

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

3 NOVEMBER 2003

Committee membership

Ms Roslyn Dundas MLA, Chair

Mr Bill Stefaniak MLA, Deputy Chair

Mr Ted Quinlan MLA

Secretary: Mr Jim Pender

Administration: Mrs Judy Moutia

Resolution of appointment

That:

- (1) pursuant to standing order 71, a Select Committee on Privileges be appointed to examine whether the dissemination of information on ABC Radio relating to report No. 5 of the Standing Committee on Public Accounts and the Report into the Appropriation Bill 2003-2004 of the Select Committee on Estimates 2003-2004 was a breach of privilege and whether a contempt of the Legislative Assembly was committed;
- (2) the Select Committee also examine Standing Order 71 (Privilege) with consideration being given to the House of Representatives procedures in relation to privilege matters;
- (3) the Select Committee also examine
 - (a) the refusal of Mr Corbell to answer questions of the Select Committee on Estimates;
 - (b) the creation and distribution of the document known as 'Budget Estimates 2003' by certain persons within ACT Healthand determine whether each constitutes a contempt of the Legislative Assembly;
- (4) the committee be composed of:
 - (a) one Member to be nominated by the Government;
 - (b) one Member to be nominated by the Opposition;
 - (c) one Member to be nominated by a Member of the ACT Greens, the Australian Democrats or the Independent Member

Select Committee on Privileges – Report, 3 November 2003

to be notified in writing to the Speaker prior to the Assembly adjourning on that sitting day;

(5) the committee report by 18 November 2003 (*amended 21 August 2003, 21 October 2003*).

Preface

On 26 June 2003 the Assembly resolved that a Select Committee on Privileges be appointed to:

- examine whether the dissemination of information on ABC Radio relating to report No. 5 of the Standing Committee on Public Accounts and the Report into the Appropriation Bill 2003-2004 of the Select Committee on Estimates 2003-2004 was a breach of privilege and whether a contempt of the Legislative Assembly was committed; also
- examine Standing Order 71 (Privilege) with consideration being given to the House of Representatives procedures in relation to privilege matters; also
- examine
 - (a) the refusal of Mr Corbell to answer questions of the Select Committee on Estimates;
 - (b) the creation and distribution of the document known as ‘Budget Estimates 2003’ by certain persons within ACT Health

and determine whether each constitutes a contempt of the Legislative Assembly.

Ms Dundas, Mr Stefaniak and Mr Quinlan were nominated to the committee.

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Summary of recommendations

RECOMMENDATION 1

The committee **recommends** a reworded standing order along the lines of that proposed in paragraph 3.28 to replace standing orders 241, 242 and 243 be referred to the Standing Committee on Administration and Procedure for consideration (paragraph 3.20).

RECOMMENDATION 2

The committee finds that the Minister for Health (Mr Corbell) was in contempt of the Assembly but **recommends** that no further action be taken (paragraph 3.40).

RECOMMENDATION 3

The committee finds that the officers from ACT Health who composed and distributed the document known as “Budget Estimates 2003”, were in contempt of the Assembly but is satisfied that the proper steps have been taken within ACT Health to discipline them and **recommends** no further action (paragraph 3.54).

RECOMMENDATION 4

The committee **recommends** to the Assembly that the seminar series conducted by Assembly staff about the Assembly for departmental officers be reconstituted (paragraph 3.56).

1. Introduction

Conduct of inquiry

1.1. The committee met a total of eight times, two of which meetings were public hearings where Mr Corbell (Minister for Health) and officers from ACT Health were examined.

1.2. The committee wrote to Mr Corbell on 8 July seeking copies of the documents the Minister provided to the Select Committee on Estimates 2003-2004 under standing order 239. On 22 July the committee also wrote to all members of the Select Committee on Estimates 2003-2004 and the Standing Committee on Public Accounts and the secretaries of those committees asking for an explanation as to how the ABC came by information on each committee's findings that the ABC then disseminated to the public before each committee had reported those findings to the Assembly.

1.3. Responses were received from all persons by 5 August 2003.

1.4. Further information was requested from Mr James Gruber of the ABC and a response was received from the ABC legal services department on 20 October 2003.

1.5. At its meetings on 19 August and 14 October the committee sought an extension of time in order that it might fully analyse those responses and determine consequent future activities of the committee.

1.6. The Legislative Assembly, on 20 August and 21 October, amended the terms of reference of the committee to allow it ultimately to report by 18 November 2003.

