done so, Mr Chairman, without seeking the concurrence of your own committee. That is of some concern to me. I would like to now know whether or not the committee has actually formally resolved to request those documents.

**THE CHAIR:** Mr Corbell, I note what you say. Might I say also that the letter you got was probably quite routine. If you go back through various other correspondence and verbal requests which have been made during these hearings, I think that is painfully obvious. The committee has considered your letter; the committee has considered your comments; we have held a meeting. You have received a letter as a result of that meeting of the committee this morning. The committee acceded to one of your requests in your letter, which I have already mentioned.

**Mr Corbell:** No, Mr Chairman, if I could just clarify that I am referring to your letter of earlier this week.

**THE CHAIR:** I know what you are referring to, and I am telling you, and I am assuring everyone here, that you now have a letter from the committee as a result of deliberations we had this morning. I said before these proceedings started what the committee has decided. We have, as a committee, acceded to one of your requests in that letter, in relation to a document—

**Mr Corbell:** I am not asking about that, Mr Chairman.

**THE CHAIR:** that you have requested. The committee, in its deliberations, has now requested the Stuart Ellis report. I have indicated to you the committee's position, as of our meeting this morning, in relation to the exit statements, which I think have been the subject of some correspondence and discussion over several months. The committee, in that letter you have today after our meeting, has requested the Ellis report, so I ask you in relation to that, minister: do you have that document?

**Mr Corbell:** Again, Mr Chairman, just for clarification, I am seeking your advice about the request you made of me, which I have largely acceded to, earlier this week, on 16 June, when you wrote to me and said:

The Committee requests that you bring to the hearing the following documents ...

You then list those documents. I am advised that the committee resolved to do no such thing prior to you writing that letter. Is that the case?

**THE CHAIR:** I have answered. I have indicated to you, Mr Corbell—

**Mr Corbell:** No, you have not, Mr Chairman.

**THE CHAIR:** Yes, I have, Mr Corbell. I have indicated what the committee—

**Mr Corbell:** The issue—

**THE CHAIR:** I hear what you say, Mr Corbell, and anything in relation to that is a matter for the committee. I also have indicated to you that you can go back through a fairly lengthy history in relation to documents. I indicate to you now that the committee met this morning, that the committee considered your response to that letter—

**Mr Corbell:** No, I understand that, Mr Chairman.

**THE CHAIR:** and that the committee has now made a further request. As I said, I hear what you say, minister. I think it is important that we now get on with it. We do not have too much time, and you can certainly rest assured that the committee, in the letter that you have now—that is, the letter of today—has indicated exactly what it now requires you to provide. I have further indicated—I do not think it is in the letter—that we have actually acceded to one of your requests in your answer.

**Mr Corbell:** I just want to know, Mr Chairman—

**THE CHAIR:** I note your concern. We will consider the matter further, if need be, and respond in writing, and it is not for ministers to ask questions of the committee.

**Mr Corbell:** No, indeed, Mr Chairman, but I am just seeking to clarify with what authority those documents were requested of me.

EXAMINATION OF ALLEGED MISUSE OF POSITION BY A COMMITTEE CHAIR  
AND UNAUTHORISED DISSEMINATION OF COMMITTEE PROCEEDINGS

**THE CHAIR:** Well, minister, I have answered your comments.

**Mr Corbell:** No. Mr Chairman, was it with the—

**THE CHAIR:** It is not a matter for you to ask questions further, minister; I am sorry.

**Mr Corbell:** No, Mr Chairman, I have to disagree.

**THE CHAIR:** I am sorry, minister. I have said as much as I am prepared to say.

**Mr Corbell:** I have to disagree, Mr Chairman, because this letter says that the committee requests me to provide the following documents. That sort of request of a minister is one that I treat seriously.

**THE CHAIR:** I would hope so, minister.

**Mr Corbell:** But I treat it seriously because I assume that the request is made by the committee, not just by an individual member of the committee.

**THE CHAIR:** Minister—

**Mr Corbell:** Mr Chairman, what I want to know—yes or no—is: did the committee resolve to request those documents of me or have I been misled? That is what I want to know.

**THE CHAIR:** The committee has discussed the matter, minister. The committee has decided to issue a further letter as a result of your response to that letter and—

**Mr Corbell:** Okay, thank you, Mr Chairman; I will take that as a “no”.

**THE CHAIR:** No, you won’t take that as a “no”, minister.

**Mr Corbell:** Well, you have not said “yes”. It is a very simple question, Mr Chairman.

**THE CHAIR:** It is not for you to ask questions. If there is anything which any member of this committee has done which needs to be discussed, it will be done with the committee. Can I assure you that you have a letter now as a result of the committee’s deliberations—

**Mr Corbell:** I know I have a letter now; thank you, Mr Chairman.

**THE CHAIR:** of 20 June, requesting, as a result of your correspondence and indeed as a result of considerable correspondence—there is correspondence in April in relation to exit statements, and there is correspondence in relation to several other documents, and all of those are listed there over the last six months. We now, however, have a letter from me as chair, on behalf of the committee, as a result of our meeting at 9.15, requesting the Ellis report. I would ask you to address that now.

**Mr Corbell:** I understand that, Mr Chairman. I am sorry to labour the point but I must, and the reason I must is that I believe I have been misled. This letter says:

## SELECT COMMITTEE ON PRIVILEGES

The Standing Committee on Legal Affairs requests that you bring to the hearing the following documents ...

It then outlines the documents: the report written by Mr McGuffog, exit interviews of RFS staff, version 2 of the SBMP, the Yellow Edge report and the Stuart Ellis report. That letter was written on 16 June, which was Monday, Mr Chairman, and delivered to me either late Monday or early Tuesday. What I want to know is: did the committee, before you wrote this letter to me requesting documents, authorise that request? It is a very simple question, but you have not answered it, and I can only assume that the committee did not request these documents—you did, and you did so without the authority of your committee.

I am very happy to respond to requests from individual members, Mr Chairman, but when a chairman of a committee says that the committee wants certain documents, I assume that the committee has agreed to request those documents, and I provide them on that basis. I believe I have been misled. I believe that you have misled me because this committee has not requested these documents prior to you writing this request to me asking for those documents. Can I simply place on the record that I am disappointed with that course of action. I believe it is quite inappropriate for a chair of a committee to behave in such a way. You of all people, Mr Stefaniak, should know—

**THE CHAIR:** Don't lecture me.

**Mr Corbell:** after a decade or more in this place that that is the way committees work, and you went and demanded documents of me without the authority of your committee.

**THE CHAIR:** Minister, the letter you refer to says "requests". I note your concern, and the committee noted that you would be raising that, so we have discussed that. Indeed, we may well discuss that further. It is not actually for witnesses to ask questions of the committee. But I do note your concern, minister, and just—

**Mr Corbell:** The point is, Mr Chairman, if you want me to cooperate with the committee, you have to work in accordance with the rules that you set down for yourself, and you have not.

**THE CHAIR:** Again, I note your concern, minister. I have been in this place for a long time, as you say—longer than you—and I think I have a pretty good track record for being a very straight, honest person. If there is any sort of transgression by me—

**Mr Corbell:** Just admit that you made a mistake.

**THE CHAIR:** I am happy to admit I make mistakes. If I have made a mistake in any way—and we are talking about very procedural matters here—I would certainly make that known to my committee. As I indicated to you at some length, with respect to our deliberations, we had a meeting. We have now requested the Ellis report. We have noted your concerns in relation to several other matters. The committee will be asking some questions in relation to those, but I now get back to the Ellis report. Where is it?

