

Appendix Three

Guidelines from other Legislatures

New South Wales

Legislative Council

Report on guidelines concerning unauthorised disclosure of committee proceedings

1. Rule against unauthorised disclosure

1.1 Evidence received by a committee, the proceedings of a committee, and draft committee reports, may not be disclosed by any person before the committee has reported to the House, unless the committee has authorised such disclosure.

1.2 The rule applies to all persons who have access to committee information, including:

- (a) committee Members and their staff,
- (b) staff of the committee secretariat,
- (c) any witness who gives evidence to a committee,
- (d) any person who provides a written submission to a committee,
- (e) any person to whom committee information has been improperly disclosed.

This may include another Member, staff of a Member, a departmental officer, or a member of the media.

1.3 The rule applies to all information received or generated by a committee, including:

- (a) oral evidence provided to a committee at an in camera hearing and the written transcript of such evidence,
- (b) documents tendered at a hearing,
- (c) written submissions received by a committee,
- (d) written briefing papers and other documents prepared by the committee secretariat,
- (e) draft reports, including draft dissenting statements,
- (f) correspondence between the committee and other persons in relation to an inquiry,
- (g) deliberations of the committee, including decisions made by the committee in private, comments made by committee members during debate within the committee, and the minutes of such deliberations.

2. Damage caused by unauthorised disclosures

2.1 Unauthorised disclosure of committee information may result in damage to individual participants in committee inquiries, the integrity of the committee system, and the public interest. Such damage may include:

- (a) jeopardising witnesses and others who provide confidential information to committees, by exposing them to the risk of reprisals or other forms of adverse treatment as a result of giving evidence,
- (b) deterring future witnesses from giving confidential evidence to committees,
- (c) impeding the ability of a committee to reach agreement, by exposing the committee's incomplete deliberations to public scrutiny,
- (d) undermining the relationship of trust between members of the committee, which is necessary for committees to function effectively,
- (e) lowering public confidence in the committee, the committee system and the Parliament generally.

3. Obligations of recipients of unauthorised disclosures

3.1 A recipient of an unauthorised disclosure of committee information must:

- (a) immediately inform the committee secretariat of receipt of the information, and the circumstances of such receipt;
- (b) return the information to the committee secretariat as soon as possible; and
- (c) not disclose the information to any person or record or copy it in any way.

3.2 Experience in this and other Parliaments suggests that recipients of leaked information commonly include members of the media, ministerial staff, and departmental officers.

4. Contravention – Contempt

4.1 Contravention of the rule against unauthorised disclosure may constitute a contempt of Parliament.

5. Contravention – Procedure

5.1 Where an unauthorised disclosure of committee information occurs, the following procedure applies:

- (a) The committee concerned seeks to identify all possible sources of the disclosure.
- (b) The committee decides whether the disclosure is significant enough to justify further inquiry.
- (c) If the committee considers that further inquiry is warranted, the Chair of the committee writes to all persons who had access to the proceedings, requesting an indication as to whether the person was

responsible for the disclosure or is able to provide any information that could be of assistance in determining the source of the disclosure.

(d) The committee comes to a conclusion as to whether the leak is of sufficient seriousness as to constitute a substantial interference with the work of the committee, the Legislative Council committee system, or the functions of the House. This occurs whether or not the source of the disclosure is discovered.

(e) If the committee concludes that the leak is of sufficient seriousness, it makes a special report to the House, describing the circumstances and the investigations it has made, and recommending that the matter be referred to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report.

(f) Following tabling of the Special Report, the House may refer the matter to the Standing Committee on Parliamentary Privilege and Ethics.

5.2 If the House refers the matter to the Standing Committee on Parliamentary Privilege and Ethics, that Committee may undertake such investigations of the matter as it considers appropriate, including taking evidence on oath or affirmation from the members of the Committee from which the disclosure arose.

6. Contravention - Sanctions

6.1 In a report to the House, the Standing Committee on Parliamentary Privilege and Ethics may find that the person responsible for the unauthorised disclosure is guilty of contempt and that appropriate sanctions be imposed.

6.2 If the person responsible is a member of the House, appropriate sanctions may include: reprimand or admonishment by the House; the provision of an apology to the House; and/or suspension from the service of the House for a defined period.

6.3 If the unauthorised disclosure was published in the media, appropriate sanctions may include: temporary exclusion from the parliamentary precincts; suspension of parliamentary accreditation; suspension of accreditation with the Parliamentary Press Gallery; the publication of an appropriate apology; and/or reprimand by resolution of the House. Such sanctions may be imposed even in cases where the person responsible for the original disclosure has not been found.¹

¹ New South Wales Legislative Council, *Report*, pp. 25-28.

