

STATES OF JERSEY



PRIVILEGES AND PROCEDURES COMMITTEE: COMPLAINT AGAINST THE CONNÉTABLE OF ST. HELIER

**Presented to the States on 20th September 2005
by the Privileges and Procedures Committee**

STATES GREFFE

FOREWORD

On 1st August 2005 the Committee of Inquiry into the Tender Process and Award of the Bus Contract submitted a complaint to the Privileges and Procedures Committee concerning an alleged breach of confidentiality by Connétable A.S. Crowcroft of St. Helier. It was alleged that the Constable had reneged on an undertaking of confidentiality given to the Committee of Inquiry in an e-mail, dated 6th July 2005, prior to his receipt of a confidential consultation draft of the Committee of Inquiry's report. The Privileges and Procedures Committee elected to form a Sub-Committee on Standards to investigate the complaint in accordance with the draft Code of Conduct for Elected Members of the Assembly (Projet No. P.32/2003 refers).

The Sub Committee consisted of the following Members –

Deputy J.A. Bernstein of St. Brelade (Chairman),
Deputy C.H. Egré of St. Peter, and
Connétable G.W. Fisher of St. Lawrence.

On 8th September 2005 the Committee considered the Sub-Committee's report. It concurred fully with the findings of the Sub-Committee. Indeed, the Committee felt strongly that members who had given an undertaking of confidentiality should consider themselves bound by that undertaking unless the particular circumstances of the case were such that there was a clear and overriding issue of public interest at stake. In this case the Committee concluded that the public interest had not been served by Constable A.S. Crowcroft's decision to pre-empt the publication of the findings of the Committee of Inquiry. The Committee nevertheless decided that there was no justification for further action beyond publication of the Sub-Committee's findings.

The final report of the Sub-Committee is attached, and the Privileges and Procedures Committee would like to thank Deputy Egré and Constable Fisher for their assistance.

**Complaint made by the Committee of Inquiry into the Tender Process and Award of the Bus Contract
against Connétable A.S. Crowcroft**

COMPLAINT

On 5th August 2005 the Committee considered a complaint from the Committee of Inquiry into the Tender Process and Award of the Bus Contract (the Committee of Inquiry). The substance of the complaint was that Constable A.S. Crowcroft of St. Helier had broken an undertaking of confidentiality given by him to the Committee of Inquiry in connexion with the circulation of a confidential consultation draft of the Committee of Inquiry's report. A copy of the letter of complaint is enclosed at **Appendix A**

METHOD

The Sub-Committee met on 31st August 2005 to consider the complaint in detail. It considered copies of a relevant e-mail exchange, dated 6th July 2005, between Constable A.S. Crowcroft and the Committee Clerk to the Committee of Inquiry, as well as a front page article, dated Friday 29th July 2005, in the Jersey Evening Post newspaper. Constable A.S. Crowcroft also attended and gave evidence voluntarily.

INVESTIGATION

During the course of its meeting on 31st August, the Committee was able to establish that, on 6th July 2005, Constable A.S. Crowcroft replied positively to an e-mail from the Committee Clerk to the Committee of Inquiry offering him a confidential consultation draft of the Committee of Inquiry's final report, subject to receipt of his agreement to certain specified conditions. A copy of the e-mail exchange is enclosed at **Appendix B**

At some point prior to 29th July 2005, Constable A.S. Crowcroft reviewed the confidential consultation draft in detail and concluded that, in his opinion, the Committee of Inquiry had shown itself to be 'biased and incompetent' and also to have exceeded its terms of reference. He subsequently decided against raising his concerns with the Committee of Inquiry directly and elected instead to make an approach to Mr. H. McRandle of the Jersey Evening Post (JEP). The Constable concluded that the Committee of Inquiry's offer to consider responses was clearly limited to those concerning matters of fact, as opposed to matters concerning its evaluation of evidence obtained. He further submitted that the manner in which the Committee of Inquiry had operated during its evidence gathering stage, particularly with regard to events reported in the Jersey Evening Post on 2nd February 2005, gave him particular cause to believe that the conclusions of the Committee of Inquiry had been predetermined. Finally, he explained that he was due to be away from the Island on 2nd August 2005 when the report was to be presented to the States. The Constable felt uncomfortable at the prospect of being reported in the media as 'unavailable for comment' on the due date.

During the course of the 31st August meeting, Constable A.S. Crowcroft clarified that the words attributed to him by Mr. McRandle in the article of 29th July were indeed his own. He acknowledged that he had therefore breached the terms of the confidentiality agreement with the Committee of Inquiry. In mitigation of this, the Constable stated that at the time of the agreement he had fully intended to comply with it, although he had interpreted the conditions to mean that he was barred from leaking a copy of the confidential consultation draft, as opposed to being prevented from making any statement on the Committee of Inquiry and its findings. He said that this was often the case with draft States' reports and that this was how he interpreted 'confidentiality' in this case. He said that he would not have agreed to such an agreement if it meant that he would be 'gagged' from speaking publicly on the subject, especially as the Committee of Enquiry had, in his view, already criticised him publicly. The Constable agreed that, with hindsight, it might have been more appropriate to have qualified his acceptance of the Committee of Inquiry's conditions. When asked whether there were any other points that Constable

Crowcroft wished to draw to the attention of the Sub-Committee, the Constable explained that the conduct of Committee of Inquiry during the evidence gathering stage had given him cause to suspect that it was pursuing a vendetta against him. He had nevertheless been taken aback by the personal criticism levelled against him in the confidential consultation draft and, subsequently, in the final report. Constable Crowcroft contended that the nature of the criticism was unprofessional and that there was a marked shortage of credible evidence to support the Committee of Inquiry's conclusions in relation to his conduct and his integrity. On that basis he felt that he had no choice but to comment on the Committee of Enquiry's report in advance of its publication.

