



**House of Representatives  
Standing Committee of Privileges**

**Report concerning the alleged threats or intimidation against a  
witness before the Defence Sub-Committee of the Joint Standing  
Committee on Foreign Affairs, Defence and Trade**

**May 2001**

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The Parliament of the Commonwealth of Australia

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Canberra

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## **Membership of the Committee**

Chair            Hon A M Somlyay MP

Deputy Chair   Mr R W Sawford MP

Members        Mr K J Andrews MP

Mr M Danby MP

Hon D F Jull MP

Hon L B McLeay MP

Mrs M A May MP

Mr P C Neville MP

Mr R C G Sercombe MP

Mr R McClelland MP

Ms J Bishop MP

## **Committee Secretariat**

Secretary            Mr David Elder

Research Officer    Ms Catherine Cornish

Administrative Officer   Ms Natasa Sikman



## **Alleged threats or intimidation against a witness before the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade**

### **The complaint**

- 1.1 The matter of the alleged threats or intimidation against a witness before the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) was first raised on 8 November 2000 by the Hon LRS Price, MP, Deputy Chair of the Sub-Committee. It relates to threats allegedly made to Corporal Craig Smith shortly after Corporal Smith had provided evidence to the Sub-Committee's inquiry into the Department of Defence Annual Report, 1998-99.<sup>1</sup>
- 1.2 The Chair of the Defence Subcommittee, Mr DP Hawker, MP, informed the House on 9 November 2000 that Corporal Craig Smith appeared before the Defence Sub-Committee on 6 October 2000 and gave evidence in public and in camera. The Sub-Committee's inquiry related to military justice. Corporal Smith's evidence in public on 6 October related to institutionalised brutality and it received extensive media coverage. On 21 October, a death threat was painted on a wall adjacent to Corporal Smith's living accommodation. Mr Hawker told the House that Corporal Smith had been harassed before giving evidence to the Sub-Committee but he

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1 H.R. Deb. (8.11.00) 22439.

believed that since his appearance the threats and harassment had escalated and he had, for the first time, received death threats.<sup>2</sup>

1.3 Mr Hawker informed the House:

The committee accepts that the threats that Corporal Smith has received are made with an intent, in the first instance, to intimidate and silence him. However, the threats towards Corporal Smith must be placed within the context of his having given evidence on institutionalised brutality. The committee must therefore take seriously the possibility that these threats will be acted upon.<sup>3</sup>

1.4 On 9 November 2000 Mr Hawker also informed the House that the Committee was unable to assist in identifying the perpetrator of the threats; Corporal Smith had not been able to assist the Committee in this regard; and the Australian Federal Police (AFP) and military police were investigating the matter. Mr Hawker also stated the Committee was concerned that as a result of the harassment received by Corporal Smith, witnesses in the future would be more reluctant to provide evidence.<sup>4</sup> A copy of Mr Hawker's statement of 9 November 2000 is at Appendix A.

## The reference

1.5 On 9 November 2000 the Speaker allowed precedence to a motion, and Mr Hawker moved:

That the matter of whether Corporal Craig Smith has suffered threat or intimidation as a consequence of his appearance before the Defence Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade on 6 October 2000 be referred to the Committee of Privileges.<sup>5</sup>

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2 H.R. Deb. (9.11.00) 22636-7.

3 H.R. Deb. (9.11.00) 22637.

4 H.R. Deb. (9.11.00) 22637.

5 H.R. Deb. (9.11.00) 22637.



## Relevant law

1.6 Each House of the Parliament has the power to hold certain actions or omissions to be contempts and to punish them. A contempt is something that obstructs or impedes a House in the performance of its functions...or which has a tendency to produce such results. An action may be a contempt even though it is not in breach of a particular right or a law.

1.7 Any consideration of an action that may amount to a contempt must be undertaken in the light of section 4 of the *Parliamentary Privileges Act 1987* (the Act). Section 4 provides a threshold test for a finding of contempt:

Conduct (including the 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.

