

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE IMPROPER INTERFERENCE
WITH A WITNESS -
DRUGS IN SPORT INQUIRY**

(17TH REPORT)

JUNE 1989

MEMBERS OF THE COMMITTEE

Senator Patricia Giles (Western Australia), Chair

Senator John Black (Queensland)

Senator Bruce Childs (New South Wales)

Senator John Coates (Tasmania)

Senator the Honourable Peter Durack, Q.C.
(Western Australia)

Senator Janet Powell (Victoria)

Senator Baden Teague (South Australia)

The Senate
Parliament House
CANBERA A.C.T. 2600.

REPORT

Introduction

1. On 8 December 1988, the Chairman of the Standing Committee on Environment, Recreation and the Arts (Senator Black) tabled the following report: Drugs in Sport Inquiry: Report on the Harassment of a Witness. The report indicated the circumstances under which a witness before that Committee, Ms Suzanne Howland, had on 1 December 1988, the day after she had given evidence to the Committee following a summons to appear and produce relevant documents, received a note from Mr Greg Blood, employed as a Librarian at the Australian Institute of Sport and the owner/occupier of the house in which Ms Howland had been living, in the following terms:

I'm afraid you will have to look for alternative accommodation as soon as possible. I'm sick and tired of the drugs in sport. You can say what you like, I can choose who lives in my house. It was a very hard decision to make. (Standing Committee Report, Attachment 3)

2. On the same day, the Secretary to the Committee, having received a telephone call from Ms Howland advising of the note, asked her to advise him in writing of the incident. The following day, Ms Howland wrote to the Committee, attaching the note. The Standing Committee considered the matter and reported to the Senate.

3 The Standing Committee reached the following conclusion:

... the Committee believes that a prima facie case rests that Ms Howland has been subject to harassment as a result of giving evidence, under summons, to the Committee. (Standing Committee Report, p. 2)

4. Immediately after Senator Black tabled the report, the President advised the Senate that he had received a letter from Senator Black raising as a matter of privilege the matter referred to in the Committee's report, and, pursuant to the procedures provided by resolutions of the Senate of 25 February 1988, had determined that a notice of motion relating to the matter should have precedence of all other business on the day for which it was given. Senator Black thereupon gave a notice, for the next day of sitting, in the following terms:

- (1) That the following question be referred to the Committee of Privileges: whether there was any improper interference with a witness who gave evidence to the Senate Standing Committee on Environment, Recreation and the Arts in relation to that Committee's inquiry into the use of drugs in sport.
- (2) That, in inquiring into this matter, the Committee of Privileges have regard to the report of the Senate Standing Committee on Environment, Recreation and the Arts relating to the harassment of a witness.
- (3) That the provisions of the resolution of 3 November 1988 relating to the powers of the Committee apply in relation to the Committee's inquiry into the matter.

5. Following statements by Senators that, in view of the serious nature of the matters raised, leave would be given for Senator Black to move the motion immediately, Senator Black so moved and the matter was referred to the Committee of Privileges.

6. As indicated in a statement made to the Senate on 11 May, the Committee of Privileges has found that, under the particular circumstances of the case, no contempt of the Senate has been committed. The purpose of this report is to give the background to and reasons for the Committee's findings.

Background

7. The Committee met to consider the reference on 13 December 1988. The Chair advised the Senate on 14 December that the Committee had invited Mr Blood and Ms Howland to make written submissions to it. The Chairman also publicly invited any other persons who wished to make a submission to do so.

8. On 16 December, the Chair wrote to Dr R. Smith, Acting Director, Australian Institute of Sport, drawing his attention to the statement made to the Senate, and inviting him, and any other persons within the Institute, to make submissions to the Committee. Also on 16 December, Mr Blood wrote to the Committee, indicating that he would like to make a submission, to be provided to the Committee after he sought legal advice.

