

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

COMMITTEE OF PRIVILEGES

FIRST REPORT OF THE SEVENTH ASSEMBLY

**REPORT ON MATTERS
REFERRED TO THE COMMITTEE
BY THE SPEAKER
ON 30 AUGUST 1994**

MARCH 1995

COMMITTEE OF PRIVILEGES

Membership

The Honourable S L Stone, MLA (Chairman)

Mr N R Bell, MLA

Mr D G Burke, MLA

The Honourable M J Palmer, MLA

Mr S J Stirling

TABLE OF CONTENTS

1. PREFACE

- 1.1 The Powers and Privileges of the Legislative Assembly**
- 1.2 Raising a Matter of Privilege**
- 1.3 Committee of Privileges**

2. REFERENCE NO. 1 - RELATING TO A SPEECH MADE BY THE MEMBER FOR WANGURI ON 23 AUGUST 1994

- 2.1 The Complaint**
- 2.2 Conduct of Inquiry**
- 2.3 Relevant Background**
- 2.4 Findings**
- 2.5 Observation and Recommendation**

3. REFERENCE NO. 2 - RELATING TO THE DECISION MADE BY THE SPEAKER, PURSUANT TO STANDING ORDER 84, ON 30 AUGUST 1994 REFERRING A MATTER TO THE COMMITTEE OF PRIVILEGES

- 3.1 The Complaint**
- 3.2 Conduct of Inquiry**
- 3.3 Findings**
- 3.4 Observation**

4. DISSENTING REPORT BY THE MEMBER FOR MACDONNELL, MR BELL, AND THE MEMBER FOR NHULUNBUY, MR STIRLING

APPENDIX A

Extract from "Report on the *Legislative Assembly (Powers and Privileges) Act*" 1991

APPENDIX B

Letter from the Leader of the Opposition to the Speaker, dated 30 August 1994

1. PREFACE

1. THE POWERS AND PRIVILEGES OF THE LEGISLATIVE ASSEMBLY

The Legislative Assembly of the Northern Territory derives its privilege powers from section 12 of the *Northern Territory (Self-Government) Act 1978* which provides that:

"12. The power of the Legislative Assembly conferred by section 6 in relation to the making of laws extends to the making of laws -

- (a) declaring the powers (other than legislative powers), privileges and immunities of the Legislative Assembly and of its members and committees, but so that the powers, privileges and immunities so declared do not exceed the powers, privileges and immunities for the time being of the House of Representatives, or of the members or committees of that House, respectively; and
- (b) providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld.

Under the power conferred by section 12 of the *Northern Territory (Self-Government) Act 1978*, the powers, privileges and immunities of the Legislative Assembly, its Committees and Members have been established by the *Legislative Assembly (Powers and Privileges) Act* which provides, except to the extent that the Act expressly provides otherwise, that they shall be the powers (other than legislative powers), privileges and immunities for the time being of the House of Representatives of the Commonwealth.

The powers and privileges of the House of Representatives, its Committees and Members were fixed under section 49 of the Australian Constitution as follows:

"49. The powers, privileges and immunities of the Senate and the House of Representatives and of the Members and the Committees of each House, shall be such as are declared by the Parliament and, until declared, shall be those of the Commons House of Parliament of the United Kingdom and of its Members and Committees, at the establishment of the Commonwealth."

In 1987 the Commonwealth Parliament, for the first time, declared the privileges of the Senate and the House of Representatives in the *Parliamentary Privileges Act 1987* of the Commonwealth.

Thus, the powers, privileges and immunities of the Northern Territory Legislative Assembly, its Committees and Members could be said to be the sum of the powers and immunities accrued over centuries to the Westminster Parliament by statute law, common law and practice which were found to be necessary for the legislature to fulfil its proper functions, except where these powers have been modified in certain areas in their application to the Northern Territory Parliament by the *Legislative Assembly (Powers and Privileges) Act 1992* and the *Parliamentary Privileges Act 1987* of the Commonwealth.

