

**ETHICS COMMITTEE****REPORT NO. 145****MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
4 MARCH 2014 RELATING TO AN ALLEGED DELIBERATE MISLEADING
OF THE HOUSE BY A MEMBER*****Introduction and background***

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (POQA). The current committee was appointed by resolution of the Legislative Assembly on 17 May 2012.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.¹ The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. The matter in this report relates to whether the Member for Mudgeeraba, Ms Ros Bates MP, deliberately misled the House on 15 October 2013 by reading material from a letter from her son, Mr Ben Gommers, into the parliamentary record which was known to her personally to be incorrect. The statement, in question, was "that at no stage did my mother employ me, nor did she ask anyone to give me a job".²
4. In accordance with Standing Order 269, the Acting Chairperson of the Crime and Misconduct Committee (CMC), Dr Ken Levy wrote to the Speaker on 19 February 2014 providing information for the Speaker to consider whether or not to refer the matter to the committee.
5. On 4 March 2014, the Speaker referred the matter to the committee in accordance with Standing Order 268(2).

The referral

6. Upon referring the matter to the committee on 4 March 2014, the Speaker made the following statement in the House:

¹ S.104B, *Parliament of Queensland Act 2001*.

² Queensland Legislative Assembly, Record of Proceedings (Hansard), 15 October 2013, p.3132.

Honourable members, on 20 February 2014 I received correspondence from the—I will now ask that, in accordance with our agreement, the cameras be removed—chair of the Crime and Misconduct Commission. This correspondence included prima facie documentary evidence that the member for Mudgeeraba read material from a third party into the parliamentary record which was known to her personally to be incorrect. The implication is that by reading this incorrect material into the record the member deliberately misled the assembly on 15 October 2013. Having considered this matter, I have decided that I will refer the matter under standing order 268(2). I have, therefore, referred the matter to the Ethics Committee.³

Committee Processes

7. The Member for Mudgeeraba wrote to the committee on 4 March 2014 requesting that the committee expedite its consideration of the matter due to concerns about Mr Gommers' health. Mr Gommers' solicitors wrote to the committee, on behalf of their client, on 6 March 2014 to also request that the matter be expedited.
8. On 5 March 2014, the Member for Mudgeeraba made a pre-emptive submission to the committee.
9. At its meeting on 6 March 2014, the committee noted the requests to expedite its consideration of the matter due to concerns about Mr Gommers' health. The committee agreed that it would reach a decision on this matter as soon as practicable, ensuring procedural fairness for all parties concerned and without compromising the integrity of the process.
10. The committee invited the Member for Mudgeeraba to provide a submission to the committee. The committee received submissions from the Member and Mr Gommers' solicitor, on behalf of their client, on 11 March 2014. On 1 April 2014, the committee received a further submission from Mr Michael Byrne QC on behalf of the Member.
11. On 3 April 2014, the committee held a private hearing during which the committee heard evidence from the Member for Mudgeeraba.

Definition of contempt

12. Section 37 of the POQA defines the meaning of 'contempt' of the Assembly as follows:
 - (1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
 - (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
 - (a) the free exercise by the Assembly or a committee of its authority or functions; or
 - (b) the free performance by a member of the member's duties as a member.

Nature of the contempt of deliberately misleading the House

13. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (the Standing Orders) provide that the Legislative Assembly may treat deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) as a contempt.⁴
14. There are three elements to be established when determining whether a member has committed the contempt of deliberately misleading the House:

³ Queensland Legislative Assembly, Record of Proceedings (Hansard), 4 March 2014, p.298.

⁴ Standing Order 266(2).

- firstly, the statement must, in fact, have been misleading;
 - secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
 - thirdly, in making it, the member must have intended to mislead the House.⁵
15. Previous ethics committees, and David McGee in *Parliamentary Practice in New Zealand*, have noted that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.⁶

Establishing a prima facie case of possible contempt

16. The committee has established procedures for dealing with privileges references, which ensure procedural fairness and natural justice is afforded to all parties. These procedures are set out in Chapters 44 and 45 of the Standing Orders. The committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 of the Standing Orders.
17. The committee found that it had sufficient material before it to deliberate on the matter. This material included: Dr Levy's correspondence, and enclosures, to the Speaker; the Member for Mudgeeraba's and Mr Gommers' submissions to the committee; and evidence heard at the private hearing of the committee on 3 April 2014.
18. The issues to be resolved in establishing whether the matter, on the face of it, gives rise to a contempt are listed below.
- Do the member's statements contain any apparent or proven factually incorrect matter?
 - Were any of the member's statements misleading; and
 - (if yes), did the member know at the time the statements were made that they were misleading and was it the member's intention to mislead the House?

Do the member's statements contain any apparent or proven factually incorrect matter?

