

The Senate

Committee of Privileges

Possible imposition of a penalty on, or
interference with, a witness before the
Rural Affairs and Transport References
Committee

151st Report

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Contents

Summary	i
Report	1
Background.....	1
Conduct of the inquiry.....	3
Consideration of contempt matters.....	5
Unauthorised disclosure	7
Interference with witnesses	9
Improper interference	9
Penalty to a witness	11
Conclusions.....	13
Publication of evidence in this matter	13
Findings and recommendation.....	14
Appendix A.....	15
Appendix B	19

Summary

The committee reports to the Senate on a matter arising from the removal of a person from positions held in an organisation after he gave evidence, as a representative of that organisation, at an in camera hearing of the Rural Affairs and Transport References Committee in March 2011.¹

The committee regards the protection of persons providing information to the Senate, and in particular of witnesses before parliamentary committees, as the most important duty of the Senate in determining possible contempts. Any suggestion that a penalty has been imposed upon a witness as a result of giving evidence to a parliamentary committee is therefore treated with the utmost seriousness.

The committee has considered whether there was any interference with the witness in respect of the evidence he was to give at the hearing, or any penalty imposed on him as a result of his evidence. The committee also considered whether there was any improper use of a proof transcript of the hearing.

The committee's attention was drawn to a number of actions which are capable of being treated by the Senate as contempts, however the committee has been unable to conclusively establish the facts of the matter, which primarily turn on the content of a private conversation. In those circumstances, the committee cannot recommend that a contempt be found.

The committee considers that the combination of events involved contributed to an atmosphere in which the witness might, with good justification, have been concerned that action was being taken against him because of his evidence. While refraining from recommending that a contempt be found, the committee considers that the organisation involved ought formally apologise to the witness for the way in which this matter was handled.

Conclusion and recommendation

On the evidence before it, the committee is unable to conclude that action taken to remove the witness was taken because of the evidence he gave to the references committee.

The committee **recommends** that the Senate endorse the findings at paragraph 1.73 of the report and the conclusion, at paragraph 1.74, that a contempt should not be found in regard to the matter referred.

1 The terms of reference are set out in paragraph 1.15 of the report.

Report

Background

1.1 This matter arose from information provided to the Regional Affairs and Transport References Committee (the ‘references committee’) regarding the circumstances surrounding the decision to remove Mr Brian Wilson from two roles as a delegate for, and as nominated representative of, the International Division of the Flight Attendants Association of Australia (FAAA). That decision was made by Mr Michael Mijatov, who holds the position of Divisional Secretary, and formally noted – in essence, endorsed – by the divisional council at a subsequent meeting.

1.2 In undertaking an inquiry on pilot training and airline safety, the references committee held an in camera hearing on 18 March 2011. Mr Mijatov and Mr Wilson were scheduled to appear at the hearing, representing the FAAA. The contact forms for each witness nominated the same email address – that of Mr Mijatov – as the address to which the proof transcript of the hearing was to be sent. As events transpired, Mr Mijatov did not attend the hearing but agreed to Mr Wilson attending alone as a representative of the FAAA.

1.3 On the evening of 31 March 2011 Mr Mijatov received, by email, a proof copy of the transcript of the evidence given by Mr Wilson at the hearing.¹ The email was addressed to Mr Wilson and cited as ‘Confidential’.

1.4 Mr Mijatov read the transcript. It is clear that he disagreed with some of the evidence given by Mr Wilson. On 1 April, Mr Mijatov sent an email to the President of the divisional council, Mr Steven Reed, and the Vice-President, Ms Vanessa Dunn, attaching a copy of the transcript. The text of the email simply read:

Brian has again said things in the senate committee that are highly detrimental to our interests and specifically against what I instructed him not to say.

I have had enough and propose to immediately get rid of him. Please contact me to discuss.²

1.5 Mr Mijatov terminated Mr Wilson’s roles with the FAAA, informing him of this decision in a phone conversation on 4 April. The decision was reviewed by the divisional council at a meeting on 6 April. The council resolved not to take any action, effectively endorsing Mr Mijatov’s actions and confirming Mr Wilson’s termination. Mr Wilson wrote to the references committee on 4 April 2011 to inform that committee of these events.

1 Proof copies of transcripts are sent to witnesses to enable them to indicate whether any corrections are needed in their evidence.

2 The email was included as an attachment to a statement provided to the references committee by Ms Dunn as part of that committee’s investigations.

1.6 It is clear that action has been taken against Mr Wilson by Mr Mijatov and by the divisional council. What is not clear is whether that action was taken as a result of the evidence given. To risk oversimplifying matters, there are two explanations that have been submitted.

Mr Mijatov's version

1.7 Prior to Mr Wilson's appearance before the committee, Mr Mijatov had instructed Mr Wilson as to the evidence he should give (or not give) on behalf of the FAAA. The transcript records that Mr Wilson had given evidence contrary to Mr Mijatov's instructions. However, according to Mr Mijatov, this was not the reason he took action against Mr Wilson.

1.8 Mr Mijatov (and the divisional council) had been concerned about Mr Wilson's performance of his role and the manner in which he was representing the FAAA for some time. At a meeting of the council on 10 December 2010, the council authorised Mr Mijatov to remove Mr Wilson from his role as a delegate if there were any further incidents or concerns. Mr Mijatov and Ms Dunn had 'counselled' Mr Wilson about this (on 8 February 2011). By 29 March 2011 – the date of an email between Mr Wilson and Mr Simon Efron, an FAAA employee, which Mr Mijatov submits he found 'unacceptable' – Mr Mijatov had decided to terminate Mr Wilson's role.