EXAMINATION OF ALLEGED MISUSE OF POSITION BY A COMMITTEE CHAIR  
AND UNAUTHORISED DISSEMINATION OF COMMITTEE PROCEEDINGS

**Mr Corbell:** I am happy to answer your question in relation to the Ellis report. As I have previously advised you, the Ellis report is a cabinet-in-confidence document. It was used to directly inform the deliberations of cabinet in relation to a range of matters. As I have indicated in my letter to you of yesterday, I am not able to provide you with a copy of that report. I previously advised you of that in the last hearing also.

**THE CHAIR:** The committee does require it, minister. I thank the secretary for looking at the grounds for this. I would ask why you will not provide it. There are certain grounds that may be acceptable there but—

**Mr Corbell:** I will simply claim public interest immunity, Mr Stefaniak. The document is central to cabinet's deliberations on a range of matters. It deals with a range of very sensitive issues, including issues relating to personnel within the ESA, and I will not be releasing the document.

**THE CHAIR:** I have great concerns there, minister. The committee hears what you say. But having looked at the precedents here and having looked at papers written by Harry Evans on precedents in the federal parliament, this is something I think that the Assembly may need to look at. There is very much a public interest. The Assembly is probably the appropriate place for a debate on that.

**Mr Corbell:** We can deal with it in that forum. That is quite okay.

**THE CHAIR:** Might I assure you, in terms of respecting people's privacy and the obvious need for that, that is certainly something this committee and I would think all committees in the Assembly take very seriously. There are ways of protecting people in terms of documents.

**Mr Corbell:** I would simply highlight to the committee that it is not routine in any way for cabinet-in-confidence documents to be released. They are given a level of protection for very good and valid reasons that relate to the decision making of governments and the ability of governments to reach decisions about the best possible course of action, without fear of advice being downplayed or muted because it may come to the public arena.

It is central to the concept of frank and fearless advice to government in decision making. That is why these documents are accorded their status as cabinet-in-confidence. It is for the very same reasons that I am unable to agree to your request.

**THE CHAIR:** I am advised that quite often reports and other documents which do go to cabinet are indeed released and there have to be very, very strong grounds for that not to occur. After all, this, from the evidence we have heard, is a logical report to make and it would not fall into what would be acceptable as cabinet-in-confidence.

**Mr Corbell:** You do not know that because you have not seen it.

**THE CHAIR:** That is probably something we cannot resolve today.

**Mr Corbell:** No, I am not able to. I regret I am not able to accede to your request.

SELECT COMMITTEE ON PRIVILEGES

Examination of alleged misuse of position by a  
Committee Chair and unauthorised  
dissemination of committee proceedings

AUGUST 2008

**Report**

SELECT COMMITTEE ON PRIVILEGES

## **Committee Membership**

Richard Mulcahy MLA (Chair)

Mick Gentleman MLA (Deputy Chair)

Vicki Dunne MLA

## **Secretariat**

Tom Duncan (Secretary)

Janice Rafferty (Assistant Secretary)

## **Resolution of Appointment**

On 1 July the Legislative Assembly resolved—That:

- (1) a Select Committee on Privileges be established to inquire into and report on the actions of Mr Stefaniak as the Chair of the Standing Committee on Legal Affairs in relation to a letter written to Mr Corbell on 16 June 2008 as part of the Committee's inquiry into the ACT fire and emergency services arrangements;
- (2) the Committee is to consider:
  - (a) whether Mr Stefaniak acted without the authority of the Committee when he made the request to Mr Corbell for certain documents as outlined in his letter of 16 June 2008;
  - (b) how Mr Corbell became aware of the fact that the Committee had not authorised the letter; and
  - (c) whether this constitutes a breach of privilege by Mr Stefaniak; and
- (3) the Committee shall report by 26 August 2008;

SELECT COMMITTEE ON PRIVILEGES

- (4) the Committee shall be composed of:
- (a) one member nominated by the Government;
  - (b) one member nominated by the Crossbench; and
  - (c) one member nomination by the Opposition;
- to be notified to the Speaker by 4pm, Tuesday, 1 July 2008.

## TABLE OF CONTENTS

Committee Membership .....	i
Secretariat .....	i
Resolution of Appointment.....	i
<b>FINDINGS AND RECOMMENDATIONS .....</b>	<b>v</b>
<b>Introduction .....</b>	<b>1</b>
Sources of the Legislative Assembly's Privileges .....	1
Contempt .....	2
Contempt – Criteria to be taken into account when dealing with matters of contempt.....	5
Precedents – Senate.....	6
Conduct of the inquiry .....	7
Circumstances of the reference .....	8
Matters under investigation .....	10
Other findings and recommendations in relation to the inquiry .....	18
<b>APPENDIX 1: The committee's hearings .....</b>	<b>21</b>
<b>APPENDIX 2: List of Submissions .....</b>	<b>22</b>
<b>APPENDIX 3: Letter from Chair of the Standing     Committee on Legal Affairs to the Minister for     Police and Emergency Services.....</b>	<b>23</b>
<b>APPENDIX 4: Transcript of hearing of 20 June 2008 .....</b>	<b>25</b>

SELECT COMMITTEE ON PRIVILEGES

## **FINDINGS AND RECOMMENDATIONS**

### **FINDING NO 1**

The committee finds that Mr Stefaniak acted without authority of the Standing Committee on Legal Affairs when he made his request to Mr Corbell, Minister for Police and Emergency Services, for certain documents as outlined in his letter of 16 June 2008.

### **FINDING NO 2**

The committee finds that Ms MacDonald revealed private deliberations of the Standing Committee on Legal Affairs to Mr Corbell, Minister for Police and Emergency Services, in breach of standing order 241(b). Specifically, Ms MacDonald revealed to Mr Corbell that the letter and request for documents he received had not been authorised by the Standing Committee on Legal Affairs.

### **FINDING NO 3**

The committee therefore finds that Ms MacDonald's actions do not meet the criteria for contempt.

### **FINDING NO 4**

The committee finds that Mr Corbell, Minister for Police and Emergency Services, did not commit a contempt when conveying details about committee proceedings to the Speaker on 27 June 2008.

### **FINDING NO 5**

The committee finds that Mr Stefaniak did not commit a contempt when writing a letter to Mr Corbell, Minister for Police and Emergency Services, without the Standing Committee on Legal Affairs agreeing to the letter.

**RECOMMENDATION NO 1**

The Committee recommends that, as far as practicable, where a committee of the Assembly is requesting a person, paper or record, that request should be made at a properly constituted meeting of a committee and when conveying the request, the Chair should indicate in any communication that the committee is exercising its power under standing order 239.

**RECOMMENDATION NO 2**

The committee recommends to the Speaker that regular training in relation to committee practice and procedures be provided for the Secretary of the Standing Committee on Legal Affairs and all other committee secretaries to ensure that these staff are able to assist in providing expert advice and assistance in the administration of parliamentary committees.

**RECOMMENDATION NO 3**

The committee recommends that the *Guide for Committee Secretaries* be updated to include the issues identified in this report about the practice of committee requests for persons and papers.

