

INQUIRY INTO INQUIRY INTO EXECUTION OF SEARCH WARRANTS BY THE AUSTRALIAN FEDERAL POLICE

Name: The Hon Shaoquett Moselmane

Date Received: 15 September 2020

Stephen J. Stanton

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15 September 2020

The Hon. Peter Primrose MLC
Chair, Privileges Committee
NSW Parliament Legislative Council

Email: privilege@parliament.nsw.gov.au

c.c. Stephen Reynolds
Deputy Clerk, Legislative Council
Email:

c.c. Federal Agent Duncan Haves
Email:

Dear Mr Primrose,

**RE: SUBMISSIONS IN REPLY BY THE HON. SHAOQUETT MOSELMANE
MLC AS TO CLAIMS OF PARLIAMENTARY PRIVILEGE**

On behalf of the abovenamed Member and in accordance with the right of reply as afforded, we seek to have put before the Committee the Submissions in Reply.

We have taken the liberty of referring them to you in the first instance, but copying them to the Deputy Clerk and to Federal Agent Duncan Hayes on behalf of the AFP.

We are instructed that our client has no objection to the primary and secondary submission being tabled and made public, if that is the wish of the Committee in the circumstances.

Respectfully submitted,

S.J. STANTON

**BEFORE THE PRIVILEGES COMMITTEE
OF THE LEGISLATIVE COUNCIL
OF THE NEW SOUTH WALES PARLIAMENT**

**RE: EXECUTION OF SEARCH WARRANT ON PARLIAMENTARY OFFICE
(NEW SOUTH WALES UPPER HOUSE)
OF THE HON SHAOQUETT MOSELMANE ON JUNE 26 AND JULY 23-25 2020**

**REPLY SUBMISSIONS AS TO CLAIMS OF PARLIAMENTARY PRIVILEGE
BY THE HON SHAOQUETT MOSELMANE MLC**

May it please the Committee,

1. We seek to respond to the submissions made on behalf of the Australian Federal Police to the Parliamentary Privileges Committee dated 8 September 2020 under the hand of Mr Ian McCartney APM, Deputy Commissioner, Australian Federal Police.
2. The Deputy Commissioner seeks to opine that our right of reply should be constrained to respond to matters effectively made by the Australian Federal Police (AFP), and whilst this is strictly a matter of convention, nevertheless, if there are matters that require further assistance to the Committee, it is the right of the Member to make those submissions and not be constrained by what is perceived to be the position as advocated by the AFP.

Claim for Parliamentary Privilege

3. There is no doubt that the parties are *ad idem* with respect to items 7, 11, 14, 54, 55, 56, 58, 60, 63, 110, 111 and 112 as to the consolidated index which has already been attached to our submission.

4. The acceptance by the AFP of the claims of parliamentary privilege over the 12 items does not require any further matter to be agitated with respect to upholding the claim for privilege as it is effectively conceded.

Balance of Material

5. It would be derelict, in our respectful submission, to accede to and more importantly ignore what effectively is the gravamen of the Member's concern with respect to the balance of the material the subject of the execution of the Warrants in question.
6. There is no doubt that Mr Zhang has proceedings before the High Court of Australia, and what if any interlocutory remedy he seeks to take with respect to the material that will effectively remain at large and not be subject to a claim for privilege is a matter for him and his lawyers.
7. Nevertheless, the Member in question for whom we act has already had successfully acknowledged by the concession made by the AFP the fact that the 12 items the subject of the claim for privilege will be the subject of a Notice of Motion essentially upholding pursuant to the resolution of this honourable Committee the claim for privilege as such.
8. There is no doubt within the 107 documents that remain, a further 6 documents have sufficient doubt concerning their relevance and more importantly the Member's concerns as to the manner in which these documents will be utilised. This is in addition to and apart from the 101 matters which will now effectively, if no claim for privilege is upheld, as must be acknowledged, enable the documents to be at large but within the constraints of the warrant and the utilisation of the investigation and not otherwise. For all intents and purposes it is akin to documents obtained on discovery in civil litigation that they cannot be used other than for a legitimate forensic purpose, and equally so with respect to documents obtained in response to a subpoena and/or notice to produce.
9. The Member wishes to place on record the fact that he is genuinely afeared and has reason to doubt the integrity of certain persons within the AFP (unnamed and

unknown) who are obviously working in conjunction with the media, either electronic and/or print, to ensure that he sustains and continues to sustain reputational damage by the utilisation of the material to reflect adversely on his reputation and to have publicised within the media matters concerning his activities and his personal life that are utterly unwarranted and an absolute abuse of the procedure of the search warrant in question.