1.9 According to this version of events, the receipt of the transcript of evidence was not a catalyst for the action taken by Mr Mijatov; the timing was coincidental.

1.10 An alternative explanation, also considered by the committee, is that the evidence given was 'the last straw', contributing to Mr Mijatov's decision to take action against Mr Wilson. Mr Mijatov's submissions deny that this is the case.

Mr Wilson's version

1.11 Mr Mijatov terminated Mr Wilson's roles with the FAAA 'directly' as a result of the evidence given. Mr Wilson submits that Mr Mijatov stated this to him and, when possible privilege implications were pointed out to Mr Mijatov, he concocted a rationalisation based on alleged dissatisfaction with Mr Wilson's performance. Mr Wilson suggests that there was nothing inappropriate about the email to Mr Efron. For his part, Mr Wilson denies that the character of the 8 February meeting was in any sense disciplinary.

1.12 According to this version of events, Mr Mijatov circulated the transcript of evidence to members of the divisional council 'in breach of privilege', to justify his decision to terminate Mr Wilson. It was submitted that Mr Mijatov had removed Mr Wilson to avoid proper scrutiny of matters which were the responsibility of the FAAA and to avoid embarrassment for the association on certain matters.

The reference of the matter

1.13 After investigating the matter the references committee concluded:

On the basis of the information received through its investigation of this matter, the committee believes that Mr Wilson may have been removed from his positions in the FAAA due to the evidence he gave to the committee on 18 March 2011.

The committee therefore believes that Mr Wilson may have been subject to a penalty in respect of his evidence to the committee.³

1.14 The chair of the references committee, Senator Heffernan, raised the matter as a matter of privilege in a letter to the President of the Senate, dated 1 August 2011. That letter, which is reproduced at Appendix A, sets out the essential facts of the case and provides details of the references committee's investigation. On 16 August, the President made a statement in the Senate indicating that, in accordance with the criteria he is required to consider under the standing orders, he had determined that a notice of motion to refer the matter to this committee should have precedence on the next day of sitting day.⁴

1.15 On 17 August, the Senate referred the matter to the Privileges Committee in the following terms:

Having regard to the material submitted to the President by the Rural Affairs and Transport References Committee, whether a witness was threatened with, or subjected to, any penalty or injury on account of his evidence to the committee, whether there was any attempt improperly to interfere with a witness before the committee, and whether any contempt of the Senate was committed in those regards.⁵

Role of the Privileges Committee in contempt matters

1.16 The role of the committee is primarily inquisitorial. When the Senate refers to the committee a matter giving rise to allegations of contempt, it is the committee's role to establish the facts. Initially, it may not be clear whether there are particular suspects or, indeed, particular allegations. Over the course of an inquiry, particular allegations or suspects may emerge. These are tested to establish what happened. The final step in the process is to consider whether any particular act may constitute a contempt.

Conduct of the inquiry

1.17 The committee wrote to the references committee seeking supporting documentation referred to in the chair's letter of 1 August, together with any other

3 Letter from Senator Heffernan to the President, dated 1 August 2011.

4 *Senate Debates*, 16 August 2011, p. 4431.

5 *Journals of the Senate*, 17 August 2011, p. 1257.

material the references committee considered relevant to the terms of reference. The committee subsequently received additional material from the references committee, consisting of written statements from Mr Wilson, Mr Mijatov and other members of the divisional council, correspondence on the matter and transcripts of hearings of the references committee in relation to its inquiry into pilot training and airline safety.

1.18 The committee wrote to Mr Wilson and Mr Mijatov on 25 August 2011, inviting them to submit to the terms of reference. The responses provided by Mr Mijatov and Mr Wilson demonstrate ongoing disagreements between the two and suggest a difficult relationship. Statements obtained by the references committee from other members of the divisional council support elements of the different versions of events.

1.19 The committee then considered the documents before it, and corresponded with Mr Wilson over aspects of his submission. In November 2011, after considering the material then before it, the committee determined that there were allegations, principally against Mr Mijatov, which warranted further investigation.

Investigation of allegations

1.20 In conducting inquiries, the Privileges Committee must follow rules of procedural fairness set down by the Senate for the protection of witnesses. These are chiefly set down in Privilege Resolution 1 (which sets out procedures to be followed by Senate committees generally) and Resolution 2 (which sets out additional protections for witnesses before the Privileges Committee).

1.21 In particular, Resolution 2 sets out the procedures that must be followed to ensure that a person against whom allegations are made:

- is informed of the nature of the allegations
- is informed of the particulars of any evidence given in respect of the person and
- is extended a reasonable opportunity to respond to such allegations and evidence.

Allegations put to Mr Mijatov

1.22 Broadly the submission made by Mr Wilson suggests three allegations for the consideration of the committee:

- that action was taken by Mr Mijatov against Mr Wilson ‘directly’ as a result of evidence he gave to a Senate committee
- that the divisional council was complicit in taking action against Mr Wilson as a result of his evidence
- that the transcript of in camera evidence sent to Mr Mijatov was improperly accessed by Mr Mijatov, and was used in support of the against taken against Mr Wilson.

1.23 The committee wrote to Mr Mijatov in November 2011, informing him that it was, in particular, investigating these allegations.⁶

1.24 In order to afford Mr Mijatov an opportunity to respond, the committee provided him with the following documents, containing the particulars of the evidence the committee was considering:

- Statements from members of the divisional council that were received by the references committee in the course of its investigation, and subsequently provided to the Privileges Committee
- The submission to the Privileges Committee received from Mr Wilson, dated 18 September 2011.⁷

1.25 The letter emphasised that these attachments, being evidence received on a confidential basis during a committee inquiry were ‘confidential committee documents until the committee authorises their release.’