**RECOMMENDATION NO 4**

The committee recommends to the Speaker that steps be taken to remind the Chair and members of the Standing Committee on Legal Affairs of the appropriate practices and processes to be observed in relation to actions taken on behalf of the committee.

## INTRODUCTION

### Sources of the Legislative Assembly's Privileges

1.1 The powers and privileges of the ACT Legislative Assembly derive from the *Australian Capital Territory (Self Government) Act 1988* which states at section 24 that:

... the Assembly may make laws:

- (a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives ...
- (b) Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives ...

1.2 The Assembly has not made a law under this section. Thus the powers and immunities of the Assembly are the same as those of the House of Representatives with one exception – that, as a result of subsection 24 (4) of the Self Government Act, it has no power to imprison or fine a person who might be found to be in contempt of the Assembly or its committees.

1.3 The privileges of the House of Representatives evolved in turn from those of the British House of Commons as at 1901 via section 49 of the Australian Constitution, which states:

The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

1.4 The privileges of the Commonwealth Parliament are further defined in the *Parliamentary Privileges Act 1987*. Also within that Act (section 16) is a definition of what constitutes “proceedings in Parliament” which are “all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.”.

1.5 All persons participating in “proceedings” as defined above are covered by “privilege”.

1.6 Decisions of the House of Representatives and the Senate on privilege matters are important sources on the law and practice of privilege and contempt.

## Contempt

2.1 A legislature’s power with regard to contempt is analogous to that of the courts and reflects the need of a legislature, or a court, “to ... protect themselves from acts which directly or indirectly impede them in the performance of their functions.” Note that “the power [to punish contempts] does not depend on the acts judged and punished being violations of particular immunities”.<sup>1</sup>

2.2 The relationship between immunities and the power to punish contempts is described in *Odgers’ Australian Senate Practice* as:

---

<sup>1</sup> *Odgers, Australian Senate Practice*, 11<sup>th</sup> Edition, p. 61.

The power of the Houses in respect of contempts ... is not an offshoot of the immunities which are commonly called privileges, nor is it now the primary purpose of that power to protect those immunities, which are expected to be protected by the courts in the processes of the ordinary law.<sup>2</sup>

2.3 Erskine May, the guide to British parliamentary practice, describes contempt as:

... any act or omission which obstructs or impedes ... (it) ..... in the performance of its functions, or which obstructs or impedes any Member or officer ... in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results ..... even though there is no precedent of the offence.<sup>3</sup>

2.4 Contempt of parliament is further defined in the *Parliamentary Privileges Act 1987* at section 4:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a member of a member's duties as a member.

2.5 *House of Representatives Practice* goes on to say that this "provision should be taken into account at all stages in the consideration of possible contempts. It is important to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts".<sup>4</sup>

---

<sup>2</sup> *Odgers, Australian Senate Practice*, 11<sup>th</sup> Edition, pp. 30-1.

<sup>3</sup> *Erskine May, Treatise on the Law, Privileges, Precedence and Usages of Parliament*, 22<sup>nd</sup> Edition, p.108.

<sup>4</sup> I Harris, *House of Representatives Practice*, 5<sup>th</sup> Edition 2005, p. 706.

2.6 The Houses of the Commonwealth Parliament, while treating contempt seriously, have tended to exercise their powers “with great circumspection”. The Senate Privileges Committee has generally confined its investigations to “serious matters potentially involving significant obstruction of the Senate...” and “... now regards a culpable intention on the part of the person concerned as essential for the establishment of contempt.”<sup>5</sup>

2.7 Standing order 241 of the Assembly provides:

Disclosure of proceedings, evidence and documents

- (a) A committee may receive and authorise publication of evidence given before it or documents presented to it;
- (b) a committee’s evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a Member of the committee or Assembly employee if necessary in the course of their duties) unless they have been:
  - (i) reported to the Assembly; or
  - (ii) authorised by the Assembly or the committee;
- (c) A committee may resolve to:
  - (i) publish press releases, discussion or other papers or preliminary findings; or
  - (ii) divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment where it is clearly necessary to assist the committee in its inquiry; and
- (d) A committee may resolve to authorise a Member of the committee to give public briefings on matters related to an inquiry. An authorised Member may not disclose evidence, documents, proceedings or reports which have not been authorised for publication. The committee shall determine the limits of the authorisation. (*Amended 6 March 2008*)

---

<sup>5</sup> *Odgers*, 11<sup>th</sup> Edition, pp. 61-3.

2.8 However, the publication or disclosure of evidence not authorised for publication, of private deliberations and of draft reports of a committee before their presentation to a House of Parliament in other jurisdictions has been pursued as matters of contempt.<sup>6</sup>

2.9 It is reasonable to conclude from the above that for an action to constitute a contempt it should include:

- (a) an *improper interference* with the free exercise by a committee of its authority or functions; and
- (b) an *intention* by the person responsible for the action to improperly interfere with the free performance of a committee's responsibilities.

2.10 In conclusion, it is important to distinguish between the ordinary meaning of contempt and its use in a parliamentary or legal context. Contempt, in the ordinary sense of holding something in extremely low regard or finding it despicable, is not relevant here. In a parliamentary context contempt is as defined above. Thus a person may find an action contemptible in the ordinary sense without that action raising an issue of contempt in the parliamentary sense.<sup>7</sup>

## **Contempt – Criteria to be taken into account when dealing with matters of contempt**

3.1 Standing Order 278 of the Assembly states:

The Assembly will take into account the following criteria when determining whether matters possibly involving contempt should be referred to a Select Committee on Privilege and whether a contempt has been committed, and requires the committee to take these criteria into account when inquiring into any matter referred to it:

---

<sup>6</sup> *Odgers*, 11<sup>th</sup> Edition, pp. 61-3.

<sup>7</sup> Select Committee on Privileges, *Possible unauthorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document*, p. 6.

- (a) the principle that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Assembly;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
  - (i) knowingly committed that act, or
  - (ii) had any reasonable excuse for the commission of that act. (*Inserted 6 March 2008*)

## Precedents – Senate

4.1 Among the many decisions the Senate Committee of Privileges made when undertaking these and other inquiries was that it should not make a finding of contempt against any person unless the committee found a culpable intention – even though it was entitled to make a finding on any basis it chose.<sup>8</sup>

4.2 In an introduction to the individual cases it canvassed the whole spectrum of improper disclosure, and developed a hierarchy of matters which it should take into account when determining the seriousness or otherwise of unauthorised disclosure of all types of material that had come before other committees. The most serious of these was, unsurprisingly, unauthorised disclosure of in camera evidence.<sup>9</sup>

---

<sup>8</sup> Senate Committee on Privileges, 22<sup>nd</sup> Report, June 2007, paragraph 1.8.

<sup>9</sup> *ibid*, paragraph 1.10.