19. In his letter to Madam Speaker of 19 February 2014, Dr Levy referred to the following statement made by the Member for Mudgeeraba in the House on 15 October 2013:
- ... that at no stage did my mother employ me, nor did she ask anyone to give me a job.*
20. The committee considers that there are two limbs to the Member's statement: firstly, that she did not employ her son and secondly, that she did not ask anyone else to give him a job. The committee has taken the view that the referral from the Speaker related only to the second limb of the statement: *nor did she ask anyone to give me a job.*
21. The Member, in her submissions of 5 and 11 March 2014, denied asking anyone to give Mr Gommers a job at any time. Specifically, the Member asserts that she did not play any part in Mr Gommers employment at the Department of Transport and Main Roads (the Department) and states that Mr Gommers appointment at the Department had nothing "to do with my personal or business friendship with anyone".
22. Mr Gommers' submission also strenuously asserts that the Member did not ask anybody to 'give him a job'. Mr Gommers states "that at no stage did his mother to his knowledge ask anyone to employ him nor did he ask his mother to request anyone to employ him".

⁵ McGee, David, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654-655.

⁶ McGee, David, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

23. The following facts are not in dispute:
- in the lead up to the election on 24 March 2012 potential Ministers, including the Member for Mudgeeraba, put together a list of names and resumes of potential ministerial staff should the Liberal National Party be elected to Government;
 - the Member for Mudgeeraba handed a folder of eight resumes to the Opposition Office for consideration. Mr Gommers' resume was one of those eight resumes;
 - on 27 March 2012, Mr Gommers sent his resume to the Member for Mudgeeraba via email. Mr Gommers states that "he forwarded his resume to his mother such that she might on forward it to the respective individuals [various potential Ministers] for their consideration in the event they were appointed.";
 - the Member for Mudgeeraba sent Mr Gommers' resume by email on 27 March 2012 to five potential Ministers; and
 - on 28 March 2012, the Member for Mudgeeraba sent Mr Gommers' resume via email to Mr Caltabiano, the then Director-General of the Department. The Member for Mudgeeraba also spoke to Mr Caltabiano about Mr Gommers' resume.
24. The Member asserts that she sent Mr Gommers' resume to the various potential Ministers for consideration "as a general expression of interest" in any Ministerial advisor positions that may have become available.
25. The Member for Mudgeeraba states that she sent Mr Gommers' resume to Mr Caltabiano to forward on to the Minister for Transport and Main Roads and that she "did not at any time ask Mr Caltabiano to employ my son/give him a job."
26. In her submission of 5 March 2014, the Member stated that "I did not ask any of the addressees to provide my son employment or give him a job" and that "I did not have any conversations with any of the aforementioned [the various potential Ministers] in relation to the prospects or otherwise of my son obtaining a position as a Ministerial advisor".
27. The committee considers that it is arguable that the Member's submission that she "... did not ask any of the addressees to provide my son employment or give him a job" is technically correct in that her emails of 27 and 28 March 2012 did not expressly request that the recipients give Mr Gommers a job.
28. The Ethics Committee of the 48th Parliament, however, held that the term misleading is wider than 'false' or 'incorrect'. That committee considered it, "... possible, although rare and unlikely, that a technically factually correct statement could also be misleading ..." by, for example, the deliberate omission of relevant information.⁷
29. Furthermore, the *Code of Ethical Standards: Legislative Assembly of Queensland* emphasises to members that, "... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading."⁸
30. The Member for Mudgeeraba confirmed that she had forwarded Mr Gommers' resume to various potential Ministers on 27 March 2012 and to Mr Caltabiano on 28 March 2012 in the context of the upcoming process of filling Ministerial Office positions.
31. The committee considers that while the Member made no express request to give Mr Gommers a job, the clear purpose of providing the resume was for Mr Gommers to be considered for a job in one of the Ministerial Offices.

⁷ Members' Ethics and Parliamentary Privileges Committee, *Alleged Misleading of the House by a Minister* on 14 November 1996, Report No. 4, Goprint, Brisbane, 1997, p.10.

⁸ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, 9 February 2009 and 11 May 2009, p.25.

32. The committee considers that, a reasonable person, having heard the Member's statement on 15 October 2013, could have been misled in substance in that forwarding her son's resume to be considered for Ministerial Office appointment was in effect a request that he be considered for a job.
33. Accordingly, based on the material before it, the committee finds that the Member for Mudgeeraba's statement to the House on 15 October 2013 contains apparently incorrect matter.

Were any of the member's statements misleading?

34. Whilst her written submissions to the committee argued that the statement "*nor did she ask anyone to give me a job*" was not misleading, at the private hearing on 3 April 2014, the Member accepted that a reasonable person, with knowledge of all the relevant facts, could have considered that by sending her son's resume to her party colleagues for their consideration, she was asking them to give her son favourable consideration in the appointment process.
35. The committee considers that, on balance, a reasonable person fully informed, including of the existence of the Member's emails of 27 and 28 March 2012 forwarding Mr Gommers' resume for consideration, could consider the Member's statement to be misleading.

If yes, did the member know at the time the statements were made that they were misleading and was it the member's intention to mislead the House?

