



ACT AUDITOR-GENERAL'S OFFICE



Ms Amanda Bresnan MLA
Chair
Select Committee of Privileges 2011
Legislative Assembly Building
Civic Square, London Circuit, Canberra City

Dear Ms Bresnan

Thank you for your letter of 24 October 2011 drawing my attention to a submission by Mr Hargreaves MLA to the Select Committee on Privileges 2011 (the Privileges Committee) that could be considered to include an 'adverse mention'.

Your letter states that Mr Hargreaves, in his submission, advised that:

'The contact from Mr Sheville was also inappropriate but again handled very well by the Chair'.

Your letter also indicates that Mr Hargreaves concluded:

'I consider the approaches by (name withheld) and Mr Sheville were inappropriate but not influential in the decision-making process.'

I have not been provided with a full copy of the submission. I understand that your letter contains all of the information provided in Mr Hargreaves' submission in support of his views. It would therefore appear that Mr Hargreaves' submission does not explain the basis for his views.

No other material before the Committee puts forward this view, or provides any support for this view. It is therefore difficult for me to respond to it.

But to assist the Committee, I have summarised below, to the best of my recollection, my telephone conversation with the Chair of the PAC shortly after becoming aware (through a Canberra Times article) that the Chair had expressed concern that the PAC was being treated as a 'rubber stamp' in relation to the proposed appointment of the Auditor-General. Mr Hargreaves was not a party to that conversation, and therefore can have no independent knowledge of it.

I did not take detailed notes of my telephone conversation with the Chair or the date and time of this conversation.

At the time I telephoned the Chair, I was Acting Auditor-General. I have previously appeared before the PAC, and know the Chair in that capacity. My primary purpose in contacting the Chair was to check the accuracy of the Canberra Times article, and obtain

any information about the stage of the Committee's deliberations and possible timing of any PAC decision following those deliberations. I was seeking information that would assist me in ensuring the Audit Office operated smoothly during the period of transition that exists between Auditor-General appointments.

For example, the timing of the appointment (e.g. weeks or several months) affects key operational and resourcing decisions, such as the management arrangements during the peak financial audit period, timing and management of performance audits, finalisation of the annual performance audit program, strategic planning arrangements, preparing of briefing information for the incoming Auditor-General etc.

At the time I contacted the Chair, several Audit Office staff had expressed a keen interest in the appointment to me, and wanted to know when the new Auditor-General would be commencing. Prior to the Canberra Times article highlighting the Chair's concerns, most staff appeared to have assumed that the proposed appointment would proceed. In contacting the Chair, I wished to obtain information that would keep staff properly and reliably informed about developments in relation to the appointment.

To the best of my recollection, in my telephone conversation with the Chair of the PAC, I:

- indicated to the Chair that I did not know, until the Canberra Times article, that the PAC was not previously informed about the proposed appointment. I also indicated that I was previously unaware of the Chair's concerns as outlined in the Canberra Times article;
- enquired into the possible timing of the Committee's deliberations on the proposed appointment, noting that it would be in the best interests of the Audit Office for the appointment to be settled as soon as possible;
- discussed some aspects of the legal processes that apply to the appointment of the Auditor-General, such as the PAC power under the *Auditor-General's Act 1996* to consider and veto a proposed appointment. For example, under the Act the PAC considers the proposed Auditor-General appointment and does not consider the field of applicants to the position; and
- indicated that the proposed appointee and I had briefly been in touch (before the Canberra Times article had reported that PAC had yet to consider the proposed appointment) to introduce ourselves over the telephone, and see if the appointee had any thoughts or preferences that would assist in providing a smooth transition.

The Chair engaged in this conversation, and responded to my queries where able to do so. At no stage, during or after this conversation, has the Chair raised any concerns about

the appropriateness of my telephone contact. The Chair has not subsequently done so, nor has anyone else except Mr Hargreaves. The Chair does not raise this issue in her submission to the Committee dated 11 October 2011.

I see nothing inappropriate (or even surprising) about my contact with the Chair of the PAC.

At any rate, I am advised that whether it was inappropriate is irrelevant to the Privileges Committee's consideration. The terms of reference of the Privileges Committee only allow it to examine whether there was improper interference with the free exercise by an Assembly Committee of its authority. This reflects the terms of section 4 of the *Parliamentary Privileges Act 1987* (Cth), which is in effect adopted by section 24 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth). These terms are also picked up by standing order 277(a) of the Standing and Temporary Orders of the Legislative Assembly for the Australian Capital Territory.

I am also advised that improper interference with the free exercise by the Committee of its authority requires actions much more serious than inappropriate behaviour. It is only in extraordinary circumstances that a private, consensual conversation could amount to any such improper interference. In this case, for the reasons I have given, there are no extraordinary circumstances and there is no basis for any such finding.

If the Privileges Committee proposes to make an adverse finding regarding my conduct, I request that the Committee provide to me details of the relevant conduct, all the evidence for that conduct, and the basis for the allegation that this conduct was an improper interference with the free exercise by an Assembly Committee of its authority, and give me an opportunity to consider this material and respond formally to it before any such finding is made, and published. I am advised that I am entitled to such a fair process.

I trust the above information assists the Committee in its consideration of this matter.

Yours sincerely



Bernie Sheville
31 October 2011