1.26 Mr Mijatov provided a response to that letter on 31 January 2012.

Consideration of contempt matters

1.27 Pursuant to section 4 of the *Parliamentary Privileges Act 1987*, any conduct may constitute an offence against a House (that is, a contempt) if it amounts to, 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.

1.28 In determining whether particular acts amount to a contempt, the committee also has regard to the list of possible contempts in Privilege Resolution 6. Those parts of Resolution 6 most relevant to this matter are set out below. The committee also has regard to the precedents provided by its earlier reports on matters giving rise to allegations of contempt, and the action taken by the Senate in relation to those reports. The committee regards culpable intention on the part of the person concerned as essential in establishing a contempt.⁸

Possible contempts

1.29 In relation to the protection of witnesses, the Senate has determined that:

A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given

6 The letter is reproduced at the Appendix B.

7 See paragraphs 1.69 to 1.72 for the committee’s determination about the publication of documents received as part of the inquiry.

8 See 125th report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006, paragraph 4.74.

or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.⁹

A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.¹⁰

The terms of reference for the inquiry clearly draw on the language of these parts of Resolution 6.

1.30 In relation to the unauthorised disclosure of evidence, the Senate has determined that:

A person shall not, without the authority of the Senate or a committee, publish or disclose...

(b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence;

unless the Senate or a committee has published, or authorised the publication of... that oral evidence...¹¹

References for Privileges Committee inquiries on possible contempts are drafted in broad terms, enabling the committee to test any particular allegations that arise and examine any suspects that emerge. The question of unauthorised disclosure arises from evidence received by the references committee about Mr Mijatov's receipt and circulation of the transcript of evidence.

Questions for consideration

1.31 The committee considers that the questions arising from the terms of reference, from the material provided by the references committee and from its own investigations are:

- (a) whether there was an unauthorised disclosure by Mr Mijatov of the transcript of evidence, and whether there was any other improper use of the transcript
- (b) whether there was any attempt to improperly interfere with Mr Wilson in respect of the evidence he was to give to the references committee and
- (c) whether Mr Wilson was threatened with, or subjected to, any penalty or injury on account of his evidence to the references committee.

1.32 In each case, the committee must also consider whether the conduct established by the evidence before it is capable of amounting to a contempt.

9 Privilege Resolution 6(10).

10 Privilege Resolution 6(11).

11 Privilege Resolution 6(16).

1.33 The principles in each of these areas are well understood, as the committee has considered them many times. The application of the principles to particular circumstances is not always so clear.

Unauthorised disclosure

1.34 In 2005, the committee examined the principles involved in relation to unauthorised disclosure when it undertook an inquiry considering what acts of unauthorised disclosure of committee proceedings ought be treated by the Senate as contempts.¹² The committee observed:

The purpose of the prohibition against unauthorised disclosure is primarily the protection of persons giving information to committees, but also covers persons about whom information may be given or who may be adversely affected by the findings and conclusions of a parliamentary committee.¹³

Circulation of the proof transcript

1.35 As set out in the first part of this report, Mr Mijatov received the proof transcript as it was sent to his email address. The committee dismisses any suggestion from him that this was a mistake on behalf of the references committee: Mr Mijatov had provided his own email address to that committee as contact information both for himself and for Mr Wilson. Mr Mijatov did the right thing, in forwarding the transcript to Mr Wilson but, as noted above, also sent the email to the President and Vice President of the divisional council with the transcript as an attachment. The transcript was also provided to other members of the divisional council, and discussed at the council's meeting on 6 April 2011 in the context of its consideration of Mr Wilson's removal.

1.36 The committee has considered two questions in relation to the circulation of the in camera evidence within the FAAA. The first question was whether it should be dealt with as an unauthorised disclosure. This question is an important one, as the committee has previously declared that the unauthorised disclosure of in camera evidence will be treated as a 'strict liability' offence:

Anyone who divulges or publishes such in camera evidence may expect a finding of contempt, regardless of the circumstances. The committee may then wish to establish whether the offence is of such gravity that it should recommend to the Senate that a prosecution under section 13 of the *Parliamentary Privileges Act 1987* be proceeded with.¹⁴

1.37 The email was addressed to Mr Wilson and marked confidential. It was delivered to Mr Mijatov only because his was the email address given to the

12 Senate Committee of Privileges, 122nd report, *Parliamentary privilege – unauthorised disclosure of committee proceedings*, PP 137/2005.

13 122nd report, paragraph 3.2.

14 122nd report, paragraph 3.24.

committee. A statement provided to the references committee by Mr Reed indicated that he had inquired about the status of the document and had been advised by Mr Mijatov 'that it was an FAAA document and we were entitled to view it and discuss it.' The committee considers that the question is not settled by the mere fact that Mr Wilson was giving evidence on behalf of the FAAA, although this is relevant.

1.38 On the other hand, it appears to the committee from Mr Wilson's submission that he intended to discuss the transcript with Mr Mijatov and other council members. Certainly, he had discussed with some of them the evidence he was to give to the references committee. The committee also considers it likely, although it has not sought clarification on this point, that the references committee intended that Mr Wilson would be able to discuss the transcript with his colleagues particularly in the context of answering questions taken on notice.

1.39 The committee has concluded that, in the circumstances, the circulation of the transcript should not be considered to be an unauthorised disclosure. The committee emphasises, however, that such questions necessarily turn on the circumstances of the particular case. The committee's conclusion in this case should not be taken as establishing a general principle.

