

1 August 2011

Dr The Rt Hon Lockwood Smith
Speaker
Parliament House

**ALLEGATION OF BREACH OF PRIVILEGE RELATING TO KNOWINGLY
MISLEADING THE HOUSE**

I wish to draw to your attention under Standing Order 393 a matter of privilege relating to the answer to a written question by Hon Steven Joyce that gives rise to a matter of privilege and request that you refer this matter to the Privileges Committee for further consideration.

Written Question 15840 (2009)

On 23 October 2009, I asked the following written question.

15840 (2009). Clare Curran to the **Minister for Communications and Information Technology** (23 Oct 2009): What correspondence, if any, has he received or sent, listed by correspondent and date, about possible structural separation of Telecom

Hon Steven Joyce (Minister for Communications and Information Technology) replied: I have not received or sent any correspondence about possible structural separation of Telecom.

Release of Telecom letter

On or about 25 July 2011, the Minister released a copy of a letter from the Chief Executive of Telecom dated 6 August 2009 to the Dominion Post.

A copy of that letter is attached.

A key sentence and the final paragraph on page one of Telecom's letter reads as follows:

"Notwithstanding these very constructive discussions, I now understand that officials have suggested that the government has a preference for Telecom to voluntarily offer to structurally separate."

Misleading the House

The issue of structural separation that Telecom raises in its August 2009 letter is exactly the subject of my written question in October 2009.

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

I submit that there is sufficient evidence to conclude that the Minister's answer to written question 15840 (2009) is a deliberate attempt to mislead the House.

First there is the matter of timing and content. My question was dated less than three months after the delivery of Telecom's letter. Given the significance of the policy considerations and the contents of the letter, in which Paul Reynolds writes "This is an extremely significant issue for us ... " it is inconceivable that the Minister was not aware of the Chief Executive's correspondence.

Second, there can be no mistake about the subject of the question because the Minister has repeated the phraseology of the question by using the words "possible structural separation of Telecom."

Third, there were alternative approaches available to the Minister in answering the question. The written question did not seek disclosure of the contents of the letter; only that one had been received. The Minister was obliged to answer the written question in the affirmative and could then have relied on the Official Information Act to manage any subsequent request.

Finally, the Minister has acknowledged in various statements to the media over recent days that the Telecom letter has been a significant issue for his office.

On 25 July 2011, the Dominion Post reported that the Ombudsman has conducted an extensive investigation into the release of the letter and on 26 July 2011, the Minister is quoted as saying that the 6 August 2009 letter was being released "given the passage of time."

All of this indicates awareness that the letter has been actively withheld for nearly two years. During this time, no attempt has been made to correct the written answer or to notify my office of an error.

Timing of this complaint

Standing Order 393 requires that I draw these complaints to your attention in writing at the earliest opportunity.

The Minister released Telecom's letter midway through the July recess and I am writing to you before the House next sits. In this regard I have met the requirements of Standing Orders.

In fulfilment of the requirements of Standing Order 395 I am forwarding a copy of this letter to Hon Steven Joyce.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Clare Curran', with a large, sweeping flourish at the end.

Clare Curran
MP for Dunedin South

cc: Hon Steven Joyce

Pirol Brynilds
Chief Executive Officer
Telecom New Zealand Ltd
Level 15, Telecom House
8 Herdford Street
Private Bag 92-028
Auckland

Telecom

6th August, 2009

Hon. Steven Joyce
Minister of Communications and IT
Parliament Buildings
Wellington

Dear Steven

Since our meeting on 9 June our respective teams have been making good progress on clarifying the potential impact of the Crown's investments if it was made additive to Telecom's own substantial investment in broadband technologies for New Zealand.

Overall the impact is very positive. As expected, with this type of additive investment the country would avoid any spend that would merely be replicating what Telecom has already invested in, and exists today, while providing synergy benefits of at least \$500M. As discussed we have been open and approached this investment on a marginal cost basis, which means the maximum possible benefit to New Zealanders from the Government's investment, both in terms of short to medium term speed, and longer term fibre to the home.

I believe that Telecom's proposal is credible and offers the ability to deliver on your policy objectives. By working together we can get close to 70% coverage of infrastructure for homeowners to be able to connect, all while actual speeds increase significantly, meaning we don't have to wait the 10 years for the productive benefits to start to flow.

To date the conversations between our teams have focussed primarily on the solution itself.

Notwithstanding these very constructive discussions, I now understand that officials have suggested that the government has a preference for Telecom to voluntarily offer to structurally separate:

My recollection of our last discussion is that you said that this issue was not on the agenda. This is an extremely significant issue for us, as you will appreciate, and therefore I would suggest a discussion between us is in order to better understand your views on this matter.

I will have my team contact your office in this regard.

