



THIRTY-SEVENTH PARLIAMENT

REPORT 15

**STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES**

**OBSERVATION 3
OF THE REPORT OF THE SELECT COMMITTEE OF
PRIVILEGE ON A MATTER ARISING IN THE
STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS**

Presented by Hon Nick Griffiths MLC (Chairman)

March 2008

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed:

24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“6. Procedure and Privileges Committee

- 6.1 A *Procedure and Privileges Committee* is established.
- 6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (*all ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.
- 6.3 With any necessary modifications, SO 326A applies to a co-opted member.
- 6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the House or its committees.
- 6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

Members as at the time of this inquiry:

Hon Nick Griffiths MLC (Chairman)	Hon Sheila Mills MLC
Hon George Cash MLC (Deputy Chairman)	Hon Simon O’Brien MLC
Hon Graham Giffard MLC	Hon Ken Travers MLC
Hon Ray Halligan MLC	Hon Giz Watson MLC (co-opt Member)

Staff as at the time of this inquiry:

Malcolm Peacock, Clerk of the Legislative Council	Donald Allison, Clerk Assistant (House)
Nigel Lake, Deputy Clerk	

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222
lcco@parliament.wa.gov.au
Website: <http://www.parliament.wa.gov.au>

ISBN 1 921243 54 6

Note

The Fifteenth Report of the Standing Committee on Procedure and Privileges consists of a Report of the Committee and a Minority Report of Hon Ken Travers MLC.



THIRTY-SEVENTH PARLIAMENT

REPORT 15
STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES
OBSERVATION 3
OF THE REPORT OF THE SELECT COMMITTEE OF
PRIVILEGE ON A MATTER ARISING IN THE
STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS

Presented by Hon Nick Griffiths MLC (Chairman)

March 2008

CONTENTS

REPORT.....	1
1 REFERENCE.....	1
2 BACKGROUND	1
Issues.....	6
Does the Statement constitute a contempt?	6
Culpable Intention	7
Hearing with Hon. Shelley Archer MLC.....	8
3 CONCLUSION	9
APPENDIX 1 TRANSCRIPT OF EVIDENCE OF THE HEARING ON 10 MARCH	
2008.....	11

REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO

**OBSERVATION THREE OF THE REPORT OF THE SELECT COMMITTEE ON A
MATTER ARISING IN THE STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS -
REFERRED BY THE LEGISLATIVE COUNCIL TO THE STANDING COMMITTEE
ON PROCEDURE AND PRIVILEGES ON 4 DECEMBER 2007**

1 REFERENCE

- 1.1 Observation 3 was referred, with other matters, to the Standing Committee on Procedure and Privileges (**Committee**) on 4 December 2007.
- 1.2 The Committee only addressed Observation 3 for the purposes of this Report.

2 BACKGROUND

- 2.1 The referral arose from the recommendations contained in the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations (**Select Committee**).
- 2.2 The motion also referred recommendation Nos 22, 23, 25, 26, 29 and 30 from the Select Committee's Report.
- 2.3 The motion agreed to on 4 December 2007 is as follows:

That -

1. *Recommendations 3, 6, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 contained in the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations be adopted and agreed to.*
2. *Noting the findings of the Select Committee in recommendations 2, 5, 8, 12 and 15, the House refers the recommendations to the Director of Public Prosecutions to assess whether any of the persons concerned should be prosecuted for a breach of section 57 of The Criminal Code and if of that view to commence such prosecution or prosecutions.*

3. *Consideration of recommendations 1, 4, 7, 11 and 14 be deferred pending the outcome of any proceedings initiated as a result of (2) above.*
4. *Noting recommendation 35, the House authorises the limited disclosure or publication of the evidence received by the Committee to the Director of Public Prosecutions to the extent necessary or expedient so as to enable the Director of Public Prosecutions to assess any false evidence given to the Committee and, if appropriate, to conduct any prosecutions under section 57 of The Criminal Code.*
5. *The House refers the Select Committee's observations 1 and 2 to the Attorney General with the request that he ask the Solicitor General to consider referring, and if he considers it appropriate to refer, the matters discussed in the observations and relevantly in the report generally to any appropriate agency or agencies for consideration in accordance with their functions.*
6. *In relation to observation 3, the House notes that Hon Shelley Archer may have committed a grave contempt of the Parliament and refers this observation to the Standing Committee on Procedure and Privilege for its consideration and report.*