9. On 16 January, the Committee received a letter from Ms Howland, indicating that she had nothing to add to what had already appeared in the Standing Committee's report on harassment of a witness but stating that she had found the whole incident very unfortunate. On 25 January, the Committee received a letter from Dr Smith, which included a note from Mr R.W. Hobson, Acting Director, Corporate Services, at the Institute, concerning discussions he had held with Mr Blood in November. Mr Blood's submission was received by the Committee on 10 February.

10 After considering the submissions, the Committee decided on 1 March to refer on a confidential basis Mr Blood's submission to Ms Howland for comment. The submission was duly sent to Ms Howland on 2 March. Ms Howland responded with her comments on the same day. The Committee further considered the submissions, and Ms Howland's comments, at its meeting on 9 March. The Committee, noting some inconsistencies between Mr Blood's submission and Ms Howland's response, decided to refer Ms Howland's letter of 16 January and her response of 2 March, also on a confidential basis, to the solicitor representing Mr Blood for any comment Mr Blood might wish to make. In so referring, the Committee made the point that, while some inconsistencies were understandable and minor, it was concerned particularly about Ms Howland's advice to the Committee as follows:

he (Mr Blood) mentioned to me if I made public the documents I had or showed them to the Senate inquiry he would have to ask me to leave. (Hansard, 10 May 1989, p. 23)

The Committee asked the solicitor for Mr Blood that his client address that matter specifically.

11. As the Secretary to the Senate Standing Committee on Environment, Recreation and the Arts had particular knowledge of matters connected with the Drugs in Sport inquiry, including matters of fact concerning contact with him, the Committee decided to send to him, again on a confidential basis, the submissions received from Ms Howland and Mr Blood. The Secretary responded to the Committee's request on 28 March, while a further submission from Mr Blood was received by the Committee on 30 March. All the papers and submissions referred to were incorporated in the Hansard report of the public meeting of the Committee, held on Wednesday, 10 May 1989, tabled with this report. (Hansard, pp. 4-39)

12. The Committee, in considering the matters placed before it in the written documents, was particularly concerned at the comment, mentioned above, from Ms Howland that Mr Blood had told her that if she made public the documents she had or showed them to the Senate inquiry he would have to ask her to leave the house. So far as the Committee has been able to establish, this matter was raised by Mr Blood some time in October.

13. On 14 October, Ms Howland indicated to the Institute of Sport, which was seeking evidence relating to the possibility that illegal drugs had been administered by persons connected with the Institute, that she would not provide documentary evidence in her possession to the Institute but that she might be prepared to produce it to the Senate Committee. It is not clear from the evidence the precise day on which Mr Blood made his comment; what is clear, however, is that it was made sometime before 21 October, which was the day on which the Secretary of the Senate Committee first approached Ms Howland and asked her to appear before the Committee. Ms Howland expressed some reluctance to come before the Committee, primarily on the ground that she was "tired" of the whole drugs in sport business and that she thought the inquiry was a waste of time. After speaking with Mrs Gael Martin, however, both Ms Howland and Mrs Martin decided to appear before the Committee. This advice was conveyed to the Secretary on 27 October.

14. On 3 November, arrangements were made for Ms Howland and Mrs Martin to give evidence at an in camera hearing on 9 November. On 8 November, however, Ms Howland rang the Secretary to advise that Mrs Martin felt unable to appear before the Committee and that the hearing would have to be cancelled. Ms Howland said that she would be prepared

to appear before the Committee at a later date, possibly in December, and that by then Mrs Martin might also feel that she could appear.

15. On 24 November, the Standing Committee resolved to issue a formal summons to both Ms Howland and Mrs Martin to appear before it and to produce relevant papers. The summons was served on 29 November and the hearings were held on the night of 30 November. The hearings were conducted partly in public and partly in private, and did not conclude until early in the morning of 1 December.

16. Because of the late conclusion of the hearing, Ms Howland did not return to Mr Blood's house, and instead spent the night at Mrs Martin's house. When she did return, she found the note left for her by Mr Blood, asking her to seek other accommodation as soon as possible.