10. The issues that can be effectively highlighted in a summation and are strictly relevant by way of reply concern the following:

- (i) The AFP, either through federal agents within their rank or acting in conjunction with the Minister for Home Affairs and/or his staff, have enabled the press, in particular Mr Neil McKenzie from The Age and others as can be seen in the media coverage of the execution of the warrant, to be in attendance well before the arrival of the AFP agents. This was hardly a coincidence, and more importantly was effectively done to humiliate and ridicule the Member in circumstances where the AFP federal agent in charge of the investigation at that time, and of whom no criticism can be made, did indicate to counsel attending that the Honourable Member was not a suspect. However, he has been effectively portrayed and treated as a suspect in the manner in which the execution of the search warrant was publicised to the world, including the invasion to his family within his home and next door in the unsightly and offensive manner in which the press sought to enter his elderly father's home, who subsequently suffered a near-fatal infarction and is again admitted to hospital for further treatment from that infarction which occurred as a result of the entry into his home by the media, unannounced, uninvited and effectively a trespass.
- (ii) The continual albeit surreptitious development in the investigation in circumstances where the media and other people involved in the investigation by way of political and/or news commentary has suggested that the Honourable Member is a suspect, when in fact the person who is a suspect is Mr Zhang. This of course is not so much a matter that is already discussed in

para (i) above, but rather a separate and discrete matter of some moment. It is patently apparent on the face of the search warrant that he is not a suspect.

11. The Honourable Member has not taken this matter lying down and has made complaints for breaches of privacy and reputational damage which he will continue to monitor and, if necessary, prosecute at the appropriate time to the following:
 - (a) Director-General Mike Burgess, ASIO, in circumstances where ASIO is said to have interviewed and/or been involved in the AFP search warrant execution when that was untrue and was expressly disavowed and denied by the AFP federal agents in attendance on 26 June 2020 to both counsel attending and to Mr Moselmane.
 - (b) The Hon. Peter Dutton MP, Minister for Home Affairs.
 - (c) The Privacy Commissioner.
12. Complaints have been made to the media organisations, in particular the Sydney Morning Herald, The Australian and the Australian Financial Review, which as recently as Friday (11/9/2020) continues to assert that the Honourable Member is a suspect in the proceedings. This is all done in complete disregard of the Honourable Member's position and, more importantly, without any denial by the AFP that he is a suspect or a person of interest when they have made that statement expressly to the Member and his counsel at the time the search warrant was executed, yet they are silent when it comes to making that statement public and/or affirming it in writing to the Honourable Member in question.
13. The continued seizure of his iPhone, laptop and other electronic equipment, denying him the right to access his constituents, his parliamentary colleagues and other people who are genuinely concerned for him – leaving aside claims for privilege, and bearing in mind that they have utilising their forensic procedures undertaken extensive forensic examination of the equipment in question – and if one were to accept that they have undertaken that in respect of the protocol “Search of Premises: Rights of the Occupier”, they would now be committed to returning that equipment to the

Honourable Member to enable him to engage in his personal and professional life as is his right and entitlement, and especially where he is not a suspect. These are matters of concern with respect to the balance of the material that is retained.

14. The Honourable Member has requested a copy of the Application for the warrant and the affidavit in support of Registrar Joseph Karam of the Downing Centre Local Court Complex and Deputy Chief Magistrate Mottley, only to be told that the documents have surprisingly been returned to the Australian Federal Police without explanation as to why no copies were kept for records and administrative purposes as one would expect concerning a Justice requested to exercise jurisdiction for the issue of the warrant in the circumstances. This in itself is a bizarre development and one that does not auger well for the effective retention of the material, that it will be kept safe and utilised for the purposes for which it was seized, and not otherwise.
15. This Privileges Committee should also understand that the Honourable Member has undertaken, at his own cost, the solemn duty of upholding the privilege not only for himself but for the interests of other Members of this House and the Parliament generally, for which he has had no ability to be compensated. This should be revisited in the future; a position as this Honourable Member has been placed in should be the subject of compensation or a right to financial sustenance where he/she would be required to uphold the privilege in all the circumstances. In analogous circumstances, it is readily undertaken and assumed by members of the legal profession that when situations arise that will encroach upon and/or infringe legal professional privilege, they are duty-bound, as officers of the Court and in respect of the duties to their client, to invoke and uphold the privilege claims that may be breached and/or eroded, and in respect of which they are able to be compensated for undertaking that task in the course of their professional duties. In like terms, such rights of redress should be available to Members of Parliament who are called upon to uphold a privilege of the House and their fellow Members.
16. The print media is replete with false and misleading references to the Honourable Member being a suspect as we have already noted, and equally in the Current Affairs program *The Insiders* published on Sunday on the ABC, the interview with the Hon. Peter Dutton, Minister for Home Affairs, revealed effectively how embarrassed and

