

APPENDIX III

1. Submission by Dr M.K. McIntosh
with an Addendum by Major
General D.M.M. Francis
2. Submission by Major General
D.M.M. Francis

SUBMISSION TO THE SENATE COMMITTEE OF PRIVILEGES
BY DR M.K. MCINTOSH, CHIEF OF CAPITAL PROCUREMENT,
DEPARTMENT OF DEFENCE

Introduction

At the meeting of the Senate Estimates Committee on 10 Oct 88, following discussion of the Army's Project PARAKEET, Senator MacGibbon accused the Chief of Capital Procurement, Dr M.K. McIntosh, of misleading the Committee. The accusation relates to evidence given at the meeting of the Committee, which considered the Defence Additional Estimates for 1987/88, on 21 April 1988. Senate Hansard records of the two meetings refer (Estimates Committee E, pages E 67 to E71, and Estimates Committee D, pages D100 and D101).

Senator MacGibbon indicated how he considered that the Committee had been misled in the consideration of the Appropriation Bill on 29 November 1988 (Hansard pages 3087 to 3093). The issue was referred to the Committee of Privileges on 5 December 1988.

Background

Project PARAKEET is to provide an integrated, secure, tactical, trunk communications system for land and joint forces. It is to interface with the radios (man and vehicle portable) being procured under project RAVEN, on the one hand, and the static network being established under project DISCON, on the other. It was to be procured in 5 phases:

1. Concept study (1978-81)
2. System definition (1982-84)
3. Equipment definition (1985-88)
4. Development and trials (1988-94)
5. Production (1990-97)

After competition between suppliers in earlier phases, RACAL Electronics Pty Ltd ('REPL' or 'RACL') was selected as the prime contractor for phase 3 in the expectation that, if its progress and proposals for phases 4 and 5 were satisfactory, it would continue as the sole source for the rest of the project.

At the time of the hearing, phase 3 was concluding and the proposals for phases 4 and 5 were being considered. Discussions were being held with RACAL who were being advised that the Department intended recommending to the Minister that they not continue as sole supplier for later phases. Those discussions were commercial-in-confidence and conditional, noting that Ministerial approval had yet to be sought. A submission to the Minister was being drafted (signed on 6 May 1988) seeking approval to call open tenders for later phases of the project. There was some press speculation on the future of the project, which was indicated as the source of the questioning by (in order of speaking) Senators Newman, MacGibbon and Hill.

Basis of the Accusation

At the hearings on 21 April 1988, essentially 4 specific issues were pursued. The issues and the responses to them by Dr McIntosh and other Departmental officials at the two Senate Estimates hearings can be summarised as follows:

- a. there were serious technical problems with the project;

As was stated at the hearing (eg page E70, left column last para) and confirmed subsequently (page D101, left column para 6) this claim was exaggerated, it was considered that there were some technical problems, but they were expected to be capable of satisfactory resolution. In the event, they were resolved.

- b. there were major cost overruns;

As was stated at the hearing, the phase being completed was not over budget, the contractor's estimates for subsequent work were being considered (page E68, left column, para 14) and whether they would be over budget was not then clear (page E68, left column, para 16). In the event, after further discussions with the contractor, the costs for subsequent phases were progressively and significantly reduced, but remained somewhat higher than previously proposed, and, importantly, their derivation and breakdown could not be justified in terms of the company's original tender. This was confirmed at the subsequent hearing (page D100, right column, para 6).

- c. the project was behind schedule;

As was stated at the hearing (page E68, left column, last para) the current phase was on time and proposals by the contractor for future phases were not expected to be significantly late, but it was noted that it was difficult to say more until the Government had considered the project.

The delay of about 1 year, which has now been injected into the next stages of the project, is a consequence of the Government's decision to reopen tenders, which had not been made at the time of the hearing. Had the Government decided not to proceed in this way, then the proposals from the contractor indicated that such a delay might not have arisen. Noting the developments world-wide in equipment of this kind, it will not be clear what the consequences will be for the timing of the actual introduction of new equipment into service until tenders are called and received.

- d. the next phases of the project would be reopened for competitive tender.

This claim was specifically addressed and responded to several times, (eg page E71, left column, para 5 and right column, first para) to the effect that the way ahead for the project was before Government for decision and could not be commented on.

In the event, it was decided to reopen the project for competition for the next phases, as announced by the Minister for Defence on 30 May 1988. The reasons, however, were somewhat different to those pursued by Senators in the Senate Estimates hearing, and were "the contractor's approach and management of the current phase together with costs and prospects for future phases." These reasons were elaborated on at the hearing of 10 October 1988 (page D100, right column, paras 6 and 8 and page D101, left column, para 6).

