



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 21**

**STANDING COMMITTEE ON PROCEDURE AND  
PRIVILEGES**

**REFERRAL OF A MATTER OF PRIVILEGE RAISED  
BY HON JON FORD MLC**

Presented by Hon Barry House MLC (Chairman)

March 2010

## 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 Barry House MLC (Chairman)                   | Hon Helen Morton MLC                 |
| Hon Matt Benson-Lidholm MLC<br>(Deputy Chairman) | Hon Max Trenorden MLC                |
| Hon Michael Mischin MLC                          | Hon Ken Travers MLC                  |
| Hon Wendy Duncan MLC (co-opted member)           | Hon Giz Watson MLC (co-opted member) |

### Staff as at the time of this inquiry:

|  |                          |
|--|--------------------------|
| Malcolm Peacock,<br>Clerk of the Legislative Council | Nigel Lake, Deputy Clerk |
| Paul Grant, Clerk Assistant (House)                  |                          |

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**REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES**

**IN RELATION TO THE**

**REFERRAL OF A MATTER OF PRIVILEGE RAISED BY HON JON FORD MLC**

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**1 REFERENCE**

- 1.1 On Wednesday, 24 March 2010, Hon Jon Ford MLC raised the following matter of privilege in the House pursuant to Standing Order 155:

*This evening during question time, at about twenty past five, 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.<sup>1</sup>*

- 1.2 In accordance with Standing Order 155(4), the President was required to rule whether the matter was one affecting the privileges of the House under the *Parliamentary Privileges Act 1891*.

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<sup>1</sup> Hon Jon Ford MLC, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 24 March 2010, pp1016-1017.

- 1.3 On 25 March 2010, the President ruled that the matter was one affecting the privileges of the House.<sup>2</sup> In making his ruling, the President referred to page 125 of the 21<sup>st</sup> Edition of Erskine May's *Parliamentary Practice*, which states that the serving or executing of a civil or criminal process within the precincts of a House of Parliament while the House is sitting, without obtaining the leave of the House, is a contempt.
- 1.4 On receipt of the President's ruling, the House passed the following resolution:
- (1) *That the Standing Committee on Procedure and Privileges inquire into and report on the attempted serving of a summons on a member during a sitting of the house; and*
  - (2) *That Hon Jon Ford MLC be excused as a member of the committee for the purposes of this inquiry.*

## **2 SERVING A SUMMONS ON A MEMBER OF PARLIAMENT WITHIN THE PRECINCTS OF PARLIAMENT WHILST THE HOUSE IS SITTING**

- 2.1 Section 36 of the *Constitution Act 1889* provides that it shall be lawful for the Legislature of the Colony, by any Act to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and Legislative Assembly, and by the members thereof respectively.
- 2.2 Pursuant to s 1 of the *Parliamentary Privileges Act 1891*, the privileges of the two houses of the Western Australian Parliament are the same as those of the United Kingdom House of Commons as at 1 January 1989, subject to any modification thereto by operation of the *Parliamentary Privileges Act 1891*.
- 2.3 In its 1999 report, the United Kingdom Joint Committee on Parliamentary Privilege noted the following:

### ***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.*

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<sup>2</sup> Hon Barry House MLC, President, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 March 2010, p1024.

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*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.<sup>3</sup>*

2.4 The incident outlined in the matter referred by Hon Jon Ford MLC is not without precedent in this House.

2.5 On Wednesday, 11 November 1992, Hon John Halden MLC moved the following motion in the House:

*At 5.58pm this evening, I was served with a writ of summons by one Harry Williams within the precincts of this House and I move -*

*That this House adjudges Harry Williams guilty of a contempt of this House and requires him to apologize in writing addressed to this House and delivered to the Clerk at Parliament House not later than 6.00pm on Thursday, November 12 1992.<sup>4</sup>*

2.6 On 12 November 1992 the Deputy President ruled, based on the above-stated reference to the 21<sup>st</sup> Edition of Erskine May's *Parliamentary Practice*, that if the circumstances stated in the adjourned motion of Hon John Halden MLC were correct, then the motion adjudging Mr Williams guilty of contempt was in order.<sup>5</sup> The debate on the motion was resumed and adjourned to 24 November 1992. Prior to the conclusion of the debate on the motion, the President tabled a letter of apology to the President and Members of the Legislative Council from Mr Williams.<sup>6</sup> The motion was subsequently carried, but no further action was taken.<sup>7</sup>

2.7 The Queensland Parliament dealt with a similar situation in 1999. Mrs Dorothy Pratt MLA was served with a subpoena within the precincts of the Parliament, requiring her to appear in a case before the Supreme Court of Queensland. The subsequent findings and recommendations of the Queensland Parliament's Members' Ethics and Parliamentary Privileges Committee included the following comments:

<sup>3</sup> United Kingdom, House of Commons and House of Lords, Joint Committee on Parliamentary Privilege, Report 1, *Parliamentary Privilege*, 30 March 1999, paras 334 and 335.

