



John Hargreaves MLA
Labor Member for Brindabella

Phone +61 2 6205 0111

Fax +61 2 6205 0427

~~www.johnehargreaves.com.au~~
hargreaves@parliament.act.gov.au

Government Whip

Ms Amanda Bresnan MLA
Chair
Select Committee on Privileges

Dear Ms Bresnan *Amanda*

Thank you for the opportunity of contributing to the deliberations of the Select Committee on Privileges. I would like the following material to be considered a submission to the Committee.

If the Committee feels it appropriate or desirable, I would be pleased to appear before it to expand on my submission.

My submission is divided into five parts, the first two of which address the terms of reference before the Committee. The parts are:

- Whether the announcement by the Chief Minister, in a press release, of the Government's proposed nominee for the position of Auditor-General constituted improper interference with the free exercise by an Assembly committee;
- Whether approaches made to the Chair of the Standing Committee on Public Accounts during the course of the committee's consideration of the proposed nominee to the position of Auditor-General constituted improper interference with the free exercise by an Assembly committee;
- The appearance of the Chief Minister and Director-General in an in-camera meeting with the PAC;
- My personal understandings and views on the two subjects as they affected me as a Member of the Standing Committee on Public Accounts; and
- A conclusion.

Announcement by the Chief Minister

The Chief Minister has been accused of not abiding by the provisions of the Auditor-General's Act and pre-empting the decision of the PAC through the announcement of the Government's nominee..

In fact, the Chief Minister did provide the nomination to the Chair (as required under the Act) by hand deliver to the Chair's office, prior to the announcement. The Chair did not action the nomination until many hours later and indeed did not open the letter addressed to her (as required under the Act). If there was an error, it was on the part of the Chair. I address this in more detail later.

This press release has been portrayed as an announcement of *fait accompli*. This is not accurate. Indeed there is a conflict between the headline and the actual text. An examination of the press release (Attachment A) will reveal the following:

- The Headline reads "New Auditor-General for ACT". It should be noted that it does not say "Government appoints New Auditor-General". The headline is merely a poorly written précis of the text to follow and indeed does not actually reflect the text.
- The text has two salient phrases. The first is contained in the first line. It contains the words "proposed appointment". The second is the last paragraph which contains the words "I have written to the Chair of PAC informing them of the Government's *nominee*..."
- There is a clear conflict between the headline and the text and since the text is consistent and acknowledges the provisions of the Act, the whole case suggesting that a *fait accompli* exist falters. It is wholly dependent on the headline and does not recognise the inconsistency.

Did interference, through the Announcement, exist?

1. For this to be so there needed to be an influence exerted. The question therefore is: did the Committee feel any pressure from the wording in the press release?
2. Would the precedence of an announcement of a Government nominee cause interference in the future? Here the question is: in what way would the airing of a single press release and not a sustained media campaign constitute interference and could a committee be influenced by the announcement in the media of its preferred nominee, either through this one press release or the appearance of others into the future.

3. Standing Committees are generally comprised of three Members – one each from the Government, the Opposition and the Cross-bench – that is two non-Government members. It is highly unlikely that a committee * having a majority of non-Government members would feel unduly influenced by the appearance of a single press release. In the event that the community at large felt that a community was being influenced, the committee can allay these fears very quickly. Further, it is an insult to suggest that a committee could be influenced by the Government of the day in any of its deliberations. Such has not been the case since self Government and there is no sign of it currently.

Approaches to the Chair

- Ms Le Couteur received a visit from the Chief Minister and spoke of that conversation in a meeting of the PAC. Members of PAC have differing views on the importance of that conversation. I contend that the conversation was intended to be of assistance to the Committee. The Chair and Mr Smyth view it otherwise. The fact remains that neither Mr Smyth nor I was present at the meeting and thus any evidence must be regarded as hearsay or opinion.
- The Chair received approaches from Dr Cooper and experienced discomfort to such a degree that she felt compelled to share that discomfort with other members through an email (Attachment C). This approach, whilst inappropriate, did not constitute interference in that the Chair did not engage with Dr Cooper, nor were the deliberations of the Committee influenced by the conversation other than to agree that the Chair had handled the situation most appropriately.
- The contact from Mr Sheville was also inappropriate but again handled very appropriately by the Chair. The Chair related that Dr Cooper had contacted Mr Sheville to discuss diary arrangements. This was third hand information, hearsay at best, however again the Chair dealt with the matter appropriately. It did not affect the discussions on whether Dr Cooper was a suitable candidate or not. Neither should third hand, hearsay comment be a consideration.
- It should be noted that no other Member was approached by the Chief Minister, Dr Cooper or Mr Sheville in respect to this matter. The contact by each was through the Chair. Whilst the approach from Dr Cooper and Mr Sheville was inappropriate, the Chair handled the matter well. The

contact by the Chief Minister was a contact between the Executive and a Committee. This is appropriate.

