

**STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES**

*Twenty-first Report — “Referral of a Matter of Privilege Raised by Hon Jon Ford, MLC” — Motion*

Resumed from 31 March on the following motion moved by Hon Matt Benson-Lidholm —

That the report do lie upon the table and be printed and adopted, and agreed to.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Transport)** [3.32 pm]: I rise to address the motion that was moved by Hon Matt Benson-Lidholm on this report. I am grateful that the motion has not been put yet because it gives me an opportunity to make some brief observations. I am aware that at least one other member is looking forward to commenting.

The twenty-first report of the Procedure and Privileges Committee is brief. It records that a matter of privilege was raised by Hon Jon Ford in respect of a contempt that was committed upon him as a member on 24 March 2010. The form of the contempt was that a legal document had been served upon him while Parliament was sitting, and when he was in the parliamentary precinct. The report itself outlines the experience of this particular contempt—and a contempt it is. Members will be well advised to read this because it not only summarises our experience as a Parliament with this issue, but also how this report, once adopted—it should be—will add to the precedent and the body of parliamentary law that relates to this matter. Members will observe that after the matter had been dealt with in accordance with standing orders—that is, referred to the Standing Committee on Procedure and Privileges—it was inquired into and quickly resolved. It was resolved by an inquiry being made to the law firm believed to be involved with the offending behaviour, and the response in writing was immediate and unequivocal. It consisted of an apology to the Legislative Council from the partner of the relevant law firm, together with an apology from the associate at that same law firm who had caused the offending behaviour to be put in train. I understand also that a letter of apology was sent to Hon Jon Ford, which is appended to the report.

I am pleased to note that the committee, under the chairmanship of our President, has formed the view that no further action is required. That is a satisfactory outcome. The contempt was recognised when it occurred and prompt action was taken by the house. I am very glad to say that the law firm has corrected a gap in its own staff knowledge that caused this contempt. The staff involved in the matter have learnt their lesson and have pledged that it will not happen again. On that basis, the committee has given us one recommendation —

**The Committee recommends that no further action be taken with respect to the attempted serving of a summons in relation to court proceedings on Hon Jon Ford MLC within the precincts of Parliament during a sitting of the House.**

If this report is adopted and agreed to, that, satisfactorily, seems to be the end of that chapter. However, one further point needs to be made. I hope Hon Jon Ford will give us the benefit of his observations in a moment. Although this is a simple matter, and at face value this case was quickly and simply resolved, it is a very serious matter that the privileges of this Parliament be maintained, protected and reinforced at every opportunity. It means that no contempt, no attempted denial of the privilege of the Parliament, can be, nor should be, taken lightly. Such contempt must be responded to in the way that occurred in this case, in which the honourable member brought the incident immediately to Parliament's attention. Parliament has procedures in place to deal with these matters. If we do not make sure we do that whenever a contempt is apparent, we weaken the institution of Parliament itself. That is something that I am determined, and I am sure all members in this place are determined, will not happen while any one of us is on our watch, as it were, in this Parliament. Therefore, I commend this report to the house and support the motion.

**HON JON FORD (Mining and Pastoral)** [3.40 pm]: I thank Minister O'Brien for his comments on the report, and I agree with everything he has said. However, I will put a personal slant on it, because it might be useful to bring members' attention to what actually happened, and then explain it in the context of how it happened at the time. I have always thought of it as a contempt of the Parliament, but in actual fact it is a contempt against the people of Western Australia and their primacy in regard to government. The report sets that out very well and I will quote it. It states —

*This evening during question time, at about twenty past five, —*

This is quoting me —

*I was informed by one of the parliamentary staff that there was a woman in parliamentary reception who had some papers for me to sign and I was asked to go there, to which I complied. When I arrived at reception there was a young woman there who did not identify herself personally, but identified herself as being a member of the staff of Freehills law firm and that she intended to serve on me a “Witness Summons to Produce a Record or Thing”.*