Matters for Determination

17. The task of the Committee has been to determine whether, under the terms of the resolutions of the Senate relating to matters which may be treated as contempts, offences had been committed under the following headings:

Interference with witnesses

- (10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

Molestation of witnesses

- (11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

18. The Senate, in passing the Privilege Resolutions of 15 February 1988, declared that it would take into account three criteria when determining, firstly, whether matters possibly involving contempt should be referred to the Committee of Privileges, and, secondly, whether a contempt had been committed. These criteria are as follows:

- (a) The principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
 - (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.

19. The relevant resolution also requires the Committee to take these criteria into account when inquiring into any matter referred to it. In contrast, the President, under resolution 4, is required only "to have regard to" only to two of the three criteria. The criteria to which the President is not required to have regard are contained in paragraph 3(c) of the Privilege Resolutions.

20. In the present case, the Committee concluded that the criterion in (a) had been met, and that the criterion in (b) was inapplicable. The Committee has therefore turned its

attention to the criteria in (c). While written evidence was available to the Committee on the question, the Committee determined that, in this particular case, it needed to hear oral evidence before it could determine a finding on the matters before it.

Public Hearing

21. The Committee therefore arranged for a brief public hearing to be held on Wednesday, 10 May 1989, at 8.00 pm. All members of the Committee participated in the hearing with the exception of Senator Black, who advised the Committee that he had decided not to participate because of his Chairmanship of the Standing Committee on Environment, Recreation and the Arts. Because the Committee deliberated on its findings immediately after the hearing, Senator Black did not participate in these deliberations.

22. The Committee points out that the hearing was the first hearing to be undertaken since the passage of the Privilege Resolutions of 25 February 1988. The Committee therefore took considerable time in establishing the procedures to be followed in this case. The procedures proposed by the Committee were advised to Mr Blood's solicitor and to Ms Howland. Each was invited to meet with the Committee beforehand to discuss the procedures, if required. This did not, however, prove necessary. A paper setting out the procedures was incorporated into the Hansard report of the proceedings (pp. 40-41).

23. The Committee invited Ms Howland to make an opening statement, which she did not feel the need to do, and then the Chair, on behalf of the Committee, and other members questioned her. Mr Richard Refshauge, Mr Blood's legal adviser, questioned Ms Howland on Mr Blood's behalf. Mr Blood was similarly invited to make an opening statement and

was questioned by the Committee on his actions in asking Ms Howland to leave his house. Mr Refshauge took the opportunity provided by the Committee to make a closing statement on his client's behalf. As reported to the Senate on 11 May, the Committee was greatly assisted in resolving the matters by the helpfulness and co-operation of Ms Howland and Mr Blood.

24. The Committee did not find it necessary to consider the terms of any commercial arrangement under which Ms Howland was living in Mr Blood's house, as Mr Blood's legal right to ask Ms Howland to leave his house was not in dispute. Rather, on the basis of the written evidence before it, the Committee considered it necessary to place the events surrounding Ms Howland's appearance before the Standing Committee in the context of a ban imposed by the Institute in 1987 on her use of facilities at the Institute, and the reasons why, despite that ban, she was still using the facilities as late as November 1988, and questioned her accordingly. Ms Howland has now provided the Committee with three letters from the Institute stating the terms of her ban. These letters are at attachment A to this report. The Committee is puzzled as to why the bans formally imposed were in effect ignored by certain Institute staff until their oral reinforcement more than a year after their imposition. This matter, however, is beyond the Committee's terms of reference other than to establish the climate in which the actions of Mr Blood in discussing the production of documentary evidence in Ms Howland's possession and his asking her to leave the house following her appearance before the Standing Committee were undertaken.

