10 December 2013

Speaker's Advice to Parliament about lawfulness of motion regarding the PCMC

Honourable Members

On November 28, the Member for Nicklin Peter Wellington wrote to me questioning the validity of a motion passed by the House on November 21. I also received correspondence from another community group with related questions.

The motion in dispute concerned the discharge and subsequent appointment of members of the Parliamentary Crime and Misconduct Committee (PCMC).

The questions being raised had serious implications if proven. There was also keen public interest and the public’s confidence in the lawful actions of the Parliament is of the highest importance.

Parliamentary in-house counsel routinely gives advice on such motions, and had advised that the motion in question was lawful. Nevertheless I engaged external senior counsel to consider the questions being raised by the Member for Nicklin. This was not a reflection on the professionalism of staff in the Office of Clerk but was to avoid placing parliamentary staff in a position where they may be subject to perceptions of conflict due to their previous involvement with the motion.

I can confirm that I have received the following advice from outside counsel, Mark Hinson QC. Mr Hinson advises that in his opinion the motion was lawful.

I attach his advice, along with Mr Wellington’s original letter.

Yours sincerely

HON FIONA SIMPSON MP
Speaker of the Legislative Assembly

Enc
28th November 2013

HONOURABLE FIONA SIMPSON, MP
SPEAKER
QUEENSLAND PARLIAMENT
Dear Madam Speaker,

Re: Sacking of the Parliamentary Crime and Misconduct Committee

I refer to the motion moved by the Manager of Government Business and passed by Parliament on Thursday, November 21 in relation to the removal of the Members of the Parliamentary Crime and Misconduct Committee.

I draw your attention to s 300 of the Crime and Misconduct Act 2001 which provides that the Committee must consist of 4 members nominated by the Leader of the House and 3 members nominated by the Leader of the Opposition. The Act is silent about the manner of their removal but the obvious inference to be drawn from s 300 is that the “nomination” by the Leaders is an ongoing concept, so that the members remain on the Committee at the pleasure of the respective Leader and can be removed if the relevant Leader withdraws the nomination.

As you are aware, a mere resolution of the House cannot override a provision of an Act passed by the House and given assent by her Majesty’s representative. I submit therefore that the resolution, being contrary to s 300, was totally ineffective.

Certainly the purported removal of the three members nominated by the Leader of the Opposition must be seen as completely ineffective. Once nominated by the Leader of the Opposition, they stay nominated until she says otherwise. No resolution can effectively provide otherwise. I am gratified that the Leader of the Opposition has re-nominated the same three members, including myself, but it was not necessary – we had not been lawfully removed.

I ask that you make a ruling that:

(a) The resolution regarding the sacking of the committee on the evening of November 21 was not lawful, or not effective, and,

(b) That if the government wishes to change the identity of its four nominees on the Committee it must do it according to the proper procedure under the Crime and Misconduct Act.

Yours sincerely,

Peter Wellington
MP
Member for Nicklin
MARK HINSON QC
Level 29
Santos Place
32 Turbot Street
BRISBANE QLD 4000

9 December 2013

Office of the Speaker,
Queensland Parliament,
Parliament House,
George Street,
BRISBANE QLD 4000

Your Ref: Ruth Limkin

RE: MOTION FOR DISCHARGE OF MEMBERSHIP OF PARLIAMENTARY
CRIME AND MISCONDUCT COMMITTEE

MEMORANDUM OF ADVICE

1. On the evening of 21 November 2013 the Leader of the House moved a three paragraph motion including the following:-

"3 That this House:
(a) immediately discharges the membership of the Parliamentary Crime and Misconduct Committee;
(b) that notwithstanding anything contained in standing orders, the appointment of new members to the committee shall be by the Leader of the House and the Leader of the Opposition writing to the Clerk with their appointments;
(c) the appointments of members by the Leader of the House and the Leader of the Opposition must be according to s.300 of the Crime and Misconduct Act 2001; and
(d) the Clerk shall table the letters of nomination upon receipt."

2. Following debate the motion was agreed to. It was then moved, and agreed to, that the House adjourn until 9.30am on 11 February 2014.

3. On 28 November the Speaker's Office received a letter from Mr Wellington, the member for Nicklin. The letter was in these terms:-

"Sacking of the Parliamentary Crime and Misconduct Committee"
I refer to the motion moved by the Manager of Government Business and passed by Parliament on Thursday, November 21 in relation to the removal of the Members of the Parliamentary Crime and Misconduct Committee.

