



16 October 2013

Rt Hon David Carter
Speaker of the House of Representatives
Parliament Buildings
Wellington

Mr Speaker,

I wish to draw to your attention under Standing Order 399 a matter of privilege relating to a contempt committed by Hon Dr Nick Smith, in questions to the House on 17 September 2013, 19 September 2013, 24 September 2013, and 26 September 2013. I request that you refer these matters to the Privileges Committee for further consideration.

I believe Hon Dr Nick Smith has committed contempt by attempting to deliberately mislead the House.

On Tuesday 17 September 2013 a draft submission the Department of Conservation had prepared was leaked to the media.

The Minister has led the House, the media and the Prime Minister's office to believe the first he knew of the Department of Conservation's submission was the day it was leaked on 17 September, that he received the final submission and a briefing on 31 September, that he was first aware there was a submission on 29 July and this was when he asked to see a copy of the submission and that at no point prior to this did he discuss the submission with officials or know the content of the submission. Weekly reports the Minister has released and answers to the written question show these statements to be false. I have set out the relevant statements below and have attached the relevant evidence.

Hon Amy Adams was questioned in the House on this matter on 17 September by Hon Maryan Street. During this question Hon Dr Nick Smith chose to raise a point of order in which he stated:

Hon Maryan Street: *Does she think that her colleague the Minister of Conservation, who was appraised of this information, should have shared the advice he had received about this plan change with her, given her responsibilities for the Resource Management Act?*

Hon Dr Nick Smith: *I raise a point of order, Mr Speaker. The member has claimed in the question that I had access to a report, which I did not, until I heard it on Radio New Zealand National this morning.¹*

In addition in questioning by Russel Norman on the same day he stated the following:

Dr Russel Norman: *In any of his meetings with the Department of Conservation around its submission on the plan change proposal, did he make any mention of his and the*

¹ Oral Question 6, 17 Sep 2013

Government's objective of facilitating water storage, outlined in his 2010 speech "Better Water Management"?

Hon Dr NICK SMITH: My best recollection—because I meet with the department staff every week—is that there were five meetings in which the issue of my role in the board of inquiry was raised. In four of those, the only issue that was discussed was whether the matter met a national significance test and, secondly, who should be on the board of inquiry. There was only one meeting and it was simply a matter of the department informing me of its submission.²

This gave the House the impression that the Minister was unaware of the information contained in the report and that he discussed the submission only at one meeting.

Outside the House later that day he repeated comments stating he did not know of the existence of the submission:

*"I did not know that this draft document even existed until this morning. And to have accusations that somehow I have covered up its existence - it is somewhat difficult to cover something up when you didn't even know it existed."*³

A press release by Hon Dr Nick Smith further set out his version of events now shown to be incorrect:

"A draft 34 page submission was prepared by DOC staff in early July raising questions about the nutrient modelling of the proposal. I have consistently said I never saw this draft until Tuesday of this week and I stand by that," Dr Smith says.

"The first I knew of there being an issue over DOC's submission to the board was at my weekly meeting with officials on Monday 29 July. It was one of 36 items in my status report for noting and contained only two sentences on the issue of the content of the submission. I was told there were differences of opinion within the department over the submission. I said I wanted a full briefing and wanted to see the final submission. This was the only meeting I had on the issue of the submission.

*"Two days later I received a full briefing and a copy of DOC's final submission. It noted the decision DOC had made to focus its submission on the conservation issues rather than water quality and why the department had decided to do so. I did no more than note the department's decision."*⁴

Again on Thursday 19 September in Question Time he made the following related statements in a question from Russel Norman and continued to deny knowledge of the existence of the draft submission in a question by myself:

Dr Russel Norman: Does he stand by his statement this morning and earlier in the week that he did not even know that the substantive submission existed until Tuesday this week, and how is that compatible with the media statement he issued today in which he says he discussed the issues related to the substantive submission on 29 July?

Hon Dr NICK SMITH: Very easily. In early July a 34-page draft submission was prepared by the Department of Conservation. I did not know about that until this week. What occurred on Monday, 29 July was that I was told the department was preparing a submission. I said: "Get me a copy of the final submission." which I received, which was quite different from the original draft.