25. It is clear from the evidence before this Committee, and other publicly available evidence, that there was considerable tension surrounding the question of drugs and the Institute of Sport. Mr Blood found himself in a situation where, as he stated in evidence before the Committee:

... my right to privacy and avoidance of further stress needed to be asserted over Sue's right to free speech. (Hansard, p. 54)

26. The Committee has formed the view that Mr Blood was in a state of stress throughout the period of the Institute's own inquiry into the availability of drugs at the Institute and the Senate Committee's inquiry into the subject. His concern about his association with Ms Howland, and the implications it might have for his position at the Institute, is evident in his written submissions and his oral evidence to the Committee. His written evidence to the Committee indicated that he is "sensitive" and "prone to stress" (Hansard, p. 35) and this was confirmed at the public hearings.

27. He perceived a number of conflicts, between: loyalty to his friend and to his employer; his desire that there should be a free flow of information and that issues relating to drugs in sport should be resolved, on the one hand, and his fear that he might be implicated in the dissemination of the information in an atmosphere of tension; and his somewhat sensitive personality and a battle, not of his making, between a forceful personality and the organisation where he worked. It appears to the Committee that Mr Blood took the actions he did in a state of stress and was motivated by a desire to obtain relief from the stressful situation in which he found himself. For example, he explained to the Committee in his second submission his comment to Ms Howland that if she released documentary evidence he would ask her to leave as follows:

I indicated to Sue that I felt she should leave my home if things were to escalate {emphasis added}. I think I did mention that I did not want her living in my house if she released the document, meaning that I could not bear the attention and pressure that would almost certainly result from its release. At no time, however, did I indicate to her that I

did not want her to release it; rather what I meant was that if she wished to take the matter forward she should do so without involving me further and putting me under any further stress or pressure. (Hansard, pp. 33-34)

28. Further in his submission in response to Ms Howland's comments, he made the following comment:

I did not ask her to stop her fight, withdraw her campaign, or, in fact, not to release the document. Rather, I suggested to her that I was becoming totally fed up at my unwilling involvement with her battle with the Institute and the sporting bureaucracy. I was reaching the stage where I hated going to work and I hated coming home. (Hansard, pp. 34-35)

29. So far as the trigger for his writing the note asking her to find alternative accommodation was concerned, he advised the Committee that the last straw came on the morning of 1 December, when he received two telephone calls from Ms Pru Goward. Mr Blood's oral evidence to the Committee includes the following:

CHAIRMAN - We come now to 1 December, and the phone calls you received from Ms Pru Goward. When she rang your home twice on 1 December, did she mention to you that Ms Howland had produced the document at the hearing of the Senate Committee?

Mr Blood - No. She rang to say that she wanted to speak to Sue. Sue was not there and so I said, "Sue is not here", and she said "Where is she?" and I said, "I do not know where she is". She was very insistent about wanting to get in contact with Sue, and I told her that I did not know where Sue was and I hung up. She rang back again and said, "We must have got cut off", and I said, "No, I hung up. I do not know where Sue is and it has nothing to do with me", and that sort of made me really angry ... It was at that point I decided that I could see there must have been something, that all the publicity was going to start

again over the evidence the night before. I assume that Sue would have had to repeat the allegations she made on Four Corners because that was one of the reasons why the Committee was called. (Hansard, pp. 60-61)

30. As Mr Blood acknowledges, the timing of his action was "awful" (Hansard, p. 55). It is not surprising therefore that, in her letter to the Standing Committee, Ms Howland made the reasonable assumption that:

As a result of my appearance before the Senate Committee inquiry ... I have now been told by the owner (employee of the AIS) Mr Greg Blood of the house in which I have been living that I now have to find alternative accommodation as soon as possible. (Standing Committee Report, Attachment 3)

31. Mr Blood makes the point, however, that the reason for his not asking Ms Howland to leave his house earlier than he did was that:

I felt, however, that it would be unfair to ask her to leave until after she had given evidence at the Senate Committee as I knew she was under some pressure, particularly as she had had to be summonsed to attend there. I thought, accordingly, that I would leave it until after that and then, hopefully, the parting could be made as quietly and as gently to her as possible (Hansard p. 15).

