

**STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES**

*Committee*

The President (Hon Kate Doust) in the chair.

*Fifty-sixth Report — “Parliamentary Privilege and Intrusive Powers — Interim Report: Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019” — Recommendation 3 — Adoption*

Resumed from an earlier stage of the sitting.

**Hon MARTIN ALDRIDGE:** Before we were interrupted by question time, I was speaking on recommendation 3 and quoting paragraph 6.15. There are a couple of other sections that I want to quote, beginning with paragraph 6.16 on page 9, which reads —

- 6.16 If this is in fact the case, the CCC would now have the means to access all of Mr Edman’s emails and their attachments sent and received for a period of 8 years when he was a member of Parliament. The PPC makes the observation that the CCC notice relating to Mr Edman sought email data for a period of 3 years and 9 months. In his evidence, the Commissioner conceded that by having the encryption and pass codes the CCC would have access to everything on Mr Edman’s computer.
- 6.17 The Commissioner confirmed to the PPC that Mr Edman had made a claim to the CCC of parliamentary privilege over everything seized by the CCC under the search warrant, including the computer. Notwithstanding that claim, and the usual procedures that apply to similar claims made by members of the Federal Parliament, the Queensland Parliament, the ACT Parliament and the NSW Parliament under various memoranda of understanding or protocols, whereby those claims are determined by the relevant House of Parliament or their delegate, the Commissioner has retained the computer and all data on it.

Obviously, these are the paragraphs leading up to recommendation 3 in the report. I want to make this point: over several months, significant amounts of state resources have been used on a process not approved by the procedure and privileges committee or by this house, but a process nonetheless in which three years and nine months’ worth of data was assessed and narrowed down to everything that the commission thought was within scope, which was the 70 000-odd documents, and roughly 68 000 documents were handed over to the Corruption and Crime Commission. Notwithstanding that, the Corruption and Crime Commission executed search warrants on the morning of 14 August on Mr Edman’s residence and, as we understand it, seized a Department of the Premier and Cabinet-issued laptop and a DPC-issued hard drive. It is clear to me that the CCC knew what it had, because it knew where to go to get the encryption codes for said devices. It went straight to the director general of the Department of the Premier and Cabinet with another notice to produce. This time, it was for the codes to the laptop. Members may not be aware, but our electronic devices have an extra layer of security on them. They have encrypted hard drives, which make it much more difficult for other parties to access them should they be misplaced or stolen. It would probably present great difficulty to the commission to access this hard drive and this computer without the encryption codes in the possession of the Department of the Premier and Cabinet. As we now know, the director general of the Department of the Premier and Cabinet handed over those encryption codes, which just puzzles me. Prior to this, we had a process by which three years and nine months’ worth of email data was searched, provided to the State Solicitor’s Office, assessed and released. Then, in one release of an encryption code on one piece of paper to the Corruption and Crime Commission, it now has access to the entire computer and whatever is stored on the computer and the hard drive. We are going to come back to recommendation 2 in a minute and talk about an amendment by the Leader of the House to discontinue an inquiry into Ms Roper, Mr Foster and the other person. To me, the breaches of privilege and potential contempts of this house are only rising by the day. The Department of the Premier and Cabinet has given the CCC the encryption code and access to everything on the computer—everything! No SSO process—no matter how flawed that process was. There was no process. They said, “Here’s the code.” What I cannot work out is that the director general insisted on having SSO assess this data previously, but was then happy to hand over the codes to the computer. I cannot reconcile that, and that is something that is going to require considerable further examination.

I want to turn members’ attention to paragraphs 6.19 and 6.20 on page 10 of the report. I want to quote them. They are really important sections. Paragraph 6.19 states —

The Commissioner told the PPC that the data on the computer seized from Mr Edman would be dealt with in the same way as the CCC is dealing with the other data it has obtained as outlined in the previous paragraph. When asked about how Mr Edman’s claim of parliamentary privilege over the data contained on the laptop was being addressed, the Commissioner advised that the CCC has asked Mr Edman to identify what particular matters of privilege he is referring to. This was to enable the Commission to assess it and, if necessary, have the claim of privileged determined by the Legislative Council.