1.40 The above conclusion does not, however, answer the second question considered by the committee: whether there was any improper use of the transcript of evidence.

1.41 The test here is to ask what the references committee *intended* in sending the transcript to Mr Wilson. It is clear that the references committee did not intend wide circulation of the document. 'Proof' copies of transcripts are sent to witnesses to enable them to indicate whether any corrections are needed in their evidence. The committee considers that to be a proper purpose for which the document may be shared within the organisation.

1.42 It cannot be imagined that the references committee intended the transcript to be distributed in an email in connection with a decision to remove the witness from the capacity in which he appeared before the committee. Neither can it be imagined that the references committee intended the transcript to form part of the discussions in the divisional council meeting of 6 April 2011 on that same matter. The Privileges Committee considers that the use of a transcript of evidence in this manner would be completely improper, and inexcusable.

1.43 It appears that, after the elapse of some time – and after receiving advice on the matter – Mr Mijatov may have come to a similar conclusion and took action to retrieve the transcript from the council members to whom it had been circulated.

1.44 The committee considers that the decision of Mr Mijatov to distribute the transcript attached to an email recording his intention 'to immediately get rid of' Mr Wilson, in particular, gave rise to the impression of improper motives. It is clear from statements provided to the committee that knowledge of the email spread among other members of the divisional council, and possibly further. There was a proper purpose

in providing the evidence to the divisional council members: to allow the council to discuss whether it wanted to submit further evidence to the committee. Again, however, the impression has been created that the transcript was discussed in the divisional council meeting on 6 April in considering Mr Mijatov's actions in relation to Mr Wilson.

1.45 If Mr Mijatov circulated the transcript with the intention of justifying taking action against Mr Wilson, the committee considers that conduct may be treated by the Senate as a contempt; in particular if members of the divisional council were influenced by the improper circulation of the transcript to acquiesce to Mr Mijatov's actions.

Conclusion

1.46 In the circumstances of the case, the committee concludes that the internal circulation of the transcript of evidence should not be treated as an unauthorised disclosure of in camera evidence. However, the committee is highly critical of the manner in which the transcript was circulated.

Interference with witnesses

1.47 As has been noted many times, the committee regards the protection of persons providing information to the Senate, and in particular of witnesses before parliamentary committees, as the most important duty of the Senate (and therefore the committee) in determining possible contempts.¹⁵ In its 141st report the committee made the following observations about interference with witnesses:

... the committee agrees that it would be useful to set out clear guidance for any person who seeks to take action of any kind against another person as a consequence of their evidence to a Senate committee. **The committee's advice is that such action should not be taken in any circumstances.** If it is taken, such action may constitute a contempt of the Senate. A person's right to communicate with the parliament and its committees is an untrammelled right, overriding all other considerations.¹⁶

The two aspects of possible interference with witnesses arising in this case are discussed below.

Improper interference

1.48 The committee considered whether there was an inappropriate attempt prior to the hearing to influence Mr Wilson as to the evidence he was to give. As has been noted above, there is an untrammelled right for witnesses to communicate with parliamentary committees. This right adheres in whatever capacity a person gives

15 125th report, p. 46.

16 Senate Committee of Privileges, 141st report, paragraphs 1.20 – 1.24.

evidence, whether professional or personal. Statements from Mr Mijatov and Mr Wilson admit that Mr Mijatov gave instructions as to what evidence Mr Wilson ought give to the committee and what evidence he was not give.

1.49 The submissions demonstrate that Mr Mijatov disapproved of some of the evidence given by Mr Wilson and considered it did not accurately represent the FAAA's position in some respects. The committee notes that many of the statements from other members of the council indicated that they had no difficulties with the evidence given. It is apparent to the committee, however, that prior to the hearing Mr Wilson did not consider the discussions to be inappropriate, although he offered that Mr Mijatov's concerns should be set at ease by the fact evidence would be given in camera. The fact that Mr Wilson gave evidence contrary to the 'instructions' given suggests to the committee that Mr Wilson did not himself consider those instructions as amounting to interference.

1.50 Mr Mijatov submitted that, as Mr Wilson was representing the FAAA, the association had a right to protect its credibility and reputation, including by controlling the evidence given on its behalf to a Senate committee. The committee considers that this gives the FAAA the right to correct the record (and supports a purpose of privilege: to protect the integrity of the Senate's processes) but it does not give it the right to take action against a representative for giving evidence with which it does not agree. The 141st report of the committee covered this ground:

There is a very simple remedy available to any employer or professional organisation or any other body whose staff or members may make submissions to a parliamentary committee that do not accord with the official policy or practices of the organisation. The remedy is for that body to make its own submission to the committee in question, dissociating itself from the submission of the individual and indicating that the views expressed by the individual are not the official views of the organisation.¹⁷

1.51 Precisely this corrective action was effected in the current matter. It appears that Mr Mijatov gave evidence to the references committee clarifying the FAAA's position, as he saw it. Mr Wilson gave further evidence to the references committee in relation to matters he had undertaken to follow up.

Conclusion

1.52 The committee does not consider that the actions of Mr Mijatov in purporting to give instructions about the evidence that Mr Wilson might give are capable of being treated as a contempt. It is clear to the committee that Mr Mijatov's motives in giving those instructions were connected with his desire to see that the evidence given reflected what he considered to be FAAA's view of matters. The committee does not consider that Mr Mijatov demonstrated the requisite intention to 'improperly influence' Mr Wilson in this regard prior to the hearing. In addition, the references

17 141st report, paragraph 1.24.

committee facilitated appropriate corrective action in enabling further evidence to be given by both parties.