36. As mentioned above, previous ethics committees, and David McGee have noted that the standard of proof demanded in cases of deliberately misleading Parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.
37. In her submission of 11 March 2014, the Member for Mudgeeraba stated:
The forwarding of resumes did not in my understanding amount to 'asking' anybody to employ and or give a job to, my son, and was merely the provision on behalf of my son, of various expressions of interest for unspecified Ministerial positions. It was in this context that I did not consider at the time that I read the relevant portion of the letter the subject of the complaint in the House that I could mislead the House.
38. At the private hearing on 3 April 2014, the Member stated that when reading her son's letter into the record of proceedings at no stage did she consider she might be misleading the House. She was just expressing Mr Gommers' opinion of what had occurred.
39. The Member for Mudgeeraba stated that when reading out Mr Gommers' letter in the House her focus was on the letter, the sustained media interest in his appointment at the Department and the adverse impact the media's interest had upon Mr Gommers' health.
40. The committee considered that as the author of the emails to various potential Ministers and Mr Caltabiano, and having provided said emails to the CMC during the intervening investigation, an argument could be made that the Member for Mudgeeraba ought to have known at the time that her statement could have been misleading.
41. However, taking into account the Member's testimony as to her state of mind at the time she read her son's letter into the record of proceedings, the committee considers, on the balance of probabilities, that the Member did not actually know the statement might be misleading. The committee also acknowledges that the Member gave an unqualified apology to the committee.
42. Having considered the information before it, the committee finds that, on balance, there is insufficient evidence to suggest that the Member for Mudgeeraba intended to mislead the House.

43. The committee acknowledges that members may from time-to-time make incorrect or misleading statements in the House without actually intending to mislead the House.
44. The committee draws members' attention to the duty under the *Code of Ethical Standards* to correct the official record in the House as soon as it becomes apparent that their statements were incorrect or could be misleading.⁹
45. The committee can only speculate that had the Member for Mudgeeraba taken such action as soon as she became aware of the suggestion that she may have misled the House then the matter may not have found its way to the committee.

Conclusion

46. On the information before the committee, the committee finds that:
 - (a) the Member for Mudgeeraba's statement "...nor did she ask anyone to give me a job" contained apparently factually incorrect matter and, in that context, a reasonable person could have been misled by the statement;
 - (b) on the balance of probabilities, at the time of reading her son, Mr Gommers', letter into the record of proceedings on 15 October 2013, the Member did not make the connection between the expression of her son's opinion and the emails that she had previously sent forwarding her son's resume for consideration for Ministerial Office positions, and therefore she did not, at the relevant time, know that her statement could, in substance, have been misleading; and
 - (c) therefore, on balance, there is insufficient evidence to indicate that the Member intended to mislead the House.
47. Accordingly, the committee finds that there is no breach of privilege or contempt in this matter.
48. The committee echoes the sentiments of its predecessor committees, specifically the Members' Ethics and Parliamentary Privileges Committee which stated in its Report No. 35 that:

*... deliberately misleading the House is a very serious contempt. If the Assembly cannot rely on members' statements in the House, the whole system of responsible democracy is at risk. To deliberately mislead the House is akin to perjury in a judicial proceeding. In both cases, the function of the organ of government is undermined.*¹⁰
49. This committee re-iterates its resolve to hold members to a high standard of behaviour. The committee considers that the preservation of high standards of behaviour is essential for protecting the institution of Parliament and its members.
50. The committee, therefore, finds that it would be appropriate for the Member for Mudgeeraba to make a statement in the House apologising if her statement to the House of 15 October 2013 was misleading.
51. The committee reminds all members of the duty to ensure the accuracy of their statements in the House and advises members who become aware of a possibility that they may have misled the House to make a statement in the House, as soon as practicable, to correct the record.

⁹ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, 9 February 2009 and 11 May 2009, p.25.

¹⁰ Members' Ethics and Parliamentary Privileges Committee, Report No. 35 – Report on a matter of privilege: A member making a deliberately misleading statement in a 'dissenting report', tabled 15 September 1999, para 10.

Conclusion 1

On the information before the committee, the committee finds there is evidence to suggest that the Member for Mudgeeraba's statement to the House "...nor did she ask anyone to give me a job" contained apparently factually incorrect matter and was misleading.

Conclusion 2

The committee finds that on the balance of probabilities, at the time of reading her son, Mr Gommers', letter into the record of proceedings on 15 October 2013, the Member did not make the connection between the expression of her son's opinion and the emails that she had previously sent forwarding her son's resume for consideration for Ministerial Office positions, and therefore she did not know, at the relevant time, that her statement could, in substance, have been misleading.

Accordingly, the committee finds, on balance, that there is insufficient evidence before it to conclude that the Member for Mudgeeraba intended to mislead the House.

Recommendation 1

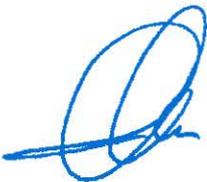
The committee recommends that the House take no further action in relation to the matter.

Recommendation 2

The committee recommends that the Member for Mudgeeraba, at the next opportunity, make a statement in the House apologising to the House if her statement was misleading.

Recommendation 3

The committee recommends that all members ensure the accuracy of their statements in the House and to correct the record, as soon as possible, if they become aware of the possibility that they have misled the House.



Michael Crandon MP
Chair

April 2014

Membership — 54th Parliament

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