The Act—in subsection 3(3)—provides that 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 committees. There is no doubt that intimidation of or discrimination against witnesses is recognised as amounting to contempt.<sup>6</sup>

1.8 Statutory protection of witnesses is also provided in section 12 of the Act. Subsection 12(2) is relevant:

(2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:

(a) the giving or proposed giving of any evidence; or

(b) any evidence given or to be given;

before a House or a committee.

(Penalties for the offences are then provided.)

1.9 The memorandum provided to the Committee by the Clerk of the House of Representatives provides more detail on the relevant provisions. A copy of the memorandum is at Appendix B.

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<sup>6</sup> See Barlin, LM, *House of Representatives of Practice*, 3 ed., 1997, pp.704-705 and Limon, Sir Donald and McKay, WR, eds, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22 ed., 1997, pp.126-127.

## The inquiry

- 1.10 The Committee held three hearings—all in camera—to seek evidence on the reference. On the first of those occasions—4 December 2000—senior members of the Australian Defence Force (ADF) were called, primarily so that the Committee could satisfy itself that all possible action was being taken to ensure the safety of Corporal Smith. Representatives of the AFP were also called at that time. On 28 February 2001 Corporal Smith gave evidence and on 7 March 2001 senior members of the ADF brought the Committee up to date on Corporal Smith's circumstances.
- 1.11 The Committee has decided not to publish the evidence to the inquiry because of concerns about the safety of Corporal Smith and the sub judice convention.

## Evidence to the Committee

### Submission from the Joint Standing Committee on Foreign Affairs, Defence and Trade

- 1.12 The JSCFADT provided a written submission to the Committee on 22 November 2000. The submission outlined the background to the hearing conducted by the Defence Sub-Committee on 6 October 2000 and to the appearance of Corporal Smith before the Committee. The submission contained a summary of events up to and immediately following the hearing and had a number of attachments, including press articles and a (confidential) background brief prepared for the Defence Sub-Committee by the Director General Personnel – Army.

## Oral evidence

### Corporal Smith

- 1.13 In his evidence, Corporal Smith stated that about a week after he gave evidence to the Defence Sub-Committee he received a telephone call during which he was advised to shut his mouth or it would be shut for him and that the caller knew where he lived. Corporal Smith also told this Committee that about a week after that telephone threat, the wall outside his room was painted with a threat against him.<sup>7</sup>

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<sup>7</sup> Other evidence provided to the Committee suggests the threatening telephone call was made to Corporal Smith on 14 October 2000 and the threatening message was painted on the door to his room and the wall adjacent to the door on 21 October 2000.

- 1.14 In Corporal Smith's view, although he was not able to identify the telephone caller or person(s) who had painted his wall, the threats related to his appearance before the Defence Sub-Committee. He drew this conclusion because instances of intimidating behaviour that he had been subjected to some years before (after he had defended a soldier) had stopped from April 1998 until shortly after the media had broadcast reports of him giving evidence to the Sub-Committee on 6 October 2000.
- 1.15 In terms of his present safety, Corporal Smith was not concerned; he told this Committee that every precaution possible for his safety was being taken by the Army. However, he was not sanguine about his safety in the longer term or his career prospects in the Army. Corporal Smith indicated that he thought it may be in his best interests to apply for a service transfer to the Navy or Air Force.
- 1.16 With regard to his attitude to the Defence Sub-Committee and the provision of evidence, Corporal Smith told this Committee that he would be prepared to give the Sub-Committee further evidence and he would go through the same thing again.

#### **Australian Federal Police**

- 1.17 The Committee received evidence, in camera, from the AFP, including Commander Ben McDevitt, Commander of Operations, Australian Capital Territory Policing. The police involvement related to a threatening telephone call received by Corporal Smith on 14 October 2000 and criminal damage on 21 October to an external wall and door of a room where he had been living. The AFP indicated that it had not been able to identify the person or persons responsible for these incidents.