2.4 The Select Committee's Observation 3 is as follows:

The Committee brings to the attention of the House a possible further contempt of Parliament in the following statement by Hon Shelley Archer MLC to the Legislative Council in the Adjournment Debate on Tuesday, 20 March 2007 (Hansard, p301), which was false:

"... in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders."¹

The Standing Orders of the Legislative Council do not exist in isolation. They must be read in the context of, and often subject to, custom and usage and the other written and unwritten rules of the House.

The Committee notes that Hon Shelley Archer MLC's statement to the House was contrary to the clear evidence of her disclosure of the

¹ Hon Shelley Archer MLC, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 March 2007, p301.

confidential deliberations of the Standing Committee on Estimates and Financial Operations in the CCC telephone intercept of a telephone conversation between Hon Shelley Archer MLC and Mr Brian Burke at 5:26pm on 30 October 2006, the relevant portions of which are set out at paragraph 10.22 of this report.

- 2.5 The above statement was extracted from comments made to the House by Hon. Shelley Archer MLC on 20 March 2007. The member's full contribution in this debate is reproduced below:

As mentioned in this House earlier, I have resigned my memberships of both the Joint Standing Committee on Delegated Legislation and the Standing Committee on Estimates and Financial Operations. I have done so at the request of the Premier. The background to this action relates to my recent appearance at the Corruption and Crime Commission, where I was called to assist the CCC in its inquiries relating to a number of matters. While I do not intend to canvass what the CCC might eventually conclude on these matters, I want to make the following points to the House.

*The first point is that at no stage have I given to Brian Burke, or anyone else outside government, any documents that could be considered confidential, sensitive or secret to this government. The second point is that **in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders.** [emphasis added] The third point is that, as most members would be aware, I have discussed on two occasions with Brian Burke matters that go to whom he might approach in government in order to take up matters on behalf of clients and people who are constituents in my electorate. The fourth point is that while these were things that I was entitled to do as a member of Parliament, the Premier has since called on all government members to cease having dealings with Brian Burke. I have given my pledge to the Premier that I will cease any contact with Brian Burke. I have honoured, and will continue to honour, that commitment.*

Since my appearance at the CCC, a significant amount of media attention has been focused on me, amid speculation that the Premier might seek my resignation from the Labor Party. I have always been of the firm view there are no grounds for such a demand to be made. Some members might accuse me of exercising poor judgement. While I continue to dispute that particular version of events, I make the point that that is all I can be accused of. I am unhappy with the events of the past few weeks. It has been a very difficult time for me and for

my family, particularly my daughter and grand-daughter, and my close friends. Probably the most upsetting incident was the revelation of an incident in my past that is now covered by the spent convictions scheme in the Crimes Act 1914. I will not go into the details of that matter. The reason we have spent convictions is so that people who have made terrible mistakes and who have then turned the corner and made something out of their lives are able to do so without the fear that these matters will keep recurring for the rest of their lives. People make serious mistakes. They pay the price, and they accept their punishment. It is of great concern to me that as a result of what has been exposed publicly, people in our community will be living with a heightened fear that they will be vilified for their own spent convictions. It is a matter of human rights that so long as their crime is not at the extreme, people should be able to wipe the slate clean and start their lives again after more than 10 years of not offending. That is why we allow spent convictions.

In closing, I want to say that I am indebted to those closest to me for being so strong and for having such faith in me over the past few weeks. The support of those closest to me, and the constant stream of well-wishers and supporters, has helped me to keep a proper sense of perspective on all issues.

- 2.6 The Select Committee's recommendation also refers to paragraph 10.22 of its report, which states:

Between 5:26pm and 5:33pm on 30 October 2006 Hon Shelley Archer MLC had a telephone conversation with Mr Brian Burke. This telephone conversation was intercepted by the CCC. In that conversation the following disclosures of the confidential deliberations of SCEFO were made by Hon Shelley Archer MLC:

"ARCHER: ... Anthony brought it up today, Ken Travers I would suggest is going to be a problem but uhm that's fine.