4.3 Parliamentary committees may expect that, unless unauthorised revelations of proceedings are of such moment that they make impossible the continuation of an inquiry, such revelations will not be considered by the Committee of Privileges as raising a question of contempt on the basis that they constitute unauthorised disclosure. Purported revelations of committee deliberations which are actually misrepresentations of committee proceedings may still be caught under the provisions of Resolution 6(7):

A person shall not wilfully publish any false or misleading report of the proceedings of the Senate or of a committee.<sup>10</sup>

4.4 Unauthorised disclosure and publication of the deliberations and draft reports of a committee, regardless of the stage at which disclosure occurs, should be a matter for internal discipline unless the disclosure and publication of those deliberations or draft reports:

- (a) also discloses actual or identifiable in camera evidence; or
- (b) discloses deliberations which may have an adverse effect on, or raise the expectations of, individuals who are the subject of or may be affected by the observations or recommendations in a committee's report.<sup>11</sup>

## **Conduct of the inquiry**

5.1 The committee held two public hearings where Mr Corbell MLA, Minister for Police and Emergency Services and Mr Stefaniak MLA were examined.

5.2 The committee wrote to all members of the Standing Committee on Legal Affairs, Mr Corbell MLA, Minister for Police and Emergency Services, and the secretary to that committee seeking submissions on the inquiry.

5.3 Submissions were received from Mr Stefaniak, MLA, Ms MacDonald MLA, Dr Foskey, MLA, Mr Corbell MLA, Minister for Police and Emergency Services, and Ms Jaffray, the Committee Secretary. All committee correspondence was authorised for publication.

---

<sup>10</sup> *ibid*, paragraph 3.32.

<sup>11</sup> *ibid*, paragraph 3.51.

5.4 A list of hearings is at Appendix 1 and a list of submissions is at Appendix 2.

5.5 Standing order 280(g), which the Assembly first adopted in March 2008, requires that as soon as practicable after the committee has determined findings to be included in the committee's report to the Assembly, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the committee, in writing and orally, on those findings. The committee is required to take any such submissions into account before making its report to the Assembly.

5.6 Accordingly the committee provided a copy of the findings to Mr Stefaniak, Mr Corbell, Minister for Police and Emergency Services, Ms MacDonald and the committee secretary, Ms Robina Jaffray on Thursday, 21 August 2008 for response to the committee by Monday, 25 August 2008.

## **Circumstances of the reference**

6.1 On Monday 16 June 2008 the Chair of the Standing Committee on Legal Affairs wrote to the Minister for Police and Emergency Services as part of the committee's inquiry into ACT fire and emergency services arrangements. A copy of that letter is at Appendix 3. The inquiry had been self referred by the committee on 22 May 2007. The letter was sent prior to a scheduled public hearing by the committee on Friday 20 June 2008 at which the Minister for Police and Emergency Services had been scheduled to appear.

6.2 At the commencement of that public hearing, when the Chair of the committee asked a question about a document that had been requested by the committee, the Minister responded:

**Mr Corbell:** Mr Chairman, before I answer that question, can I place on the record my concern that this committee made a request of me for documents earlier this week, which I am advised was not authorised by the committee. Mr Chairman, you wrote to me earlier this week and requested a range of documents. Indeed, you asserted the use of this committee's powers to call for documents. I understand that that call for documents was not actually authorised by the committee prior to that request being made of me.

I am deeply distressed by that, Mr Chairman, because I treat all requests for documents seriously, and I am concerned that the committee's request for documents was made without the concurrence of the committee. I just want to clarify whether that situation has now been rectified.

6.3 The Chair of the committee responded to the query as follows:

**The Chair:** Mr Corbell, I note what you say. Might I say also that the letter you got was probably quite routine. If you go back through various other correspondence and verbal requests which have been made during these hearings, I think that is painfully obvious. The committee has considered your letter; the committee has considered your comments; we have held a meeting. You have received a letter as a result of that meeting of the committee this morning. The committee acceded to one of your requests in your letter, which I have already mentioned.

6.4 There followed a fairly robust exchange between the Minister and the Chair concerning the matter over several minutes of the public hearing. This is shown in full at Appendix 4.

6.5 On Friday 27 June 2008 the Minister for Police and Emergency Services, Mr Corbell, MLA, wrote to the Speaker in accordance with standing order 276 raising a matter of privilege. On 1 July 2008 the Speaker made a statement in the Assembly, indicating that, having considered the matter, he was prepared to give the matter precedence over other business. Mr Corbell, Minister for Police and Emergency Services, moved a motion to establish a select committee to investigate the matter. An amendment was moved by Mr Smyth, MLA to add a new paragraph that would entail the committee also examining how Mr Corbell, Minister for Police and Emergency Services, became aware of the fact that the committee had not authorised the letter. The amendment was agreed to.

## Matters under investigation

- (a) **Did Mr Stefaniak, MLA act without authority of the committee when he made the requests to Mr Corbell, Minister for Police and Emergency Services, for certain documents as outlined in his letter of 16 June 2008?**

7.1 From the submissions lodged by Members of the committee and the committee Secretary, it appears that there has developed a practice within the Standing Committee on Legal Affairs whereby the committee Chair would, without reference to the other committee members, request the Secretary to draft a letter seeking information from the relevant person (in this case a Minister). In accordance with this practice, the committee Secretary then usually, but not always, copies the letter to other members of the committee to ensure that they are happy for this course of action to occur.

7.2 As can be seen from the committee Secretary's submission, this practice did not occur in relation to the letter sent by Mr Stefaniak on 16 June 2008. She states in her submission:

Normally my practice as a committee secretary is to ensure that committee members are aware of all correspondence. However, on this occasion I omitted to provide copies to all committee members, prior to sending the letter to the Minister. I therefore did not give the correspondence as much consideration as I normally would have.<sup>12</sup>

7.3 The committee Chair stated he was not aware that the letter had not been sent to other committee members. His submission states:

Whilst looking at my emails between 16 and 19 June I recall not seeing any circulation of my letter to the Committee, but I thought nothing of it as I regarded it as routine, especially as all of these documents to my recollection, had been referred to on a number of occasions and, indeed, requested at various times during the Inquiry.<sup>13</sup>

---

<sup>12</sup> Submission of Robina Jaffray, p. 1.

<sup>13</sup> Submission of Mr Stefaniak, MLA, p. 1.

7.4 This committee has been asked by the Assembly to examine whether Mr Stefaniak, at the time of writing the letter, acted without the authority of the committee. Although it appears that the committee may have later followed up all or most of the requests with a subsequent letter, that is in the committee's view immaterial to the question that the Assembly has asked this committee to address.

7.5 The committee notes that it appears that an error was made by the committee secretary in not clearing the letter of 16 June 2008 via email with the other members of the committee. Nevertheless, the committee noted that, in giving evidence before the Privileges Committee, Mr Stefaniak appeared on another occasion to make the effort to check with the committee secretary prior to signing a very strong letter in relation to the inquiry stating that:

I asked the committee secretary several weeks ago "Have you actually made sure our colleagues agree with that, in light of this particular inquiry?" and she said that she had.<sup>14</sup>

7.6 Mr Stefaniak claims that he did not consider the request being made in the letter of 16 June to be anything other than routine.<sup>15</sup> However, as can be seen from the evidence given by Mr Corbell, Minister for Police and Emergency Services, the letter was in fact requesting, for a second time, a copy of the Stuart Ellis report, a document that both Mr Stefaniak and Mr Corbell, Minister for Police and Emergency Services, agree is central to the committee's inquiry.

7.7 The committee considers that it is clear that Mr Stefaniak, when making the request for the documents on 16 June 2008, clearly acted without authority of the committee. Whether this request was made knowingly and is a contempt is discussed later in the report.