I draw your attention to s.300 of the Crime and Misconduct Act 2001 which provides that the Committee must consist of 4 members nominated by the Leader of the House and 3 members nominated by the Leader of the Opposition. The Act is silent about the manner of their removal but the obvious inference to be drawn from s.300 is that the “nomination” by the leaders is an ongoing concept, so that the members remain on the Committee at the pleasure of the respective Leader and can be removed if the relevant Leader withdraws the nomination.

As you are aware, a mere resolution of the House cannot override a provision of an Act passed by the House and given assent by Her Majesty’s representative. I submit therefore that the resolution, being contrary to s.300, was totally ineffective.

Certainly the purported removal of the three members nominated by the Leader of the Opposition must be seen as completely ineffective. Once nominated by the Leader of the Opposition, they stay nominated until she says otherwise. No resolution can effectively provide otherwise. I am gratified that the Leader of the Opposition has re-nominated the same three members, including myself, but it was not necessary – we had not been lawfully removed.

I ask that you make a ruling that:

(a) The resolution regarding the sacking of the committee on the evening of November 21 was not lawful, or not effective, and

(b) That if the government wishes to change the identity of its four nominees on the Committee it must do it according to the proper procedure under the Crime and Misconduct Act.

4. I am briefed to advise whether paragraph 3(a) of the motion was lawful or not, and if lawful whether it applies to members of the Parliamentary Crime and Misconduct Committee (the PCMC) nominated by both the Government and the Opposition.

5. I am also briefed to advise whether the appointment of new members of the PCMC was lawful. Paragraphs 3(b), (c) and (d) of the motion provided for the appointment of new members of the PCMC following the discharge of the then members. A letter from the Whistleblowers Action Group (Queensland) received in the Speaker’s Office on 3 December 2013 notes that the four government members of the PCMC were notified to the Clerk on 22 November and that the Leader of the Opposition nominated three members on 28 November.

6. The letter says that:

It is our opinion, on advice, that the method by which the PCMC was recently dismissed and replaced on 21 November 2013 by the Queensland Legislative Assembly may not have been carried out in accordance with the provisions of
the Crime and Misconduct Act 2001 ("CM Act"), and consequently has brought about the following:

(a) for a seven-day period between 21 November until 28 November 2013, the 'new' PCMC was not constituted lawfully and was thus invalid at law; and accordingly

(b) in respect of any action taken between 21 November until 28 November 2014, the CMC, being accountable to the PCMC at law in continuum, is therefore potentially open to a judicial challenge as having acted beyond power (i.e. ultra vires).

... this 7-day gap of 21-28 November 2013 remains a matter of great concern regarding the lawful functioning of the PCMC and CMC for us. WAG respectfully submits that senior counsel’s advice on this concern ... also takes into account our concerns.

7. In order to answer those questions it is necessary to examine the relevant statutory and other provisions relating to the establishment and membership of the PCMC and other committees.

Establishment of PCMC

8. Section 291 of the Crime and Misconduct Act 2001 (the CM Act) provides as follows:-

"A committee of the Legislative Assembly called the Parliamentary Crime and Misconduct Committee is established."

9. Section 292 describes the functions of the PCMC. Sections 293-299 describe the powers of the PCMC.

10. Sections 300 and 301 of the CM Act provide for membership of the PCMC as follows:-

"300 Membership of parliamentary committee

(1) The parliamentary committee must consist of 7 members nominated as follows:-

(a) 4 members nominated by the Leader of the House;
(b) 3 members nominated by the Leader of the Opposition;

(2) The chairperson of the parliamentary committee must be the member nominated as chairperson by the Leader of the House.

301 Membership of parliamentary committee continues despite dissolution

(1) Despite section 300, from the dissolution of the Legislative Assembly, the parliamentary committee consists of its members immediately before the dissolution.

(2) A member under subsection (1) continues to be a member of the parliamentary committee until whichever of the following first happens -
(a) the member resigns by notice given to the clerk of the Parliament;
(b) the member dies;
(c) the returning officer for the electoral district in which the member was nominated as a candidate for the election notifies the electoral commission that a person other than the member has been elected for the electoral district;
(d) fresh members are appointed by the Legislative Assembly

(3) If a member stops being a member of the parliamentary committee under subsection (2)(c), the person recognised as the leader of the political party that nominated the member to the committee may nominate another person as a member of the committee until fresh members are appointed by the Legislative Assembly.”