Uh Giz Watson said she wants to have a look at uh the proposal before she agrees to it. Uhm Anthony hadn't discussed it with uhm his colleague, ...Nigel Hallett. So Nigel's sort of nudging me and saying what's all this about so I just said to Nigel I understand that its uhm you know sort of in relation to the Cazaley decision and I said and anything that looks into that decision uhm suites me just fine.

... And he said well uhm uhm he said as long as it doesn't effect the er development of the state in any way he'll support it so I think he should be okay....

but as I said uhm Ken Travers is gunna be a problem.

BURKE: How'd we get on top of Travers?

ARCHER: Well he's gunna go off today and discuss it with John Bowler. Now I know John Bowler won't want it and I would suggest that if John Bowler says no then uhm Ken won't do it and I'm pretty sure then the, the pressure will start on me that I, and I don't really care ...

So I was just doing the numbers uh you know, three against two, we'll get it up....

BURKE: Tell me this, when are you gunna decide it?

ARCHER: Uh well we want, Anthony and I both wanted it on next week's agenda uh meeting but uhm unfortunately the uhm two people who advised us asked us to leave it until the thirteenth of December. So uhm thirteenth of December it is.

BURKE: Who are they?

ARCHER: Oh Lisa, Lisa Peterson and David, David, I can't think of his surname but the reason is that uhm that the Libs and the Greens referred the Auditor General's Bill and the bloody Financial Bill ... to us and we're doing a huge hearing on that in the next uhm two to three weeks so it'll have to wait til the thirteenth.

BURKE: Alright.

ARCHER: But I think if we deal with it on the thirteenth and we get it up which I'm hoping that we will on that date because I'll just push Anthony now.

...

BURKE: ... What I'll do is I'll get AMEC, which is the organisation for smaller explorers,

ARCHER: Yep.

BURKE: I'll get them to go and see Giz Watson.

ARCHER: Yes. But if we push it and then because what Anthony was saying, and I agreed with him was we agree with it on the thirteenth and then we can advertise for submissions over the Christmas New Year ... break ... and into January so it gives people eight, ten weeks to put their submissions in uh and we write letters off to the relevant uhm you know bodies who are interested and ask them for submissions and uhm and then you know sort of March start to do hearings.

...

BURKE: Do you reckon that Bowler is, he's definitely gonna speak to Bowler he said did he?

ARCHER: Yes yes he said he wants to go and speak to Bowler.

Actually what uhm uh Ken Travers said to Anthony Fels was why don't you go, before you put this up why don't you go and get a briefing from Bowler and I'm looking at Anthony and shaking my head, no ...behind Travers back so it was quite funny

BURKE: did Traver's have a go at you, did he know your view?

ARCHER: Nup, no, no no. Oh I just said oh listen I support this and uhm and uh uhm Travers just turned to to Fels and said get a briefing from Bowler before you put it up. ... And but Fels really stuck to his guns and he said no I want it discussed at, you know, the ne- the thirteenth of December meeting so ... So what I'll do, just do in the next uhm couple of weeks is make sure that Anthony uhm does what's required and that is to provide all of us with a briefing about where he wants to go and what he wants to achieve.

- 2.7 On 4 December 2007, the House debated the Select Committee's report. During the course of this debate, the House resolved (upon the motion of the Leader of the House) to refer the Select Committee's Observation No. 3 to the Procedure and Privileges Committee (PPC).

Issues

Does the Statement constitute a contempt?

- 2.8 The issue of whether Hon. Shelley Archer's statement to the House on 20 March 2007 constitutes a possible further contempt of Parliament (the subject of Select Committee Observation No. 3) is a serious matter. In its report to the House, the Select Committee's opines that the member's "statement to the House was contrary to clear

evidence of her disclosure of the confidential deliberations of the Standing Committee...”. Hon. Shelley Archer’s disclosure of the deliberations of the Standing Committee, as detailed in paragraph 10.22 of the Select Committee’s report, was contrary to the Standing Orders of the Legislative Council, and is inconsistent with her statement to the House on 20 March 2007.