1.53 In its 141st report, the committee went on to say:

Under no circumstances is it acceptable, as occurred in this case, for the organisation to take the matter up with the individual directly and threaten disciplinary action as a result of the individual's communication with the committee.¹⁸

That is the question that remains: whether any action was taken against Mr Wilson after the hearing as a result of the evidence given.

Penalty to a witness

1.54 The committee considered whether Mr Wilson was threatened with, or subjected to, any penalty or injury on account of the evidence he gave to the references committee. The central allegation is that Mr Mijatov removed Mr Wilson from his roles with the FAAA because of that evidence.

Nature of penalty

1.55 Mr Mijatov in his submissions suggests that there has been no 'penalty' imposed, as Mr Wilson's roles were informal voluntary positions, rather than formal paid positions. By contrast, Mr Wilson outlines penalties in the nature of loss of those roles, some monetary costs, loss of other opportunities and, in particular, damage to reputation. The nature of the penalty is not defined in the Privilege Resolution, nor need it be. The applicable principle is that *any* action taken *against* a person on account of the evidence they give to a parliamentary committee may be treated by the Senate as a contempt.

1.56 The committee has no doubt that the conduct in this matter – both that of Mr Mijatov in removing Mr Wilson from his positions, and the action (or inaction) of the council in endorsing that removal – is capable of being treated by the Senate as a contempt.

Action 'lawful'

1.57 One of the arguments often raised in justifying actions taken in respect of persons who have given evidence to committees is that the action was lawful. In this case, it appears that Mr Mijatov took legal advice which indicated that he was within his rights to remove Mr Wilson from his positions.

1.58 It bears repeating that an action which is otherwise lawful may constitute a contempt if the motivation for the action is improper. This has been emphasised by the committee on many occasions. Accordingly, the committee has found that lawful

18 141st report, paragraph 1.24.

actions such as initiating disciplinary proceedings or commencing legal proceedings against a person were nonetheless capable of being treated as contempts.¹⁹ The same principle applies in this case. There is no doubt that Mr Mijatov, with the authority of the divisional council, could lawfully remove Mr Wilson from his roles. The question comes back to whether this action was improperly motivated by Mr Wilson's evidence.

Causal connection

1.59 In its 125th report, the committee emphasised that 'although it may conclude that penalty, injury or reprisal has occurred, in order to find a contempt of the Senate it must be satisfied that any such penalty or intimidation was as a result of participation in parliamentary proceedings.'²⁰ For such a finding to be made in this case, the evidence would have to demonstrate that Mr Wilson was removed from his positions *on account of* the evidence he gave. If this connection cannot be demonstrated, the committee cannot recommend to the Senate that a contempt be found.

1.60 In the current matter there are two events the committee can, in particular, look to in seeking to establish the relevant facts. The first is the telephone conversation of 4 April 2011, in which Mr Mijatov informed Mr Wilson of his decision to remove Mr Wilson from his positions with the FAAA; the second is the email of 1 April 2011 to Mr Reed and Ms Dunn, referred to in paragraphs 1.3 and 1.4.

1.61 The evidence before the committee is that only Mr Wilson and Mr Mijatov were privy to that phone call, and their accounts differ markedly. In particular, Mr Wilson alleges that Mr Mijatov stated during the conversation that he was removing Mr Wilson from his roles with the FAAA 'as a direct result of [his] testimony.' Mr Mijatov denies this was said. On the evidence before it, the committee has no way of conclusively establishing the content of the phone call. Nor does the committee consider that it would be able to determine between these two conflicting accounts by taking further evidence. Accordingly, the committee considers that the evidence in relation to the phone call is equivocal.

1.62 The email at first appears to provide more of a 'smoking gun'. On its face it appears to suggest that Mr Mijatov was proposing to 'get rid of' Mr Wilson *because of* things said in the hearing. However, the committee considers that the email is also capable of bearing the meaning that the transcript had motivated Mr Mijatov to act immediately on a decision already taken. There is some support in the statements received from the references committee for the contention that Mr Mijatov had made the decision to remove Mr Wilson prior to receiving the transcript of evidence, and other statements support the view that the timing was an unfortunate coincidence.

19 See 125th report, at paragraphs 4.79–4.84.

20 125th report, paragraph 4.78.

Conclusions

1.63 On the evidence before it, the committee is unable to conclusively determine the central question in this matter: whether in removing Mr Wilson from his roles Mr Mijatov was imposing a penalty on Mr Wilson *as a result* of the evidence he gave to the references committee. Nor does the committee consider that it would be able to conclusively determine that question by taking further evidence. The facts of the matter primarily turn on the content of the disputed phone call. The committee considers that the evidence about the intent of the email containing the transcript is also equivocal, and is not in a position to dispute accounts given in statements obtained by the references committee that the timing was coincidental.

1.64 Accordingly, the committee will not be recommending to the Senate that the evidence discloses that a contempt was committed in this regard.

1.65 In his final submission Mr Mijatov states ‘this dispute is an internal union dispute and it is entirely inappropriate for the Senate Committee to become embroiled in it.’ The committee considers that ceased to be the case when Mr Mijatov circulated the transcript of evidence in an email communicating his decision to ‘immediately get rid of’ Mr Wilson. This action of itself created an impression of improper motive, whatever the content of the disputed conversation.