² Oral Question 2, 17 Sep 2013

³ Radio New Zealand, 19 Sep 2013

⁴ Hon Nick Smith, Press Release, 19 Sep 2013

Hon Dr NICK SMITH: On 29 July the department told me that it was finalising its submission to be made by that Friday. I said: "Before I make any view on it, I want to see a copy." I did on the Wednesday.

Hon Dr NICK SMITH: I was told by the department on the Monday that it is finalising a submission by the Friday. Just because it tells me that it is finalising a submission, I will not necessarily know what drafts might exist in the bowels of my department.⁵

On questioning on the 24 September the Minister made his clearest statements to date that he became aware of the submission on 29 July. The comments were made in response to a primary question and followed up in a supplementary:

10. EUGENIE SAGE (Green) to the Minister of Conservation: When was he made aware that the Department of Conservation was preparing a submission that would address the potential effect of the proposed nutrient limits of the Tukituki Catchment Proposal?

Hon Dr NICK SMITH (Minister of Conservation): On Monday, 29 July I was advised that submissions closed that Friday, that the Department of Conservation was "evaluating the project", and that there was a preliminary view that there was insufficient information on the nutrient management. I asked for more information and a copy of the submission, and received that on Wednesday, 31 July.

Hon Dr NICK SMITH: I have said that the Department of Conservation should review the process around the Tukituki submission. The reason is this. This is a major project and the first I knew of the issue of the submission was just 5 days before. I would note that there is actually a Labour Cabinet minute that said that when submissions are made in the resource consent process, there should be a better process than what the Department of Conservation followed in this case. That is why it is being reviewed, and I think there are some lessons to learn from the Tukituki submission process.⁶

On 25 September two questions were answered on behalf of the Minister which made no mention of the earlier three meetings. In addition questions were asked of the Prime Minister which were answered by Hon Bill English on his behalf which continued the statements Hon Nick Smith had earlier made, again failing to mention any of the earlier meetings and continued to give the impression that on 29 July was when everything was discussed:

2. Hon DAVID CUNLIFFE (Leader of the Opposition) to the Prime Minister: Has he or his Office sought an assurance from the Minister of Conservation that he did not know about the existence of the draft submission prepared by the Department of Conservation in early July relating to the Ruataniwha Dam, before 17 September 2013; if not, why not?

Hon BILL ENGLISH (Acting Prime Minister): No; an assurance was not required, because the Minister had advised this House in his answers to a number of questions that he had not seen the leaked draft submission until Tuesday, 17 September, and I take the Minister at his word. The Minister was aware that the Department of Conservation was working on a submission. He was not aware of the content of the leaked draft submission until Tuesday, 17 September. My office was advised by the Minister's office on Tuesday, 17 September that the leaked draft submission was never sent to the Minister.

⁵ Oral Questions 2 and 3, 19 Sep 2013

⁶ Oral Question 10, 24 Sep 2013

Hon BILL ENGLISH: The Minister receives weekly departmental reports. This is not unusual. In that departmental report, I am advised, there were two sentences in it regarding lodging a submission in the name of the director-general. The Minister asked to see a final submission before it was made. On Wednesday, 31 July the Minister received a full briefing on the final submission. The leaked draft report appeared on Tuesday, 17 September, which was the first time the Minister had seen the leaked draft.

Hon BILL ENGLISH: As I understand it, as Dr Smith has answered in the House, the note on 29 July said that the department was making a submission. He then asked to see the final submission, which is a legitimate, perfectly normal activity by any Minister of any department.

Hon BILL ENGLISH: Again, as I understand it, the departmental weekly report said that the department was making a submission. The Minister had not seen that submission. When the department showed him a submission a couple of days later, as the final submission, he saw that submission. The draft the member is referring to appeared some time later on 17 September, which was the leaked draft submission, not the final submission. It does not matter how hard the member digs, there is no conspiracy here. It is pretty straightforward. The Minister asked to see a submission and he saw it.⁷

On 26 September the Minister was again questioned by myself and failed to give any indication of the matters involved.⁸

In written question number 12701 (2013) the Minister provided extracts from his weekly reports.