Paragraph 6.20 states —

The PPC notes, that in a letter to Mr Edman's lawyers, dated 28 August 2019, Ms Wendy Endebrock-Brown, Director Legal Services, CCC, expressly rejected Mr Edman's claim of parliamentary privilege over all items that were seized under warrant from both his home and business. She further advised Mr Edman's lawyers that:

Your client was given a list of all items seized at the conclusion of each warrant. If parliamentary privilege is now claimed in respect of any document or communication in or on any item by your client, please identify the document or communication and the basis for the claim. Upon receipt of this information, the Commission will seek to agree a process involving the Legislative Council to determine the extent to which parliamentary privilege applies to the document or communication.

Those two paragraphs I have just quoted are really quite disturbing. It is not our place to challenge the validity of a claim of privilege, but it is our job to assess it. It is clear from these two paragraphs that the CCC, from the evidence before us so far, has had complete disregard to the claim of privilege over the items seized. It was clear they were government assets provided to the former member for the conduct of parliamentary business. The CCC knew exactly where to go to get the encryption codes to these devices. The way in which it has dealt with the claim made by the former member is disgusting. I challenge members in this house: if you were placed in the same position, could you recall every email on your computer? Could you recall, of the emails on your computer, which ones are privileged? Let us narrow this down. Could you recall what is on the desktop of your computer and what is privileged? Let us narrow it again. Could you recall what is in the boot of your car and what might be privileged? It is an impossible task to present to somebody and clearly a complete disregard of privilege and the privileges of this house. That is why the committee made recommendation 3—to make sure that we recover the materials from the CCC that have a claim of privilege over them so that they can be further assessed. This is not something that is groundbreakingly new. This happens in every jurisdiction that has encountered this issue over the last few decades. It happens routinely in the Australian Parliament. The difference is that in those other jurisdictions, the investigative agencies and the police forces respect the privileges of the Parliament.

**Hon SIMON O'BRIEN:** Earlier, I indicated that about this time I would be offering another dimension to this particular point. I follow on from what Hon Martin Aldridge has just said. It seems that now is the appropriate time to do it. In relation to recommendation 3, which we are dealing with now, it would seem that it has already been achieved. I am not so sure about that. In the same spirit that you might think, "Hang on, we're not going to oppose it because it appears it has already been achieved", I am inclined to say "Hang on, let's not discharge it", because I think there might be some other elements that need to be examined. Who knows about some of the vagaries and unforeseen circumstances that might just arise? We have already been warned by the Leader of the House at some length earlier today about making sure that we dot the i's and cross the t's in this matter. However, what members do need to look at beyond that is that the laptop was provided to the Standing Committee on Procedure and Privileges, under a covering letter dated 4 September. We know this because it was one of the tabled papers from earlier. I happen to know anyway, but that is another story. This followed a previous letter from the CCC the day before in which we were told that the contents of that machine were also provided. It was interesting to receive that. I want to draw members' attention to what the commissioner says in his covering letter on 3 September. He said he has provided various materials and continues —

Finally, I undertake to provide copies of all material produced in response to the third NPR served on Mr Foster and any further NPR served on him.

God knows where this is all going to end! He continues —

The Committee is now in a position to make its own evaluation and to instruct the Commission what constitutes privileged material.

This is meant to be clever. The fact of the matter is that it must be plainly obvious to all members following this, as it must be obvious to the CCC, as it has become obvious to Darren Foster, as was made blindingly obvious to the State Solicitor's Office, that this process of trying to identify privileged documents simply, logistically, cannot work. If one has half a dozen documents, I suppose they can be presented to the member who owns them or maybe to the Clerk or some other representative and get an opinion about whether the matter is covered by privilege. But when we are talking about millions of documents, plainly, that is just absurd. It is ludicrous. The author of the letter would also know that that is ludicrous. What game are they playing? What they are trying to do is put the onus back on the Standing Committee on Procedure and Privileges. Members will see a steady thread of this going through the correspondence that was very kindly tabled by the Leader of the House earlier this afternoon. Examine that correspondence, and members will see very slickly laid out there all the devices intended to lead us to this point—this aha moment; this gotcha point—when it is presumed, "Now that wretched parliamentary committee is hoist on its own petard." The fact of the matter is that I reject that and this chamber ought to reject it as well.