2. Contempt of the Legislative Assembly

Sources of the Legislative Assembly’s Privileges

2.1. 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:

(2) ... 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 ...

(3) 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 ...

2.2. 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.

2.3. The privileges of the House of Representatives derive 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.

2.4. 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.”.

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

2.6. Decisions of the House of Representatives and the Senate on privilege matters are important sources on the law and practice of privilege and contempt. The House of Representatives’ practice in regard to possible “leaks” of committee report contents has been of assistance to the committee in the conduct of this inquiry.

Contempt

2.7. 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.”¹ Note that “the power [to punish contempts] does not depend on the acts judged and punished being violations of particular immunities”².

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

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.³

2.9. 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..⁴

2.10. 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.

2.11. *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

¹ *Odger’s Australian Senate Practice*, 10th edition, p.58.

² *Odger’s*, op cit, p. 58

³ *Odger’s*, op cit, p.30-31.

⁴ Erskine May, *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*, 22nd edition, p.108.

important to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts”⁵.

2.12. 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.”⁶

2.13. Standing order 241 of the Assembly provides

The evidence taken by any committee and documents presented to and reports of the committee shall be strictly confidential and shall not be published or divulged by any member of the committee or by any other person, until the report of the committee has been presented to the Assembly: Provided always that the publication or divulging of any evidence, documents, proceedings or report confidentially to any person or persons by the committee or by any member of the committee for the execution of any clerical work or printing, or to the Speaker, a Member, or, if it be necessary, in the course of their duties, to the Clerk or other officers of the Assembly, shall not be deemed to be a breach of this standing order;

and standing order 242 provides further that

Standing order 241 shall not apply to:

- (a) proceedings of a committee that are public;
- (b) any press release or public statement made by the Presiding Member of a committee relating to an inquiry;
- (c) submissions, exhibits or oral evidence received by a committee that have been authorised for publication by that committee;
- (d) any submission which the Presiding Member may refer to any person for comment for the purpose of assisting the committee in its inquiries; and
- (e) any evidence taken or documents received ‘in camera’ or on a confidential basis by a committee which will remain strictly confidential unless its publication is authorised by a resolution of the committee or the Assembly.

2.14. These standing orders combine to provide that a committee may resolve through various means to issue press releases, discussion or other papers, preliminary findings or report for the purposes of seeking comment to assist that committee or its members in its inquiry.

⁵ *House of Representatives Practice*, 4th edition, 2001, p 706.

⁶ For discussion of this see *Odger’s*, op cit, pp.61-63.

2.15 The standing orders enable any committee member to disclose the contents of a draft report to any other Member and in so doing extends “absolute privilege” to that disclosure because it constitutes a proceeding of the Assembly.

2.16 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.

2.17 Also conversations and comments amongst Members in the Commonwealth Parliament, for example, have not necessarily be found to enjoy the same “privilege” as that enjoyed by Members of the Assembly.

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

(i) an *improper interference* with the free exercise by a committee of its authority or functions; and

(ii) an *intention* by the person responsible for the action to improperly interfere with the free performance of a committee’s responsibilities.

2.19 In concluding this chapter 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.

3. The matters under investigation

Introduction

3.1. On 17 June 2003 the Speaker announced that Mr Wood as Manager of Government Business had raised as a possible breach of privilege or contempt the apparent knowledge of contents of committee reports by some ABC radio journalists before those reports had been presented to the Assembly.

3.2. The Speaker allowed precedence to a motion to be moved on this matter on 18 June and Mr Wood accordingly moved that a Privileges Committee be appointed to investigate the matters.

3.3. The committee was established on 25 June but during the course of the debate the Assembly resolved to alter the proposed terms of reference to include issues surrounding the ACT Health submission to the Select Committee on Estimates in May 2003 and the appearance of Mr Corbell (Minister for Health) before that committee.

3.4. The Assembly also resolved that the committee should examine standing order 71 with consideration being given to the House of Representatives procedures in relation to privilege matters.

Premature release of committee reports (paragraph (1) of the resolution)

3.5. The two committee reports that are the subject of the Privileges' Committee investigation were presented to the Assembly on 17 June 2003.

3.6. The report of the Standing Committee on Public Accounts inquiry into the Rates and Land Tax Amendment Bill 2003 made certain recommendations about the rates system.

3.7. It was reported on ABC Radio news on 11 June 2003 at 7 a.m. that "It's understood the main recommendation of that report will be for the Government to abandon the proposal and start from scratch". Then at 7.45 a.m. on the same day it was reported "That report will reject the current proposal and recommend the government go back and start again from scratch".