Queensland

Members' Ethics and Parliamentary Privileges Committee

1. The committee concerned should seek to identify all possible sources of the disclosure.
2. The committee concerned should decide whether the disclosure is significant enough to justify further inquiry.
3. If the committee concerned considers that further inquiry is warranted, the Chair of the committee concerned should then write to all persons who had access to the proceedings. The Chair's letter should request an indication from each person as to whether the person was responsible for the disclosure or if they are able to provide any information that could be of assistance in determining the source of the disclosure.
4. If the source of the disclosure is identified, the committee concerned should then decide whether to report accordingly to the Legislative Assembly.
5. If the source of the disclosure has not been identified, the committee concerned should consider whether the matter merits further formal investigation by the MEPPC.
6. In considering (4) and (5) above, the committee concerned should take the matters below into account and balance the worth of further inquiry.
 - (a) How serious was the disclosure and is there a public interest in pursuing the matter? (Was the disclosure a substantial interference, or the likelihood of such, with the work of the committee, with the committee system or the functions of the Legislative Assembly?)
 - (b) If the source of the disclosure has been discovered, was the breach inadvertent or deliberate, mischievous or benign?
 - (c) If the source of the disclosure has not been discovered, what is the likelihood of discovering the source of the disclosure? (How many people had access to the proceedings? Were the proceedings in the possession of persons outside Parliament, such as public officers?)
 - (d) Is the disclosure an isolated occurrence, or is it one instance of a larger problem? Has there been a pattern of such disclosures?
 - (e) What is the likelihood of a disclosure re-occurring?
7. If the committee concerned comes to the conclusion that the matter merits further investigation by the MEPPC, the committee concerned should write to the Speaker accordingly detailing the action it has taken in respect of the above steps.²

² Queensland Legislative Assembly, Members' Ethics and Parliamentary Privileges Committee, *Report on a Matter of Privilege-Unauthorised release of correspondence between a Committee and Ministers-Report No. 42*, 7 June 2000, pp.5-6.

Canada

Senate

- (a) If a leak of a confidential committee report or other document or proceeding occurs, the committee concerned should first examine the circumstances surrounding it. The committee would be expected to report the alleged breach to the Senate and to advise the chamber that it was commencing an inquiry into the matter.
- (b) While the committee would be required to undertake an investigation of the circumstances surrounding the alleged leak, the means, nature and extent would rest with the committee. As part of the inquiry, it is likely that the committee members, their staff, and committee staff could be interviewed. The committee would be engaged in a fact-finding exercise – to determine, if it can, the source of the leak. The committee should also address the issue of the seriousness and implications – actual or potential – of the leak. The committee would be expected to undertake this inquiry in a timely manner.
- (c) The committee investigation of the leak would not prevent any individual Senator raising a question of privilege in the Senate relating to the matter. As a general matter, however, and in the absence of extraordinary circumstances, it would be expected that the substance of the question of privilege would not be dealt with by the Senate until the committee had completed its investigation. Thus, if the Speaker finds that a *prima facie* case exists, any consequent motion would be adjourned until the committee had tabled its report.
- (d) Individual Senators would also be able to raise questions of privilege in relation to the leak upon the tabling of the committee report. In other words, while ordinarily a question of privilege is to be raised at the first opportunity, no Senator would be prejudiced by awaiting the results of the committee's investigation. Similarly, no action or inaction or decision taken by the committee in relation to the matter would be determinative in respect of the Speaker's responsibility under the Rules of the Senate to determine whether or not a *prima facie* exists.
- (e) In the event that a committee decided not to investigate a leak of one of its reports or documents, any Senator could raise a question of privilege at the earliest opportunity after the determination by the committee not to proceed in the matter. Similarly, if a committee did not proceed in a timely way, any Senator would be entitled to raise a question of privilege relating to the leak.
- (f) When the committee concerned tabled its report, the matter would ordinarily be referred to your Committee by the Senate if it discloses that a leak occurred and that it caused substantial damage to the operation of the committee or to the Senate as a whole.³

³ Canadian Standing Committee on Privileges, Standing Rules and Orders, *Fourth Report*, 13 April 2000, para 26(a) to (f).

This report was adopted by the Canadian Senate in June 2000 and is published as an appendix to the Rules of the Senate.⁴

The report also suggested that ‘serious consideration be given to the following measures’:

- (a) that draft reports and other confidential documents be individually numbered, with the number shown on each page;
- (b) that each numbered report and other confidential document be assigned exclusively to an individual, and always given to that individual, and this should be carefully recorded;
- (c) that if Senators are to be given draft reports or other confidential documents in advance of a meeting, or are to take such documents away after a meeting, they be required to sign for them. Certain documents, such as *in camera* transcripts, should only be able to be consulted in the committee clerk’s office, with the chair’s approval;
- (d) that the names of all persons in the room at *in camera* meetings to discuss draft reports – including assistants, research staff, interpreters and stenographers – be recorded, preferably on the record; and
- (e) that the chairs of committees ensure that all Senators and staff are cautioned and reminded of the nature of confidential an *in camera* proceedings and documents, the importance of protecting them, and the consequences of breaching such confidentiality.⁵

⁴ *Correspondence from the Canadian Senate*, 13 January 2005.

⁵ Canadian Standing Committee on Privileges, Standing Rules and Orders, *Fourth Report*, 13 April 2000, para 30(a) to (e).