Other Provisions About Committees

11. There can be no doubt that the Legislative Assembly has power to establish committees. Section 9(1) of the Constitution of Queensland 2001 assumes the existence of such a power in providing that the powers, rights and immunities of the Legislative Assembly and its members and committees are those defined in an Act.

12. The Parliament of Queensland Act 2001 (the Parliament Act) provides:-
(a) in s.80 that the Committee of the Legislative Assembly is established;
(b) in s.88(1) that the Legislative Assembly must, by standing rules and orders, establish committees of the Assembly under s.88 (portfolio committees);
(c) in s.102 that the Ethics Committee is established;
(d) in s.106 that the Legislative Assembly’s power to establish committees is not limited by the Act.

13. Membership of the Committee of the Legislative Assembly comprises the office holders specified in s.81 of the Parliament Act or their alternate. Membership of portfolio committees comprises the members of the Assembly nominated by the Leader of the House and the members nominated by the Leader of the Opposition in the numbers specified in ss.91-91C according to the number of non-government members of the Assembly. Similarly, s.103 provides that membership of the Ethics Committee comprises members nominated by the Leader of the House and members nominated by the Leader of the Opposition.
14. Part 7 of the Standing Orders of the Legislative Assembly (standing orders 193-220B) provide for the appointment and conduct of committees. Standing Order 193(1) provides that the rules in standing orders 193-220B apply unless otherwise ordered by the House or provided by the standing orders or statute. Standing Order 6 provides that where there is a conflict between the standing orders and a statute “containing a procedure for the House to observe” the procedure in the statute is to be followed.

15. Standing orders 195-197 deal with membership of committees as follows:

"195 Membership of a committee

(1) Statutory committees and portfolio committees established under the Parliament of Queensland Act 2001 and any other committee of the House established by statute shall have the number of members determined by the statute or set out in these Standing Orders or order of appointment.

(2) If a statute, Standing Order, or order of appointment does not set a number of members, the committee shall consist of seven members.

(3) The Speaker shall not be appointed to serve on a committee except with the Speaker's consent.

196 Appointment, discharge and substitution of members

(1) Unless otherwise provided, members shall be appointed and discharged from committees by motion without notice.

(2) A motion for the appointment of a committee may contain the names of the members to be appointed to serve on the committee and the name of the Chairperson and Deputy Chairperson.

(3) Despite (1), a member may, by signed notice to the Speaker, resign from a committee and the Speaker shall, at the earliest opportunity, report the member's resignation to the House.

(4) The member's resignation in (3), is effective when received by the Speaker.

197 Ballot for committee members

(1) Any member may call for a ballot for the selection of committee members.

(2) When a ballot for the selection of committee members has been called for, each member present shall deliver at the Table a list of the members whom they wish to be appointed to the committee not exceeding the number of members proposed for the committee.

(3) Any list delivered to the Table that contains more names than the numbers of members proposed is invalid and shall not be considered further.
(4) The Speaker shall appoint two members to be scrutineers, who, with the Clerk, shall ascertain the number of votes for each member proposed.

(5) The members proposed who are reported to have the greatest number of votes shall be declared by the Speaker to be the members of the committee.

(6) If in any case two or more members proposed have an equality of votes, the Speaker shall decide which of those members proposed shall serve on the committee.”

The Acts Interpretation Act

16. The provisions referred to above do not make express provision for several aspects of the processes relating to membership of committees. That does not mean that there is a gap. The statutory provisions referred to above must be read, as all Acts must, together with the Acts Interpretation Act 1954 (the AlA). Statutes are drafted and intended to be read and understood in the light of the AlA: see Attorney-General (Qld) v Australian Industrial Relations Commission (2002) 213 CLR 485 at 492-493 [18].

17. Relevant provisions of the AlA are as follows:-

“4 Displacement of Act by contrary intention
The application of this Act may be displaced, wholly or partly, by a contrary intention appearing in any Act.

... 

13B Acts not to affect powers, rights or immunities of Legislative Assembly except by express provision

(1) An Act enacted after the commencement of this section affects the powers, rights or immunities of the Legislative Assembly or of its members or committees only so far as the Act expressly provides.

(2) For subsection (1), an Act affects the powers, rights or immunities mentioned in the subsection if it abolishes any of the powers, rights or immunities or is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.

(3) In this section –
rights includes privileges.