3.8. These comments coincided with the recommendations eventually made by the committee the following week.

3.9. On the morning of 17 June 2003, ABC news reported "A majority of the Public Accounts Committee will today ask the Government to go back to scratch on plans to overhaul the rates system." In relation to the Estimates Committee ABC news reported that "A further query will be directed at the Health Department over a leaked email which advised departmental officers on how to avoid answering questions at budget estimates."

- 3.10. The report of the Select Committee on Estimates and the Public Accounts Committee inquiry into Rates were also the subject of further comments on ABC radio on that morning. Certain ABC presenters rightly predicted during the morning program that there was to be criticism of some Ministers not answering questions during committee hearings and that the government would be asked to make changes to the rates system.
- 3.11. The committee sought advice from all members of the two committees and the committee secretaries as to how the ABC might have come by the information it disclosed in its news items and morning show discussions.
- 3.12. While all persons responded to the inquiries of the committee not one was able to shed any light on the subjects that the committee was appointed to examine.
- 3.13. The responses raised some doubt as to whether the ABC journalists in commenting on the two inquiries had seen the reports at all.
- 3.14. The committee also approached the ABC reporter, Mr James Gruber, but he was unable to assist this committee on the source of the story he reported.
- 3.15. The provisions of standing order 241 make it impossible to determine how extensive the distribution of the respective draft reports may have been. Members, not being members of either committee, could have been given access to each of the draft reports.
- 3.16. The committee was unable to attribute whether there was a “leak” in each case and if there was a leak, the origin of such a leak.
- 3.17. In considering this matter the committee endeavoured to apply the test of whether there had been *substantial* interference with the work of the two committees by the premature release of their recommendations. The answer appears to be “No” and hence not sufficient to be a breach of privilege or contempt.
- 3.18. The committee concluded that while there seemed to be prior knowledge of the recommendations of the two committees it was impossible to attribute this knowledge to a “leak”.
- 3.19. The additional problem that the committee faced was in the wording of standing orders 241 and 243. These standing orders limit or even prevent the committee following the publication trail of the two draft reports. While there is a limited distribution initially there can be subsequent publication of the drafts to third parties who in turn could be the source of information on the reports’ content or “leaks”.

Recommendation 1

- 3.20. It is because of this difficulty that the committee experienced that it **recommends** a reworded standing order along the lines of that proposed in paragraph 3.28 to replace standing orders 241, 242 and 243 be referred to the Standing Committee on Administration and Procedure for that committee’s consideration.

3.21. The committee discussed how a new standing order might operate and how it could be interpreted to not accord with current provisions especially the standing order permitting members to seek private advice for them to better understand the subject of an inquiry.

3.22. Should the Standing Committee on Administration and Procedure feel that this matter is not appropriately addressed by the standing order proposed then it would be available to the Speaker to establish such a practice as members being able to conduct private consultations when announcing the administrative arrangements surrounding the application of both standing order 71 and new standing order 241.

Standing order 71 (Privilege) (paragraph (2) of the resolution)

3.23. In relation to the prior release of committee proceedings including draft reports the House of Representatives has followed a practice established in 1984-85 by the United Kingdom House of Commons. Other parliaments too have set about relaxing restrictions on the disclosure of committee proceedings.

3.24. The practice adopted by the House of Representatives is for the committee involved with the unauthorised release of material to come to a conclusion as to whether the leak was of sufficient seriousness to constitute a substantial interference to the work of the committee. If a committee arrived at this conclusion then it would report to the House accordingly and the report would automatically be referred to the Committee of Privileges. If the Privileges Committee found that a breach of privilege or contempt had occurred and confirmed that substantial interference with a committee's or House's functions had resulted then the Privileges Committee would recommend appropriate penalties.

3.25. The House of Representatives requires a member of the committee purportedly affected by the leak to notify the House or if the House is not sitting the Speaker, that the committee is endeavouring to establish whether the premature release has caused or is likely to cause substantial interference with its work, with the committee system or with the functioning of the House. The committee must inform the House of the results of its consideration.

3.26. This practice has worked well in both the United Kingdom and the Australian House of Representatives and has saved the Privileges Committee in each case considerable time although the practice is complemented by standing orders. The practice itself could be introduced into the Assembly by the Speaker and adopted by the Assembly in cases where the Assembly deems it appropriate.

