

House of Representatives

Committee of Privileges

**Report concerning the unauthorised publication of information
concerning an inquiry by the Standing Committee on Environment,
Recreation and the Arts**

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HOUSE OF REPRESENTATIVES**



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MARCH 1995

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
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CHICAGO, ILLINOIS 60637

MEMBERS OF THE COMMITTEE

MR R W SAWFORD, MP (CHAIRMAN)

MR K J ANDREWS, MP (DEPUTY CHAIRMAN)

MR R A ATKINSON, MP¹

HON R J BROWN, MP

MR P R CLEELAND, MP

HON A C HOLDING, MP²

HON L S LIEBERMAN, MP

MR P J McGAURAN, MP

HON L B McLEAY, MP

HON A S PEACOCK, MP³

HON D W SIMMONS, MP

MR A M SOMLYAY, MP⁴

1. Nominee of the Deputy Leader of the Opposition from 28 February 1995
2. Nominee of the Leader of the House
3. Resigned 17 September 1994
4. Nominee of the Deputy Leader of the Opposition from 24 February 1994 until 28 February 1995



The complaint

1. On 24 February 1994 Mr Langmore, Chairman of the Standing Committee on Environment, Recreation and the Arts, raised two matters of privilege in the House. He stated that articles in several newspapers that morning had made reference to a draft report of the Committee and that they purported to reveal conclusions reached by the Committee. The report concerned the community, cultural, recreational and sporting grants scheme. Mr Langmore went on to say that the Committee had considered the matter at length at a meeting that morning and had concluded that publication of the material had caused substantial interference with its work. The second matter Mr Langmore raised concerned remarks made by the honourable Member for Pearce on a radio program. Later in the day Mr Langmore indicated that it had not been the unanimous wish of the Committee that the matter concerning the honourable Member for Pearce should be proceeded with as a matter of contempt. Mr Speaker responded later in the day, stating that he accepted for present purposes the Committee's conclusion that the publication of the articles had caused substantial interference with its work. He stated however that the second requirement in the raising of such complaints (that a committee should itself take steps to ascertain the source of any disclosure) had not been satisfied and that the Committee should take whatever steps it could to ascertain the source(s). The Speaker also stated that, having examined the transcripts of the remarks by the honourable Member for Pearce on the radio program in question he did not find a *prima facie* case had been made out on that matter and so he would not allow precedence to a motion.
2. On 12 May 1994 Mr Langmore reported to the House that, in accordance with the Speaker's determination, the Committee had taken steps to seek to identify the source of the unauthorised disclosure of its draft report. Mr Langmore stated that the Committee had been unable to determine the source. He asked that the Speaker allow precedence to a motion to refer the matter to the Committee of Privileges. The Speaker indicated that he was willing to allow precedence, whereupon the following motion was moved and agreed to:

That the matter of articles in The Canberra Times, the Australian Financial Review and The Australian on 24 February 1994 in each case which appeared to reveal a knowledge of the contents of a draft report and/or deliberations of the Standing Committee on Environment, Recreation and the Arts be referred to the Committee of Privileges.

Relevant law

3. House of Representatives standing order 340 provides:

The evidence taken by any select committee of the House and documents

presented to and proceedings and reports of such committee, which have not been reported to the House, shall not, unless authorised by the House, be disclosed or published by any member of such committee, or by any other person.

4. *House of Representatives Practice* states:

... the publication or disclosure of evidence taken in camera, of private deliberations and of draft reports of a committee before their presentation to the House, have been pursued as matters of contempt.

5. Since 1987 it has been necessary for actions which may amount to a contempt to be assessed in terms of the provisions of section 4 of the *Parliamentary Privileges Act 1987* which provides:

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 committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member.