1.66 It is not this committee’s task, however, to determine whether or not the actions taken by Mr Mijatov and endorsed by the divisional council were appropriate in all the circumstances. It is the committee’s task to determine whether or not that conduct was improper from the perspective of the protection of a witness before a Senate committee, and whether that conduct amounted to a contempt of the Senate.

Improper use of the transcript of evidence

1.67 The committee considers that, whatever the truth of the disputed conversation, the combination of events contributed to an atmosphere in which Mr Wilson might, with good justification, have been concerned that action was being taken against him because of his evidence. The committee considers that others may also have reasonably reached this conclusion. The matters described at paragraphs 1.44–1.45 are particularly concerning.

1.68 While refraining from recommending that a contempt be found, the committee considers that the FAAA, which is ultimately responsible for the decision to remove Mr Wilson from his roles, ought formally apologise to Mr Wilson for the way in which this matter was handled.

Publication of evidence in this matter

1.69 The committee has resolved not to publish, at this time, the evidence it has received in relation to this matter. Much of the evidence, particularly in the statements of Mr Wilson and Mr Mijatov, raise allegations going to the reputations of both men, and of others involved in the circumstances of the inquiry. While that evidence readily

establishes an antagonistic relationship between the two, the committee does not consider it to be in the interests of anyone involved for the statements to be published. In effect, these statements have not brought the committee any closer to determining the disputed matters.

1.70 Further, some of the evidence goes to the detail of matters put before the references committee at the in camera hearing in March 2011 which has not been published. The Privileges Committee refrains from publishing relevant material in deference to the right of the references committee to exercise appropriate control over the evidence it has taken. Finally, it is not clear to the Privileges Committee that members of the divisional council who provided statements to the references committee were aware of the manner in which those statements might be used, nor that they might be published by this committee.

1.71 Although this is an unusual decision for the Privileges Committee to make, the committee considers that it is appropriate in the current circumstances.

1.72 The committee emphasises that the evidence that it has taken in this matter, like any other evidence given to any committee, is protected by parliamentary privilege. It ought not be disclosed by any person without the authority of the committee. Additionally, any attempt by any person to impose any penalty upon a person on account of the evidence they have submitted to the references committee or to this committee as part of this inquiry may be treated as a contempt of the Senate.

Findings and recommendation

1.73 The committee **finds**:

- (a) that there was no unauthorised disclosure of the transcript of evidence
- (b) that there was no attempt to improperly interfere with Mr Wilson in respect of the evidence he was to give to the references committee and
- (c) that on the evidence before it the committee was unable to conclude that Mr Wilson was subjected to a penalty *on account of* his evidence to the references committee.

1.74 The committee **recommends** to the Senate that a contempt should not be found.

(Senator John Faulkner)
Deputy Chair

Appendix A



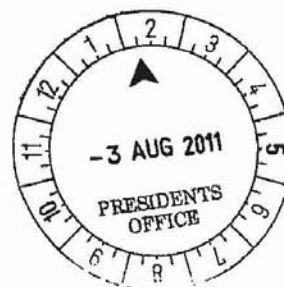
AUSTRALIAN SENATE

STANDING COMMITTEE ON RURAL AFFAIRS AND TRANSPORT

REFERENCES COMMITTEE

1 August 2011

Senator the Hon. John Hogg
President of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600



Dear Mr President

Privilege matter relating to the protection of witnesses

I write to you to formally raise a matter of privilege under Standing Order 81.

The matter relates to the protection of a witness who may have been subjected to a penalty in respect of evidence given before the Rural Affairs and Transport References Committee (the committee), and the question of whether a contempt may have been committed in that regard.

Background

On 18 March 2011, the committee conducted an in camera hearing in Canberra in connection with its inquiry into pilot training and airline safety (including consideration of the Transport Safety Investigation Amendment (Incident Reports) Bill 2010).

At this hearing, Mr Brian Wilson appeared as the nominated representative of the Flight Attendants Association of Australia (FAAA), in the position of Government and Regulatory Affairs Delegate.

Following his appearance, Mr Wilson wrote to the committee on 4 April 2011 advising that, as a result of his evidence, he had been removed from his role in the FAAA as Government and Regulatory Affairs Delegate by Mr Michael Mijatov, FAAA Secretary. Mr Wilson advised that Mr Mijatov's decision had been subsequently considered by the FAAA Divisional Council on 6 April 2011.

Mr Wilson advised that, as a consequence of his removal from the position of Government and Regulatory Affairs Delegate with the FAAA, he lost associated remuneration and entitlements, and was also removed from associated OH&S appointments.

The committee considered Mr Wilson's letter at a private meeting on 7 April 2011, and concluded that there was reason to believe that Mr Wilson may have been subjected to a penalty in respect of the evidence he provided at the hearing on 18 March 2011. In accordance with Privilege Resolution 1(18), the committee therefore agreed that it would take all reasonable steps to ascertain the facts of the matter. To this end, the committee instructed the secretariat to write to Mr Wilson, Mr Mijatov and all members of the FAAA Divisional Council seeking statements and documents relevant to Mr Wilson's removal from his position in the FAAA.

Relevant facts

At a private meeting on 11 May 2011, the committee considered a number of statements and documents received in response to its requests for further information, in order to determine the question of whether the facts disclosed that Mr Wilson may have been subjected to a penalty or injury in respect of his evidence to the committee on 18 March 2011.