3.27. Standing order 71 would not need to be changed but standing orders 241, 242 and 243 of the Assembly are currently unclear in their expression while their intent is clear. Standing orders 241 and 243 have to be read together otherwise there would be some doubt as to whether an Assembly committee can authorise publication of its evidence or any documents presented to it.

3.28. To remove any ambiguity the following standing order based on the standing orders of the House of Representatives is suggested for investigation by the Assembly's Standing Committee on Administration and Procedure:

241 Publication of evidence

- (a) A committee may authorise publication of evidence given before it or documents presented to it.
- (b) A committee's evidence, documents, proceedings and reports which have not been reported to the Assembly must not, unless authorised by the Assembly or the committee, be disclosed or published to any person other than a member of the committee or parliamentary employee assigned to 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 for comment for the purpose of assisting the committee in its inquiry or for any administrative purpose.
- (d) A committee may resolve to authorise the Presiding Member of the committee to give public briefings on matters related to an inquiry but not so as to disclose evidence, documents, proceedings or reports which have not been authorised for publication. The committee determines the limits of the authorisation.

3.29. This sort of standing order enables a committee to give "limited" publication to enable it to have the best of advice and often to test its conclusions against an expert or experts. It also enables a committee to authorise release of reports under embargo so that when the presentation occurs in the Assembly it is immediately followed by an informed debate and not simply a recitation of recommendations by the various members of the committee who were involved in the committee's inquiry.

3.30. It also means that the media can have prior access to reports and consequently should be sufficiently well informed to ask pertinent questions of the committee members and give enlightened or at least greater media commentary once a report has been presented to the Assembly.

3.31. The former ACT House of Assembly, of necessity, had a somewhat similar practice. As it met only once a month and standing orders required a report to be tabled during a sitting there would be no debate for a month when the currency of a report could have quite easily expired. To remedy this situation the committees circulated their reports to other members and press alike several days in advance of the meeting at which they were to be presented. The reports were placed under strict embargo so that the information they contained could not be published until after presentation. The system meant an informed commentary both in the House and the media immediately after the tabling to the satisfaction of all. Thus there is an ACT precedent for this practice.

3.32. These proceedings could operate within standing order 71 as it is currently written. Should the Standing Committee on Administration and Procedure

recommend such a course to the Assembly then the Speaker would need to make a statement to the Assembly as to the changed administration arrangements (*and see* the statement by Speaker McLeay in the House of Representatives, *Hansard*, 7 May 1992, pp 2661-2).

3.33. The committee has noted the potential for quite wide availability prior to tabling in the Assembly of the two reports the subject of this inquiry. Members, not members of the committees, and Ministers and their staff could quite conceivably have had access to the reports making it virtually impossible to be certain that an unauthorised disclosure of committee report details did occur in each case and if they did; how they might have occurred.

Mr Corbell's response to the Estimates Committee (subparagraph (3) (a) of the resolution)

3.34. On 22 May 2003, during Estimates Committee hearings, the Minister for Health, Mr Corbell, refused to provide answers in relation to hospital waiting lists. The information was released publicly the next day.

3.35. In evidence to the committee Mr Corbell indicated that he had made an error of judgment; he was wrong; and he apologised.

3.36. Mr Corbell admitted that he should have provided the information on hospital waiting lists that the Estimates Committee had requested of him when it was requested and not at a later time. He had been aware that the information was available in a raw form but wished to release it in a different format at a different time.

3.37. Mr Corbell claimed he had not heard the Chair of the Estimates Committee ask for "the raw figure now".

3.38. Mr Corbell did not receive a later request for the data nor had he been recalled to provide further information on this subject to the Estimates Committee. There was no denial on Mr Corbell's part that the Committee had a legitimate claim to the information and that he had an obligation to provide the Committee with such information.

3.39. Mr Corbell himself admitted, he made an error of judgment and he should have responded positively to the request of the Estimates Committee for hospital waiting lists data made at its hearing in May this year. He has apologised to the Assembly as well as reiterating that apology to this committee.

Recommendation 2

3.40. As a consequence the committee finds that Mr Corbell was in contempt of the Assembly but **recommends** that no further action be taken.

“Budget Estimates 2003” (subparagraph (3) (b) of the resolution)

3.41. During the hearings of the Estimates Committee a document subsequently referred to as “Budget Estimates 2003” with an ACT Health logo came to the attention of that committee. The document had been circulated by e-mail and hence published throughout senior management of ACT Health on 12 May 2003.

3.42. Mr Smyth, the Chair of the Estimates Committee, opined during the Estimates proceedings that the document was “a very serious contempt of the Estimates Committee proceedings”.