Conduct of inquiry

6. The Committee invited Mr Langmore, as Chairman of the Standing Committee on Environment, Recreation and the Arts, to make a submission to help it ascertain the facts as to:

- the circulation of the Committee's draft report (to whom the report had been circulated, when it was circulated and in what circumstances, and what steps had been taken in respect of confidentiality);
- the consideration of the draft report (at which meetings the draft report had been discussed or considered and which Members had been present at the meetings or would have a knowledge of the Committee's deliberations on the matter);
- precisely what elements of the articles revealed a knowledge of the discussion at particular meetings or of the contents of the draft report (including comment as to what, if any, of the matters contained in the articles could have been able to be deduced from an examination of the material on the public record, and what elements revealed a knowledge of discussions at private meetings and/or the contents of the draft report);
- the reasoning which led the Committee to conclude that substantial interference had occurred;
- the effects of the disclosures/acts of publication complained of;

- steps taken by the Committee to seek to ascertain the source of the disclosure(s) in question.
7. As a Member of the Standing Committee on Environment, Recreation and the Arts, Mr McLay did not participate in the consideration of the immediate complaint, although he contributed to the committee's discussions on the general matters referred to later in this report.

Evidence received

8. On 11 July 1994 a written submission was received from Mr Langmore in response to our Committee's invitation for a submission.
9. The key points Mr Langmore made were that:
- the newspapers in question carried reports of the contents of a draft report of the Committee which was to be considered at a meeting on 24 February and which had not been previously authorised for publication. When the Committee did meet the Committee considered the newspapers articles and resolved that Mr Langmore should report the matter immediately to the House, which he did;
 - copies of the draft report in question had been circulated to Members of the Committee on 23 February, copies were delivered personally and in most cases handed directly to Committee members. The reports were delivered in sealed envelopes, marked confidential, with a covering note which stressed the need for confidentiality and referred to standing order 340. These steps were taken in recognition of the sensitivity of the report and the likely consequences of any unauthorised disclosure;
 - four copies of the draft are retained in the secretariat, along with the original, and a master copy and these were kept in a locked filing cabinet; the manuscript was also stored in electronic form on a computer system protected by a secure password only known to two officials, with a backup copy on disk locked in the Secretary's briefcase;
 - each of the three articles complained of referred to the draft report rather than to the evidence or the submissions and in each case the articles presented material as direct quotes from the draft report, and the articles did in fact correctly quote parts of the draft report and/or accurately paraphrase its contents. Mr Langmore said "The articles, in part, presented the material as apparent speculation but it is clear that the authors of the articles had access to the draft or received an accurate account of its contents (or part thereof)".

10. On the issue of the basis for its conclusion that there was substantial interference, and on the effect of its disclosure, Mr Langmore stated that the draft dealt with matters which were politically highly sensitive and of considerable public interest. He stated that the reporting of the draft seriously prejudiced the capacity of the Committee members to debate the draft without being perceived to be either in predetermined positions or reflecting media commentary; that the article in the *Canberra Times* subjected the draft to judgement and comment before the Committee was able to discuss it and that with such prior disclosure and commentary it was extremely difficult for Members to form their own opinions or to argue that their opinions had not been influenced. Mr Langmore stated that he believed it was of concern to some Members that the subsequent debate on the draft report partly reflected the media commentary rather than the evidence. Mr Langmore also stated that he believed the disclosure brought the integrity of the committee system into serious disrepute and that future committee operations and report drafting would be seriously affected if draft reports were routinely canvassed in the media before they are considered by committees. Committee reports were less likely to be objective and non-partisan but could reflect the positions taken by media commentators, he stated. He felt it could be argued that articles such as those complained of could unduly influence or inhibit a Member in the discharge of his or her own duties as a committee member and that they could undermine the objectivity and potential impartiality of the committee system.
11. Mr Langmore stated that the Committee had discussed the effects of the disclosure on 3 March 1994 and directed the Committee Secretary to write to all Members asking them if they had any knowledge of the circumstances surrounding the disclosure. He said that all replies had indicated that the Members had no knowledge of the disclosure. Mr Langmore also said that he had confirmed with the Committee Secretary that there was nothing that the Secretary did that would have led to a disclosure and that none of the secretariat officers had any knowledge of the circumstances surrounding the unauthorised disclosure.
12. The Committee notes that the inquiry conducted by the Standing Committee on Environment, Recreation and the Arts into the community cultural and recreation funding issue was characterised by intense media and other interest: the evidence given to the Committee, and other aspects of the matter were subject to comprehensive attention in the media and elsewhere. Our committee recognises that in such matters the risks of unauthorised disclosure and publication can be greater. In many ways the hurt and annoyance felt by committee members who have observed the rules in the face of such interest is likely also to be greater in these circumstances. The Committee notes Mr Langmore's comments and accepts without question his comments as to the possible effects of such breaches, although it is impossible to reach a firm conclusion as to the actual consequences.