- 2.9 However, having reached that conclusion, the Committee considers this does not, of itself, constitute a ‘grave contempt’ (as per the reference from the House on 4 December 2007). Indeed, the Committee notes that there are numerous occasions when a member makes a statement to the House that is incorrect. Most frequently this occurs when Ministers (or a Parliamentary Secretary on behalf of a Minister) provide answers to questions on or without notice, then receive subsequent advice that the answer (or part of the answer) was incorrect. In these circumstances, the Minister advises the House of the error or omission at the earliest opportunity, and the record is corrected accordingly.²
- 2.10 There is no dispute that these corrections could be considered as technical contempts of the House. However, the Committee notes the comments of a previous select committee of privilege of the Legislative Council, that stated:

“Because a contempt can be committed regardless of a person’s intent (or lack of it), the penalty imposed is the appropriate means for the House to indicate how serious it takes it to be. Customarily, an unintended or technical contempt is excused without penalty.”
[emphasis added]³

- 2.11 Clearly the relevant issue on the occasions outlined in paragraph 2.9 above is the intent of the Minister when he or she was providing the original answer to the question. The House does not pursue these matters, as it is evident to all members that the Minister had not intended to mislead the House, and therefore any possible contempt is only of a technical nature. These examples are a clear indicator of the House’s consideration of a member’s intent in relation to these matters.

Culpable Intention

- 2.12 The consideration of intent in relation to these matters is consistent with the approach taken in other jurisdictions. The Privileges Committee of the Australian Senate “... now regards a culpable intention on the part of the person concerned as **essential**

² for recent example, see correction to answer provided by Hon Adele Farina MLC, Parliamentary Secretary to the Minister for Planning and Infrastructure, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, Tuesday, 25 September 2007, p5592.

³ Western Australia, Legislative Council, *Committee of Privilege on a Failure to Produce Documents under Summons*, Report 8, 8 December 1998, p7.17.

[emphasis added] for the establishment of a contempt.”⁴. Amongst the Senate’s parliamentary privilege resolutions of 1988, one of the criteria to be taken into account when determining matters relating to contempt is “... whether the person who committed any act which may be held to be a contempt ... **knowingly committed** [emphasis added] that act ...”⁵. The Committee concurs with this approach, and believes that the contemporary actions of the House in relation to similar matters, as outlined above, endorse this approach. Therefore, any consideration as to whether Hon. Shelley Archer’s statement to the House on 20 March 2007 constitutes a grave contempt of the House must include an examination of the member’s intent when making that statement.

Hearing with Hon. Shelley Archer MLC

2.13 Hon. Shelley Archer appeared before the Committee in closed session on 10 March 2008. During the course of this hearing, the Committee queried the member’s intention in making her statement to the House on 20 March 2007. The following extracts are from that hearing -

The Chairman: The words that we are concerned with in observation 3 are, and I quote —

“... In my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders.”

Why did you make that statement? What was in your mind when you made that statement? What was your intent?

Hon. Shelley Archer: Certainly my intent was to indicate to the House that, in my view and as far as I was aware, there had been no deliberations into an inquiry into the iron ore industry.

2.14 At a later stage in the hearing -

The Chairman: I want to know that when you used those words you honestly believed them to be true.

Hon. Shelley Archer: Absolutely.

⁴ Evans H. (ed.), *Odgers’ Australian Senate Practice, 11th Edition*, Department of the Senate, Canberra, 2004, p65.

⁵ Evans H. (ed.), *Odgers’ Australian Senate Practice, 11th Edition*, Department of the Senate, Canberra, 2004, p597.

2.15 In response to questioning from Hon. Ken Travers -

Hon. Shelley Archer: I believe there was no breach of parliamentary privilege, because there were no deliberations.

2.16 Final question and answer at the hearing -

Hon. Ken Travers: My next question is: the statement that is in observation 3 - "in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders" - do you still consider that statement to be correct?

Hon. Shelley Archer: Yes.

3 CONCLUSION

3.1 The Committee finds that no cogent evidence has been adduced that would support a claim that the statement made to the House on 20 March 2007 by Hon. Shelley Archer constitutes a grave contempt of the House (as per the referral from the House on 4 December 2007).