1.2. RAISING A MATTER OF PRIVILEGE

The procedure for raising a matter of privilege in the Legislative Assembly is provided in Standing Orders 83 to 86 which follow:

“83. Apparent Breach

A Member may rise at any time to speak upon a matter of privilege suddenly arising and may, on that occasion, request the Speaker to refer the breach of privilege of which he complains to the Committee of Privileges.

84. Speaker To Decide

Before or during the next day of sitting after a Member has requested the Speaker to refer a complaint under Standing Order 83, the Speaker shall state that he has so referred the complaint or that he has not and does not propose to refer the complaint to the Committee of Privileges and, if he reports that he has not and does not propose to refer the complaint to the Committee of Privileges, the Member who has raised the matter may thereupon move without notice a motion to refer the matter to the Committee of Privileges.

85. Privilege Motion Takes Precedence

When a matter of privilege is raised in a Committee of the Whole, the Chairman shall leave the Chair and report to the Assembly.

86. Privilege Motion Takes Precedence

A motion on a matter of privilege at any time arising shall, until disposed of, or unless the debate on the motion is adjourned, suspend the consideration of and decision on any other question.”.

1.3 COMMITTEE OF PRIVILEGES

In order to assist the Assembly in its examination of issues of privilege, the Assembly appoints a Committee of Privileges, pursuant to Standing Order 18, consisting of five Members, to inquire and report upon complaints of breach of privilege which may be referred to it by the Speaker or by the Assembly.

On 27 June 1994, the following Members were appointed to be Members of the Committee of Privileges:

Mr Bell

Mr Burke

Mr Palmer

Mr Stone

Mr Stirling

At its meeting on 31 August 1994, the Honourable Shane Stone, MLA, was elected Chairman of the Committee.

2. REFERENCE NO. 1 - RELATING TO A SPEECH MADE BY THE MEMBER FOR WANGURI ON 23 AUGUST 1994

2.1 THE COMPLAINT

In the Legislative Assembly on 25 August 1994, the Attorney-General, the Honourable Fred Finch, raised as a matter of privilege: "the misleading of this House last evening by the Member for Wanguri in that he claimed without question that he had received written advice from the Ombudsman that accused the Departments of Education and Law of being obstructionist in his proceedings." (Parliamentary Record, p.97).

In response to the request of Mr Finch, the Speaker later, on 30 August 1994, referred the matter to the Committee of Privileges in the following terms:

"Mr Speaker: Honourable Members, on Thursday 25 August 1994, the Attorney-General, the Honourable Fred Finch, MLA, pursuant to Standing Order 83, raised a matter of privilege: "the alleged misleading of the House by the Member for Wanguri, Mr Bailey, in respect of a statement he made relating to the Ombudsman and the Departments of Education and Law during the adjournment debate on Tuesday 23 August". I undertook to consider the matter and advise the House accordingly.

I advise the House that I have examined the sound and vision recording and I have also examined the *verbatim* and edited transcripts of the debate, together with papers tabled by Mr Bailey and the Attorney-General and other documents relating to this matter. Subsequently, I have received a letter from Mr Bailey which I table for the information of honourable Members. The letter reads as follows:

'In response to our meeting, I would like to present the following information in relation to the issue referred to privileges. On Tuesday evening, during the adjournment debate, I was attempting to outline the

long and detailed issues and events relating to my concerns over the tragic death of Mark Halliday from BCF inhalation. During my speech, on many occasions, Members on the Government side interjected and disrupted my presentation. I had a large number of matters that needed to be covered and, as time was running out, I had to rush to present the final issues. This may have led to some confusion in the information I presented. In particular, there may have been some confusion in my comments covering the role of the Ombudsman.