3.43. Mr Corbell made available to this committee a copy of all relevant documents surrounding the publication of “Budget Estimates 2003”.

3.44. Mr Corbell, in his evidence before the committee, commented that he was surprised that “anyone would be silly enough to write it”. The document itself was described by its author as “flippant and glib”.

3.45. The author, Mr Tatz, and the officer who circulated the memorandum, Mr Rosenberg, had since apologised to senior management in ACT Health and the Minister and took the opportunity of their appearance before this committee to express their deep regret for their part in this incident. Both realised that the wording of the document was inappropriate and each denied that the document was intended to be used to undermine the Estimates process.

3.46. Senior management in ACT Health commissioned an investigation into the circumstances surrounding the composition and publication of the document. The report of the investigation had been received by the Chief Executive on 22 July 2003 and as a result of the report both officers had been admonished by the Chief Executive and the admonishment recorded on their files as a formal disciplinary measure.

3.47. In response to questions at a public hearing the recently appointed Chief Executive, Dr Sherbon, stated that it was of concern to him that none of the portfolio executive in ACT Health who were recipients via e-mail of the memorandum had picked up any problems with the document.

3.48. Dr Sherbon went on to say that “the broader implications for the portfolio executive have been taken into account by myself” and that “is why all members of the portfolio executive underwent the leadership and integrity training”

3.49. As well as this training ACT Health had received a presentation from the former Clerk of the Assembly, on appropriate committee preparation, behaviour and service from the department. Dr Sherbon assured this committee that the training was to remain part of an ongoing program of senior leadership development in his department.

3.50. The publication of the ACT Health document year shows a complete ignorance of the nature and powers of Assembly committees in some areas of the ACT public service. This is of great concern to the committee.

3.51. Dr Sherbon is to be commended for his immediate efforts to overcome this problem in his department. His answer has been in educating his senior executive and the committee concurs with this response; such a problem can only be rectified with education.

3.52. The internal investigation also revealed that none of the 29 officers or senior executives in ACT Health who received the document via e-mail “raised concern with regards to the content or raised the matter with” the author, the officer who did the distribution or the Acting Chief Executive.

3.53. The two officers of ACT Health have both admitted to being naïve and failing in their duties. They have apologised to all affected by their actions. They also have been admonished and the admonishment placed on their personal records. In addition a number of senior executives in ACT Health including the two officers specifically mentioned have received counselling regarding their actions or non-action.

Recommendation 3

3.54. While the committee finds that the officers from ACT Health who composed and distributed the document known as “Budget Estimates 2003” did not show “culpable intention” in their actions the inadvertent consequence potentially amounted to improper interference with the Estimates Committee. The committee finds them both in contempt of the Assembly but it is satisfied that the proper steps have been taken within ACT Health to discipline them and **recommends** no further action.

3.55. The greater concern of the committee is in the fact that 29 recipients of the document including the Acting Chief Executive of ACT Health did not respond to the document at the time of circulation/publication.

Recommendation 4

3.56. As a consequence and following the lead of ACT Health the committee **recommends** to the Assembly that the seminar series conducted by Assembly staff about the Assembly for departmental officers be reconstituted.

3.57. The Assembly does have special rights and immunities which are essential to its carrying out its appointed functions under the Self Government Act. Confusion over these powers and privileges and their application is exacerbated by the wording of several standing orders and what constitutes a “proceeding” in the Assembly. For example the officers in ACT Health involved in the publication of the “Budget Estimate 2003” document would not be aware that “proceeding” includes “preparation of a document ... incidental to the transacting of evidence before acommittee” (*Parliamentary Privileges Act 1987, s16*).

3.58. It is with these concerns expressed throughout the report and the identification of current problems with “privilege” in the Assembly that the committee has made its recommendations. The committee commends its recommendations to the Assembly.

Roslyn Dundas MLA
Chair
3 November 2003

Appendix 1 – The committee’s hearings and witnesses

The committee conducted hearings as follows:

30 September 2003

Dr A K Sherbon, Chief Executive, ACT Health

Mr S L Tatz, Acting Manager Communications and Marketing, ACT Health

Mr S P Rosenberg, Acting Manager, Executive Coordination, ACT Health

14 October 2003

Mr Simon Corbell MLA Minister for Health

Appendix 2 – Comment by Mr Quinlan on recommendation 2

Matter of emphasis – Refusal of information by Mr Corbell

The Report (paragraph 2.19) makes the clear distinction between the ordinary meaning of “contempt” and its use in a parliamentary or legal context. Elsewhere it indicates that, in practice, the causing of a ‘significant obstruction’ was a necessary element for an action to qualify as contempt in the parliamentary context.