*I informed the server that, in fact, she could not do that and it was a breach of privilege to which she argued the point. I said, "I don't care about that. You can't serve it on me. However, if you want to come after Parliament is finished tonight or before 10 o'clock tomorrow morning, I'll make myself available." She said that she had been advised by her supervisor that she could serve it on my staff. To that end, I told her that my staff were actually in Newman, so she could help herself. She said that she understood that she could actually give the summons to a member of my staff and that they could serve it on me. I told her that I did not know about that, but I would see her at 10 o'clock tomorrow. I made the point that I was not trying to be obstructionist and that there were actual rules of privilege to be followed. At that stage my staff member, Mr Dennis Liddelow, was called to reception and he was served with the document, which he presented to me.*

The context of that was that I was the lead speaker for the opposition at the time on an important bill that dealt with mining approvals, I think. The point I want to make to members is that what seemingly started off as an innocent interaction completely distracted me from the job that I have been elected to do, and members have to understand that. That is why it is not a contempt so much of the Parliament, in my mind—clearly, it is a contempt of Parliament—but it is a contempt of the people of Western Australia. The people of Western Australia elect us to this place to represent them and their views in this Parliament. We are the law-makers; this is the highest court in the land; and we need to understand that. That is the most important part.

In a practical sense, what this company did—it gave a very prompt apology and recognised its error—was interfere in the processes of this Parliament. We are elected to this place. It is the top pillar of our democracy. That is what it is about. It is not about protecting our patch; it is about protecting the people of Western Australia's patch. That is what we are here to do. As I said before, for the first time in my life I understood what a breach of privilege meant in this regard, because it was totally distracting. To that end, it distracted the Parliament, because then the Parliament had to deal with it. It dealt with it very quickly at the time, and that was a good thing.

It is very important for members of the house to explain this report to their staff around this chamber. The important thing that came out of this report, for me, is where it applies. It is not good enough to step out the front door of the Parliament, because that is in the parliamentary precincts. Our President and the Speaker determine the parliamentary precincts. It has been explained to me that if we draw a line around the doughnut, which is the car park, that is a good measure. So out to the main road, and anything contained within the doughnut and down to the freeway are the parliamentary precincts. It is not good enough to step out there. Therefore, members cannot be served with a piece of paper for anything when they are walking through the car park from their car, and they should not accept anything that someone is attempting to serve on them. Members should tell their staff that it is also a contempt if the person gives the paper to someone else to give to the member. That is very, very important, because when we are in this place, it is about working for the people of Western Australia. We are not working for anybody else.

An interesting thing came out of this for me that extended that. Recently I found myself in court in a case in which I was a witness for the prosecution. I explained to the legal people when the Parliament was sitting, and they did their best to schedule my time at the court so that it did not conflict with that. However, unfortunately, with the way proceedings go, I ended up as a witness in the Supreme Court on a number of occasions while the house was sitting.

The disturbing attitude that I saw down there was that nobody recognised what I was doing. There was some commentary right at the end by his Honour Justice Murray, thanking me for allowing myself to be there—in actual fact it was the house that allowed me to be there, because I did not claim privilege and I was paired, which meant I was on official leave. However, there was some debate about whether I would go back to the court on a Friday. The representative of the Director of Public Prosecutions tried to explain to the judge that I was a member of Parliament, that he thought that I was going to a committee meeting and that perhaps the court needed to make some allowance for me so that I could attend that committee meeting. The judge's response, as I remember it, was, "Well, that's all very well, counsel, but if I need him here, he's going to be here." That was basically the short answer, and I raised that with the Clerk. This showed me that there is a disconnection in our roles as parliamentarians. At no stage was I trying to be obstructionist. In fact, by the Parliament allowing me to go down there, we were trying to allow justice to be done. However, there did not seem to be a recognition that if the Parliament had required me to be here, I should be allowed to return to the Parliament. Therefore, there is a bit of work to be done in educating both sides—the judiciary and the Parliament. It is really up to us in such an instance around the Parliament. Members should be very aware of that. A member's job to represent his or her constituency is the most important job, and it is recognised in the Constitution and in law. Members need to be aware of that, and they should make sure that their staff are aware of it.