Over the last three years, I have had numerous contacts with the Ombudsman in writing, on the telephone and face to face. These contacts have led me to believe that both the Departments of Education and Law have not been fully cooperative in the BCF issue. For example, the part of the 1992-93 Annual Report of the Ombudsman relating to Anita Williams shows a refusal by the Department of Education to implement his recommendations. In relation to the Department of Law, his letter sent to me of 24 December 1993 and the subsequent telephone conversations led me to believe he was not totally happy with the Department of Law's response to this issue.

In the rush of completing my adjournment, my choice of words and their possible interpretation are what I believe has led to this referral to privileges. I do not believe I have misled the Parliament in relation to this issue and trust that the preceding information shows this.'

However, it appears that there remains an apparent conflict between the content of Mr Bailey's speech and the content of the letter from the Ombudsman to the Attorney-General that has been tabled in the Assembly. Accordingly, I advise the House that I propose to refer the complaint to the Committee of Privileges."

2.2 CONDUCT OF INQUIRY

The Committee first considered the matter at a meeting held on 31 August 1994. The Committee held four meetings during which the matter was considered.

Before considering the matter in detail, the Committee requested the Secretary to provide background and briefing documents on Parliamentary privilege and the powers and privileges of the Northern Territory Legislative Assembly.

From the material referred to it and on examination of edited and *verbatim* transcripts, it appeared that the element in Mr Bailey's speech on 23 August which was regarded by Mr Finch, at the time, as being a possible contempt and, accordingly, an alleged offence under the terms of the *Legislative Assembly (Powers and Privileges) Act 1992*, was Mr Bailey's following statement:

Extract from Parliamentary Record, p. 627

"NOTE: By direction of Mr Speaker, the following three paragraphs are a strictly *verbatim* report.

That was in December 1991. It has taken, Mr Speaker, until June 1994 for the coroner - the Ombudsman to get the relevant information from the Department to show that quite clearly, Mr Speaker, they did not carry out the actions that they were supposed to have done, Mr Speaker, and in correspondence he has sent me concerns that he has had that both the Departments of Education and the Department of Law have been obstructionists in supplying that information. I then put on notice, Mr Speaker, and it has been on there for three years

Mr Finch interjecting.

Mr Bailey:the information about BCF fire extinguishers from Transport and Works. That information has never been provided. It is quite clear that there has been a cover-up in relation to the negligence by the Department of Law.

Mr Deputy Speaker: Order!".

This edited version of the speech which had appeared in the daily *Hansard* read as follows:

"That was in December 1991. It has taken until June 1994 for the Ombudsman to obtain the relevant information from the Department to show that, quite clearly, it did not carry out the actions that it was supposed to have carried out. In correspondence to me, he expressed concerns that both the Department of Education and the Department of Law have been obstructionists in supplying that information. I then put on notice a question - and it was there for three years - requesting information about BCF fire extinguishers from Transport and Works. That information has never been provided. It is quite clear that there has been a cover-up in relation to the negligence by the Department of Law."

2.3 RELEVANT BACKGROUND

Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 21st edition, at p.115 contains the following introductory paragraph to the Chapter on "Contempt":

“Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.”.

House of Representatives Practice (second edition) records that “whilst claims that Members have deliberately misled the House have been raised as matters of privilege or contempt in the House, the Speaker has not, to date, accepted such a claim.” (p. 705). Similarly, no allegation of deliberately misleading the House has been referred to the Committee of Privileges of the Northern Territory Legislative Assembly.

However, the following reference in *May*, 21st edition, at p.119, describes House of Commons practice as follows:

“Members deliberately misleading the House

The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963, the House resolved that, in making a personal statement which contained words which he later admitted not to be true, a former member had been guilty of a grave contempt.”.

Section 5 of the *Legislative Assembly (Powers and Privileges) Act* provides that the essential element of an offence is that “it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Assembly, or a Committee, of its authority or functions, or with the free performance by a member or the Member’s duties as a Member.”.