We will move on from the letter of 3 September saying those things and advising that disclosure is made, too. They name the members of the procedure and privileges committee and three staff. Why are they naming them to say that disclosure is made to these people? Is it intended to intimidate? I do not know. Anyway, I anticipated sometime before that we would have games, and lo and behold we have. Then we come to 4 September, when we received the following letter from the Corruption and Crime Commission to the President of the Legislative Council. It states —

Dear President

I refer to my letter of yesterday, 3 September 2019.

Acknowledging:

- members of the Procedure and Privileges Committee have emphasized that they do not wish to impede the Commission's investigation;
- the Committee obtained from Mr Foster the contents of the first Notice to Produce Records ... on 23 August 2019; and
- the Committee obtained an image of the DPS computer retained by a person on 3 September 2019.

I respectfully enquire —

The day later —

when the Committee anticipates being able to advise the Commission as to what documents and other material are not subject to Parliamentary Privilege.

This is a pointless exercise, as I have already indicated. It is preposterous, this situation. What sort of games are being played here? If the government is intending to find a situation in which, in the interests of truth and justice and non-corruption and all the rest of this other virtue-signalling nonsense we are hearing, it wants to get to a stage at which it says, "Right; parliamentary privilege no longer exists; it's been declared passé, and we're going to ignore it from here on in", this is the way to go about it, by saying, "Hang on; we're trying to do the right thing. Look, we're giving them everything they asked for and we're just saying, 'Tell us what documents we can have.'" It is so transparent a device intended to divide this chamber. Incredibly, the government is going for it, from the Premier's office down. It is absolutely appalling.

I do not know where this is going to go next, but it is the appropriate action that when documents that are subject to parliamentary privilege have been taken in this way—this way that we submit to the chamber is unlawful!—we ought to demand that they be returned into the safe custody of a representative of the chamber. That is why it sits with the Clerk of the Parliaments. There is no way any members of the procedure and privileges committee are going to be looking at anything on that computer, or anybody else's. It does not matter whose computer it is or whose hardcopy files it might be, no way known are we going to do that, and neither should we.

With the greatest respect, the recommendation as drafted to have the laptop and all copies of the data contained on it returned, or given, to the Clerk is the right one. We should support it and continue to support this recommendation, so we do not have someone wanting to retrospectively have it back or something. The question of who now owns that computer is something that we will have to sort out in due course. We should not be getting letters, cheered on by the government, saying, "Right; now what are you going to do? We gotcha." That is what is happening at the moment. If members think that is all right, we are in big trouble. But, happily, this chamber does not seem to think that that is right and I am sure will support the recommendation as printed.

*Division*

Question put and a division taken with the following result —

Ayes (19)

Hon Martin Aldridge  
Hon Jacqui Boydell  
Hon Robin Chapple  
Hon Jim Chown  
Hon Tim Clifford

Hon Peter Collier  
Hon Diane Evers  
Hon Nick Goiran  
Hon Colin Holt  
Hon Rick Mazza

Hon Michael Mischin  
Hon Simon O'Brien  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Charles Smith

Hon Aaron Stonehouse  
Hon Colin Tincknell  
Hon Alison Xamon  
Hon Ken Baston (*Teller*)

**Extract from Hansard**  
[COUNCIL — Thursday, 5 September 2019]  
p6549d-6553a  
Hon Martin Aldridge; Hon Simon O'Brien; President

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Noes (10)

Hon Alanna Clohesy  
Hon Stephen Dawson  
Hon Sue Ellery

Hon Alannah MacTiernan  
Hon Kyle McGinn  
Hon Martin Pritchard

Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Darren West

Hon Pierre Yang (*Teller*)

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Pairs

Hon Colin de Grussa  
Hon Dr Steve Thomas  
Hon Donna Faragher

Hon Adele Farina  
Hon Samantha Rowe  
Hon Laurie Graham

**Question thus passed.**

*Recommendation 2 — Amendment to Motion*

Resumed from an earlier stage of the sitting on the amendment moved by Hon Sue Ellery (Leader of the House).