... 

23 Performance of statutory functions etc.

(1) If an Act confers a function or power on a person or body, the function may be performed, or the power may be exercised, as occasion requires.
(2) If an Act confers a function or power on a specified officer or
the holder of a specified office, the function may be performed,
or the power may be exercised, by the person for the time being
occupying or acting in the office concerned.

25 Powers of appointment imply certain incidental powers

(1) If an Act authorises or requires a person or body to appoint a
person to an office—

(a) the power may be exercised as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a
person appointed to the office; and

(ii) power to appoint another person to act in the
office if a person appointed to the office is
removed or suspended; and

(iii) power to reinstate or reappoint a person
removed or suspended; and

(iv) power to appoint a person to act in the office if it
is vacant (whether or not the office has ever been
filled); and

(v) power to appoint a person to act in the office if
the person appointed to the office is absent or is
unable to discharge the functions of the office
(whether because of illness or otherwise); and

(c) the power also includes power to reappoint a person to
the office if the person is eligible to be appointed to the
office.

(2) The power to remove or suspend a person under subsection
(1)(b) may be exercised even if the Act under which the person
was appointed provides that the holder of the office to which the
person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subsection (1)(b) may
be exercised as occasion requires.

(4) An appointment under subsection (1)(b) may be expressed to
have effect only in the circumstances specified in the instrument
of appointment.

26 Appointment not affected by defect etc.

The appointment of a person to an office, to act in an office, to exercise a
power or to do anything else is not invalid merely because of a defect or
irregularity in relation to the appointment.
38  Reckoning of time

...  
(4) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the relevant occasion happens."

Establishment and Membership of Committees

18. There are three methods of establishing a committee of the Legislative Assembly:-

(a) direct establishment by statute;

(b) authorisation in the sense of requiring (by statute or otherwise) establishment of a committee by the Assembly;

(c) authorisation in the sense of permitting establishment of a committee by the Assembly in its discretion.

19. There are three methods of determining membership of a committee:-

(a) by direct statutory specification of who the members are;

(b) by statutory specification that the members are to be the persons nominated by identified office-holders;

(c) by ballot of the members of the Assembly.

20. Termination of membership of a committee is dealt with in express terms only by standing order 196 and s.301 of the CMC Act. Standing order 196 makes general provision for that subject while s.301 deals only with the PCMC. For present purposes it is not necessary to consider voluntary termination on a member’s own initiative by tender of a notice of resignation.

21. In terms, standing order 196 authorises a motion for the discharge of the members of a committee. Given the relationship between the standing orders and statutes stated in standing orders 6 and 193(1) (see paragraph 14 above), the real question is whether ss.300 and 301 of the CMC Act exclude the operation of standing order 196(1) so far as the PCMC is concerned.

The Motion For Discharge was Lawful

22. In my opinion ss.300 and 301 of the CMC Act do not exclude the operation of standing order 196(1), and paragraph 3(a) of the motion was lawful.

23. Section 300 of the CMC Act stipulates the membership of the PCMC. To give effect to s.300 the Leader of the House and the Leader of the Opposition must nominate the required number of members of the Assembly to be members of the PCMC. The power
of nomination necessarily granted by s.300 to the Leader of the House and the Leader of the Opposition must be exercised as occasion requires, as often as the relevant occasion happens and as soon as possible: see ss.23(1) and 38(4) of the AIA.

24. The occasion for nomination of a member of the PCMC by the relevant nominator under s.300 will be a vacancy in the membership of the PCMC. Section 300 is not concerned with how and when a vacancy may arise. It is concerned with how members of the Assembly become members of the PCMC whenever the occasion arises for a member or members of the Assembly to fill a vacancy in PCMC membership.

25. Section 301 of the CMC Act does two things. First, s.301(1) provides that the members of the PCMC immediately before the dissolution of the Legislative Assembly continue to be the members of the PCMC following dissolution. Section 301(1) is complementary to s.291, and reading the two provisions together shows a legislative intention that the PCMC be a permanent body.

26. Second, s.301(2) provides for the circumstances in which a member of the PCMC following the dissolution of the Assembly, ceases to be a member of the PCMC. Section 301(2) does not have a field of operation outside the period following dissolution of the Assembly. It is not therefore an exhaustive or complete statement of the circumstances in which a person ceases to be a member of the PCMC. It is not addressed to and says nothing about the period of time before dissolution of the Assembly.