The above section of the Act passed in 1992 sets a threshold and provides an ultimate standard by which the facts found and all other considerations

need to be judged by the Committee to find that an offence against the Parliament had been committed.

The Committee, having regard to the power of the Legislative Assembly to impose significant penalties, would always consider whether there is a deliberate intention to mislead the House.

The Committee understood that, in its inquiry on behalf of the Legislative Assembly into the matter referred to it by Mr Speaker McCarthy, it must determine whether Mr Bailey had misled the Legislative Assembly and, if so, whether such action was deliberate. Further, if the Committee so found, there would also be a need to test the alleged contempt against the provisions of section 5 of the *Legislative Assembly (Powers and Privileges) Act 1992*.

The Committee considered letters sent from Mr Bailey to the Speaker and the Committee and has examined the edited and unedited *verbatim* transcripts of the speech which was the matter referred to the Committee. It would appear that the original edited version (above) published in the daily *Hansard* could have led to an interpretation which is clearly not conveyed by reading the strictly unedited version of the *verbatim* transcript of the speech in question.

2.4 FINDINGS

After considering Mr Bailey's letter to the Speaker by way of explanation of the matter, it was apparent to the Committee that, nearing conclusion of his speech on the adjournment debate, Mr Bailey felt compelled to present a number of facts in a limited time. This obviously led to some confusion of the content of the paragraphs in question and the Committee finds that the Member for Wanguri, Mr Bailey, did not deliberately mislead the House.

Accordingly, the Committee was not required to test the matter in terms of section 5 of the *Legislative Assembly (Powers and Privileges) Act 1992*.

2.5 OBSERVATION AND RECOMMENDATION

The Committee draws the attention of the Assembly to the following recommendation contained in the *Report on the Legislative Assembly (Powers and Privileges) Act*, at page 40.

"The Committee therefore recommends: That, if the Legislative Assembly accepts the recommendations contained in this Report and passes a *Parliamentary Powers and Privileges Bill* vesting the Legislative Assembly with the power to consider matters of breach of privilege or contempts of Parliament and, if necessary, to penalise persons who commit such breaches or contempts, **the Assembly should also pass a motion regulating the operations of the Committee of Privileges when considering such matters.**"

As the matter has not been considered to date, the Committee recommends that it be a matter for consideration by the Assembly.

Attached at Appendix A is a proposed Resolution recommended by the Committee of Privileges in 1991 setting out the recommended *modus operandi* to be followed when considering matters of a complaint of breach of privilege or contempt of Parliament.

3. REFERENCE NO. 2 - RELATING TO THE DECISION MADE BY THE SPEAKER, PURSUANT TO STANDING ORDER 84, ON 30 AUGUST 1994 REFERRING A MATTER TO THE COMMITTEE OF PRIVILEGES

3.1 COMPLAINT

In the Legislative Assembly on 30 August 1994, the Leader of the Opposition, Mr Ede, raised a matter of privilege in the following terms:

"Mr Ede (Opposition Leader): Mr Speaker, pursuant to Standing Order 83, I raise as a matter of privilege your ruling on the matter of the alleged misleading of the Assembly by the Member for Wanguri. Your ruling has prevented Members from discussing the issue under Standing Orders 58, 59 and 60. Mr Speaker, your ruling is wrong on its face as a contravention of accepted parliamentary practice as outlined at page 705 of the Second Edition of the *House of Representatives Practice* which states:

'Where claims that Members have deliberately misled the House have been raised as matters of privilege or contempt of the House, the Speaker has not to date accepted such a claim.'

Mr Speaker, as your ruling is clearly, on its face, incorrect, and as Members did not have the advice from Pettifer this morning, I move that your ruling be referred to the Committee of Privileges. I do so on two bases. The first is that Standing Order 58 states that Members may not speak after a decision has been given and that they are limited in that regard. By Standing Order 59, we shall not allude to an earlier debate unless it is relevant to that particular matter. We may not reflect on the vote unless it is upon a motion for its rescission and that cannot be done except with seven days notice.