3.2 Given this, the Committee recommends the House take no further action.

Recommendation 1:

- (a) The Committee recommends that no further action be taken by the Legislative Council; and**
- (b) The Committee recommends that the Legislative Council adopt the Committee's Report.**

There was dissent from this recommendation.



Hon Nick Griffiths MLC
Chairman

20 March 2008

APPENDIX 1
TRANSCRIPT OF EVIDENCE OF THE HEARING ON
10 MARCH 2008

APPENDIX 1
TRANSCRIPT OF EVIDENCE OF THE HEARING
ON 10 MARCH 2008

STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 10 MARCH 2008

CLOSED SESSION

Members

The President (Hon Nick Griffiths) (Chairman)

The Chairman of Committees (Hon George Cash) (Deputy Chairman)

Hon Graham Giffard

Hon Ray Halligan

Hon Simon O'Brien

Hon Sheila Mills

Hon Ken Travers

Hon Giz Watson (Co-opted member)

Hearing commenced at 9.40 am

ARCHER, HON SHELLEY
Member for Mining and Pastoral Region
Parliament House,
West Perth 6005, sworn and examined:

The CHAIRMAN: Good morning. On behalf of the committee I would like to welcome you to this hearing. It is proposed that you will be examined. Before the examination begins, I must ask you to take either the oath or the affirmation.

[Witness took the affirmation.]

The CHAIRMAN: For the record would you be kind enough please, to state the capacity in which you appear before the committee.

Hon SHELLEY ARCHER: Witness.

The CHAIRMAN: Have you signed a document entitled “Information for Witnesses”?

Hon SHELLEY ARCHER: Yes.

The CHAIRMAN: That document seeks to explain your entitlements as a witness.

Hon SHELLEY ARCHER: Yes.

The CHAIRMAN: Have you read the document?

Hon SHELLEY ARCHER: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you and you will have an opportunity to correct any transcription errors and to clarify any matter in the transcript. Even though this hearing is private, you should note that the committee may make some or all of your evidence public when it reports. The Legislative Council may also authorise publication. Please note that you should not publish or disclose any private evidence to any other person at any time unless the committee or the Legislative Council has already publicly released the evidence. Premature publication of private evidence constitutes contempt.

I note you have a person present with you. Would you please identify that person to the committee and state why they are here.

Hon SHELLEY ARCHER: Eibhlin McCloskey. She is a lawyer from Tottle Partners.

The CHAIRMAN: Is it Ms McCloskey?

Hon SHELLEY ARCHER: Ms.

The CHAIRMAN: Perhaps Ms McCloskey, you might care to sit next to Hon Shelley Archer, unless Hon Shelley Archer wants you sitting behind.

I would like to take the opportunity to remind everyone of the role of legal counsel in these proceedings. Counsel is not permitted to answer questions or reply on your behalf, or to otherwise address the committee. Counsel’s role is that of an adviser. You are at liberty to confer with your counsel but that discussion will not be recorded by Hansard. It is for you, the witness, to make any submission and to answer the committee’s questions. Just so we are all clear, I will take a bit of time to go through why we are here so that we can have everything in context. The house resolved on 4 December 2007—this was a long

resolution—regarding the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in these terms, among other matters —

In relation to observation 3, the house notes that Hon Shelley Archer may have committed a grave contempt of the Parliament and refers this observation to the Standing Committee on Procedure and Privileges for its consideration and report.

That is why we are here.

Members, it might be worthwhile if I read out observation 3 so that we can absorb the context, although I am sure all members are familiar with it. Observation 3 is an observation of the select committee, which I referred to earlier. It states —

The Committee brings to the attention of the House a possible further contempt of Parliament in the following statement by Hon Shelley Archer MLC to the Legislative Council in the Adjournment Debate on Tuesday, 20 March 2007 (*Hansard*, p301), which was false:

“... in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders.”

The *Standing Orders of the Legislative Council* do not exist in isolation. They must be read in the context of, and often subject to, custom and usage and the other written and unwritten rules of the House.