utterly devoid of candour he was in his response when questioned as to how the press were “tipped off” to the AFP raid on the Honourable Member’s home on 26 June 2020. The blunt if not deliberately obtuse response by the Honourable Minister that the matter is an ongoing investigation smacks of the problems that were reminiscent of the bungled investigation undertaken in *Smethurst*, and no doubt will possibly be agitated in the current High Court proceedings in question.

17. In short, whilst the AFP have a duty to undertake and this is acknowledged by the Honourable Member in question, there is equally a duty to ensure that in the interests of justice there is a balance and more importantly a respect shown to people in respect of whom search warrants are executed and material is seized, that that material be used for a bona fide, lawful and legitimate purpose.
18. If as we anticipate this material is circulated and/or disseminated, it will cause grave reputational damage of a more aggravated and far more acute state than has already occurred with respect to the Honourable Member in question. A matter of some concern is the appearance now being made in various media outlets of photographs of individuals who are said to be involved in the investigation. Who it is that is leaking and/or allowing these photos to be put into media circulation is unknown to the Honourable Member, but nevertheless he is somewhat apprehensive, and rightly so, that the material that will remain within the control of the AFP will find its way into media outlets when it should be kept under tight scrutiny for the purpose of the investigation and not otherwise. Whilst it is not a matter of critical relevance to the Committee’s deliberations, the Honourable Member nevertheless wishes to assert that at the time the search commenced he did not receive the document “Search Of Premises: Rights Of The Occupier” until well after the search was underway, in this case a search that lasted from around 6.30am until 1.30am, concluding on Saturday 27 June 2020.
19. It should not be forgotten that his own political party was quick to condemn him without even having heard or for that matter been informed that he was not a suspect, and that whatever alleged briefing was given to the Leader of the Opposition, it could not have been in circumstances where he would have been identified as a suspect when it was clearly denied at the time the search was undertaken. If he was identified

as a suspect, how could this be, other than that it was false, misleading and deceptive in all the circumstances? The current investigation and the attempt to suspend him from his membership of the Australian Labor Party is a further indication of the manner in which he has been callously treated by the investigative bodies that have sought to humiliate and denigrate him by the use (albeit as a legitimate veneer) of the execution of the warrant, with an ulterior purpose in mind. It is beyond argument that it is, as they say, "black and white" that the warrant clearly states that its object was not Mr Moselmane. Finally, media outlets are now acknowledging that Mr Moselmane was not the subject of the foreign interference investigation, but has been made the subject of the search warrant on account of links to individuals who are the subject of the investigation as reported in News Corp media and also on Channel 9.

20. In concluding, we respectfully thank the Committee for the time taken and the ability to respond, and trust that by putting our position clearly for the Honourable Member as we have, the concerns raised and agitated will be addressed and made the subject of such comment as is necessary to ensure his position is preserved and protected, as he has little confidence in the AFP doing the same in view of their track record to date.

Respectfully submitted,

STÉPHEN J. STANTON
Counsel for Shaoquett Moselmane MLC

15 September 2020

From: Stephen Stanton
Sent: Tuesday, 15 September 2020 3:57 PM
To: Privilege
Cc: Steven Reynolds; David Blunt; Hayes, Duncan
Subject: Re: Send data from MFP12034465

Dear Mr Reynolds

I realise that the refence to Neil McKenzie in para 18 should read Nick McKenzie please accept my corrigendum and my thanks for the due consideration.

Respectfully

S. J. Stanton

Barrister at Law

Mob:

Email:

On 15/9/20, 3:15 pm, "Stephen Stanton" <

> wrote:

Dear Mr Reynolds

I attach the Submissions in Reply required to be served by close of business today ie 15.9.20.

Respectfully

S. J. Stanton

Barrister at Law

Mob:

Email:

On 15/9/20, 3:12 pm, "photocopier 7 Windeyer" <

> wrote:

Scanned from MFP12034465

Date:15/09/2020 15:14

Pages:8