In any event, I appreciate the support of the Parliament in the way that it dealt with this matter quickly. When a member finds himself in this situation it is quite intimidating, because the member is presented with a piece of paper saying, "We're going to chuck you in jail or give you a big fine, or both, if you don't turn up or deliver a piece of paper." That is the distracting part, believe it or not. While I was trying to deal with a bill—we know how fast the parliamentary processes are—I was thinking, "Am I going to be in jail by the time the Parliament deals with this?" However, the house dealt with it very quickly and got a good response. Indeed, the law firm involved responded very quickly. The point I want to make to the house—I support the motion—is that members should remember that this is about contempt of the people and protecting the privilege of the people of Western Australia, and a contempt against this house is a contempt against the people of Western Australia.

**HON MATT BENSON-LIDHOLM (Agricultural)** [3.49 pm] — in reply: I rise to make a few brief remarks on this motion. I certainly would like to endorse the remarks of Hon Jon Ford and Hon Simon O'Brien. I particularly note the importance attached, as far as Hon Jon Ford is concerned, to the rather speedy and satisfying outcome that resulted from the inquiry by the Standing Committee on Procedure and Privileges.

As has been noted already, obviously this was a particularly serious issue; that is, serving a summons on a member of Parliament within the precincts of Parliament House whilst Parliament was sitting. I draw members' attention to page 2, paragraph 2.3 of the twenty-first report of the Standing Committee on Procedure and Privileges. The significance of a matter such as this was noted in a 1999 report of the United Kingdom Joint Committee on Parliamentary Privilege under the heading "Service of court documents within the precincts" —

*334. Service of court documents such as writs and orders within the precincts of the House on a day when the House is sitting, but not otherwise, has long been regarded as a contempt, as tending to obstruct or impede the House in its functions. The main purpose of this rule nowadays is to protect members and others who attend either House from service within the House being used for publicity seeking purposes. Such activity would be an abuse of the precincts of Parliament.*

The UK committee went on to say at paragraph 335 —

*The Joint Committee considers the present rule does not impede the administration of justice. If personal service elsewhere is difficult, other alternatives, such as postal service or substituted service, are readily available.*

The standing committee's report goes on to quote instances in which this has occurred in the Parliament of Western Australia. One such occasion was on 11 November 1992, with respect to Hon John Halden, MLC; and a Queensland example is also referred to. But, that aside, as far as I am concerned, the procedure adopted by the Standing Committee on Procedure and Privileges was short, sharp and appropriate, as was the resolution. I commend Hon Simon O'Brien for his comments about the importance of the institution of Parliament. That, to me, is the prime reason for the speedy action by the committee. I do not really want to go into great detail about the procedure adopted by the committee—it is in the report for members to take note of—but I think the conclusion warrants some attention. The committee's conclusion at paragraph 4.1 states —

The Committee finds that an attempt was made to serve a summons in relation to court proceedings on Hon Jon Ford MLC within the precincts of the Parliament during a sitting of the House.

In this case Mr Ante Golem, a senior associate of the Freehills law firm in Perth, was involved. I will not go into his particular role here, but as a senior associate of the Freehills law firm he was responsible for the attempt to serve the summons. The committee found that the attempt was a contempt of Parliament. Set out in paragraph 4.4 is the most important point as far as the committee was concerned —

The Committee, however, notes that prompt, written apologies addressed to both Hon Jon Ford MLC and the Legislative Council were received from Mr Golem.

The committee found that Mr Golem now understands the impropriety of his actions, and notes Mr Steven Penglis's undertaking at paragraph 3.3 of the report —

Mr Penglis states in his letter that he will take steps to ensure that the impropriety of attempting to serve a summons at Parliament House is well understood by all members of the Freehills law firm's litigation section in Perth.

The disturbing thing that followed, as members would well know, the committee set out in paragraph 4.6 of the report —

The Committee also notes that the Committee's correspondence referred to in paragraph 3.1 —

I will not go through that again —

was forwarded to Hon Jon Ford MLC, which constitutes a further breach of privilege.

The committee was certainly of the view that no further action was required.

On that note I will resume my seat, but make the point, as Hon Simon O'Brien did, that if this particular action had not been taken by the procedure and privileges committee, the importance of Parliament would have been minimised. That is something that this particular Parliament should not ever, and will not ever, entertain whilst members here are present.

Question put and passed.