*Ruling by President*

**The PRESIDENT:** Members, we return to postponed recommendation 2, which we started to deal with before question time and there was more than one point of order. I said that I would provide a ruling on the amendment that had been moved by the Leader of the House.

Hon Nick Goiran raised a point of order in relation to the proposed amendment moved by the Leader of the House to amend the following motion of Hon Simon O'Brien —

That in relation to recommendation 2 —

That the vote passed by the Legislative Council on 15 August 2019 adopting and agreeing to the order contained in recommendation 4 in the fifty-fifth report of the Standing Committee on Procedure and Privileges, “A Refusal to Comply with a Summons to Produce Documents”, is hereby rescinded.

The Leader of the House has moved to add after the word “rescinded” —

and to request the Standing Committee on Procedure and Privileges to discontinue the investigations in relation to the actions of two public servants, being Ms Emily Roper, the deputy director general of the Department of the Premier and Cabinet, and Mr Darren Foster, the director general of the Department of the Premier and Cabinet

The point of order is on the basis that the proposed amendment is beyond the scope of the original motion. The motion is to rescind a vote of the Legislative Council pursuant to standing order 84. Standing order 84 requires certain technical requirements to be complied with before a rescission may occur, including a notice requirement and a requirement for an absolute majority; hence, Hon Simon O'Brien obtained a suspension of standing orders at yesterday's sitting in order to dispense with the notice requirement. The requirement for an absolute majority remains. As a result, it would not be possible to add the rescission of any additional votes, however related to the vote that is the subject of the motion, to the motion by amendment without also suspending standing orders. The proposed amendment is a rescission by another means. The amendment does not comply with the formal requirements of standing order 84 and is out of order for that reason.

The Leader of the House argues that the amendment is not a further rescission of two votes of the Legislative Council on 15 August 2019, but simply a request to the Standing Committee on Procedure and Privileges. The amendment, if carried, would have the effect of a direction from the Legislative Council for the committee not to comply with two orders of the Legislative Council made on 15 August 2019. The amendment is therefore inconsistent with these two orders and is out of order.

Apart from noncompliance with standing order 84 and inconsistency with previous orders of the Legislative Council, I also agree with the point of order that the amendment is beyond the scope of the motion. The two matters of privilege currently referred to the procedure and privileges committee for investigation relate to matters that have happened in the past, whilst the motion for rescission relates to an order concerning matters that may happen in the future. They relate to an entirely different subject matter and, for that reason, the proposed amendment is also out of order.

I rule that the proposed amendment is out of order.

*Motion Resumed*

**The PRESIDENT:** Members, we return to the original motion moved by Hon Simon O'Brien. The question is that the motion be agreed to.

**Question put and passed.**

*Recommendation 4 — Adoption*

**Hon SIMON O'BRIEN** — without notice: I move —

That recommendation 4 be adopted and agreed to.

*Division*

Question put and a division taken with the following result —

Ayes (19)

Hon Martin Aldridge  
Hon Jacqui Boydell  
Hon Robin Chapple  
Hon Jim Chown  
Hon Tim Clifford

Hon Peter Collier  
Hon Diane Evers  
Hon Nick Goiran  
Hon Colin Holt  
Hon Rick Mazza

Hon Michael Mischin  
Hon Simon O'Brien  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Charles Smith

Hon Aaron Stonehouse  
Hon Colin Tincknell  
Hon Alison Xamon  
Hon Ken Baston (*Teller*)

Noes (10)

Hon Alanna Clohesy  
Hon Stephen Dawson  
Hon Sue Ellery

Hon Alannah MacTiernan  
Hon Kyle McGinn  
Hon Martin Pritchard

Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Darren West

Hon Pierre Yang (*Teller*)

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Pairs

Hon Colin de Grussa  
Hon Dr Steve Thomas  
Hon Donna Faragher

Hon Adele Farina  
Hon Laurie Graham  
Hon Samantha Rowe

**Question thus passed.**

*Report*

Resolutions reported, with an absolute majority, and the report adopted.