## **FINDING NO 1**

**The committee finds that Mr Stefaniak acted without authority of the Standing Committee on Legal Affairs when he made his request to Mr Corbell, Minister for Police and Emergency Services, for certain documents as outlined in his letter of 16 June 2008.**

---

<sup>14</sup> Mr Stefaniak, MLA, Committee transcript, 14 August 2008, p15.

<sup>15</sup> Submission of Mr Stefaniak, MLA, p 1.

**(b) How did Mr Corbell, Minister for Police and Emergency Services, become aware of the fact that the committee had not authorised the letter?**

7.8 As stated above in paragraph 5.2, in trying to get all points of view in relation to the reference from the Assembly, the committee sought submissions from the members of the committee, its secretary and Mr Corbell, Minister for Police and Emergency Services. Mr Corbell's, Minister for Police and Emergency Services, submission contained no information on how he became aware of the fact that the committee had not authorised the letter. For this reason, the committee decided to call Mr Corbell, Minister for Police and Emergency Services, to seek the information it needed to complete its inquiry.

7.9 The committee had noted that in Ms MacDonald's submission she indicated she had told Mr Corbell, Minister for Police and Emergency Services certain information. In her submission she states that, after having a conversation that was initiated by Mr Corbell, Minister for Police and Emergency Services, on 19 June 2008 where Mr Corbell, Minister for Police and Emergency Services, informed her that he would be providing some but not all the documents requested by the committee, and after ascertaining with the committee secretary that the letter to Mr Corbell, Minister for Police and Emergency Services, had been sent without discussing it with the committee, she informed Mr Corbell, Minister for Police and Emergency Services, that:

...Mr Stefaniak has sent the request for documents without discussing it with the committee.<sup>16</sup>

7.10 When Mr Corbell, Minister for Police and Emergency Services, appeared before the Privileges Committee he confirmed this evidence, stating that:

Later that day, she (Ms MacDonald) made contact with me and advised me that she had made some inquiries and she had ascertained that the committee had not formally resolved to write to me on that matter.<sup>17</sup>

---

<sup>16</sup> Submission of Ms MacDonald, MLA, p 2.

<sup>17</sup> Mr Corbel, MLA, Minister for Police and Emergency Services, Committee transcript 13 August 2008, p 4.

7.11 The committee has considered whether Ms MacDonald's conveying of information to Mr Corbell, Minister for Police and Emergency Services, was a contempt, as it could be considered to be breaching standing order 241. The committee notes that it was open to Ms MacDonald herself to raise a matter of privilege when she found out from the committee secretary that the letter had not been authorised.

7.12 In defence of Ms MacDonald, Mr Corbell, Minister for Police and Emergency Services, contended that she had not revealed to him anything that the committee actually did, and hence, could not be taken as having breached privilege. He stated:

The reason is that she had disclosed something that did not happen. I think that if she had disclosed that the committee had deliberated on the matter and had decided to do X, Y or Z, yes, that would be a breach of privilege.

7.13 The committee does not accept this argument. It is certainly possible that disclosure of an omission may be so peripheral or inconsequential to the proceedings of a committee that it does not fall within the meaning of standing order 241(b). We made no finding of general principle in this regard. However, in this particular case, Ms MacDonald revealed to Mr Corbell, Minister for Police and Emergency Services, that important matters pertaining to the hearing he was about to enter had not been discussed by the Standing Committee on Legal Affairs. The committee believes that this amounts to disclosing proceedings within the meaning of standing order 241(b).

## **FINDING NO 2**

**The committee finds that Ms MacDonald revealed private deliberations of the Standing Committee on Legal Affairs to Mr Corbell, Minister for Police and Emergency Services, in breach of standing order 241(b). Specifically, Ms MacDonald revealed to Mr Corbell, that the letter and request for documents he received had not been authorised by the Standing Committee on Legal Affairs.**

7.14 It is clear that Ms MacDonald knowingly revealed this information, however, the committee is not satisfied on the basis of the evidence that she had any intention to improperly interfere with the free performance of the Standing Committee on Legal Affairs responsibilities in doing so. To the contrary, the committee accepts that Ms MacDonald saw Mr Stefaniak's actions impeding the work of the committee and her own role as a member, and took the actions she did with the intention of ensuring that the committee functioned properly.

7.15 Moreover, the committee is satisfied that this act was required in order to ensure that Mr Corbell, Minister for Police and Emergency Services, was aware of the legal invalidity of the instruction that he had received from Mr Stefaniak. As such, the committee finds that Ms MacDonald had a reasonable excuse for the commission of this act within the meaning of standing order 278(c)(ii).

### **FINDING NO 3**

**The committee therefore finds that Ms MacDonald's actions do not meet the criteria for contempt.**

7.16 The committee also considered whether Mr Corbell, Minister for Police and Emergency Services, breached standing order 241(b) when he disclosed the information he received from Ms MacDonald to the Speaker, and if so, whether this amounted to contempt.

7.17 Since the information revealed was the same as that revealed by Ms MacDonald, the committee finds that Mr Corbell, Minister for Police and Emergency Services, revealed private deliberations of the committee to the Speaker in breach of standing order 241(b).

7.18 As was the case with Ms MacDonald, it is clear that Mr Corbell, Minister for Police and Emergency Services, knowingly revealed this information, however, the committee is not satisfied on the basis of the evidence that he had any intention to improperly interfere with the free performance of the Standing Committee on Legal Affairs responsibilities in doing so. The committee accepts that Mr Corbell, Minister for Police and Emergency Services, took the actions he did with the intention of ensuring that the committee functioned properly.

7.19 Moreover, the committee is satisfied that this act was required in order to ensure that the committee functioned within its powers and to protect Mr Corbell's, Minister for Police and Emergency Services, legitimate rights as a witness in committee proceedings. As such, the committee finds that Mr Corbell, Minister for Police and Emergency Services, had a reasonable excuse for the commission of this act within the meaning of standing order 278(c)(ii).

#### **FINDING NO 4**

**The committee finds that Mr Corbell, Minister for Police and Emergency Services, did not commit a contempt when conveying details about committee proceedings to the Speaker on 27 June 2008.**

7.20 To be clear, the committee believes that Mr Corbell's, Minister for Police and Emergency Services, breach of standing order 241(b) was merely of a technical nature. Although Mr Corbell, Minister for Police and Emergency Services, could have raised the issue for examination directly with the members of the Standing Committee on Legal Affairs without breaching standing order 241(b), in the circumstances, it was not unreasonable for Mr Corbell, Minister for Police and Emergency Services, to raise the matter with the Speaker.

#### **(c) Did Mr Stefaniak's actions constitute a breach of privilege?**

7.21 In considering this issue, the committee was mindful of standing order 278 which stipulates, inter alia, that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees. The committee noted that the actions of the Chair in sending the letter did not appear to seriously affect the work of the committee. Indeed, at the meeting of 20 June the Legal Affairs Committee appeared to ratify the request to the Minister for what appears to be a crucial document for the inquiry (ie the Stuart Ellis report).

7.22 The committee was more concerned about the effect of sending the letter on the Minister for Police and Emergency Services, and whether the act of sending the letter offended against one the Assembly's stated contempts in standing order 277 (g), namely that it was an attempt to wilfully publish a false or misleading report of the proceedings of a committee.