<sup>4</sup> Parliament of Western Australia, *Votes and Proceedings 1992, 4<sup>th</sup> Session of 33<sup>rd</sup> Parliament, Vol. 1*, Legislative Council, 11 November 1992, p477.

<sup>5</sup> Ibid, 12 November 1992, p486.

<sup>6</sup> Ibid, 24 November 1992, p501. Hon Clive Griffiths MLC, President, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 24 November 1992, p6904.

<sup>7</sup> Ibid.

*The committee wishes to point out that members are not immune from service of legal process out of a Court of record. Rather, when and where service is effected is material to whether it constitutes an affront to the dignity of the House and ought to be treated as a contempt.*

*The term “precincts of Parliament” may be defined as the area within which the authority of the House and of the Speaker on behalf of the House, may be exercised.*

*The Committee finds that Mr Terry Sharples committed a contempt of the Legislative Assembly in serving a subpoena on Mrs D Pratt MLA within the Parliamentary precincts on 3 March 1999, when the House was sitting. Mr Sharples was assisted in this contempt by Mr Ted Briggs.*

*The Committee recognises that Mr Sharples, Mr Briggs and Mrs Pratt were all unaware at the time that it was not appropriate and a contempt to serve a summons on the Parliamentary precincts when the House was sitting.*

*In the circumstances, the committee recommends that the Assembly take no further action in respect of the matter.<sup>8</sup>*

### **3 THE PROCEDURE ADOPTED BY THE COMMITTEE**

3.1 The Procedure and Privileges Committee (**the Committee**) met on 25 March 2010 and resolved to send a letter to Mr Jason Ricketts, the partner heading the Perth office of the Freehills law firm (**Appendix 1**), seeking answers to the following questions:

- (1) *Did a person acting for, or on behalf of, Freehills attempt to serve a summons on Hon. Jon Ford MLC at Parliament House, Perth on Wednesday, 24 March 2010?*
- (2) *If “yes” to (1) -*
  - (a) *what is the name and contact details of that person;*
  - (b) *in what capacity was that person acting;*
  - (c) *on whose instruction or at whose direction was that person acting; and*

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<sup>8</sup> Queensland, Legislative Assembly, Members’ Ethics and Parliamentary Privileges Committee, Report 31, *Report on a Matter of Privilege - Matter Referred to the Committee on 25 March 1999, 27 May 1999*, para 8.



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(d) *what is the name and contact details of the person or persons who issued those instructions or made those directions?*

- 3.2 On 26 March 2010 the President received an emailed letter from Mr Steven Penglis, the partner at Freehills law firm who was responsible for the conduct of the proceedings for which the summons was sought to be served (**Appendix 2**). Mr Penglis provided answers to the above requested questions, which indicate that Mr Ante Golem, a senior associate at Freehills law firm was the person ultimately responsible for the attempt to serve the summons on Hon Jon Ford MLC within the parliamentary precinct during a sitting of the House. The letter from Mr Penglis also attaches a letter of apology to the Legislative Council written by Mr Ante Golem. Mr Golem also sent a letter of apology to Hon Jon Ford MLC (**Appendix 3**).
- 3.3 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.

#### **4 CONCLUSION**

- 4.1 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.
- 4.2 The Committee finds that Mr Ante Golem, Senior Associate, Freehills law firm was responsible for the attempt to serve the summons.
- 4.3 The Committee finds that the attempt to serve the summons on Hon Jon Ford MLC within the precincts of the Parliament during a sitting of the House was a contempt of the House.
- 4.4 The Committee, however, notes that prompt, written apologies addressed to both Hon Jon Ford MLC and the Legislative Council were received from Mr Golem.
- 4.5 The Committee accepts that Mr Golem now understands the impropriety of his actions, and notes Mr Penglis' undertaking at paragraph 3.3.
- 4.6 The Committee also notes that the Committee's correspondence referred to in paragraph 3.1 was forwarded to Hon Jon Ford MLC, which constitutes a further breach of privilege.
- 4.7 The Committee is of the view that no further action is required.