On the basis of the information provided in those statements, the following facts were identified as relevant to this question:

- On or about Friday, 10 December 2010, Mr Mijatov expressed his dissatisfaction to the FAAA Divisional Council regarding Mr Wilson's work performance.
- On Tuesday, 8 February 2011, Mr Wilson was counselled by Mr Mijatov regarding the concerns about Mr Wilson's work performance, and was warned that if any further performance issues occurred, he would be removed from his role in the FAAA.
- On Friday, 18 March 2011, Mr Wilson appeared as the nominated representative of the FAAA at an in camera hearing of the committee's inquiry into pilot training and airline safety.
- On Tuesday, 29 March 2011, Mr Wilson sent an email to a work colleague, Mr Simon Efron, regarding work issues unrelated to the committee's inquiry.
- On Thursday, 31 March 2011, Mr Mijatov was, in error, provided with the transcript of Mr Wilson's in camera appearance. This error was due to Mr Mijatov being nominated as the person to whom the transcript should be sent on Mr Wilson's Hansard witness form.
- On Friday, 1 April 2011, Mr Mijatov emailed certain colleagues, drawing their attention to Mr Wilson's evidence, and stating that he intended to remove Mr Wilson from his role in the FAAA.
- On Monday, 4 April 2011, Mr Wilson was removed from his role as FAAA Government and Regulatory Affairs Delegate by Mr Mijatov.
- On Tuesday, 5 April 2011, the committee received a supplementary confidential submission from Mr Mijatov (dated 4 April 2011), which clarified that certain aspects of the evidence given previously by Mr Wilson 'should not be taken to be FAAA policy'.
- On Wednesday, 6 April 2011, the Divisional Council of the FAAA considered Mr Wilson's removal.

Evidence as to whether Mr Wilson may have been subjected to a penalty on the basis of his evidence to the committee

The central issue considered by the committee in determining whether Mr Wilson may have been subjected to a penalty on the basis of his evidence to the committee was whether his removal was, wholly or in part, motivated by the evidence he provided to the committee on 18 March 2011.

Mr Mijatov's position

Mr Mijatov's statement asserts that his decision to remove Mr Wilson was on the basis of an 'extensive and troubled history' which had demonstrated that Mr Wilson was unfit to act in any capacity for the FAAA due to a 'lack of common sense and judgement'.

Mr Mijatov cited a number of previous incidents on which this conclusion was based, including, for example:

- the making of unsubstantiated allegations about a major employer of union members;
- acting with discourtesy; and
- purporting to represent the views of the FAAA without Mr Mijatov's approval.

Mr Mijatov noted that he had raised the prospect of Mr Wilson's dismissal at a Divisional Council meeting on or around 10 December 2010; and that Mr Wilson was subsequently formally counselled on 8 February 2011, and warned that:

...his behaviour was unacceptable...[with particular reference to] his attitude and hostility towards [a major employer of union members and]...his constant aggressive and unacceptable emails to FAAA officials and the fact that he had made contact with external bodies purporting to speak for the FAAA without reference to [Mr Mijatov]’.

Further, Mr Mijatov stated that Mr Wilson was told that 'if there were any more issues of this kind...[Mr Mijatov] was authorised to cease...[Mr Wilson's] involvement in FAAA activities forthwith'.

Mr Mijatov identified as the direct catalyst for the decision to remove Mr Wilson on 4 April 2011 an email sent by Mr Wilson to another FAAA official, Mr Efron, on 29 March 2011. Mr Mijatov described this email as 'involving appalling attitude and language, including erroneous allegations...about another official'.

Mr Wilson's position

Mr Wilson's statement asserts that, on 4 April 2011, he was advised by Mr Mijatov that his role with the FAAA as Government and Regulatory Affairs Delegate and associated appointments to [a major employer of union members]...were 'immediately terminated arising from [Mr Wilson's]...responses to the committee'.

Mr Mijatov had allegedly stated that Mr Wilson's answers in relation to:

...a variety of safety, reporting and regulatory matters and especially fatigue, were contrary to his instructions not to inform the committee of any matters that may embarrass or bring scrutiny to [a major employer of union members]’.

In his later statement to the committee (dated 14 May 2011), Mr Wilson stated that he had responded to Mr Mijatov by pointing out that evidence given to the committee was protected by parliamentary privilege, and that Mr Mijatov's actions could constitute an 'abuse of this privilege'. At this point, Mr Mijatov allegedly stated that Mr Wilson's evidence 'was not the only reason [for his removal]', and had then raised the issue of Mr Wilson's email to Mr Efron on 29 March 2011.

Mr Wilson noted that he was aware that Mr Mijatov had, prior to this discussion, sent an email to certain colleagues, drawing their attention to Mr Wilson's evidence, and stating that he intended to remove Mr Wilson from his roles in the FAAA.

Other statements and documents

The committee has assessed the claims of Mr Mijatov and Mr Wilson in light of the statements and documents received from FAAA Divisional Council members. A number of these statements provided information that informed the committee's conclusions.

Committee's conclusions

On the basis of the information received through its investigation of this matter, the committee believes that Mr Wilson may have been removed from his positions in the FAAA due to the evidence he gave to the committee on 18 March 2011.

The committee therefore believes that Mr Wilson may have been subject to a penalty in respect of his evidence to the committee.

The committee wrote to Mr Mijatov on 16 June 2011 to advise him of the committee's conclusions and to invite him to provide the committee with further comment regarding the committee's conclusions. The committee also invited Mr Mijatov to advise it of any action or remedy taken, or proposed to be taken, which may be relevant to the committee's conclusions.

Mr Mijatov replied to the committee on 15 July 2011 and reiterated his earlier statement "that Mr Wilson has not suffered any 'penalty or injury', or been deprived of any benefit." Mr Mijatov invited the committee to reconsider his earlier advice to the committee and to give further consideration to its provisional conclusion.