Findings

13. The Committee finds that information concerning the draft report of the Standing Committee on Environment, Recreation and the Arts were disclosed without authorisation by a person or persons with access to the information. If such person or persons acted deliberately he or she (or they) were guilty of a serious breach of the prohibitions. The Committee takes a serious view of such actions which, as a predecessor committee has stated, display an offensive disregard for the committee itself and others associated with it, and ultimately a disregard for the rules and conventions of the Houses. Unfortunately the Committee has been unable to ascertain the identity of the person or persons responsible on this occasion.

Recommendation

14. In light of its findings, the Committee is unable to make any recommendation on the particular matters complained of, although in the sections which follow it again makes proposals for the consideration of the House in order, it would hope, to assist in any future cases.

The general issue

15. In its May 1994 report concerning the unauthorised disclosure of information concerning the Joint Committee of Public Accounts, the Committee made a number of observations on this whole issue. We stated:

“19. While the Committee acknowledges that not all Members or observers share the view that the present rules should be maintained, the fact is that each House has prohibitions on the unauthorised disclosure of committee proceedings and evidence. As we see it the concerns are to ensure that:

- the ability of a particular committee to gather evidence, sometimes on sensitive matters, is not damaged;
- the efforts made by a committee to reach agreement on a particular matter is not made more difficult by the premature disclosure of evidence, draft reports, or the detail of discussions. Such disclosure can, as well as destroying the trust that is desirable between members of a committee, expose committee members to representations and pressures additional to those arising in the course of the normal inquiry processes.

In addition, there have been concerns that continuing unauthorised disclosures can harm the committee system itself, for example, if it becomes clear that evidence or material presented to parliamentary committees may not be held in confidence witnesses and prospective witnesses may become more reluctant to participate in committee inquiries.

"20. The Committee acknowledges the difficulty that can be faced in seeking to ascertain the sources of such disclosures. Those guilty are unlikely to identify themselves. Media representatives can be expected to claim that their professional code of ethics prevents them from revealing the identity of such sources, although it is important to recognise that neither House has accepted the existence of such professional rules or conventions as justifying the refusal to reveal sources. The Committee is concerned that while the present rules remain the House should be prepared to act against Members or others responsible for disclosure should they be identified - these are the person(s) most culpable in these matters, in our view. It is also important that where it is necessary to do so the Houses are willing to proceed against those who knowingly publish the material in question. The Houses have a range of penalty options available in the case of Members found to have committed a contempt, but they are not without remedy in respect of other persons. One option is the withdrawal of access to the building. A mechanism could be set in place under which, should it be established that a particular person or organisation has deliberately published such material and known that this was against the relevant rules, the persons in question would have their Parliament House passes withdrawn for a specified period."

16. In its May 1994 report the Committee also gave its endorsement to the steps followed by Speakers McLeay and Martin in these matters (the requirements that committees from which there has been unauthorised disclosure should themselves consider the matter to seek to ascertain the source of the disclosure and to reach a conclusion as to whether substantial interference has occurred). The Committee recommended changes in the present arrangements:

- proposing that the House should formalise the procedures which had been followed by adopting a detailed resolution concerning all the main elements;
- arguing that committees which suffered from unauthorised disclosures should themselves present written reports to the House on these matters, after having given most careful and thorough consideration to them.