Yours sincerely,

Paul Reynolds

Paul Reynolds
Chief Executive Officer

Labour attacks Telecom UFB win as 'pre-ordained plan'

TOM PULLAR-STRECKER

A SECRET letter Telecom chief executive Paul Reynolds sent to Communications Minister Steven Joyce two years ago shows Telecom's ultrafast broadband win was part of a "pre-ordained plan", Labour communications spokeswoman Clare Curran believes.

In the August 6, 2009, letter, Reynolds told Joyce he understood officials had suggested the Government had a preference for Telecom to voluntarily offer to structurally separate, and that followed a meeting in which Joyce said that was "not on the agenda".

"This is an extremely significant issue for us . . . and therefore I would suggest a discussion between us in order to better understand your views on this matter," Reynolds wrote.

The letter could be sensitive because if the Government was secretly urging the breakup of Telecom in 2009, that might show it favoured Telecom as its UFB partner before it went to tender.

Joyce's public position at the time was that it was up to Telecom to decide whether it wanted to separate to compete for the UFB contract and that he was "agnostic". The Government awarded Telecom the contract to build the bulk of the network on May 24.

Joyce said in a covering letter to The Dominion Post, "the supposition regarding voluntary separation referred to by Dr Paul Reynolds in his letter was incorrect".

But Curran was not convinced Reynolds got the wrong end of the stick and called on Joyce to also release that advice. "I don't think Paul Reynolds would have written that to the minister if that wasn't his clear understanding."

Joyce said he had released the correspondence "given the passage of time". That was after withholding it for 1 1/2 years.

The letter also reveals officials and Telecom were holding detailed discussions in 2009 about how Telecom could partner with the Government on the UFB scheme.

Reynolds said in the letter that Telecom had been having "very constructive" discussions with officials about the merits of the Government investing alongside Telecom in ultrafast broadband, saying that would avoid duplication and provide "synergy benefits" of up to \$500 million.

"What it indicates is there were direct discussions going on between Telecom and the Government . . ." Curran said. "It shows the sham of the contracting process that the industry and the country underwent for 2 1/2 years."

CAPTION:

Tender issue: Telecom chief Paul Reynolds wrote to Communications Minister Steven Joyce two years ago.

Section: BUSINESS

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Reynolds' UFB letter still too sensitive to release

TOM PULLAR-STRECKER

A SECRET letter written by Telecom chief executive Paul Reynolds to Communications Minister Steven Joyce two years ago on the ultrafast broadband initiative remains so sensitive that it may never be released while the pair are in their current jobs.

Government officials revealed the existence of the August 6, 2009, letter after it was captured by an Official Information Act request from The Dominion Post seeking documents relating to the Government's \$1.5 billion scheme.

The letter was penned less than three months after Reynolds derided the ultrafast broadband (UFB) plan as a "starter-for-10" initiative and may include criticisms of the scheme.

Joyce refused to release it, along with a batch of other documents, prompting a complaint from the newspaper and a one-and-a-half-year investigation by the Office of the Ombudsmen.

Telecom gradually performed an about-face on UFB, before revealing in April 2010 that it was prepared to consider splitting into two separate companies in order to partner with the Government on the scheme.

Ombudsman David McGee said he had seen the letter and discussed its contents with the Government and Telecom as part of his investigation. He said in a provisional ruling mailed to the newspaper that Joyce had advised him the release of the letter would lead to the free and frank expression of opinion between himself and Telecom being "jeopardised to the extent that it would not be possible for him to engage directly with Telecom on significant matters".

McGee accepted Joyce's position. "It is not possible for me to provide a fuller explanation of why the release of the information in the letter would be likely to create the predicted harm," McGee said.

That remained the case, even though Telecom has since won the contract to build the bulk of the UFB network.

McGee said he had considered whether the grounds for withholding the letter no longer applied.

"At this point, the minister considers that the subject of the letter is a matter that remains relevant to the ongoing relationship between the minister and Telecom and withholding remains necessary."

Joyce reconsidered and released other documents last year that were also subject to the Ombudsman's investigation. They included advice from the Treasury on the UFB scheme and the Cabinet paper supporting the investment.

A final ruling by the Ombudsman on that complaint said Joyce had been wrong not to release the Treasury advice when it was initially withheld from The Dominion Post in November 2009.

Joyce had feared the advice - which argued UFB network operators should only be able to sell access to "dark fibre" and not internet connectivity - might be used to "drive a wedge" between ministers and officials and undermine their negotiating position.

But McGee said the Cabinet had already finalised its policy when it first declined to provide the advice.

CAPTION:

Touchy subject: Communications Minister Steven Joyce, right, says the contents of a letter from Telecom CEO Paul Reynolds, left, could damage his dealings with Telecom if made public.

Picture: JOHN SELKIRK

Section: BUSINESS

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