Mr Speaker, it is essential that you give consideration to this and report back. I refer you also to section 3(3) of the Commonwealth's *Parliamentary Privileges Act 1987* which states:

'In this Act, a reference to an offence against a House is a reference to a breach of privilege or immunities or a contempt of a House or of the Members of Committees.'

Mr Speaker, I would have hoped that you would have taken advice on this earlier because section 4 related to elements of offences. We should remember that this is where the House of Representatives has codified the Standing Orders and the whole matter of privileges. As such, it binds this House. Section 4, 'conduct' states:

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

Two points arise from that, Mr Speaker. The first is that your referring of the Member for Wanguri's statements was clearly wrong. However, that has been covered already at page 705 of Pettifer. I ask Members who were not present at the start of my speech not to pass comments in relation to its content.

Members: interjecting.

Mr Ede: Page 705 of Pettifer already ruled that out. However, what this does do is to say that conduct is not an element of an offence unless it 'is intended or likely to amount to an improper interference with the free

performance by a Member of the Member's duties as a Member'. Mr Speaker, that is what you have done. I have to limit what I say in this regard because I may not now reflect on a previous decision of the House. However, Mr Speaker, I can say that you have carried that out yourself. May I add that you must take up this matter of privilege. However, if you are prepared to rescind and renege on your decision of this morning and recognise that it was wrong, as I have shown in terms of Pettifer and, apologise to this House for having carried out those actions this morning, that would clear the slate as far as Members on this side are concerned. Failing that, I refer this point of privilege to you under Standing Order 83.

Mr Speaker: Honourable Members, I will consider the matter of privilege raised by the Leader of the Opposition and report back to this Assembly at a later time.”.

Mr Speaker later that day responded as follows:

“Mr Speaker: Honourable Members, this afternoon, the Leader of the Opposition, pursuant to Standing Order 83, raised as a matter of privilege ‘the decision of the Speaker to refer the matter raised by the Attorney-General and relating to comments made by the Member for Wanguri, Mr Bailey, to the Committee of Privileges’. I advise the House that I propose to refer the complaint to the Committee of Privileges for inquiry and report.

I take the opportunity to state that, in referring both matters today to the Committee of Privileges for inquiry and report, I have done no more than perform my duty as Speaker, pursuant to the Standing Orders of this House. I point out to honourable Members that it is not the Speaker of this Assembly who rules whether any breach of privilege has been committed, or the Committee of Privileges which determines offences against the Assembly, pursuant to the *Legislative Assembly (Powers and Privileges) Act 1992*. It is the Assembly itself which determines these matters.”.

Mr Ede had earlier provided the Speaker with a letter containing further details of his particular complaint. The text of the letter is contained at Appendix B.

3.2 CONDUCT OF INQUIRY

The Committee was of the opinion that Mr Ede's complaint appeared to be comprised of the following elements:

- (a) That, by referring the complaint concerning the Member for Wanguri to the Committee of Privileges, Mr Speaker prevented further debate on the matters that were the subject of the alleged misleading of the House, pursuant to Standing Orders 58, 59 and 60. Presumably, Mr Ede submitted that the prevention of further debate would amount to an improper interference with the free exercise by the Assembly of its authority or functions or with the free performance of a Member of the Member's duties as provided in section 5 of the *Legislative Assembly (Powers and Privileges) Act*.
- (b) That by so deciding to refer the complaint, Mr Speaker had exercised a power beyond that authorised by section 12 of the *Northern Territory (Self-Government) Act 1978* read with the *Parliamentary Privileges Act 1987* of the Commonwealth, together with the absence of any precedent in the House of Representatives for a Speaker to accept such a claim.