The more general claim was that it was implied that there were no problems with the project. This was specifically refuted (eg page E70, left column, last 2 paras). Further, the fact that the project was going back to Government for review and that several very important aspects could not be commented on, was stated several times and clearly indicated problems. No other projects, including those with acknowledged problems, which were discussed at the Committee hearings, were so described.

Some more detailed information on the technical, cost and schedule aspects of the project at the time of the April hearing are attached to this Submission should members of the Privileges Committee be interested in the basis of the advice given to the Estimates Committee.

On the above basis, it is submitted that the Committee was not given false or misleading evidence as known at the time or as emerged subsequently.

Approach to the Estimates Discussions

Under the practices of the Committee, it is not for Public Servants to preempt the decisions of Ministers and the Government by disclosing what is being, or is to be, recommended. Ministers may, quite properly, place a different interpretation or importance on information and assessments presented by officials and come to different conclusions. Officials' speculation on, or interpretation of, "facts" can therefore preempt Ministers.

This lack of disclosure can be quite dissatisfying to Senators seeking more definite answers and may leave them to draw their own (sometimes incorrect) conclusions based on their own views and any other information. Obviously, however, it does not constitute giving false evidence and it is submitted, noting that it was explained why questions could not be answered, that it is not, misleading.

It is also the practice that officials at the hearings respond to questions from Senators on detailed Explanatory Notes on the Estimates and an opening statement, rather than volunteer information in a more seminar style. If questions are not asked, it is presumed that Senators do not require further information on that item or aspect of the Estimates. While a less formal approach is sometimes adopted, and obviously Senators wanted any and all information they could get on the PARAKEET project, it would clearly have been inappropriate for officials to volunteer information and comment in a sensitive area yet to be decided by Government. Noting that the reason why questions could not be answered was given clearly in the discussion, it is submitted that this is not evasive in the pejorative sense.

In the discussion, there were occasions on which what had been said by officials was paraphrased incorrectly by Senators, presumably to elicit further responses. On occasions the paraphrasing was specifically rejected (eg page E70, left column para 11 and last para, page E71, right column, first para). Noting the pressures on the Committee to examine a large quantity of material in a short time, not all such paraphrasing was corrected, particularly if it had already been corrected once, because it was felt that the sense was generally clear and the record would show that to be so. It is presumed that the Privileges Committee will judge what officials actually said, rather than what others said they said.

Circumstances of the Accusation

The April 1988 hearing was on the Additional Estimates for the Department of Defence, which cover those (usually minor) adjustments to funds appropriated in the Budget after some half the financial year has passed. They do not usually represent, or result from, significant changes in direction or policy, which are dealt with in the Budget

deliberations. It was therefore reasonable for initial responses to questions by Senators to be confined to the effects on Additional Estimates, particularly as the opening question (page E67, right column, last para) asked for that assessment.

Once it was clear that Senators (not surprisingly) wished to pursue the longer term prospects of the project, some information could be given on specific claims, and was, but most of the answers sought by Senators could not be given without preempting Ministers. This was indicated as those questions arose by reference to the imminent consideration by Ministers.

An alternative to allowing the discussion to develop as it did might have been to state at the beginning that, the matter having yet to be decided by Ministers, officials could provide no information at all on the project beyond the effect on Additional Estimates. While this approach would have avoided the subsequent charge of misleading the Committee, it would have denied Senators that part of the information they sought, which could be given without preempting Ministers.

The Privilege Reference

In his statement of 29 November 1988 leading to the reference to the Committee of Privileges, Senator MacGibbon repeated his views that:

- a. there were considerable technical problems with the project;

This remains an exaggeration, as outlined in the original hearings, repeated since and again confirmed in this submission.

- b. there were major management problems;

This is correct and was announced by the Minister for Defence on 30 May 1988 as one of the main reasons for the change in acquisition strategy for the project. It was not raised at the April hearing (Senator MacGibbon's subsequent claim that "everyone who had an interest in this field knew", notwithstanding) and was not volunteered for reasons given elsewhere in this submission.

- c. the schedule has slipped.

This is correct. It was not clear that it would at the time of the April hearing and this was indicated as outlined elsewhere in this submission.

Senate Resolution (12), which deals with Privilege matters of this kind requires that:

- "(12) A witness before the Senate or a Committee shall not:
- b. without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so;
 - c. give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular."

As outlined in this submission, I believe that, where answers were given, they were true. Where answers were not given the reason was that the matter was before Ministers, this was clearly stated, and it is submitted that this is a reasonable excuse. Where questions were not asked, there is no offence under Resolution (12). Were it to be argued that relevant information should have been volunteered whether questions were asked or not, the same reason applied and was stated.

Summary

While the discussions of the project were of a partial nature so as not to preempt Ministers and were clearly unsatisfactory to Senators, I do not believe that false or misleading evidence was given by what I said (as opposed to the paraphrasing by others of what I said) as to the facts or status of the project.