A weekly report on 20 May stated:

"Further work is needed to determine the content of any Crown submission. DOC has some concerns with the novel scientific approach for dealing with nitrogen and phosphorus, and how this is translated into the plan provisions. Meetings have been organised with the Regional Council and its consultants to discuss this, and a number of other matters."⁹

A weekly report on 17 June stated:

"The issue of Crown involvement in the Board process is discussed and officials recommend that the Crown, as a whole, does not make a submission. Any Individual agency that wishes to submit would need to discuss its approach with other relevant agencies. At this stage, it may be that DOC is the only agency that will make a submission."¹⁰

A weekly report on 24 June stated:

*"Actions from the meeting of 17 June 2013 – Item 1.3
Ruataniwha water storage proposal: Any DOC submission on this proposal needs to be okayed by the Minister prior to it being submitted"¹¹*

⁷ Oral Questions 2, 5 and 10, 25 Sep 2013

⁸ Oral Question 4, 26 Sep 2013

⁹ Status report mentions of Ruataniwha Dam, Plan Change 6 or the Tukituki Catchment Proposal, Question for Written Answer Number 12701 (2013)

¹⁰ Status report mentions of Ruataniwha Dam, Plan Change 6 or the Tukituki Catchment Proposal, Question for Written Answer Number 12701 (2013)

¹¹ Status report mentions of Ruataniwha Dam, Plan Change 6 or the Tukituki Catchment Proposal, Question for Written Answer Number 12701 (2013)

These demonstrate the Minister was first informed that the Department of Conservation was considering submission and was told what its contents would be on 20 May by the Department of Conservation not on 29 July as he previously stated.

In addition it shows the first time he asked to see the submission was on 17 June not on 29 July as he stated.

The Minister in the same written question also provided the following answer:

*"I attach for the member's information the list of mentions of the Tukituki catchment proposal in my weekly briefings. My weekly briefings typically cover about 35 items and report on decisions I need to make, operational issues, implementation issues and OIA requests etc. The Ruataniwha Dam, Plan Change 6 or the Tukituki Catchment is mentioned in 19 of the weekly briefings of which the vast bulk are noting the EPA process, the appointment of the Board of Inquiry and OIA requests. A mention in the weekly report does not mean the issue was raised and discussed. My best recollection is that the issue was raised briefly on five occasions: 6 May, 20 May, 4 June, 17 June and 29 July."*¹²

The Minister had previously told the House that the issue was discussed on 5 occasions with the submission being only 1 of those discussions and the other 4 relating to the call in. However this answer and the weekly report extracts show that the submission was discussed on 3 occasions: 20 May, 17 June and 29 July. That the specifics of the submission were discussed on 17 June is evident from the weekly report of 24 June noting the Minister's request to see the submission before it was lodged.

An extract from the Minister's weekly report was made public earlier from the week of 29 July which again suggests the Minister was aware of the contents of the submission:

*"The Department is evaluating the proposed plan change and resource consents. The Department's preliminary view is that a submission should be lodged to the plan change in the name of the Director-General requesting that the Board requests further information by way of an independent peer review of the proposed approach to nutrient management and the potential effect of the proposed nutrient limits and targets on the freshwater values in the Tukituki catchment."*¹³

Standing Order 401(2) states:

In considering if a question of privilege is involved, the Speaker takes account of the degree of importance of the matter which has been raised.

In regard to Standing Order 401(2), the freedom for the Department of Conservation to make submissions is a matter of significant importance and Hon Nick Smith has misled the House on this matter, this is not a technical or trivial matter.

Standing Order 399(1) requires that I draw these complaints to your attention in writing at the earliest opportunity. These written questions were released late yesterday afternoon so this is the first opportunity I have had to raise these matters with you. In this regard, I have met the requirements of Standing Orders.

For these reasons I believe Hon Dr Nick Smith has committed contempt by attempting to deliberately mislead the House and I request that you refer these matters to the Privileges Committee for further consideration.

¹² Question for Written Answer Number 12701 (2013)

¹³ Minister of Conservation Weekly report 29 July 2013

In fulfilment of the requirements of Standing Order 402, I am forwarding a copy of this letter to Hon Nick Smith.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ruth Dyson', with a stylized flourish at the end.

Hon Ruth Dyson
MP for Port Hills

cc. Hon Nick Smith