

Legislative Assembly for the Australian Capital Territory

Person referred to in Assembly

W. J. Curnow

Report by the Standing Committee on

Administration and Procedure
November 1997

RESOLUTION OF APPOINTMENT

On 9 March 1995, the Legislative Assembly for the Australian Capital Territory adopted standing order 16 which established the Standing Committee on Administration and Procedure. This standing order was amended on 4 May 1995 to provide the following terms of reference:

16. (1) A Standing Committee on Administration and Procedure shall be appointed at the commencement of each Assembly to:
- (a) inquire into and report on, as appropriate:
 - (i) the Assembly's annual estimates of expenditure;
 - (ii) the practices and procedure of the Assembly; and
 - (iii) the standing orders of the Assembly;
 - (b) advise the Speaker on:
 - (i) Members' entitlements including facilities and services;
 - (ii) the operation of the transcription service (*Hansard*);
 - (iii) the availability to the public of Assembly documents;
 - (iv) the operation of the Assembly library; and
 - (c) arrange the order of private Members' business and Assembly business;

Membership

The Speaker (Presiding Member)
Mr W Berry, MLA (discharged 26 August 1997)
Mr Corbell, MLA (appointed 26 August 1997)
Mr H Hird, MLA
Mr M Moore, MLA
Ms K Tucker, MLA

Secretary to the Inquiry: Ms M Weeks

Introduction

1. On 31 July 1997 the Speaker of the Legislative Assembly for the Australian Capital Territory referred a letter he had received from Mr W. J Curnow to the Standing Committee on Administration and Procedure for its consideration. Mr Curnow was seeking redress for comments made in the Assembly during a debate on a motion to refer the matter of compulsory wearing of bicycle helmets to the Standing Committee on Social Policy for inquiry. In his letter the Speaker indicated that he was referring the letter to the Committee in accordance with the resolution of the Assembly of 4 May 1995 relating to Citizen's Right of Reply.

Background

2. The 4 May 1995 resolution was passed by the Assembly after it had considered the Report of the Standing Committee on Administration and Procedure on Standing Orders and a Citizen's Right of Reply. The resolution provides:

Protection of persons and corporations referred to in the Legislative Assembly:

- (1) Where a person or corporation who has been referred to by name, or in such a way as to be readily identified, in the Assembly, makes a submission in writing to the Speaker:
 - (a) claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and
 - (b) requesting that the person or corporation be able to incorporate an appropriate response in the parliamentary record,

if the Speaker is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Standing Committee on Administration and Procedure; and
- (d) that it is practicable for the Standing Committee on Administration and Procedure to consider the submission under this resolution,

the Speaker shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Assembly.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person or corporation who made the submission and any Member who referred in the Assembly to that person or corporation.
- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Assembly.
- (6) In considering a submission under this resolution and reporting to the Assembly the Committee shall not consider or judge the truth of any statements made in the Assembly or of the submission.
- (7) In its report to the Assembly on a submission under this resolution, the Committee may make either of the following recommendations:
 - (a) that no further action be taken by the Assembly or by the Committee in relation to the submission; or
 - (b) that a response by the person or corporation who made the submission, in terms specified in the report and agreed to by the person or corporation and the Committee, be published by the Assembly or incorporated in *Hansard*.

and shall not make any other recommendations.

- (8) A document presented to the Assembly under paragraph (5) or (7):
 - (a) in the case of a response by a person or corporation who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
 - (b) shall not contain any matter the publication of which would have the effect of:

- (i) unreasonably adversely affecting or injuring a person or corporation, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person or corporation.
 - (9) A corporation making a submission under this resolution is required to make it under their common seal.
 - (10) This resolution have effect from the commencement of the Third Assembly and continue in force unless and until amended or repealed by this or a subsequent Assembly.
3. The resolution had initially been agreed to on 16 September 1993, again after the Assembly had considered a report by the then Standing Committee on Administration and Procedures. That report, entitled *Citizen's Right of Reply*, recommended that the Assembly adopt a similar procedure to that operating in the Australian Senate which provides that a citizen who has been adversely affected by comments made in the Senate can apply to the President of the Senate for redress. That Committee, in making the recommendation that a procedure be adopted to give citizens and corporations a form of redress if they had been adversely affected by comments made in the Assembly, indicated that a number of guidelines should be followed if the effective implementation of a citizen's right of reply was to be adopted by the Assembly. With one exception these were incorporated into the resolution of the Assembly. The resolution was paired with another resolution which reminded Members of the responsibilities they have in exercising their freedom of speech. The resolution relating to a Citizen's Right of Reply was not used by anyone during the term of the Second Assembly.
 4. At the commencement of the Third Assembly the newly appointed Standing Committee on Administration and Procedure undertook to examine the Temporary Orders as they had operated on the First and Second Assemblies and as part of this inquiry also reported on the resolution relating to a Citizen's Right of Reply. The Committee reported on that inquiry and it was in that report that it recommended that the resolution, together with that relating to the exercise of freedom of speech, again be adopted by the Assembly. The Committee in that report noted that it "... is not concerned with its lack of use but rather believes that the mere existence of the resolutions act firstly to focus Members on the responsibility they have to exercise their freedom of speech with care and secondly to give those in the community a security by knowing that they do have access to the right of reply."¹

¹ Standing Committee on Administration and Procedure Report, *Standing Orders and Citizen's Right of Reply*, May 1995, p. 13.

Work of Committee

5. As this was the first time the Committee had considered a request from a citizen for a right of reply the Committee invited Ms Anne Lynch, Deputy Clerk of the Australian Senate and Secretary to the Senate Standing Committee of Privileges to meet with the Committee and brief it on the operations of the Senate's resolution. The Committee appreciated Ms Lynch agreeing to discuss the Senate Committee's work with it. During discussions with Ms Lynch it became apparent to the Committee that in the application of the Senate's resolution all those who had sought redress and had pursued the matter had received the right of reply with the Privileges Committee recommending to the Senate that the Submission be incorporated into *Hansard* and the Senate agreeing to that course of action. In considering the terms of the submission the Senate tended to apply the same standards and precedents as those applied to personal explanations in the Chamber. It was stressed that the Senate resolution prevents the Senate Committee from considering or judging the truth of any statements made in the Senate or of the submission and this was seen as vital to the proper operation of the procedure and underlies its success. The Senate Committee also took the view that a response should not be refused on the basis that further debate may ensue in the Chamber as a result of the right of reply being granted.
6. The Committee considered Mr Curnow's initial letter at its meeting of 20 August 1997 and in accordance with the resolution of 4 May 1995 met in private session. Mr Curnow is the President of the Cyclists' Rights Action Group and the Committee was unclear as to whether Mr Curnow was seeking redress as an individual or for the Cyclists' Rights Action Group. The Committee noted that while the Right of Reply resolution provided for corporations to seek redress it did not provide for groups that were not incorporated to request a right of reply and as it may be an oversight it should be addressed.
7. At that meeting the Committee also considered the question of whether Mr Curnow should appear before the Committee. The Committee referred to the Senate's practice in relation to this matter and agreed that there was no need for Mr Curnow to be called before the Committee.
8. As the Committee was unsure of the capacity in which Mr Curnow was requesting a right of reply it could not determine whether it did fall within the terms of the 4 May resolution. The Committee therefore agreed to confer with Mr Curnow on the matter and at the same time, to ensure that the right of reply, if granted could occur as expeditiously as possible, ask him to prepare a submission that could under paragraphs (7) and (8) be recommended for incorporation into *Hansard*.
9. Mr Curnow responded to the Committee's request by indicating that it was on his behalf that he was seeking redress and providing the Committee with a submission, dated 8 September 1997, for its consideration under the 4 May resolution. The

Committee considered the submission at its meeting 17 September 1997 and agreed that under paragraph (7)(b) of the 4 May resolution that the statement submitted by Mr Curnow be agreed to by the Committee and that Mr Curnow be informed accordingly.

