Tuesday, 4 August 2009

Dr the Hon Lockwood Smith
Speaker
Parliament House

ALLEGATION OF BREACH OF PRIVILEGE RELATING TO STATEMENT TO THE HOUSE BY HON JOHN KEY MP ON WEDNESDAY, 1 JULY 2009

Mr Speaker,

1. I wish to draw to your attention under Standing Order 393 to a statement in the House on 1 July 2009 by Hon John Key MP that gives rise to a matter of privilege and request that you refer this matter to the Privileges Committee for further consideration.

Misleading the House

2. On Wednesday 1 July 2009, in answer to Question for Oral Answer number 1 from the Leader of the Opposition, Hon Phil Goff, Hon John Key MP stated that a "Rigorous analysis was done" of the cycleway scheme.

> **Hon Phil Goff**: What analysis did Treasury do on the cost-effectiveness of the national cycleway scheme in producing jobs, and is he prepared to provide the Treasury analysis, oral and written, to members of this Parliament; if not, why not?
>
> **Hon JOHN KEY**: Rigorous analysis was done. We do not need to show the Leader of the Opposition the analysis; I can take him on the bike rides, because they are starting soon. They are going to be fantastic and there will be lots of jobs as a result of them.

3. As an Honorable Member, we had to take Mr Key's word on this.

4. However, early yesterday morning I was provided with a copy of an OIA response from the Prime Minister's office to a member of the public (not a member of our staff) which directly contradicts the Prime Minister's statement.

5. A copy of the response is attached. Personal details have been removed by the member of the public concerned.

6. You have advised the House that the appropriate way in which to deal with any contradiction was by way of complaint rather than raising these matters in the chamber.

7. Standing Order 401 sets out a number of examples of contempts, including (b) deliberately attempting to mislead the House or a committee (by way of statement, evidence or petition).

8. I understand that you have informed Members of the importance of also discharging the test that there must be evidence of *intent* to mislead.

9. The issue of intent which is considered in courts of law on a regular basis. Various laws contain analogous requirements to prove intention. However, intention is something which lies in the mind of the person concerned. This makes it difficult to objectively establish intent. Justice Kirby of the High Court of Australia made the compelling point in *Cannane v Cannane Pty Limited (in liquidation)* [1998] HCA 26 that proof of the intention of the person presents notorious difficulties in every area of law where it is encountered.

10. Fortunately the courts have given us some guidance in how to best to identify intent from action. In order to get around what Justice Kirby refers to as notorious difficulty of proof, in my submission it is quite appropriate, for the Speaker, just as the courts do in appropriate circumstances, rely on logical devices that assist in overcoming difficult areas of proof, having regard to the needs of the real world.

11. This is especially true in the case of the Speaker's decisions under Standing Order 393. Standing Orders effectively charge you with determining whether there is a *prima facie* case to answer. You are changed with determining whether a question of privilege is ***involved***. You are not charged with determining whether the allegation is made out.

12. There is an obvious logical device open to you in determining whether there is sufficient evidence of intent to show that a question of privilege is ***involved*** in the allegation.

13. This logical device is to assess whether there is any other reasonable explanation for the misleading statement having been made.

14. The only reasonable alternative explanation that could be put forward is that Hon John Key MP was simply confused about whether there had been analysis of the cycleway. However, this possibility can be readily dismissed:

- This proposal is Mr Key's personal proposal which he has promoted both as the Prime Minister and Minister for Tourism. He has access to advice from across the public sector including DPMC, The Treasury and the Ministry of Tourism.

- The Cabinet Paper on the topic was in his name – meaning he was required to sign it off.

- Also, he has been previously challenged on this topic and would have come to the House well prepared on it.

15. Having dismissed the possibility of confusion or misunderstanding, the only credible explanation for her statement is that it was designed to mislead the House.

16. The House has traditionally seen any statement by a Member designed to deliberately mislead the House as very serious breach of privilege.

17. This being the case, *I formally draw your attention under Standing Order 393 to a matter of privilege arising from the comments by Hon John Key MP during answer to Question for Oral Answer number 1 on Wednesday 1 July 2009.*

Timing of this complaint

18. While the misleading statement occurred on 1 July 2009, I only received evidence of the fact that it was misleading in the early hours of yesterday morning. This being the case I have met the requirements of Standing Order 393 regarding timing of the complaint.

Further information

19. I have attached the relevant *Hansard* from Hon John Key MP. I have also attached the crucial letter from Wayne Eagleson proving that Mr Key's comments were misleading and the relevant Cabinet paper.

20. In fulfilment of the requirements of Standing Order 395 I am forwarding a copy of this letter to Hon John Key MP.

Yours sincerely,

Hon Trevor Mallard MP

CC: Hon John Key MP.