The Committee notes that Hon Shelley Archer MLC’s statement to the House was contrary to the clear evidence of her disclosure of the confidential deliberations of the Standing Committee on Estimates and Financial Operations in the CCC telephone intercept of a telephone conversation between Hon Shelley Archer MLC and Mr Brian Burke at 5:26pm on 30 October 2006, the relevant portions of which are set out at paragraph 10.22 of this report.

The words that we are concerned with in observation 3 are, and I quote —

“. . . In my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders.”

Why did you make that statement? What was in your mind when you made that statement? What was your intent?

Hon SHELLEY ARCHER: Certainly my intent was to indicate to the house that, in my view and as far as I was aware, there had been no deliberations into an inquiry into the iron ore industry. At that meeting we had asked Hon Anthony Fels to go away and come back with a form of words so that we could look at an inquiry. At the following meeting where Hon Giz Watson indicated there may have been a breach of parliamentary privilege, I left that meeting and I went to two people during the week of Parliament. Both of those people are here; one was Hon Ray Halligan, and, at a delegated legislation meeting, I asked what his view was of parliamentary privilege. He gave me a very long, extended view of what that was. It still did not help me or my understanding of what parliamentary privilege was so I went to Hon Sheila Mills. Before going to her I went through standing orders and I also went through a search on the internet to find out exactly what parliamentary privilege was, and I could not find a determination of what it meant. I asked Hon Sheila Mills and, basically, her answer was, “If you are unsure, keep your mouth shut” and I did from that point on. There was no more communication between myself or Brian Burke in relation to any matter that came before the financial and estimates committee. So, even after all that research that I had done and spoken to Hon

Ray Halligan and Hon Sheila Mills, I still held the view that, because there was no inquiry, there was not a breach. It was said to me by both those people that it is only when there is an inquiry underway and that you are actually deliberating on that inquiry. In my view, there was no inquiry underway. Nevertheless, Hon Giz Watson said it may, so, from then on I did not say anything further.

[9.50 am]

The CHAIRMAN: I did not want to interrupt you. We are not concerned to go over the rights and wrongs of the select committee report. I know it is very difficult in dealing with this issue not to touch on it to some extent. What we are concerned about are just these words, “in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders.” It is really, in my view—other committee members may have a different view and they will be invited to ask questions shortly, if they have any questions—but I want to know that when you used those words you honestly believed them to be true.

Hon SHELLEY ARCHER: Absolutely.

The CHAIRMAN: Does any member have any questions?

Hon KEN TRAVERS: I wanted to go back to your earlier statement where you indicated to the committee that you had actually held discussions with a number of people about parliamentary privilege and the role of standing orders and you indicated that following advice, or comments, from Hon Giz Watson you believed you may have breached parliamentary standing orders and, from that time onwards, you ceased to talk to people outside the committee. Did you, therefore, think that there was some doubt from the time that Hon Giz Watson made her comments to you?

Hon SHELLEY ARCHER: No, there was no doubt in my mind at all. I really took on board the advice of Hon Sheila Mills, that is, if you are unsure, just do not say anything.

Hon KEN TRAVERS: So you were unsure?

Hon SHELLEY ARCHER: I could not get a straight answer from anybody as to what applied in terms of parliamentary privilege. So, instead of making any further mistakes, or possible mistakes—just not to say anything to anybody about any committee proceedings at any time, whether you are on that committee with that person or whether you are a parliamentary colleague and you want to gain advice. The advice, in a much more subtle manner from Hon Ray Halligan, was really to say, “If you are unsure about what parliamentary privilege was, do not say anything further.”

Hon KEN TRAVERS: As a result of those conversations, from that time onwards there was a grey area?

Hon SHELLEY ARCHER: There certainly was after those conversations with Hon Sheila Mills and Hon Ray Halligan a certain unsureness from all the people that I discussed it with.

Hon KEN TRAVERS: What date was that—approximately the dates you talked to them?

Hon SHELLEY ARCHER: It may have been just after Hon Giz Watson brought it to our attention in December.

Hon KEN TRAVERS: So, it would have been well before you made the statement to the house that is listed in observation 3?