#### **Australian Defence Force**

- 1.18 On 4 December 2000, Admiral Christopher Barrie, Chief of the Defence Force, Dr Allan Hawke, Secretary of the Department of Defence, and Lt General Peter Cosgrove, Chief of Army, among others, gave evidence to the Committee. The focus of this hearing was on the steps being taken to ensure Corporal Smith's safety and the action that was taken in response to the threats Corporal Smith had reported.
- 1.19 When further evidence was taken from members of the ADF on 7 March 2001, Admiral Barrie told this Committee that the military police and the AFP had been unable to identify any of the offenders. Evidence was also provided to the Committee on Corporal Smith's career options. In conclusion, on 7 March, Admiral Barrie told the Committee: 'We will do

everything we can to look after Smith. That is the assurance that I can give the committee.'

## Conclusions

- 1.20 After hearing the evidence it was clear to the Committee that, although Corporal Smith had been the subject of harassment before giving evidence to the Defence Sub-Committee on 6 October, it appears that, following his evidence, that harassment reached a more serious level. The Committee was satisfied that the threats to Corporal Smith were serious and could reasonably be concluded as relating to his evidence before the Defence Sub-Committee.
- 1.21 The person or persons responsible for the harassment have not been identified, and from the evidence to date, it appears unlikely that they will be identified. Therefore, the Committee does not propose to comment on their intention, or whether their actions amount to improper interference with the authority or functions of the JSCFADT.
- 1.22 The Committee wishes to record its concern that a witness before a parliamentary committee has been subject to threats and is apprehensive that he will be subject to intimidating action in the future. The Committee notes the steps that have been taken by the Army and the assurance made by Admiral Barrie. It also notes that Corporal Smith told the Committee that he would be prepared to give evidence again.
- 1.23 The Committee is conscious of the importance of witnesses being able to freely give evidence to parliamentary committees. Interference with witnesses or potential witnesses has the potential to diminish the quality and range of evidence that is provided to committees. The Committee will deal seriously with any matters that are referred to it following allegations of interference with witnesses or prospective witnesses before committees and draws attention to a statement by an earlier Committee of Privileges:

If the Parliament fails to provide the protection to which ... witnesses and prospective witnesses are entitled, the effectiveness of the Committees, and through them, the Parliament and the nation, will suffer.<sup>8</sup>

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<sup>8</sup> House of Representatives Committee of Privileges, *Report relating to the alleged discrimination and intimidation of Mr David E Berthelsen in his public service employment because of evidence given by him to a Subcommittee of the Joint Committee on Foreign Affairs and Defence*, 1980, Parliamentary Paper No. 158/1980, p.12.

## Findings

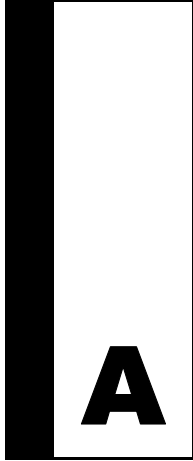
- 1.24 The Committee was unable to find that a breach of parliamentary privilege had been proved against any person or persons.
- 1.25 However, the Committee wishes to make clear that it does not regard this report as necessarily concluding its inquiry into the matter of whether Corporal Smith was threatened or intimidated as a result of giving evidence to the Defence Sub-Committee. Should the Committee be provided with information—during the current Parliament—that suggests to it that the matter is ongoing, then it may seek further evidence and report to the House on the evidence and the conclusions it draws from that evidence.
- 1.26 The Committee also wishes to see that Corporal Smith has every opportunity to complete his career with the ADF with safety and confidence. Consequently, the Committee makes the following recommendation.

## Recommendation

### Recommendation

- 1.27 **The Committee recommends that the attention of the Director General Personnel – Army and equivalent officers in the Navy and Air Force be drawn to the circumstances of this case and that the Director General and equivalent officers do all within their power to accommodate any request for a service transfer by Corporal Craig Smith.**

**Hon Alex Somlyay MP**  
**Chair**  
**May 2001**



## **Appendix A**

**Statement by Mr David Hawker MP to the House on  
9 November 2000**



## **Appendix B**

**Clerk's Memorandum**