17. The Committee has now had the opportunity to consider the matter afresh. It repeats its earlier comment that the problem, at source, is essentially one for the members of the committees in question. We now propose further changes: changes which, while acknowledging the justification for the prohibitions on the unauthorised disclosure of certain information concerning committee inquiries, recognise the reality that the issues are essentially for the committees themselves to resolve. In brief, while endorsing our May 1994 recommendations, we now recommend the following additional changes:

- (1) all new Members, together with all new staff members who may be involved with committee inquiries, should be informed as to the rules against unauthorised disclosure of committee information;

- (2) applicants for press gallery passes should also be informed of the rules in these matters, and consideration should be given to having passes incorporate reference to the rules including the possibility that a pass may be withdrawn for a period for contravention of these rules;
 - (3) consideration should be given to the use of stamps in appropriate places on certain documents to indicate that they should not be published without a check to ascertain whether publication has been authorised;
 - (4) as well as being required to present written reports concerning their conclusions and actions in connection with claims of the unauthorised disclosure or publication of committee material, committees should be required to spell out precisely what facts constitute substantial interference and also to spell out precisely what has led them to conclude that substantial interference has occurred (if this is their conclusion); they should be required to spell out the benefits they see in further action on the matter, such as reference to the Committee of Privileges, and they should be required to comment on the prospects that the source(s) will be discovered; and
 - (5) in considering complaints in this area, and notwithstanding the provisions of standing order 96, the House in addition require that the Speaker should not allow precedence to a motion on such a matter unless, in the light of the information presented to the Speaker, he or she is of the opinion:
 - (a) that there is sufficient evidence that will enable the Committee of Privileges to ascertain the source or sources of the disclosure(s); or
 - (b) that there are special circumstances in the matter such that the protection of the committee system, or the protection of committee sources or witnesses are such as would warrant reference to the Committee of Privileges.
18. A draft resolution to give effect to the Committee's recommendations is at Attachment A.

ROD SAWFORD
Chairman

2 March 1995

**SUGGESTED RESOLUTION
CONCERNING THE CONSIDERATION OF THE UNAUTHORISED DISCLOSURE
OR PUBLICATION OF COMMITTEE EVIDENCE OR PROCEEDINGS**

- (1) That the House adopt the following resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings:
1. Notwithstanding the provisions of standing orders 95, 96 and 97A, a complaint concerning the unauthorised disclosure or publication of evidence taken by a committee, or proceedings of a committee or documents concerning a committee, must be raised at the first opportunity at a meeting of the committee in question; and the House must be advised that the matter is to be raised, or has been raised, with the committee.
 2. A committee concerning which a complaint of unauthorised disclosure or publication has been made must consider whether the matter has caused substantial interference with its work, with the committee system or with the work of either House, or whether it is likely to have such an effect.
 3. If a committee wishes to consider such a matter further, it must seek to ascertain the source of any unauthorised disclosure and in order to do so letters must be written to all members of the committee and its staff asking if they have any knowledge as to the source of the disclosure.
 4. If a committee concludes that the unauthorised disclosure or publication in question has caused substantial interference, or is likely to do so, and it wishes the matter to be proceeded with, it must set out its findings in a Special Report which must be presented to the House at the first available opportunity. Such a Special Report should spell out precisely what facts constitute substantial interference and precisely what has led the committee to conclude that substantial interference has occurred, details of the steps the committee has taken to ascertain the source of any unauthorised disclosure, the committee's views as to the benefits of any further action on the matter, and its views as to the prospects of the source(s) of the disclosure(s) being discovered.
 5. In considering complaints in this area, and notwithstanding the provisions of standing order 96, the Speaker should not allow precedence to a motion on such a matter unless, in the light of the information presented to the Speaker, he or she is of the opinion:
 - (a) that there is sufficient evidence that will enable the Committee of Privileges to ascertain the source or sources of the disclosure(s);
or

(b) that the circumstances of the case are such that the issues of the protection of the committee system, or the protection of committee sources or witnesses are such as would warrant reference to the Committee of Privileges.

(2) That the House requests the Speaker to take up with the President of the Senate the implementation of the Committee's recommendations not covered by this resolution.

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 9 June 1994

PRESENT: Mr Sawford (Chairman); Mr Brown, Mr Cleeland; Mr Holding;
Mr Lieberman; Mr Simmons; Mr Somlyay

The meeting opened at 11.23am.

Minutes

The minutes of the meeting held on 5 May were confirmed.

.....(section deleted)

Reference concerning Standing Committee on Environment, Recreation and the Arts

The Committee was advised that, as he was a member of the Standing Committee on Environment, Recreation and the Arts, Mr McLeay felt that he should not participate in this reference.

