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**REPORT OF**  
**THE SELECT COMMITTEE**  
**OF PRIVILEGE**  
**RE A COMPLAINT BY**  
**HON S J PIANTADOSI MLC**

Presented Hon G K Kelly MLC  
November 1991

REPORT OF THE SELECT COMMITTEE OF PRIVILEGE  
RE A COMPLAINT BY HON S J PIANTADOSI MLC

**1. Order of Reference**

On Wednesday October 16 1991 the House ordered:

That the matter of privilege arising from statements contained in a newsletter in which Hon Sam Piantadosi was attacked in his capacity as a member of this House be referred to a select committee of Privilege for consideration and report, the committee to report not later than Thursday, November 7 1991.

By further order made on Wednesday October 23, the reporting time was extended to Thursday November 21.

At the time the matter was referred, the committee was constituted and consisted of Hons Garry Kelly (chair), E J Charlton, N F Moore, Tom Helm and R G Pike.

The committee met on 2 occasions and interviewed Hon Sam Piantadosi.

**2. The Complaint**

The Hon Sam Piantadosi (the "member") submitted to the committee that assertions in the newsletter (appended), as well as the overall effect of the newsletter, was an interference with his capacity to function as, and is a reflection on his standing as, a member of Parliament.

Specifically, it was said that the newsletter was but a part of a series of attacks on the member by elements within the WA Soccer Federation because of differences among soccer clubs and officials as to the way in which soccer administration should be structured.

Under questioning by the committee, the member stated that the effect of the newsletter's allegations coupled with current and previous activities designed to make him desist, would have an adverse effect on his reputation within his parliamentary constituency. To that extent, he believed that what had occurred was intended to deter him from making public comment on the issues.

The committee acknowledges the fact that the member is well known in many of the ethnic communities.

### 3. The issues of Privilege

Throughout its inquiry into this matter, the committee has remained conscious of 2 things. First, it is charged with considering issues of privilege arising from the publication of the newsletter. While the background leading to its publication was informative, nevertheless, those antecedent matters cannot be taken into the committee's assessment.

Secondly, the committee has had to divorce from its consideration any question relating to the newsletter's impact on the reputation or standing of the member in his non-parliamentary capacity.

Bearing that in mind, there are 2 related issues of privilege that have a bearing on this case, viz, defamation of a member and obstruction of a member. These issues will be discussed concurrently.

In *May* (21st ed) 127 it is stated:

Written imputations, as affecting a Member of Parliament, may amount to breach of privilege, without, perhaps, being libels at common law, but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity.

(emphasis added)

There is no doubt that the article complained of is directed towards the member's use of the parliamentary chamber to criticize matters of soccer's internal administration. The newsletter describes the member's attack as "cowardly", "unwarranted" and "mistaken". It also proceeds to suggest that the member has a conflict of interest between his duties as a member and his interests in soccer administration.

In the strictest sense, it would be open to this committee to find that the newsletter is a reflection on the member's character and conduct as a member and therefore constitutes defamation of a member. However, the committee agrees with the statement in *Australian Senate Practice* (6th ed 1991) 1014:

The modern trend, however, leans to the view that criticism, even if intemperate and wrong-headed, of Parliamentary institutions or of the conduct of members should not be stifled unless and until it reaches the point of improper obstruction, or is likely to cause substantial interference with the performance of their functions.

It seems to the committee, applying the test of "substantial interference", that the newsletter falls short of having caused the member to desist from his course of action whether in relation to the matters raised in the newsletter or to his functions, in general, as a member of Parliament. The committee therefore concludes that while there may have been a technical breach of privilege on the part of the author and publishers of the newsletter, it is not sufficient to have interfered with the performance of the member's functions as a member of the Legislative Council.

The committee's conclusion is reinforced by s 6 (1) of the *Parliamentary Privileges Act 1987 (Cwlth)* which abolishes contempt by defamation except where committed in the face of a House or committee [subs (2)].

The same Act, by s 4, defines the essential element in conduct before it can be said that a breach of privilege or a contempt has been committed:

4. Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

The committee suggests that any subsequent committee to which a similar complaint is referred have regard to the approach taken by the Commonwealth Act as being consistent with the use of parliamentary privilege as a shield rather than as a sword.

That is not to say that the committee accepts that there will never be an occasion where the defamation of a member is such that action should not be taken by this House. To that extent, the committee would not recommend that Western Australia follow the Commonwealth Parliament and abolish "defamation of a member" as a species of contempt in its own right. There may well be circumstances where it is proper for the House to proceed against a person guilty of defaming a member even where serious interference or obstruction would be difficult to prove.

Nevertheless, the committee accepts the Commonwealth's approach as a reasonable balance between the freedom of speech guaranteed to all members and the equally important need for constructive criticism of those in public office.

#### **4. Finding and recommendation**

The committee finds:

- (a) the newsletter constitutes defamation of a member;
- (b) the newsletter's publication was not calculated to interfere with, nor has it interfered with, the performance of the member's functions as a member of Parliament; and

**recommends:** that no action be taken by the House in relation to this matter.