**Recommendation 1: 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.**



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**Hon Barry House MLC**  
**Chairman**

**31 March 2010**

# APPENDIX 1

## LETTER TO FREEHILLS FROM THE PRESIDENT OF THE LEGISLATIVE COUNCIL DATED 25 MARCH 2010

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### STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

25 March 2010

Mr Jason Ricketts  
Partner and Head of Perth Office  
Freehills  
Level 36 QV, 1 Building  
250 St Georges Terrace  
PERTH WA 6000

Dear Mr Ricketts,

#### Reference from the Legislative Council - Matter of Parliamentary Privilege

During the proceedings of the Legislative Council yesterday, Hon. Jon Ford MLC advised the House that a person had attempted to serve a summons on him at Parliament House earlier that day. The House has now considered this matter and agreed to the following resolution -

That the Standing Committee on Procedure and Privileges inquire into and report on the attempted serving of a summons on a Member during a sitting of the House.

The Procedure and Privileges Committee requires your assistance with its inquiry, and in particular seeks your written response to the following questions:

- (1) Did a person acting for, or on behalf of, Freehills attempt to serve a summons on Hon. Jon Ford MLC at Parliament House, Perth on Wednesday, 24 March 2010?
- (2) If "yes" to (1) -
  - (a) what is the name and contact details of that person;
  - (b) in what capacity was that person acting;
  - (c) on whose instruction or at whose direction was that person acting; and
  - (d) what is the name and contact details of the person or persons who issued those instructions or made those directions?

Please arrange for your written response to be directed and delivered to me at Parliament House prior to 12 noon on Tuesday, 30 March 2010.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Barry House", written over a white background.

Hon. Barry House, MLC  
President of the Legislative Council  
Chairman of the Procedure and Privileges Committee



## APPENDIX 2

# LETTER FROM MR STEVEN PENGLIS TO THE PRESIDENT OF THE LEGISLATIVE COUNCIL

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Freehills

Hon. Barry House MLC  
The President of the Legislative Council  
Chairman of the Procedure and Privileges Committee  
Parliament House  
Harvest Terrace  
PERTH WA 6000

26 March 2010  
Matter 81554725  
By email

Dear Sir

### Reference from the Legislative Council - Matter of Parliamentary Privilege

I refer to your letter dated 25 March 2010 to Mr Ricketts.

The answer to your questions are as follows (using the same paragraph numbering):

- (1) Yes.
- (2)(a) Michelle Guy, Graduate, Freehills.
- (2)(b) Process server.
- (2)(c) Ante Golem.
- (2)(d) Mr Golem can be contacted care of this office.

I am the Partner responsible for the conduct of the matter in respect of which the Summons was sought to be served. I was unaware that it was intended to seek to serve the Honourable Member at Parliament House and wrongly assumed that Mr Golem was aware that appropriate arrangements would need to be made to serve the Honourable Member as it would be improper to seek to serve him at Parliament House.

I have spoken to Mr Golem about the matter. Enclosed herewith is a letter to you from Mr Golem as well as a copy of a letter Mr Golem has sent to the Honourable Member. We are also providing a copy of this letter to the Honourable Member.

In addition to the above I will also now take steps to ensure that the impropriety of attempting to serve a summons at Parliament House (and other places such as in Court) is well understood by all members of Freehills litigation section here in Perth.

I trust that the above and enclosed is sufficient for your purposes. Notwithstanding, please feel free to contact me should you have any further queries.

Yours sincerely



**Steven Penglis**  
Partner  
Freehills

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## Freehills

The President of the Legislative Council  
Chairman of the Procedure and Privileges Committee  
Parliament House  
Harvest Terrace  
PERTH WA 6000

26 March 2010  
Matter 81554725  
By email

Dear Sir

### **Reference from the Legislative Council - Matter of Parliamentary Privilege**

I refer to your letter dated 25 March 2010 to Mr Ricketts.

I sincerely apologise to the Legislative Council for my actions in causing a summons to be served on the Honourable Jon Ford MLC at Parliament House.

I have also written to the Honourable Jon Ford personally in relation to this matter. Enclosed is a copy of my letter.

I now understand the impropriety of my actions and undertake to never cause this to occur in the future.

Yours sincerely



**Ante Golem**  
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## APPENDIX 3

### LETTER FROM MR ANTE GOLEM TO HON JON FORD MLC

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Freehills

The Honourable Jon Ford MLC  
Parliament House  
Harvest Terrace  
PERTH WA 6000

26 March 2010  
Matter 81554725  
By email

Dear Sir

**Reference from the Legislative Council - Matter of Parliamentary Privilege**

I have been provided a copy of the letter from the President of the Legislative Council, the Honourable Barry House MLC, to Jason Ricketts of Freehills dated 25 March 2010.

I enclose a copy of the above letter and a letter of Steven Penglis of today's date in reply (which attaches my letter to the President of the Legislative Council).

I sincerely apologise to you personally for my actions in causing a summons to be served on you at Parliament House.

As I have stated in my letter to the President of the Legislative Council, I now understand the impropriety of my actions and undertake to never cause this to occur in the future.

Yours sincerely



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