- The question arises: was there a concerted campaign to influence the Committee through approaches? Clearly such a campaign did not exist.
- A further question arises: was the Chair influenced by the contacts? It was obvious that the Chair was concerned by the approaches and the content of those approaches but there was no evidence that she was influenced in her decision on the suitability of the nominee.
- Was the Committee influenced by the contacts? Since neither Mr Smyth nor I had any approach, we could not have been influenced by the approaches to the Chair.
- Does discomfort constitute influence in the decision making process and if so, did it occur in this case? Clearly, discomfort was felt by the Chair. It however, whilst shared with the committee, did not improperly influence the decision on the suitability of the nominee.

Appearance of Chief Minister and Director-General in camera

- As a consequence of the conversation with the Chair, a unique appearance in-camera by the Chief Minister and the Director-General of her department was arranged. This was intended to inform the committee about the interview process. The Chief Minister and her Director-General were candid in their responses and outlined the reasons for the accent and priorities in the selection criteria. It is not the purview of the Committee to comment on the selection criteria rather to address the suitability of the nominee against those criteria.
- The Chief Minister and Director-General did not attempt to influence the Committee rather they attended and provided additional information which was to assist the committee.

Personal Observations as Committee Member

- My observations were that the Chair did indeed have discomfort over the timing of the media release; and had discomfort over the approaches.
- However, the Chair behaved, in respect to the approaches, quite correctly and advised the Committee either verbally or by email. The Committee did not receive any approaches other than those to the Chair. I did not

feel influenced by either the announcement of a nominee nor by the approaches. Indeed, I felt some comfort that the Chair had handled the approaches so well and I felt that the announcement of a nominee was a refreshing exercise in transparency on the part of the Chief Minister.

- I understood that notwithstanding the headline, the text of the media release talked about a *nominee* not a predetermined appointment.
- Were the approaches appropriate? I felt that the approach by the Chief Minister was appropriate in that it sought to determine if there was a problem facing the Committee, could the Government assist in that problem? The approaches by Cooper and Mr Sheville were inappropriate in both cases.
- The Act was observed and respected. The Chair *was advised* of the nomination prior to the announcement of the nominee. The Chair did not open the envelope, even though the Act specifically refers to communication between the Executive and the Chair – not the Committee. Indeed, the discussions within the Committee on the Government’s nominee are to advise the Chair (again specified in the Act) and the Chair communicates an advice to the Executive. This all respects the provisions of the Act, and thus no fault of the Executive exists. If the Chair did not open the letter, left it unopened in her office and eventually delivered it, again unopened to the Committee Office, it is the fault of the Chair that there appears to be a disrespect of the Act.
- No Standing Order has been breached in the transmission of a media release once the Act has been satisfied.
- I believe that Mr Smyth did not like the process. He did not agree with the selection criteria and actually felt that accounting qualifications should be mandatory and he seemed to believe that PAC should choose Auditor-General. He did not seem to understand the nature of recruitment processes for senior executives and seemed to want more formal process as for junior officers, thus making the process unacceptable. In all, since he did not like the process of recruitment, did not like the outcome of the PAC recommendations, he has acted outside that Committee process and has suggested that improper behaviour has occurred. I do not feel, and have not felt at any time, that, other than the approaches from Dr Cooper and Mr Sheville, such improper conduct did exist or interference was attempted.

- The case for this fait accompli was put by Mr Smyth in his letter to the Speaker. However, he also suggested that the announcement if regarded as a precedent would possibly cause substantial interference with a committee. In his defence when censured by the Assembly for the placement of a press release indicating that the Chief Minister was guilty of improper conduct, before the conclusion of your Select Committee had been reached, he said that undue interference was not caused. This is inconsistent with his own suggestions earlier.
- His own press release (Attachment B), issued before the first meeting of the Select Committee said in the headline, “Gallagher to be Examined for Improper Conduct”. This surely suggests improper conduct existed.
- His first line said, “Katy Gallagher’s *interference* in ... will be examined by...” – again suggests that interference existed before the Select Committee, charged with determining whether interference existed, concluded its deliberations.
- There is consistency in the headline and the text. This was not the case with the Chief Minister’s announcement.
- Mr Smyth’s press release is not factually correct. In his 4th paragraph, it states, “However, ... Katy Gallagher chose her own appointment and announced her conclusion ...before even informing the correct Committee”. The Government nominated a preferred candidate to the PAC (see the first line and last paragraph of text in the Chief Minister’s press release). Indeed, the letter informing the Chair of the PAC of the Government’s nomination was hand delivered to the Chair’s office 4 hours before the announcement of the nomination. This remained unopened in the Chair’s office and was delivered to the Committee Office unopened some hours later.
- Mr Smyth’s whole case that interference existed rested on the emergence of the Chief Minister’s press release, yet he defended his own press release from the same accusation saying that he did not interfere with the deliberations of the Select Committee through his own press release. I consider that this position is hypocritical.
- Mr Smyth and I have both been Members of the Legislative Assembly for nearly 14 years, Mr Smyth has held many senior positions, from Leader of the Opposition, Chair of PAC and Estimates Committees and has been a minister. I have had a similar career in the Assembly. It is not possible that either of us would tolerate interference nor be improperly influenced