7.23 The Minister indicated in evidence to the committee that he viewed the request for the Stuart Ellis report quite seriously. As he stated in evidence:

Mr Stefaniak was demanding some fairly sensitive documents, including one that had been previously requested and that I had indicated I was not going to release. I assumed that, because I had already said no, the committee was not taking no for an answer in relation to at least one of those documents, the Stuart Ellis report, and that this amounted to a call for documents. I treated it as such and gave the detailed reasoning as to why I did not believe that some of those documents should be released.<sup>18</sup>

7.24 In considering this matter, the committee has to have regard to the whether such publication of a false proceeding of a committee proceeding (in accordance with standing order 277(g)) was wilful. This is because standing order 278(c) instructs this committee to take into account the criteria of whether a person who commits an act which constitutes a contempt knowingly committed that act.

7.25 It is noted that Mr Stefaniak may have thought that the letter of 16 June had been seen by other members of the committee. However, Mr Corbell's, Minister for Police and Emergency Services, view of this possibility is that it is not relevant.

7.26 When it was put to Mr Corbell, Minister for Police and Emergency Services, that, as submissions had indicated that an error had been made by the committee secretary, would his view of Mr Stefaniak's actions change, he replied by stating:

What I would say in response to that is that the fact that the committee secretary prepared the correspondence would reinforce my view that Mr Stefaniak sought to make the request on behalf of the committee in that he utilised the resources of the committee – the secretariat – to prepare the correspondence. It also reinforces my view that Mr Stefaniak did not have proper regard for the seriousness of the request that he was making. He should have known, and indeed the committee did know, that I had previously refused to provide one of those documents, the Stuart Ellis report. And probably the most contentious document in all the committee hearings is that document. So it is at the heart of the

---

<sup>18</sup> Mr Corbell, MLA, Minister for Police and Emergency Services, Committee transcript, 13 August 2008, p 3.

committee hearings because that document has been used to inform a range of government decisions around ESA governance and operational activities....I would have thought he should have raised the matter with his committee members so that he had the imprimatur of the committee to again push the issue and request the documentation. ..Whether or not the committee secretary made an error in not providing this documentation to other members I think is beside the point. The point is that the request was made by the chair without proper regard for the implications of that request and perhaps the importance of seeking other members' agreement to that course of action.<sup>19</sup>

7.27 Having regard to all the evidence before it, the committee does not consider that Mr Stefaniak knowingly committed contempt in the terms outlined in standing order 278. The committee does consider that the committee that he chairs is not being administered in the way that it should be, but that will be the subject of further comment later in this report.

7.28 The committee also considers that Mr Stefaniak did not breach Mr Corbell's, Minister for Police and Emergency Services, privileges, although the committee does not discount the fact that Mr Corbell, Minister for Police and Emergency Services, may have been impeded but did not form the view that he was substantially impeded as a consequence of receiving and later discovering that the letter he had received had not been approved by the committee when he received it some time after 16 June 2008. The committee was of the view that whilst Mr Stefaniak's conduct impeded the work of the Minister, it was not of the view that the Minister had been substantially impeded in his work.

## **FINDING NO 5**

**The committee finds that Mr Stefaniak did not commit a contempt when writing a letter to Mr Corbell, Minister for Police and Emergency Services without the Standing Committee on Legal Affairs agreeing to the letter.**

---

<sup>19</sup> Mr Corbell, MLA, Minister for Police and Emergency Services, Committee transcript, 13 August 2008, p 6.

## Other findings and recommendations in relation to the inquiry

8.1 In conducting the inquiry, the committee has had an opportunity to examine the practices and procedures for the operation of the Standing Committee on Legal Affairs. In examining that practice, it should be noted that all the members of the Privileges Committee have been, or are currently, a committee chair.

8.2 It is apparent that the methods used and the process of running the Standing Committee on Legal Affairs are very different from those employed in administering other standing and select committees of the Assembly, based on the experiences of the members of the Privileges Committee.

8.3 The committee was somewhat concerned that fairly significant decisions, namely the decision to seek for a second time a document that had previously been refused by the Minister, would be taken based on a handwritten note to the secretary asking her to draft a letter to the Minister. It is this committee's view that decisions requesting documents should be done at a formally constituted meeting of a committee. As the submission of Ms Jaffray points out, the standing orders of the House of Representatives specifically state that:

(b) The chair of a committee or sub-committee shall direct the secretary of the committee or sub-committee to invite or summon witnesses and to request or require documents to be produced as determined by the committee or sub-committee.<sup>20</sup>

8.4 Based on the evidence given, it is clear that this practice is not being observed by the Standing Committee on Legal Affairs. The Committee secretary pointed out in her submission that:

Many letters are written without their being formally considered by a committee at a private meeting and a more prescriptive process may constrain committees in their day-to-day activities.<sup>21</sup>

---

<sup>20</sup> Submission of Ms Jaffray, 25 July 2008, p 3.

<sup>21</sup> Submission of Ms Jaffray, 25 July 2008, p 4.

8.5 The committee considers that the practices of requesting documents appear not to be as rigorous as they should be. It should be noted that the power given to committees under standing order 239 to send for persons, papers and records is one of the most fundamental tools of a committee in seeking information to conduct the various inquiries that they undertake. As such, it should be used in such a way as to ensure that all requests are duly authorised by the committee and not made on the individual initiative of committee members. The committee therefore considers that it should make a recommendation that formalises this procedure, so it is clear to everyone – the Chair, the committee, the committee secretary and the Minister who is receiving the request – what exactly is occurring.

### **RECOMMENDATION NO 1**

**The committee recommends that, as far as practicable, where a committee of the Assembly is requesting a person, paper or record, that request should be made at a properly constituted meeting of a committee and when conveying the request, the Chair should indicate in any communication that the committee is exercising its power under standing order 239.**

8.6 The committee system in this Assembly is often seen as one of the Assembly's best attributes. It is important that this reputation is kept intact, and the committees continue to operate in the highest traditions of parliamentary democracy.

8.7 The committee considers that, as a result of its findings and the evidence given in this inquiry, that there would be benefit for further training in relation to committee practice and procedure. This would help ensure that instances such as the one the subject of this inquiry do not again occur.

### **RECOMMENDATION NO 2**

**The committee recommends to the Speaker that regular training in relation to committee practice and procedures be provided for the Secretary of the Standing Committee on Legal Affairs and all other committee secretaries to ensure that these staff are able to assist in providing expert advice and assistance in the administration of parliamentary committees.**

**RECOMMENDATION NO 3**

The committee recommends that the *Guide for Committee Secretaries* be updated to include the issues identified in this report about the practice of committee requests for persons and papers.

**RECOMMENDATION NO 4**

The committee recommends to the Speaker that steps be taken to remind the Chair and members of the Standing Committee on Legal Affairs of the appropriate practices and processes to be observed in relation to actions taken on behalf of the committee.