27. For the 3 year duration of the Legislative Assembly (as provided for by s.2 of the Constitution Act Amendment Act 1890) there are two ways in which a member of the PCMC may be discharged from such membership, and two ways in which the whole membership of the PCMC may be discharged.

28. The power of nomination of members of the PCMC conferred on the Leader of the House and the Leader of the Opposition by s.300 of the CMC Act is a power to appoint to an office within the meaning of s.25 of the AIA in my opinion. The Macquarie Dictionary defines “appoint” as meaning “to nominate or assign to a position” and defines “nominate” as meaning “to propose as a proper person for appointment or election to an office, to appoint for a duty or office, to name, to specify”. Section 300 of the CMC Act uses “nominate” in the sense of appoint for an office rather than in the sense of to propose for appointment. As I read s.300, it mandates that membership of the PCMC consist of the 7 members nominated by the respective Leaders, and mandates that each Leader nominate the specified number of members. Accordingly, the respective Leaders appoint the members of the PCMC because they nominate members to those positions.
29. The first way in which a member may be discharged from membership of the PCMC is by the relevant nominating Leader exercising the power of removal under s.25(1)(b)(i) of the ALA. A power of appointment to an office includes, under s.25(1)(b)(i), a power to remove a person appointed to the office. Membership of the PCMC is an office in my opinion. An office is a duty towards others attaching to one's station, position or employment: see Sharples v Arnison [2001] QSC 056 at [34].

30. The second way in which a member may be discharged from membership of the PCMC is by motion under standing order 196(1). The reference therein to "members" includes a reference to a single member in my opinion.

31. The first way in which all the members of the PCMC may be discharged is by motion under standing order 196(1). There is no inconsistency or conflict between that standing order and ss.300 and 301 of the CMC Act. Section 300 is concerned with appointment not discharge. Section 301 is concerned with discharge but only following dissolution of the Assembly and not during the 3 year duration of the Assembly.

32. The power of appointment under s.300 is exclusive, in my opinion, as indicated by the expression "must consist". That power of appointment carries with it a power of removal under s.25(1)(b)(i) of the ALA, but it does not follow that the power of removal is also exclusive.

33. Section 300 must be read not only in the light of s.25 of the ALA but also in the light of s.13B of the ALA. Section 300 was enacted after the commencement of s.13B. The powers, rights and privileges of the Legislative Assembly extend to exercising control over members relating to the performance of their parliamentary duties. The Assembly has power to expel or suspend a member, notwithstanding that the member has been elected to represent an electoral district and is entitled to sit in the Assembly and exercise all the rights of a member. Similarly, notwithstanding that a member has been nominated as a member of a committee by a body other than the Assembly itself, the Assembly may discharge a member from a committee. Such a power is recognised in standing order 196(1).

34. Section 300 is not to be construed as abolishing the power, right or privilege of the Assembly to discharge a member from a committee, and is not to be read as wholly or partly inconsistent with such a power, right or privilege unless it expressly so provides. It does not expressly so provide in my opinion. It is concerned only with appointment and is silent about discharge. While the power of appointment carries with it a power of removal, that power of removal is conferred on the persons having the power of appointment. There is nothing in the text or context of s.300 which indicates to me that the power of the Leaders to remove members of the PCMC is to operate as the sole means of removal or that the purpose of s.300 is to abolish the power, right or privilege of the Legislative Assembly to discharge a member or members of the PCMC.
35. The second way in which the whole membership of the PCMC may be discharged is by simultaneous exercise of the power of removal by the Leader of the House and the Leader of the Opposition.

36. In summary, it is lawful for the Assembly to discharge a member or all the members of the PCMC by motion under standing order 196(1), regardless of which Leader nominated the member who is discharged. It is also lawful for a nominating Leader to discharge one or all of the members nominated by that Leader, and for all members of the PCMC to be discharged by simultaneous exercise of each nominating Leader’s power of removal.

Appointment of New Members of PCMC

37. Section 300 of the CMC Act is silent as to the manner in which nominations must be made by the respective Leaders and the timing of such nominations.

38. As to the manner of nomination, it was open to the Legislative Assembly to resolve that nominations should be made by the Leaders writing to the Clerk and by the Clerk tabling the letters of nomination upon receipt. Neither s.300 of the CMC Act nor paragraphs 3(b)-(d) of the motion are explicit in saying when the nominations take effect. The Action Group’s letter appears to accept that the nominations were effective upon tabling by the Clerk. I agree that the nominations were then effective, and do not think it necessary to consider whether they may have been effective at the time of receipt by the Clerk and before tabling.