32. The Committee, in making the finding reported to the Senate on 11 May that Mr Blood had not committed a contempt of the Senate, has concluded that he had no intention either to interfere with Ms Howland in the giving of evidence, or to penalise her for the giving of the evidence. From the evidence before it, the Committee has concluded this on the basis that Mr Blood was concerned about the escalation of a situation beyond his control.

Conclusion

33. As indicated in the 11 May statement to the Senate, the issues raised by the reference are of importance for the operations of all Senate Committees, and the Committee reiterates its comment that it regards Ms Howland's notification to the Standing Committee of the events which transpired after her giving evidence to the Standing Committee, and that Committee's report to the Senate, as entirely appropriate, and indeed necessary for the proper functioning of Senate committees.

34. The Committee shares the Standing Committee's concern that actions taken by persons in order to prevent information being produced, or to impose a penalty as a result of the production of that information, would seriously impede a Committee's inquiry, and is of the view that they would amount to a serious contempt of the Senate deserving of severe censure and penalty. In the circumstances of the present case, however, the requisite intention has not been established to the satisfaction of the Committee of Privileges and thus a finding has been made that no contempt has been committed.

Patricia Giles
CHAIR

ATTACHMENT A

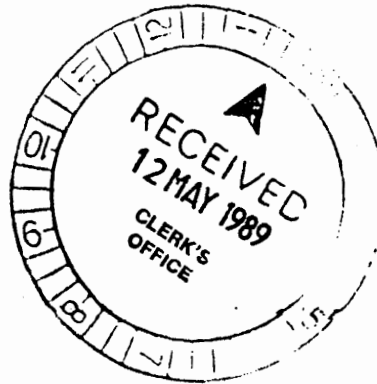


Australian Institute of Sport

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Telephone (062) 52 1111
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8 September 1987

Ms Sue Howland
16 Gully Street
SCULLIN ACT 2614



ABS

Dear Ms Howland

It is with regret that the Institute has now been advised by the Australian Athletic Union that the International Amateur Athletic Federation has suspended you from further competition because you returned a positive drug test.

It is the Institute's policy that any athlete returning a positive drug test (relating to athletic performance) shall not be allowed access to the Institute's facilities and back-up services.

You are advised that as from 8 September 1987 you will not be permitted to have access to AIS facilities including the following:-

- ↳ Frank Stewart Sports Training Facility
- ↳ Sports Science and Medicine Facility
- ↳ Information Centre
- ↳ Athletic Tracks and Training area
- ↳ AIS Halls of Residence
- ↳ Weight Rooms

When the Institute receives advice from the Australian Athletic Union concerning a completion of the suspension, the above decision will be reviewed.

If you wish to discuss this decision with me my telephone number is 521235.

Yours sincerely

R G HARVEY
Director



7 December 1987

Ms Sue Howland
194 Slade Point Road
MACKAY QLD 4740

Dear Ms Howland

The Board of the Australian Sports Commission and the Australian Institute of Sport have asked me to inform you that in the light of what you said on the Four Corners program of 30 November 1987, and upon completion of your two year suspension, you will need to satisfy the Institute that you have changed your approach to the use of drugs if you wish to use the Institute's facilities.

Yours sincerely

R G HARVEY
Deputy Chairman



18 December 1987

Ms Sue Howland
194 Slade Pt Road
MACKAY QLD 4741

Dear Ms Howland

I refer to your letter of 16 December 1987. I would like to confirm that the position of the Board of the Australian Sports Commission and the Australian Institute of Sport is that upon completion of your two year's suspension you will need to satisfy the Institute that you have changed your approach to the use of drugs if you wish to use the Institute's facilities.

A change of approach could consist of a sworn statement to the effect that you are not using drugs and will not use drugs in the future. The statement will also need to include an assurance that you will not advocate the use of drugs.

Yours sincerely

R G HARVEY
Deputy Chairman