Richard J Mulcahy MLA

Chair

August 2008

## **APPENDIX 1: The committee's hearings**

The committee conducted hearings as follows:

### **Wednesday, 13 August 2008**

Mr Corbell, MLA, Minister for Police and Emergency Services

### **Thursday, 14 August 2008**

Mr Stefaniak, MLA

## **APPENDIX 2: List of Submissions**

The Committee received submissions from:

Mr Corbell, MLA, Minister for Police and Emergency Services

Mr Stefaniak, MLA, Chair of the Standing Committee on Legal Affairs

Ms MacDonald, MLA

Dr Foskey, MLA

Ms Robina Jaffray (2), Secretary to the Standing Committee on Legal Affairs

**APPENDIX 3: Letter from Chair of the Standing  
Committee on Legal Affairs to the  
Minister for Police and Emergency  
Services**



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

Bill Stefaniak MLA (Chair), Karin MacDonald MLA (Deputy Chair), Deb Foskey MLA

Mr Simon Corbell MLA  
Minister for Police and Emergency Services  
Legislative Assembly for the ACT  
GPO Box 1020  
Canberra ACT 2601

Dear Minister

*Inquiry into ACT fire and emergency services arrangements*

The Standing Committee on Legal Affairs confirms the further public hearing on Friday, 20 June 2008 in Committee Room 1.

The Standing Committee on Legal Affairs requests that you bring to the hearing the following documents:

- The report written by RFS Officer Tim McGuffog outlining preparations for the Bushfire Season 2007/2008.
- All Exit Interviews of RFS Chief Officers and Staff from 1/7/07- to date.
- Version 2 of the Strategic Bushfire Management plan or as much of the plan that is complete.
- The Yellow Edge Report.
- The Stuart Ellis Report.

Thank you for your willingness to appear.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Stefaniak', written over a horizontal line.

Bill Stefaniak MLA  
Chair  
16 June 2008

Civic Square, London Circuit, Canberra ACT 2601  
GPO Box 1020, Canberra ACT 2601  
Secretary: Telephone: (02) 620 50127 Facsimile: (02) 620 50432  
Email: [committees@parliament.act.gov.au](mailto:committees@parliament.act.gov.au)

**APPENDIX 4: Transcript of hearing of  
20 June 2008**

**CORBELL, MR SIMON**, Attorney-General and Minister for Police and Emergency Services

**LEON, MS RENEE**, Chief Executive, Department of Justice and Community Safety

**MANSON, MR GREGOR**, Commissioner, ACT Emergency Services Agency

**PARRY, MR BRIAN**, Deputy Commissioner, Fire and Rescue, ACT Emergency Services Agency, and Chief Officer, ACT Fire Brigade

**THE CHAIR:** Thank you, minister, for attending today, and for bringing along the officials. I will read out the privileges statement to everyone. We will then get into some further questioning.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others necessary to discharge the functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing. Do you all understand that?

**Mr Corbell:** Yes, thank you, Mr Chairman.

**THE CHAIR:** Everyone else is nodding, including the two gentlemen sitting behind Mr Parry. Firstly, thank you for the documents you have provided. There is one document about which the committee has agreed to adhere—we had a meeting earlier today—to your request, as that document is very much in draft form. There are great gaps in it, and that has not been authorised for publication. That is the *Strategic bushfire management draft plan mark 2*, which has “draft” written all over it. The other documents have been authorised for publication.

You should now have received a letter from the committee requiring you to present the Stuart Ellis report. In terms of the exit statements, we will be asking you questions in relation to those. You have made comments in relation to that matter; there is a fair bit of correspondence in relation to those, I think over the past six months. The committee will deliberate further in relation to those.

With any documents, we are mindful of respecting confidentiality of any people mentioned in those documents. That is a longstanding tradition of this committee. The committee has requested—I think you were asked to bring it along, minister—the

EXAMINATION OF ALLEGED MISUSE OF POSITION BY A COMMITTEE CHAIR  
AND UNAUTHORISED DISSEMINATION OF COMMITTEE PROCEEDINGS

Ellis report. Have you got that document?

**Mr Corbell:** Mr Chairman, before I answer that question, can I place on the record my concern that this committee made a request of me for documents earlier this week, which I am advised was not authorised by the committee. Mr Chairman, you wrote to me earlier this week and requested a range of documents. Indeed, you asserted the use of this committee's powers to call for documents. I understand that that call for documents was not actually authorised by the committee prior to that request being made of me.

I am deeply distressed by that, Mr Chairman, because I treat all requests for documents seriously, and I am concerned that the committee's request for documents was made without the concurrence of the committee. I just want to clarify whether that situation has now been rectified.

**THE CHAIR:** Mr Corbell, I thank you for your comments. Might I say, of course, that the deliberations of the committee are quite confidential. Might I also say that I hear what you say—

**Mr Corbell:** But the issue for me, Mr Chairman, is that when I receive a letter from the committee, I presume that the committee has resolved to do that. I am advised that the committee did not actually resolve to request those documents before the letter was sent to me. It makes it difficult for me to know whether or not I should be supplying documents, because I now no longer have any confidence as to whether or not a request made by the committee under the committee's name has actually been authorised by the committee.

You have requested a series of documents, including a cabinet-in-confidence document, and you have done so, Mr Chairman, without seeking the concurrence of your own committee. That is of some concern to me. I would like to now know whether or not the committee has actually formally resolved to request those documents.

**THE CHAIR:** Mr Corbell, I note what you say. Might I say also that the letter you got was probably quite routine. If you go back through various other correspondence and verbal requests which have been made during these hearings, I think that is painfully obvious. The committee has considered your letter; the committee has considered your comments; we have held a meeting. You have received a letter as a result of that meeting of the committee this morning. The committee acceded to one of your requests in your letter, which I have already mentioned.

**Mr Corbell:** No, Mr Chairman, if I could just clarify that I am referring to your letter of earlier this week.

**THE CHAIR:** I know what you are referring to, and I am telling you, and I am assuring everyone here, that you now have a letter from the committee as a result of deliberations we had this morning. I said before these proceedings started what the committee has decided. We have, as a committee, acceded to one of your requests in that letter, in relation to a document—

**Mr Corbell:** I am not asking about that, Mr Chairman.

**THE CHAIR:** that you have requested. The committee, in its deliberations, has now requested the Stuart Ellis report. I have indicated to you the committee's position, as of our meeting this morning, in relation to the exit statements, which I think have been the subject of some correspondence and discussion over several months. The committee, in that letter you have today after our meeting, has requested the Ellis report, so I ask you in relation to that, minister: do you have that document?

**Mr Corbell:** Again, Mr Chairman, just for clarification, I am seeking your advice about the request you made of me, which I have largely acceded to, earlier this week, on 16 June, when you wrote to me and said:

The Committee requests that you bring to the hearing the following documents ...

You then list those documents. I am advised that the committee resolved to do no such thing prior to you writing that letter. Is that the case?

**THE CHAIR:** I have answered. I have indicated to you, Mr Corbell—

**Mr Corbell:** No, you have not, Mr Chairman.

**THE CHAIR:** Yes, I have, Mr Corbell. I have indicated what the committee—

**Mr Corbell:** The issue—

**THE CHAIR:** I hear what you say, Mr Corbell, and anything in relation to that is a matter for the committee. I also have indicated to you that you can go back through a fairly lengthy history in relation to documents. I indicate to you now that the committee met this morning, that the committee considered your response to that letter—

**Mr Corbell:** No, I understand that, Mr Chairman.

**THE CHAIR:** and that the committee has now made a further request. As I said, I hear what you say, minister. I think it is important that we now get on with it. We do not have too much time, and you can certainly rest assured that the committee, in the letter that you have now—that is, the letter of today—has indicated exactly what it now requires you to provide. I have further indicated—I do not think it is in the letter—that we have actually acceded to one of your requests in your answer.