10. Mr Curnow responded to the Committee's request by indicating that it was on his behalf that he was seeking redress and providing the Committee with a submission, dated 8 September 1997, for its consideration under the 4 May resolution. The Committee considered the submission at its meeting 17 September 1997 and agreed that Mr Whitecross should under paragraph (3) of the 4 May resolution and standing order 241 be given the opportunity to comment. Mr Whitecross provided the Committee with comments on 4 November 1997. The Committee considered Mr Whitecross' comments and finalised its consideration of the matter on 26 November 1997 and agreed that under paragraph (7)(b) of the 4 May 1995 resolution that the statement submitted by Mr Curnow be agreed to by the Committee and that Mr Curnow be informed accordingly.

The Committee therefore recommends:

That a response by Mr W. J. Curnow, in the terms specified below and agreed to by Mr Curnow and the majority of the Committee, be incorporated into *Hansard*.

**RESPONSE BY MR W.J. CURNOW AGREED TO BY MR W. J. CURNOW AND
THE STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE
PURSUANT TO PARAGRAPH (7)(b) OF THE RESOLUTION OF THE
ASSEMBLY OF 4 MAY 1995**

Greg Cornwell MLA
Speaker

26 November 1997



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Dissent on Recommending Right of Reply for MR W J Curnow

The recommendation from the Administration and Procedure Committee to incorporate a citizens right of reply by Mr W J Curnow is not one I can support. There are two grounds on which I believe the decision is flawed.

Firstly, Mr Curnow's submission has failed to demonstrate that the comments made by Mr Whitecross have adversely affected his reputation and the office he occupies. Indeed Mr Curnow only suggests that his credibility as an officer of the group he represents may have been injured. He states that "*his [Mr Whitecross' comments] could well impugn my credibility with other people.*" The guidelines for accepting a citizen's right of reply clearly require that individuals substantiate the claim that the person has been adversely affected in reputation.

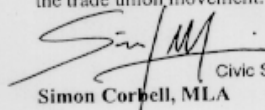
In my opinion Mr Curnow has failed to substantiate this claim and, on these grounds alone, his request for a right of reply should have been refused by the committee.

Secondly, Mr Curnow claims that Mr Whitecross' comments have injured his reputation because Mr Whitecross alleged that Mr Curnow had not provided the evidence that Mr Whitecross needed. Mr Curnow suggests that because he had provided evidence Mr Whitecross' claim was false and damaged Mr Curnow's reputation as a competent representative of his organisation.

It is clear from the examination of the Hansard that Mr Whitecross was not suggesting that Mr Curnow had not provided him with evidence, only that he had not presented evidence sufficient to convince him of Mr Curnow's cause. This is an entirely legitimate decision for Mr Whitecross to make. Indeed it is the type of decision which all Members make every day in the course of their duties.

In my opinion, it is clear that in relation to this point Mr Curnow is simply attempting to continue a debate on a certain issue through the Citizens Right of Reply process which the Assembly has already considered. It is my firm view that this is not what the right of reply process is for. On this ground also the Committee should not have accepted Mr Curnow's request.

In conclusion, I believe that Mr Curnow has failed to meet key requirements for the acceptance of a citizens right of reply and that his request should be refused. Should the Assembly accept the majority recommendation of the Administration and Procedure Committee it will establish a dangerous precedent. It is quite possible that it would result in a situation where, hypothetically, the Assembly would be bound to accept submissions from every developer in Canberra explaining the merits of their proposals each time a Member of the Assembly questioned the pace of development or from individual trade unionists any time a Member expresses disagreement with the goals of the trade union movement. This is not a precedent I am prepared to support.


Simon Corbell, MLA

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