The actions of Mr Corbell in refusing information to the Select Committee on Estimates need to be put into perspective.

Mr Corbell did not outrightly refuse the requested information – he stated that he “will be releasing those figures later this week”. He did refuse to provide them immediately.

The proceedings of the Select Committee were not hindered. In fact, the Committee made no attempt to recall Mr Corbell when the figures were made available publicly. Nor did the Committee examine Mr Corbell on the figures when he reappeared before them to provide information on other portfolio responsibilities.

The Committee’s action demonstrates that there was little, if any, interest in the Hospital Waiting List figures in the context of Estimates deliberations. On the other hand, there may well have been interest on the part of members of the Committee in the context of immediate politics. I suspect that Mr Corbell was attuned to this likelihood. However, he could have handled the situation with greater subtlety.

I agree that Mr Corbell was in contempt – but only in the most minor fashion.

He has apologised to the Assembly. That should be the end of the matter.

Ted Quinlan MLA
3 November 2003

Appendix 3 – Dissenting and additional comments by Mr Stefaniak

I agree with recommendation 2 in so far as Mr Corbell being in contempt of the Legislative Assembly, but I do not agree with the recommendation " that no further action be taken".

In my view the role of this committee is to ascertain whether Mr Corbell was guilty of contempt or not. If he was (as has been found by the committee) then what punishment should flow from this breach is, in my view, a matter for the Assembly to decide.

Similarly, regarding recommendation 3, I think it is inappropriate and unnecessary for the committee to recommend no further action. The committee has indicated that it is satisfied with the actions taken by ACT Health to discipline the officers concerned and it need say no more than that in my view.

Bill Stefaniak MLA
3 November 2003

Attachment – “Budget Estimates 2003”



BUDGET ESTIMATES 2003

Budget estimates is the Opposition's main avenue for obtaining ammunition against the Government. A good Opposition (and minor parties/cross-benches) will ask enough questions - and put enough questions on notice - to ensure they have on-going issues to run with for many months.

Some suggested tactical approaches:

- 1 • Always follow the Minister's lead, he'll defer to your expertise as required.
- 2 • Never be seen to contradict the Minister - if he's wrong, be subtle in the way you correct him (or whisper it to him!).
- 3 • Never venture information - wait to be asked follow-up questions.
- 4 • Don't embellish or wax lyrically - be brief and succinct.
- 5 • Refer back to Budget Papers in answers (eg, "you'll find the answer to that / you'll find the funding for that in Budget Paper 3, p 56").
- 6 • Stick to the key points; don't let an MLA sidetrack you or take you down another path. It's often a good tactic to get a question repeated or to repeat the question back to ensure you are providing the specific and correct answer.
- 7 • Don't get involved in generalisations or hypotheticals. This is about the 2003-04 Health Budget and that's all you should be addressing.
- 8 • Take on notice what you can't or don't want to answer - but make sure of the specifics of the question. Avoid taking on notice general or vague questions or anything unrelated to the 2003-04 Budget.
- 9 • Point out when an MLA is wrong or suffering a misconception. Don't ever let even the smallest inaccuracy, misconstruction, slight, or projection go unchallenged. If an MLA says something that affronts or is critical of your area that can't be challenged directly, it can be countered in a media release or by telling the journalists covering Estimates.
- 10 • Politicians also take affront at being patronised, so be judicious in your use of language. Use the royal "we" when answering for ACT Health. Use phrases such as:
 - a > "In practice, the funding will achieve XXXX....."
 - b > "We believe we will meet this target..."
 - c > "We are confident waiting lists will be reduced because XXXXX..."
 - d > "Let me explain why it may appear this way"
 - e > "With respect, that is not our experience/expectation..."
 - f > "We agree this is an area/issue of concern, which is why we're doing XXXX..."
- 11 • The Blame Game. Nothing works better than pointing out that an area of concern or attack is in fact the fault and/or responsibility of another. This is particularly so when the previous ACT Government is responsible or did not address this problem while in office. If possible, always mention:
 - a > Commonwealth under funding;
 - b > Neglect of the ACT;
 - c > Lack of services to the broader community;
 - d > Australia-wide problems (such as recruitment, skills shortages);
 - e > Wages and clinical costs;
 - f > Cross-boarder issues;
 - g > That the problem existed under previous Governments.