**Mr Corbell:** I just want to know, Mr Chairman—

**THE CHAIR:** I note your concern. We will consider the matter further, if need be, and respond in writing, and it is not for ministers to ask questions of the committee.

**Mr Corbell:** No, indeed, Mr Chairman, but I am just seeking to clarify with what authority those documents were requested of me.

EXAMINATION OF ALLEGED MISUSE OF POSITION BY A COMMITTEE CHAIR  
AND UNAUTHORISED DISSEMINATION OF COMMITTEE PROCEEDINGS

**THE CHAIR:** Well, minister, I have answered your comments.

**Mr Corbell:** No. Mr Chairman, was it with the—

**THE CHAIR:** It is not a matter for you to ask questions further, minister; I am sorry.

**Mr Corbell:** No, Mr Chairman, I have to disagree.

**THE CHAIR:** I am sorry, minister. I have said as much as I am prepared to say.

**Mr Corbell:** I have to disagree, Mr Chairman, because this letter says that the committee requests me to provide the following documents. That sort of request of a minister is one that I treat seriously.

**THE CHAIR:** I would hope so, minister.

**Mr Corbell:** But I treat it seriously because I assume that the request is made by the committee, not just by an individual member of the committee.

**THE CHAIR:** Minister—

**Mr Corbell:** Mr Chairman, what I want to know—yes or no—is: did the committee resolve to request those documents of me or have I been misled? That is what I want to know.

**THE CHAIR:** The committee has discussed the matter, minister. The committee has decided to issue a further letter as a result of your response to that letter and—

**Mr Corbell:** Okay, thank you, Mr Chairman; I will take that as a “no”.

**THE CHAIR:** No, you won’t take that as a “no”, minister.

**Mr Corbell:** Well, you have not said “yes”. It is a very simple question, Mr Chairman.

**THE CHAIR:** It is not for you to ask questions. If there is anything which any member of this committee has done which needs to be discussed, it will be done with the committee. Can I assure you that you have a letter now as a result of the committee’s deliberations—

**Mr Corbell:** I know I have a letter now; thank you, Mr Chairman.

**THE CHAIR:** of 20 June, requesting, as a result of your correspondence and indeed as a result of considerable correspondence—there is correspondence in April in relation to exit statements, and there is correspondence in relation to several other documents, and all of those are listed there over the last six months. We now, however, have a letter from me as chair, on behalf of the committee, as a result of our meeting at 9.15, requesting the Ellis report. I would ask you to address that now.

**Mr Corbell:** I understand that, Mr Chairman. I am sorry to labour the point but I must, and the reason I must is that I believe I have been misled. This letter says:

## SELECT COMMITTEE ON PRIVILEGES

The Standing Committee on Legal Affairs requests that you bring to the hearing the following documents ...

It then outlines the documents: the report written by Mr McGuffog, exit interviews of RFS staff, version 2 of the SBMP, the Yellow Edge report and the Stuart Ellis report. That letter was written on 16 June, which was Monday, Mr Chairman, and delivered to me either late Monday or early Tuesday. What I want to know is: did the committee, before you wrote this letter to me requesting documents, authorise that request? It is a very simple question, but you have not answered it, and I can only assume that the committee did not request these documents—you did, and you did so without the authority of your committee.

I am very happy to respond to requests from individual members, Mr Chairman, but when a chairman of a committee says that the committee wants certain documents, I assume that the committee has agreed to request those documents, and I provide them on that basis. I believe I have been misled. I believe that you have misled me because this committee has not requested these documents prior to you writing this request to me asking for those documents. Can I simply place on the record that I am disappointed with that course of action. I believe it is quite inappropriate for a chair of a committee to behave in such a way. You of all people, Mr Stefaniak, should know—

**THE CHAIR:** Don't lecture me.

**Mr Corbell:** after a decade or more in this place that that is the way committees work, and you went and demanded documents of me without the authority of your committee.

**THE CHAIR:** Minister, the letter you refer to says "requests". I note your concern, and the committee noted that you would be raising that, so we have discussed that. Indeed, we may well discuss that further. It is not actually for witnesses to ask questions of the committee. But I do note your concern, minister, and just—

**Mr Corbell:** The point is, Mr Chairman, if you want me to cooperate with the committee, you have to work in accordance with the rules that you set down for yourself, and you have not.

**THE CHAIR:** Again, I note your concern, minister. I have been in this place for a long time, as you say—longer than you—and I think I have a pretty good track record for being a very straight, honest person. If there is any sort of transgression by me—

**Mr Corbell:** Just admit that you made a mistake.

**THE CHAIR:** I am happy to admit I make mistakes. If I have made a mistake in any way—and we are talking about very procedural matters here—I would certainly make that known to my committee. As I indicated to you at some length, with respect to our deliberations, we had a meeting. We have now requested the Ellis report. We have noted your concerns in relation to several other matters. The committee will be asking some questions in relation to those, but I now get back to the Ellis report. Where is it?

EXAMINATION OF ALLEGED MISUSE OF POSITION BY A COMMITTEE CHAIR  
AND UNAUTHORISED DISSEMINATION OF COMMITTEE PROCEEDINGS

**Mr Corbell:** I am happy to answer your question in relation to the Ellis report. As I have previously advised you, the Ellis report is a cabinet-in-confidence document. It was used to directly inform the deliberations of cabinet in relation to a range of matters. As I have indicated in my letter to you of yesterday, I am not able to provide you with a copy of that report. I previously advised you of that in the last hearing also.

**THE CHAIR:** The committee does require it, minister. I thank the secretary for looking at the grounds for this. I would ask why you will not provide it. There are certain grounds that may be acceptable there but—

**Mr Corbell:** I will simply claim public interest immunity, Mr Stefaniak. The document is central to cabinet's deliberations on a range of matters. It deals with a range of very sensitive issues, including issues relating to personnel within the ESA, and I will not be releasing the document.

**THE CHAIR:** I have great concerns there, minister. The committee hears what you say. But having looked at the precedents here and having looked at papers written by Harry Evans on precedents in the federal parliament, this is something I think that the Assembly may need to look at. There is very much a public interest. The Assembly is probably the appropriate place for a debate on that.

**Mr Corbell:** We can deal with it in that forum. That is quite okay.

**THE CHAIR:** Might I assure you, in terms of respecting people's privacy and the obvious need for that, that is certainly something this committee and I would think all committees in the Assembly take very seriously. There are ways of protecting people in terms of documents.

**Mr Corbell:** I would simply highlight to the committee that it is not routine in any way for cabinet-in-confidence documents to be released. They are given a level of protection for very good and valid reasons that relate to the decision making of governments and the ability of governments to reach decisions about the best possible course of action, without fear of advice being downplayed or muted because it may come to the public arena.

It is central to the concept of frank and fearless advice to government in decision making. That is why these documents are accorded their status as cabinet-in-confidence. It is for the very same reasons that I am unable to agree to your request.

**THE CHAIR:** I am advised that quite often reports and other documents which do go to cabinet are indeed released and there have to be very, very strong grounds for that not to occur. After all, this, from the evidence we have heard, is a logical report to make and it would not fall into what would be acceptable as cabinet-in-confidence.

**Mr Corbell:** You do not know that because you have not seen it.

**THE CHAIR:** That is probably something we cannot resolve today.

**Mr Corbell:** No, I am not able to. I regret I am not able to accede to your request.