



**THIRTY-SEVENTH PARLIAMENT**

**MINORITY REPORT OF  
HON KEN TRAVERS MLC**

**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**

Report 15 - Minority  
March 2008



## Minority Report of Hon Ken Travers MLC

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

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1. According to Parliamentary Practice in New Zealand (p 653) there are three elements to be established when it is alleged that a member is in contempt by reason of a statement that the member has made:
  - 1.1 The statement must, in fact, have been misleading;
  - 1.2 It must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
  - 1.3 In making it, the member must have intended to mislead the House.
2. Further it states that the “standard of proof is on the balance of probabilities but given the serious nature of the allegations, proof of a very high order”.
3. It also makes it clear that off the cuff statements made in the heat of debate are unlikely to be considered deliberate misleading. But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality a presumption of an intention to mislead the House will more readily arise.
4. The Standing Committee unanimously agreed at paragraph 2.8 that the “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”.
5. The next element that needs to be determined is did the Member know at the time that the statement was incorrect.
6. The Hon Shelley Archer in her statement to the House said that “in my dealings with committees I have at all times conducted myself properly and according to parliamentary standing orders”.
7. The Standing Committee must therefore determine did the member have personal knowledge that her conduct was not proper or according to Standing Orders. The two points are interlinked but also may be considered separately. Could the Member act in accordance with her understanding of the Standing Orders but in a way that she knew may not have been proper?
8. The Hon Shelley Archer advised the Standing Committee that at a meeting of the Estimates and Financial Operations Committee the Hon Giz Watson, who was the Chair of that Committee, indicated that there may have been a breach of privilege. These events would appear to have occurred at the SCEFO on the 4 December 2006 and are outlined at paragraphs 9.29 and 9.30 of the Select Committee Report.
9. The Hon Shelley Archer further advised the Standing Committee that following this event she sought advice from the Hon Ray Halligan and the Hon Sheila Mills about parliamentary privilege. In short the advice to her, in her own words, was that “If you are unsure, keep your mouth shut”. Further the member indicated that she went through standing orders and did a search on the internet to find out exactly what parliamentary privilege was. Again she advised the Standing Committee “I could not find a determination of what it meant”.

10. It was the Members advice to the Standing Committee that following the advice from the Hon Sheila Mills to “If you are unsure, keep your mouth shut” that she “...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.”
11. In a question from the Hon Ken Travers “So you were unsure” the Hon Shelley Archer replied “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.....”.
12. These statements lead to a strong presumption that there was doubt in the Members mind that her previous conduct had been proper and in compliance with the Standing Orders.
13. It is my view that the Standing Committee needed further advice from Hon Shelley Archer as to whether there was any doubt in her mind as to:
  - 13.1 the application of the standing orders regarding the disclosure of the discussions of a committee; and
  - 13.2 whether her conduct had at all times been proper.
14. In my opinion the Standing Committee has not obtained this evidence.
15. It is also my view that it would assist the House in this matter to have before it evidence from the Hon Ray Halligan and Hon Sheila Mills about their discussions with Hon Shelley Archer as this would enable a better understanding of her knowledge at the time of the statement to the House.
16. The Hon Shelley Archer sought this advice some time shortly after 4 December 2006 and made her statement to the House only three and a half months later on 20 March 2007.
17. Due to time constraints I have not been able to compare the statements by the Hon Shelley Archer before the Standing Committee and her evidence to the Select Committee but I believe it is necessary to do so to be able to fully consider this matter.
18. I am therefore at this stage unable to come to a firm conclusion on this element. I believe it is necessary for the House to seek to obtain the above information before it makes a final determination.
19. The third element that must be considered is did the Member intend to mislead the House.
20. The Hon Shelley Archer’s statement was not made as an off the cuff remark but as a considered statement to the House following allegations and speculation in the media. It was clearly made in a situation of some formality. It would be reasonable for the House to assume that a member has carefully considered their statement and previous actions before giving it to the House.
21. Once the first two elements have been established then these circumstances will more readily lead to a presumption of an intention to mislead.
22. It is my view that it is not sufficient in these circumstances for a privilege committee to simply ask a Member the intent and purpose underlying their statement to the House and accept it at face value, especially if their statements are full of inconsistencies. The committee must test the statement and determine on the balance of probabilities if they believe it.
23. I am therefore not satisfied that the Standing Committee has sufficiently examined this matter to make a recommendation to the House.
24. I therefore recommend:

That the House -

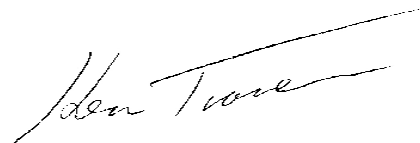
  - (1) Establishes a Select Committee of Privilege of three Members to enquire into and report on Observation three of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations.

- (2) The Committee have access to all records and papers of the Standing Committee on Procedure and Privilege regarding this matter and is authorised to publish any of these documents if the committee consider it necessary.

**Minority Recommendation:**

That the House -

- (1) Establishes a Select Committee of Privilege of three Members to enquire into and report on Observation three of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations.
- (2) The Committee have access to all records and papers of the Standing Committee on Procedure and Privilege regarding this matter and is authorised to publish any of these documents if the committee consider it necessary.



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**Hon Ken Travers MLC**

**20 March 2008**