by anyone. The presence of a single press release would not constitute interference on any scale when applied to a committee on which either of us sat.

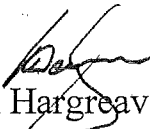
Conclusion

I do not consider that the Chief Minister engaged in any improper conduct by the placement of a press release announcing the Government's nominee for the position of Auditor-General. The press release was issued only once, it advised the community of the Government's preferred candidate and the press release acknowledged in the text clearly that the matter was before the PAC.

I consider that the approach by the Chief Minister to the Chair was intended to assist the Committee and indeed had that result in the attendance at an in-camera meeting to discuss the finer details of the selection. The Committee was given far more detail than any Committee on which I have been a member since 1998.

I consider that the approaches by Dr Cooper and Mr Sheville were inappropriate but not influential in the decision making process. The discussions in the Committee concentrated more on the appropriateness of the selection criteria, the absence of financial qualifications, the accent of the Government on the environmental aspects of performance auditing and not so much on the attempt to influence improperly the deliberations of the Committee.

I thank the Select Committee for the opportunity of providing this submission and would be pleased to assist further if the Committee felt so inclined. As a member of the PAC during the playing out of these matters, I have insights not available to others, with the exception of Mr Smyth and Ms Le Couteur.


John Hargreaves MLA
Deputy Chair
Standing Committee on Public Accounts

29 Sept 2011



Katy Gallagher MLA

CHIEF MINISTER

TREASURER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

MEDIA RELEASE

MR09CM

New Auditor-General for ACT

Chief Minister, Katy Gallagher, today announced the proposed appointment of Dr Maxine Cooper to the office of ACT Auditor-General.

Dr Cooper currently holds the position of ACT Commissioner for Sustainability and the Environment and had previously held a number of senior executive offices within the ACT Government.

"Dr Cooper will bring to the position significant public sector management experience and expertise."

"As Commissioner for Sustainability and the Environment, she has performed her duties dutifully as an independent Statutory Office holder and has clearly demonstrated her capacity to work with the ACT Government entities whilst maintaining an independent role," the Chief Minister said.

Since graduating from Curtin University, Western Australia in 1978 with a Bachelor of Urban and Regional Studies, Dr Cooper has worked in a variety of arenas in both the public and private sectors, including appointment to the statutory positions of Territory Conservator for Flora and Fauna and the Chief Animal Welfare Officer.

Dr Cooper completed her Masters of Environmental Design at the University of Calgary in Canada in 1983 and a PhD in Environmental Planning, Melbourne University in 1991.

"Dr Cooper's background is one that has encompassed many reviews and investigations and it is these skills which will be called upon in the Auditor General position. I am pleased to recommend Dr Cooper for this key role, one that is an important part of the accountability and transparency structure of government," the Chief Minister said.

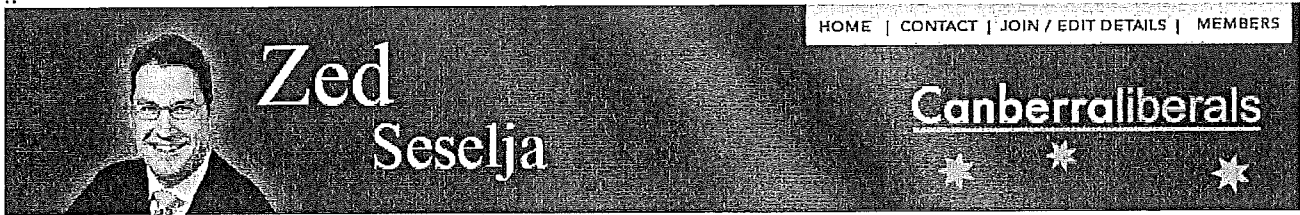
Section 8 of the *Auditor General Act 1996* requires written notice of the proposed appointment to the Public Accounts Committee (PAC) and inviting the committee to respond to the proposal.

