

**MATTER OF PRIVILEGE RAISED BY SENATOR TAMBLING**

Thank you for your letter of 15 August 2001, in which the Committee of Privileges seeks advice on the precedents referred to in the statement by the President of the Senate of 6 August 2001 in relation to the matter of privilege raised by Senator Tambling.

There are no directly relevant Senate precedents of privilege cases involving extra-parliamentary bodies purporting to direct senators as to their votes or to penalise senators for not complying with such direction.

There have been several directly comparable cases in the United Kingdom. The first arose in 1947 when it was suggested that an extra-parliamentary body had attempted to influence a member. While finding nothing improper in the activities of that body, the Privileges Committee gave consideration to the boundary which should be drawn between legitimate political activity and improper influence of a member. The committee concluded that it is proper for a body to support and endorse a member, including by way of financial support, and to withdraw that support and endorsement on the basis of disagreement with the policies pursued by the member, but improper influence arose when a body purported to direct a member as to the performance of the member's duties or to inflict a penalty or detriment on a member in consequence of the member's performance of those duties. The committee declared that an extra-parliamentary body is not entitled to use support of a member, or the withdrawal of that support, "as an instrument by which it controls or seeks to control the conduct of a Member or to punish him for what he has done as a Member". The House of Commons by resolution endorsed the report of the committee and also passed a resolution declaring that a member's duty is to the member's constituents and that a member must not have any relationship with a body which limits the member's independence and freedom of action in Parliament.

The boundary drawn by the Committee of Privileges in this report has been reiterated in subsequent cases in which extra-parliamentary bodies purported to direct members or to withdraw support in retaliation for members' conduct in Parliament. Further cases occurred in 1971, 1975, 1977 and 1991. In each case the Privileges Committee, while reiterating the ruling principles, did not find it necessary to recommend further action by the House because of the circumstances of the case or remedial action by the offending body.

In these cases a purported direction to a member was regarded as a contempt in itself, quite apart from any threatened or actual withdrawal of support from a member in consequence of the member's performance of parliamentary functions. The rationale of treating the purported direction as an offence in itself was that, where a body has a relationship with a member which could be regarded as giving it some particular control or influence over the member, a purported direction in itself would be an interference with the free exercise by a member of the member's functions.

All of these cases involved professional associations or trade unions which support members of Parliament, rather than organs of political parties as such. The extra-parliamentary organs of

political parties as such appear not to purport to direct members as to how they are to vote on particular issues in comparable jurisdictions.

On 16 March 1951 in the House of Representatives a matter of privilege was raised in relation to an alleged direction by a Labor Party conference to members as to how they were to vote in the House. A resolution was passed declaring that such a purported direction would be a contempt, and asserting the freedom of members from such direction. This resolution seems to have been based on the 1947 House of Commons resolution, but unlike the latter was passed only by division on party lines. The matter was also referred to the Privileges Committee, but the committee had not reported when both Houses were dissolved a few days later, and the reference was not revived.

I know of no other comparable cases in any jurisdiction.

Attached are copies of the reports of the House of Commons Committee of Privileges and the transcript of the debate on the 1947 report.

Please let me know if the committee requires any further assistance in relation to this matter.