If Senators were misled, it was certainly not deliberate on my part and I can only apologise for any deficiencies in the phrasing of my responses, which did not make the position, as outlined in this submission, sufficiently clear.



M.K. MCINTOSH
Chief of Capital Procurement
Department of Defence

2 February 1989

ADDENDUM BY MAJOR GENERAL D.M.M. FRANCIS
ASSISTANT CHIEF OF THE GENERAL STAFF - MATERIEL
TO SUBMISSION TO THE SENATE COMMITTEE OF PRIVILEGES
BY DR M.K. McINTOSH, CHIEF OF CAPITAL PROCUREMENT
DEPARTMENT OF DEFENCE

Introduction

1. This addendum expands on issues raised by Dr McIntosh in his submission. It will discuss the suggestions that there were serious technical problems with the project, that there were major cost overruns and that the project was behind schedule.

Technical Problems

2. I am aware of only one issue which could lead to the suggestion that there were serious technical problems. It related to equipment being produced by the principal sub-contractor to RACAL (EB/STK of Norway). We were concerned at one stage that that equipment would not perform to the standards required by our specification. We were also concerned that RACAL would not guarantee its performance within the contract price. The problem of RACAL's failure to guarantee its performance was in the process of being resolved when it was decided to revert to open tender. The equipment concerned has since been tested and proved satisfactory.

Cost Overruns

3. At the time of the Senate Estimates Committee hearing in April 1988 Phase 3 of the project was in progress. It was proceeding to cost.

4. The only potential for a cost overrun lay in future phases. At the time of the April 1988 Senate Estimates Committee hearing RACAL had provided me an updated estimate of the cost of Phase 4 and I was discussing it with RACAL. That cost was in excess of the estimate for Phase 4 offered by RACAL in their tender for Phase 3 which had been one of the principal factors upon which their selection as prime contractor was based. For a number of reasons their new estimate for Phase 4 was unacceptable and was the principal reason for my recommendation to the Government that we not continue with RACAL as prime contractor and revert to open tender.

5. Until tenders are called we will not know what the cost of subsequent phases will be and whether they will be in excess of our earlier estimates.

Delay to the Project

6. At the time of the Senate Estimates Committee hearing in April 1988 Phase 3 was proceeding on time. If we had recommended to the Government that we continue with

RACAL as the prime contractor for Phase 4 and the Government had approved that in the context of the Budget in August 1988 it is likely that the project would have continued to be on time.

7. The decision by the Government to revert to open tender, which had not been made at the time of the Senate Estimates Committee hearings, leads to a number of procedures which will take more time than would have been the case if we had continued with RACAL as planned. Following the Government's decision we have taken the opportunity to revise our Equipment Acquisition Strategy before calling tenders. It is my assessment that we will be able to seek Government approval for the next phase in the context of the Budget in August 1989. It was on the basis of the slippage of approval for the next phase from Budget 1988 to Budget 1989 that I advised the Senate Estimates Committee in October 1988 that I expected a delay of about one year.

8. It is difficult at this stage to assess the consequential delay on complete introduction of the PARAKEET system into service. I will be in a better position to do so on receipt of tenders called late this year and early in 1990, if we get approval to do so from the Government in the context of the Budget in 1989.



D.M.M. FRANCIS
Major General
Assistant Chief of the General Staff - Materiel

2 February 1989



ASSISTANT CHIEF OF THE GENERAL STAFF—MATERIEL

DEPARTMENT OF DEFENCE
(ARMY OFFICE)
RUSSELL OFFICES
CANBERRA, A.C.T. 2600

16 December 1988

The Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

Dear Madam,

I refer to your letter dated 15 December 1988 concerning the question of the possibility of misleading evidence having been given to a Senate Estimates Committee on Project PARAKEET.

It is my perception that the issue will be decided on opinions on the meaning of the words used by Dr McIntosh in April and my words in October. I believe that the important opinions in the case will be those of the members of the Committee of Privileges.

Dr McIntosh's and my words are, I believe, accurately recorded in Hansard. Accordingly I do not think I can assist the Committee at this time by making a written submission. I will, of course, be happy to assist the Committee in any way and await their wishes in this regard.

I assume that the Committee is aware that Dr McIntosh heads the Capital Procurement Organisation in the Department of Defence and that I am one of his divisional heads.

I would also like to record, as I discussed on the phone today, that I will be on leave until 30 January 1988. My office will of course know where to contact me while I am away (in Perth mainly).

Yours faithfully,

D.M.M. FRANCIS
Major General
Assistant Chief of the General Staff - Materiel

c.c. Dr M.K. McIntosh
Chief of Capital Procurement