"I have written to the Chair of PAC informing them of the Government's nominee for Auditor-General of the ACT and I look forward to formalising the appointment once the PAC has considered our recommendation," the Chief Minister concluded.

Statement Ends

Date: 31 May 2011

Media Contact: Tanya Davies Ph: 6205 0242 (w) 0402 399 907 (m)



NEWSROOM ABOUT US GET INVOLVED LOCAL LIBERALS LINKS SEARCH GO >

You are here: Home > NEWSROOM > MEDIA-RELEASES-SMYTH > GALLAGHER-TO-BE-EXAMINED-FOR-IMPROPER-CONDUCT

Brendan Smyth MLA

Media Release

GALLAGHER TO BE EXAMINED FOR IMPROPER CONDUCT

Katy Gallagher's interference in the appointment of the new Auditor-General will be examined by a Select Committee of the Legislative Assembly after Brendan Smyth wrote to the Speaker outlining his concerns, it was revealed today in the Assembly.

"The appointment of the Auditor General is one of the most important statutory roles in our form of democratic government. It is a unique role with unique responsibilities to keep the government to account," Mr Smyth said.

"That is specifically why this role must be approved by a Committee of the Assembly the government cannot simply pick their own candidate and install them without proper approval.

"However, in this case, Katy Gallagher chose her own appointment and announced her conclusion in the media before even informing the correct Committee.

"This was followed by a pattern of behaviour that placed extraordinary pressure on the Committee. So clear was the improper behaviour, that the multi-party Public Accounts Committee found there was interference, that, if left unchecked, could create serious interference in the future.

"Katy Gallagher behaved in a way that indicated this government believes that normal rules and procedures don't apply to them. Worse still, Katy Gallagher does not seem to be aware how serious this breach is, or of the importance of proper process.

"That's why the Chief Minister now faces a Select Committee. That's why this Assembly must stand up to an ACT government who believes they are above scrutiny and beyond reproach.

"I look forward to the Select Committee examining the interference in this process and putting in place stronger rules to prevent similar interference in the future," Mr Smyth concluded.

20 September 2011

[< Back](#) [Email a Friend](#) [Bookmark](#)

\$ Donate

\$

Donate

Feedback

Volunteer

Join

Find us on Facebook

YouTube

[Privacy Policy & Disclaimer](#)

Smyth, Brendan

From: Le Couteur, Caroline
Sent: Tuesday, 31 May 2011 9:41 PM
To: Cullen, Andrea; HARGREAVES; Smyth, Brendan
Subject: encounter with Dr Cooper

Dear Fellow PAC members and secretary

I have just had a conversation with Max. We were both at the same function tonight – Canberra conversations. I went out of my way to avoid her but she finally button holed me and said she would like to speak to me. She pointed out I had been clearly avoiding her and I said it was because of the very awkward situation created by the Chief Minister's press release and her (Max's) subsequent media interviews. I did my best not to express much in the way of views. I did say that the Chief ministers press release was silly and premature given the statutory process. Max did not seem to fully understand the statutory process and did not think Pac had a veto. She told me that she had been wondering why it was taking so long as she had known for some time she was the preferred candidate. Until today she thought the nomination was with PAC and we were dragging our heels.

She said she had done 5 media interviews. She said we should read the transcript and we would see she had been very to just say she was honoured to be nominated. I did go as far as to say it would be good to avoid media on the subject – she said she just responded as she had to.

She offered to come and meet with us, and I said I would let the committee know about her offer. She said that she had been expecting us to meet with her and had been surprised it hadn't happened.

Max said she would let the Chief minister's office know about our conversation and her offer to meet the committee.

Anyway I hope I have not said too much. I did stress I was not speaking on behalf of the committee.

Caroline Le Couteur MLA
ACT Greens Member for Molonglo
ACT Greens Spokesperson for Planning, Territory and Municipal Services, Business and Economic Development,
Land and Property Services, Arts and Heritage
Phone: 6205 0051
GPO Box 1020 Canberra ACT 2601

From: Cullen, Andrea
Sent: Tuesday, 31 May 2011 1:24 PM
To: Le Couteur, Caroline; HARGREAVES; Smyth, Brendan
Cc: McGhie, Tim; Mallett, Jim; McNeill, Ian; LECOUTEUR
Subject: PAC: Private meeting - Tues 31 May 2011 - 4:45pm to 5:00pm

Dear Members,

I have liaised with each of your respective offices to confirm the following time for a PAC Private meeting (today):

- Tuesday 31 May 2011 – 4:45pm to 5:00pm, Committee room 2

The agenda will be provided to each of your offices shortly.

Regards,