39. As to the timing of the nominations, ss.23(1) and 38(4) of the AIA are relevant. The nomination of members of the PCMC by the Leader of the House occurred on 22 November and the nomination of members by the Leader of the Opposition occurred on 28 November. The occasion for the making of those nominations was the discharge of the members of the PCMC on 21 November. Whether those nominations were made as soon as possible once the relevant occasion arose is a question of fact to be answered having regard to the circumstances in which the nominations were to be made. A requirement to do something “as soon as possible” is a requirement to do that thing with all reasonable expedition which the circumstances allow: *Vines v Djordjevich* (1955) 91 CLR 512 at 522.

40. The nominations by the Leader of House were made as soon as possible in my opinion. There is room for debate about whether the nominations by the Leader of the Opposition were made as soon as possible. It would be reasonable to allow some time for consultation by the Leader of the Opposition with not only prospective nominees but also other members of the Opposition and the ALP. It is open to conclude that the nominations by the Leader of the Opposition were made as soon as possible.
41. If I am wrong about that, nevertheless there is no effect of the validity of the appointment of those members of the PCMC because of s.26 of the ALA. Any delay in nomination is a defect or irregularity within the meaning of s.26 in my opinion.

42. The Whistleblowers Action Group’s letter apparently accepts that nominations were completed on 28 November and that thereafter there was a properly constituted PCMC consisting of seven members nominated in accordance with s.300 of the CMC Act. I agree that from 28 November there was a properly constituted PCMC consisting of seven members nominated in accordance with s.300 of the CMC Act.

43. In the past the Assembly has resolved, upon motion by the Leader of the House, to appoint members to portfolio committees, the PCMC and the Ethics Committee: see Hansard 17 May 2012 p.150. In each case, a statute specifies that the committee comprises members nominated by the Leaders: see s.300 of the CMC Act and ss.91-91C and 103 of the Parliament Act. Those statutory provisions operate on their own terms to make the nominated members the members of the relevant committee. Standing order 196(1) provides for appointment of members of committees by motion without notice, unless otherwise provided. The statutory provisions referred to do provide otherwise in my opinion, so that appointment by motion without notice is unnecessary. A motion, naming the members of a committee, nevertheless provides a convenient record of committee membership, in circumstances where there is no express provision for publication of nominations. It was open to the Assembly to adopt the means of publication of nominations in paragraphs 3(b) and 3(d) of the motion. Paragraph 3(c) of the motion is to be understood as requiring the Leader of the House to nominate four members and a chairperson and the Leader of the Opposition to nominate three members as required by s.300 of the CMC Act.

44. The Action Group’s contention that for a seven day period between 21 November and 28 November the new PCMC was not constituted lawfully and was thus invalid is not legally correct in my opinion. The correct legal position is that for that seven day period there were no members of the PCMC or that membership of the PCMC was vacant. The PCMC established by s.300 of the CMC Act continues to exist as an institution, in the same way that the Legislative Assembly continues to exist as an institution following its dissolution or expiry through the effluxion of time.

45. A consequence of there being no members of the PCMC between 21 November and 28 November is that there were no persons capable of performing the functions and exercising the powers of the PCMC. The Action Group’s contention that any action taken by the CMC between 21 November and 28 November is potentially open to challenge as being beyond power because of the non-existence of a properly constituted PCMC is wrong in my opinion.
46. There is nothing in the text or context or purpose of the CMC Act which leads me to conclude that the CMC's lawful performance of its functions and lawful exercise of its powers is dependent upon the existence of a properly constituted PCMC, or that a vacancy in the entire membership of the PCMC has the consequence that the CMC is unable to perform its functions or exercise its powers. The CMC and the PCMC are separate and distinct bodies.

Conclusions

47. In my opinion, paragraph 3(a) of the motion was lawful and applied to all members of the PCMC regardless of whether they were nominated by the Leader of the House or the Leader of the Opposition.

48. In my opinion the appointment of new members of the PCMC pursuant to paragraphs 3(b)-(d) of the motion was lawful. The PCMC continued in existence despite the vacancy in its membership between 21 November and 28 November. The CMC was able to lawfully perform its functions and exercise its powers during that period despite the vacancies in the membership of the PCMC.

With compliments,

M D HINSON QC

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