The Committee deliberated.

Resolved (on the motion of Mr Cleeland) - That Mr Langmore, MP, Chairman of the Standing Committee on Environment, Recreation and the Arts be invited to lodge a submission in connection with the reference.

At 12.05pm the committee adjourned until a date and time to be fixed.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House – Canberra
Wednesday, 24 August 1994

PRESENT: Mr Sawford (Chairman), Mr Andrews, Mr Brown, Mr Cleeland,
Mr Lieberman, Mr McLeay, Mr Peacock, Mr Somlyay

The meeting opened at 5.09pm.

Minutes

The minutes of the meeting held on 27 June 1994 were confirmed.

.....(section deleted)

Reference concerning Standing Committee on the Environment, Recreation and the Arts

The Chairman presented a submission dated 30 June 1994 from Mr J.V. Langmore, MP, Chairman of the Standing Committee on the Environment, Recreation and the Arts.

Resolved (on the motion of Mr Cleeland) – That the submission be received as evidence.

The Committee deliberated.

Resolved (on the motion of Mr Cleeland) – That the Committee invite Mr Langmore to give evidence at approximately 11.30am on Thursday, 22 September 1994.

.....(section deleted)

At 5.28pm the Committee adjourned until 11.30am on Thursday, 1 September 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 13 October 1994

PRESENT: Mr Sawford (Chairman); Mr Andrews; Mr Brown; Mr Holding.

The meeting opened at 11.40 am.

Minutes

The minutes of the meeting of 1 September 1994 were confirmed.

On the motion of Mr Brown, Mr Andrews was elected Deputy Chairman of the Committee.

Reference concerning unauthorised disclosure of information concerning the Standing Committee on the Environment, Recreation and the Arts

The Committee deliberated.

.....(section deleted)

At 12.45 pm the Committee adjourned until 11.30 am on Thursday, 20 October 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 20 October 1994

PRESENT: Mr Andrews; Mr Brown; Mr Cleeland; Mr Holding;
Mr Simmons; Mr Somlyay.

The meeting opened at 11.36 am.

In the absence of the Chairman, Mr Sawford, the Deputy Chairman, Mr Andrews took the chair.

Minutes

The minutes of the meeting of 13 October 1994 were confirmed.

Reference concerning unauthorised disclosure of material from the Standing Committee on the Environment, Recreation and the Arts

The Committee deliberated.

.....(section deleted)

At 12.30 pm the Committee adjourned until 11.30 am on Thursday, 10 November 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 17 November 1994

PRESENT: Mr Sawford (Chairman); Mr Andrews; Mr Brown; Mr Holding;
Mr Lieberman; Mr McLeay; Mr Somlyay.

The meeting opened at 11.42 am.

Minutes

The minutes of the meeting of 20 October 1994 were confirmed.

.....(section deleted)

**Reference concerning unauthorised disclosure of material from the Standing
Committee on the Environment, Recreation and the Arts**

The Committee deliberated.

.....(section deleted)

At 12.28 pm the Committee adjourned until 2.00 pm on Tuesday, 6 December 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 6 December 1994

PRESENT: Mr Sawford (Chairman); Mr Andrews; Mr Lieberman;
Mr Simmons.

The meeting opened at 2.08pm.

Minutes

The minutes of the meeting held on 17 November 1994 were confirmed.

.....(section deleted)

Reference concerning unauthorised disclosure of material from the Standing Committee on the Environment, Recreation and the Arts

The Committee deliberated.

At 2.18pm the committee adjourned until 11.30am on Thursday, 9 February 1995.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

**Parliament House - Canberra
Thursday, 9 February 1995**

PRESENT: Mr Sawford (Chairman); Mr Andrews; Mr Brown; Mr Cleeland,
Mr Holding; Mr Lieberman; Mr McLeay; Mr Simmons;
Mr Somlyay.

The meeting opened at 11.40am.

Minutes

The minutes of the meeting held on 6 December 1994 were confirmed.

Problem of unauthorised disclosure and publication of material concerning Parliamentary committees

The Committee deliberated.

At 12.20pm the committee adjourned sine die.

Confirmed.

CHAIRMAN