3.3 FINDINGS

The Committee has considered the matter raised by Mr Ede and finds that the decision by Mr Speaker to refer the complaint concerning the Member for Wanguri to the Committee of Privileges was not an *ultra vires* exercise of the power of the Speaker. The Speaker in deciding to refer the complaint to this

Committee was acting in accordance with the provisions of Standing Order 84.

The power of the Assembly to make standing rules and orders with respect to the order and conduct of its business and proceedings as provided at section 30 of the *Northern Territory (Self-Government) Act*.

The Committee notes that, at the time of announcing his decision to the Assembly, Mr Speaker stated ".....I have done no more than perform my duty as Speaker, pursuant to the Standing Orders of this House. I point out to honourable Members that it is not the Speaker of this Assembly who rules whether any breach of privilege has been committed, or the Committee of Privileges which determines offences against the Assembly, pursuant to the *Legislative Assembly (Powers and Privileges) Act 1992*. It is the Assembly itself which determines these matters."

In discussing the role of the Speaker in privilege matters, *House of Representatives Practice*, (second edition) at p.723, states as follows:

"An opinion by the Speaker that a *prima facie* case has been made out does not imply a conclusion that a breach of privilege or a contempt has occurred, or even that the matter should necessarily be investigated. It is the House which determines whether or not a contempt or breach has been committed. This fact has been expressed by the Clerk of the House of Commons in the following succinct statement:

'Although any Member may complain of a breach of privilege, the issue cannot be decided either by the Speaker or by the Committee of Privileges. The House alone is competent to pronounce on the matter; and the House has to decide, by resolution, that a breach of privilege has been committed. The Committee of Privileges can express a view, but the House does not always accept the advice of the Committee

and indeed has occasionally come to a decision without referring the issue to its Committee."

Further, your Committee is of the opinion that the decision by Mr Speaker to refer the matter did not necessarily preclude further debate on the subject matter of Mr Bailey's concern.

3.4 OBSERVATION

Finally, the Committee notes that the current procedure for referring matters to the Committee of Privileges in the Northern Territory Legislative Assembly differs significantly to current practice in the Commonwealth Parliament and the House of Commons.

The Committee is of the opinion that the Standing Orders Committee should consider whether it would be appropriate for the Northern Territory Legislative Assembly to adopt Standing Orders and practice similar to that introduced to the House of Commons in 1978 and now in place in the Commonwealth Parliament.

A handwritten signature in blue ink, appearing to read 'Shane', with a long horizontal flourish extending to the left.

SHANE L STONE
Chairman

2 March 1995

4. DISSENTING REPORT FROM THE MEMBER FOR
MACDONNELL, MR BELL, AND THE MEMBER FOR
NHULUNBUY, MR STIRLING

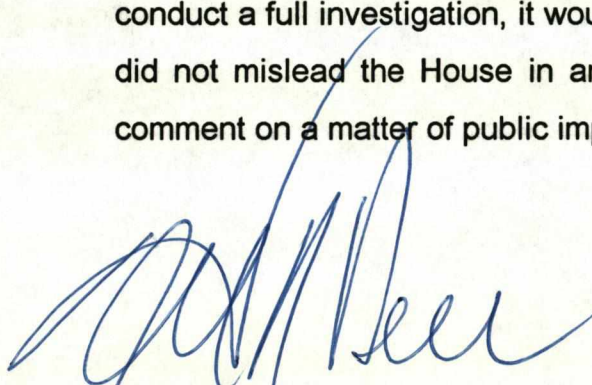
The Committee was charged with the task of establishing whether the Member for Wanguri, firstly, misled the House to such an extent that it amounted to an interference with the free exercise by the Assembly of its functions and, secondly, if he had, whether he had done so deliberately.

The majority report of the Committee is that the Member for Wanguri did not "deliberately mislead the House".