Constable A.S. Crowcroft, having been thanked by the Sub-Committee for his attendance, withdrew from the meeting. The Sub-Committee then deliberated further on the evidence available to it. It reviewed the nature of the quotes attributed to the Constable in the article of 29th July and formed the view that he had attempted to paraphrase the findings of the Committee of Inquiry. Moreover, it was considered likely that the statements had been made to the reporter concerned in the hope of generating negative press coverage regarding the competence of the Committee of Inquiry prior to the release of its final report. The Constable's views regarding the impartiality of the Committee of Inquiry were acknowledged; however, the Sub-Committee concluded that it was open to a member with such concerns to take appropriate and timely action in the States, perhaps by way of a proposition to disband the relevant Committee of Inquiry. The Sub-Committee further concluded that, in cases where a Committee of Inquiry had been permitted to complete its work, it was entirely reasonable to expect members to avoid commenting or speculating on the outcome of any public enquiry until such time as the findings of that enquiry had been made public.

FINDINGS

1. Constable A.S. Crowcroft agreed to honour a legitimate confidentiality agreement with the former Committee of Inquiry in order to obtain a confidential consultation draft of the Committee's final report.
2. Constable A.S. Crowcroft broke the terms of the legitimate confidentiality agreement by making statements to Mr. H. McRandle of the Jersey Evening Post concerning the findings of the Committee of Inquiry on or shortly before 29th July 2005, 4 days prior to the release of the Committee's report.
3. The conduct of Constable A.S. Crowcroft in breaching the terms of the legitimate confidentiality agreement fell below that which was expected of a States member. In particular the Constable's actions breached paragraph 1 of the section of the draft Code of Conduct for Elected Members of the Assembly (P.32/2003 refers) entitled 'The Principles in Practice: members' conduct', which states that –

“Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey and shall endeavour, in the course of their public and private conduct, not to act in a manner which would bring the States, or its Members generally, into disrepute.”



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Deputy Roy Le Hérissier
President, Privileges and Procedures Committee
States of Jersey,
2 Waverley Lodge,
St. Saviour's Road,
St. Saviour,
JE2 7LA

1st August 2005

To be Collected.
~~by E-mail confirmed by mail~~

Dear Deputy Le Hérissier

**Committee of Inquiry into Tender Process and Award of Bus Service Contract
JEP Friday 29 July 2005**

We spoke on 30th July concerning the story by Harry McRandle on pages 1 and 4 of Friday's JEP. I am now writing on behalf of my Committee of Inquiry to make a formal complaint about the breaking of the undertaking of confidentiality given by Connétable Crowcroft of St Helier.

We had resolved that, as a matter of our procedure, persons criticised in our report would be given an opportunity to see the report in draft and submit comments to us for our consideration, before the final report was prepared and published. As this was a confidential consultation, we required all those to whom we sent a draft to agree that the draft and their comment, if any, would remain confidential. I enclose copies of the exchange of emails with the Connétable.

In our view, Connétable Crowcroft has again treated us, a Committee of the States, with contempt by breaking his undertaking. In responding to his comments in the press, I tried hard not to follow his example but may inadvertently have done so.

I leave it to your Committee to take such action as it considers appropriate.

Yours sincerely

Huw Shephard
President of the Committee of Inquiry

Message

Page 1 of 2

Mac Spence

From: aascrowcroft
Sent: 06 July 2005 12:40
To: Mac Spence
Subject: RE: COMMITTEE OF INQUIRY - DRAFT REPORT FOR CONSULTATION
Sensitivity: Confidential
Categories: Logged, Witnesses non PSD

 This e-mail has been received directly from the INTERNET; you should exercise a degree of caution since there can be no guarantee that the source or content of the message is authentic.
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 The full States e-mail Usage Policy can be found here:
http://intranet/aware/Internet_email_issues.htm

Yes, thanks. Am happy to comply with the confidentiality request and to receive a copy of the CCD.
 rgds
 Simon Crowcroft

From: Mac Spence [mailto:M.Spence@gov.je]
Sent: Wed 06/07/2005 10:29
To: Simon Crowcroft; Simon Crowcroft
Subject: COMMITTEE OF INQUIRY - DRAFT REPORT FOR CONSULTATION

Dear Connétable,

The Committee of Inquiry, after consultation with the Law Officers' Department, has a Confidential Consultation Draft ("CCD") of its report, ready to send to a limited number of persons for the limited purpose of seeking their observations on the accuracy of the findings of fact, contained in the CCD. I am instructed to send a copy of the CCD to you on receipt of your acceptance of the following conditions upon which it is offered to you:-

- (a) That the CCD including its appendices shall be treated as confidential and you shall not, without the prior written permission of the Committee of Inquiry, release or divulge all or any part of the CCD or any paraphrase or description of it or any part of it, except to your legal advisers on the same undertaking of confidentiality;
- (b) That you shall respond to the Committee Clerk as soon as possible, and in any event no later than 2 p.m. on Wednesday 20th July 2005, with any and all observations which you have, as to the accuracy of the CCD on matters of fact within your knowledge and which you wish the Committee of Inquiry to take into account in completing its report to the States.

I shall be grateful to receive your acceptance as above, in order that delivery of the CCD may be arranged. You may find it most convenient to reply to this e-mail with a short note to that effect.

With regards and thanks for your co-operation,

Mac Spence,
 Committee Clerk,
 Committee of Inquiry - Bus Contract,
 States' Greffe, Morier House, St Helier.
 Direct phone 50 20 70.

01/08/2005