Hon SHELLEY ARCHER: Nevertheless, in my statement on 20 March—and I still hold the view—that there was no breach of parliamentary privilege as there were no deliberations.

Hon KEN TRAVERS: There was a grey area in your mind at the time you made that statement?

Hon SHELLEY ARCHER: There was no grey area in my mind, but there was grey area in the minds of people who are far more experienced than me. As I have said, and I cannot say it anymore plain than this, as I have said: I took on their advice. For me, there was no doubt in my mind that I had not breached parliamentary privilege because there were no deliberations going on at the time. We had had a discussion at that meeting. We asked Hon Anthony Fels to go away and bring that inquiry. So, for me, there were no deliberations at all by that committee into an inquiry, because there was no inquiry underway.

Hon KEN TRAVERS: As a result of those conversations you had with those people, it was a grey area, as you understood it in, in respect to parliamentary privilege?

Hon SHELLEY ARCHER: Hon Ken Travers, I cannot say to you any clearer than I already have that in my view I believe that there was no breach of parliamentary privilege, because there were no deliberations.

Hon KEN TRAVERS: I understand that, but what I am asking is: did you understand at that time there was a grey area about the procedures?

Hon SHELLEY ARCHER: What I got from other members of Parliament was that there was some doubt, because I could not let them even know what exactly I was talking about. In my view, I came away that there was no deliberations and there was no inquiry; therefore, it was not a breach, but in my future deliberations or future meetings with any committee, it was best I kept mouth shut and did not say anything to anyone at any time.

Hon KEN TRAVERS: Why did you think that?

Hon SHELLEY ARCHER: To be quite frank, so I would not get myself into any trouble, just in case.

Hon GEORGE CASH: It seems to me that we may be running off and digressing from the actual requirements of this committee. Let me say, firstly, I am unsure of what Hon Ken Travers is talking about. So I want to make it clear: I am confused and I would not be surprised if other members are confused because we do not have the knowledge that Hon Ken Travers does in respect to certain matters that occurred on that committee—the select committee, that is.

I want to make the point that, firstly, in my view the committee itself has overstretched itself by claiming that the statement made by Hon Shelley Archer to the Legislative Council in the adjournment debate on Tuesday, 20 March 2007—it is at *Hansard* page 381—the committee claims it is false. At the very least, the committee should have said it was inconsistent, that it decided, for reasons of its own, that it was false. I have to say: I do not necessarily agree with that at all.

The point of today's meeting is to determine whether or not Hon Shelley Archer, at the time she made that statement to the house, believed in what she said. What was her intention? I understood her intention was earlier stated to yourself.

The CHAIRMAN: Does any member have any other questions?

Hon KEN TRAVERS: Yes, Mr President. I want to be clear about this in terms of—there are two comments in that statement you made, “in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders.” That suggests you have done two things, both conducted yourself properly and according to parliamentary standing orders. What did you mean by that when you said it?

[10.00 am]

Hon SHELLEY ARCHER: Exactly that.

Hon KEN TRAVERS: What do you mean by “conduct yourself properly”?

The CHAIRMAN: Member, the witness has been asked this question already by me, and she has answered it. I do not think, frankly, it is appropriate that witnesses be asked the same question over and over again, albeit perhaps in a slightly different form. The witness has said what her understanding is. She said she believes she used words to be effect that she believed that what she was saying at that time was true. I do not think it is appropriate, frankly, that she continues to be asked the same thing.

Hon KEN TRAVERS: Mr President, can I suggest we have an adjournment without the witness so that we can have a discussion as a committee about this?

The CHAIRMAN: Alright.

Proceedings suspended from 10.00 to 10.13 am

Hon KEN TRAVERS: My next question is: the statement that is in observation 3 - “in my dealings with the committees I have at all times conducted myself properly and according to parliamentary standing orders” - do you still consider that statement to be correct?

Hon SHELLEY ARCHER: Yes.

The CHAIRMAN: Are there any further questions arising out of that? Hon Shelley Archer and counsel, thank you very much for your attendance this morning.

Hon SHELLEY ARCHER: Thank you.

The CHAIRMAN: That concludes the examination.

Hearing concluded at 10.14 am