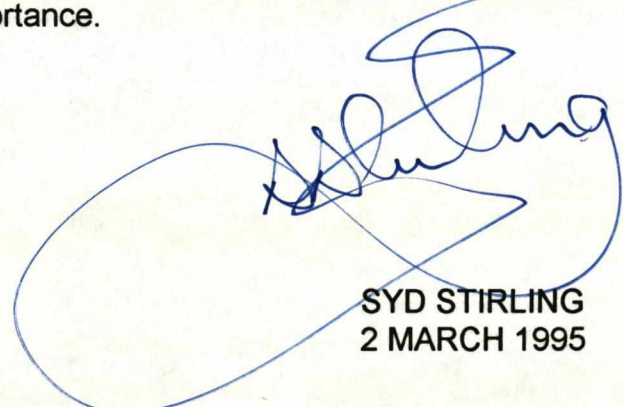
It is possible that some Members may infer from this that the Member for Wanguri did mislead the House, but not deliberately. It is our view that the Member for Wanguri did not mislead the House deliberately, or otherwise.

It should be noted that once the Committee found that the Member for Wanguri did not deliberately mislead the House, the Committee was of the view that there was no need to proceed further because there was no case to answer.

It is our view that, had the Committee proceeded to call witnesses and conduct a full investigation, it would have found that the Member for Wanguri did not mislead the House in any way at all and that his words were fair comment on a matter of public importance.



NEIL BELL
2 MARCH 1995



SYD STIRLING
2 MARCH 1995

**Extract from "Report on the
*Legislative Assembly (Powers and Privileges) Act - 1991***

"If that motion were to be applied to the operations of the Assembly Committee of Privileges, it would read as follows:

'That, in considering any matter referred to it which may involve, or gives rise to any allegation of, a breach of privilege or a contempt, the Committee of Privileges shall observe the procedures set out in this resolution, in addition to the procedures required by the Assembly for the protection of witnesses before Committees. Where this resolution is inconsistent with the procedures required by the Assembly for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

"(1) A person shall, as soon as practicable, be informed, in writing, of the nature of any allegations, known to the Committee and relevant to the Committee's inquiry, against the person, and of the particulars of any evidence which has been given in respect of the person.

"(2) The Committee shall extend to that person all reasonable opportunity to respond to such allegations and evidence by:

- (a) making a written submission to the Committee;
- (b) giving evidence before the Committee;

(c) having other evidence placed before the Committee; and

(d) having witnesses examined before the Committee.

“(3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the Committee shall ensure as far as possible that that person is present during the hearing of that evidence, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.

“(4) A person appearing before the Committee may be accompanied by counsel and shall be given all reasonable opportunity to consult counsel during that appearance.

“(5) A witness shall not be required to answer in public session any question where the Committee has reason to believe that the answer may incriminate the witness.

“(6) Witnesses shall be heard by the Committee on oath or affirmation.

“(7) Hearing of evidence by the Committee shall be conducted in public session, except where:

(a) the Committee accedes to a request by a witness that the evidence of that witness be heard in private session;

(b) the Committee determines that the interests of a witness would best be protected by hearing evidence in private session; or

- (c) the Committee considers that the circumstances are otherwise such as to warrant the hearing of evidence in private session.
- “(8) In exceptional circumstances, with the approval of the Speaker, the Committee may appoint, on terms and conditions approved by the Speaker, counsel to assist it.
- “(9) Again, in exceptional circumstances, the Committee may authorise, subject to rules determined by the Committee, the examination by counsel of witnesses before the Committee.
- “(10) As soon as practicable after the Committee has determined findings to be included in the Committee’s report to the Assembly and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the Committee, in writing and orally, on those findings. The Committee shall take such submissions into account before making its report to the Assembly.
- “(11) the Committee may recommend to the Speaker the reimbursement of costs of representation of witnesses before the Committee. Where the Speaker is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the Committee, the Speaker may make reimbursement of all or part of such costs as the Speaker considers reasonable.
- “(12) Before appearing before the Committee, a witness shall be given a copy of this resolution”.