The committee has reconsidered Mr Mijatov's advice to the committee and has not varied its conclusion that Mr Wilson may have been subject to a penalty or injury in respect of evidence he gave to the committee on 18 March 2011.

Accordingly, the committee requests that you give precedence to a notice of motion to refer this matter to the Committee of Privileges. The committee would of course be happy to provide the Committee of Privileges with any supporting documentation.

Yours sincerely



Senator the Hon. Bill Heffernan
Chair
Senate Rural Affairs and Transport References Committee

Appendix B



AUSTRALIAN SENATE
CANBERRA ACT

COMMITTEE OF PRIVILEGES

rh.priv.let.6648

PARLIAMENT HOUSE
CANBERRA ACT 2600
PHONE: (02) 6277 3360
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24 November 2011

PRIVATE AND CONFIDENTIAL

Mr Michael Mijatov
Secretary – International Division
Flight Attendants Association of Australia
20 Ewan Street
MASCOT NSW 2020

Dear Mr Mijatov

As you know, the following matter was referred by the Senate to the Committee of Privileges on 17 August 2011 for inquiry and report:

Having regard to the material submitted to the President by the Rural Affairs and Transport References Committee, whether a witness was threatened with, or subjected to, any penalty or injury on account of his evidence to the committee, whether there was any attempt improperly to interfere with a witness before the committee, and whether any contempt of the Senate was committed in those regards.

The investigation arises from information provided to the Rural Affairs and Transport References Committee (the 'References Committee') regarding the circumstances surrounding the decision to remove Mr Brian Wilson from his roles within the Flight Attendants Association of Australia (FAAA).

The Privileges Committee regards the protection of persons providing information to the Senate, and in particular of witnesses before parliamentary committees, as the most important duty of the Senate (and therefore of the committee) in determining possible contempts.

In relation to the protection of witnesses, the Senate has determined that:

A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

To do so may be treated by the Senate as a contempt.

Documents before the committee

The matter was raised with the President by the Chair of the Rural Affairs and Transport References Committee in a letter, dated 1 August 2011, and that letter was tabled in the Senate on 16 August 2011.

As noted in that letter, the References Committee undertook an initial investigation to help determine the circumstances surrounding the matter, concluding that the Chair should raise the matter as a Matter of Privilege. The Privileges Committee sought and received relevant documents from the References Committee.

The committee wrote to you and to Mr Wilson on 25 August inviting submissions by 20 September and received submissions from each of you.

Procedural resolutions for the protection of witnesses

In conducting inquiries, the Privileges Committee follows the rules of procedural fairness set down by the Senate for the protection of witnesses. These are chiefly set down in Privileges Resolutions No. 1 (which sets out procedures to be followed by Senate committees generally) and No. 2 (which sets out additional protections for witnesses before the Privileges Committee).

In particular, Resolution No. 2 sets out the procedures that must be followed to ensure that a person against whom allegations are made:

- is informed of the nature of the allegations
- is informed of the particulars of any evidence given in respect of the person and
- is extended a reasonable opportunity to respond to such allegations and evidence.

It is therefore appropriate that I write to you now to inform you of the nature of the allegations made against you and the particulars of evidence given in respect of those allegations and give you an opportunity to respond.

Allegations

The allegations made against you are connected to the matters brought to your attention in a letter from the Acting Secretary of the References Committee, dated 12 April 2011, and in subsequent correspondence with that committee.

The letter of 12 April, in part, stated:

The investigation arises from information provided to the committee regarding the circumstances surrounding the decision to remove Mr Brian Wilson from his roles within the Flight Attendants Association of Australia (FAAA) as (a) delegate to the divisional council and (b) Government and Regulatory Affairs Officer (effective 4 April 2011).

The committee understands that this decision was made on your authority as the Secretary of the FAAA, and that the decision was formally noted by the FAAA divisional council on 6 April 2011.

The information received suggests that the removal of Mr Wilson from these roles was, either wholly or in part, on account of evidence given by Mr Wilson to the committee at an in-camera hearing of the inquiry on 18 March 2011.

The Privileges Committee is in particular investigating the allegation that you took action to remove Mr Wilson from these roles, either wholly or in part, on account of evidence he gave at an in-camera hearing on 18 March 2011.

The committee is also investigating whether the proof transcript of the 18 March hearing that was sent to you on 31 March 2011 was used for any improper purpose, including for any purpose connected with the decision to remove Mr Wilson.

Evidence

In order to afford you an opportunity to respond, I attach the following documents, which contain the particulars of the evidence the committee is considering in relation to this matter:

- The letter from the Chair of the References Committee to the President, dated 1 August 2011
- A submission received from Mr Wilson to the Privileges Committee, dated 18 September 2011
- Certain documents received by the References Committee in the course of its investigation into the matter, and subsequently obtained by the Privileges Committee.

I invite you to provide a response to the allegations and evidence contained in these documents.

After considering your response the committee will be in a better position to determine whether it wishes to proceed to hold a hearing on the matter.

The committee would appreciate receiving a response from you as soon as practicable. It would be of help to the committee if you were to forward the comments to the Committee Secretary Mr Richard Pye. While submissions are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry. I emphasise that the attachments to this letter are also confidential committee documents until the committee authorises their release.

If you need any further information on the matter, you may care to get in touch with the secretary, using any of the contact details set out above.

Yours sincerely

A handwritten signature in blue ink, appearing to read "David Johnston". The signature is fluid and cursive, with a large initial "D" and "J".

Senator the Hon David Johnston
Chair