In Reply Please Quote our
Ref:

LEADER OF THE OPPOSITION

1st Floor
38 Mitchell Street
DARWIN NT 0800

GPO Box 3721
DARWIN NT 0801
089/81 7666

30 August 1994

Hon T McCarthy MLA
Speaker
Legislative Assembly
GPO Box 3721
DARWIN NT 0801

Dear Mr Speaker,

Further to the matter of privilege I raised with you today, I would like to set out the basis of my reasoning. In view of your request that you be provided with this letter as expeditiously as possible, I have not waited for advice from the House of Commons. In view of the existence of the *Self-Government Act* and relevant Commonwealth legislation, the relevance of the United Kingdom law and procedure is debatable. On the other hand, the laws and procedure of the Commonwealth are not just relevant but binding.

The Legislative Assembly is a creation of the Commonwealth, in particular through the *Northern Territory (Self-Government) Act 1978*. As such it has no powers derived from the innate sovereignty of, say the House of Commons. The privileges of the Legislative Assembly are contained in Section 12 of that Act.

Section 12 provides:

"The power of the Legislative Assembly conferred by section 6 in relation to the making of laws extends to the making of laws -

- (a) declaring the powers (other than legislative powers), privileges and immunities of the Legislative Assembly and of its members and committees, but so that the powers, privileges and immunities so declared do not exceed the powers, privileges and immunities for the time being of the House of Representatives, or of the members or committees of that House, respectively; and
- (b) providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld.

It is submitted that in considering the move to refer your ruling to the Privileges Committee, two aspects of Section 12 of the *Self-Government Act* are relevant: firstly, the powers, privileges and immunities are not fixed; they change with the changes in the powers, privileges and immunities of the House of Representatives. The other critical aspect of Section 12 is that, if the House of Representatives reduces its powers and privileges, the Legislative Assembly's powers, privileges and immunities are accordingly reduced.

The Commonwealth Parliament, of which the House of Representatives is a part, has clarified its powers and privileges in the *Parliamentary Privileges Act 1987*. Section 4 of that Act provides:

4. Conduct (including 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.

An "offence against a House" is defined in Section 3(3):

- (3) In this Act, a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or of the members or committees.

It is further submitted that your actions in referring Mr Bailey's comments to the Privileges Committee are sufficient to give rise to a breach of privilege. This is due to the operation of Standing Orders 58, 59 and 60. These prevent Members from further discussion of the matters that were the subject of the alleged misleading of the House. Where a referral is clearly on its face incorrect, as it is submitted my argument shows, then your ruling is itself a breach of parliamentary privilege and an abuse of the powers of the Assembly.

It is submitted that any ruling by the Speaker of the Legislative Assembly to refer an allegation of misleading the House to the Privileges Committee of the Legislative Assembly is *ultra vires* the power of the Speaker, and indeed of the Assembly. The Assembly cannot treat an allegation of misleading the House to the Privileges Committee as it does not, under the terms of Section 4 of the *Parliamentary Privileges Act* constitute "an improper interference with the free exercise by a House or a committee of its authority or functions". To attempt to do so would breach Section 12(a) of the *Self-Government Act*, which prevents the Legislative Assembly from casting a wider net of definition of breach of privilege where the House of Representatives cannot itself treat such an allegation as a breach of privilege.

The case, it is submitted, is made stronger by reference to the practice of the House of Representatives. The *House of Representatives Practice (Second Edition)* - more commonly known as Pettifer's, has this to say (at p .705):

"While claims that Members have deliberately misled the House have been raised as matters of privilege or contempt in the House, the Speaker has not, to date, accepted such a claim".

My Office has today made enquiries with the Clerk's Office in the House of Representatives. Their advice is that an allegation of misleading the House has never been referred to the Privileges Committee.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Brian Ede', written in a cursive style. The signature starts with a large loop and ends with a long, sweeping tail.

BRIAN EDE