

The Senate

Committee of Privileges

Possible improper interference with a
Senator in the free performance of his duties

175th Report

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Report

Introduction

1.1 On 17 October 2018, the Senate referred a possible contempt to the Privileges Committee for inquiry in the following terms:

Having regard to the matters raised by Senator Burston in correspondence tabled by the President on 16 October 2018:

- (a) whether, by removing him from positions within Pauline Hanson's One National Party and pressing him to resign from the Senate, Senator Hanson or any other person has sought to improperly interfere with the free performance of his duties as a senator or to penalise him for his conduct as a senator; and
- (b) if so, whether a contempt was committed in that regard.

1.2 The committee considered the matter at its meetings on 18 October 2018, 15 and 29 November 2018 and 14 February and 1 April 2019.

Background

1.3 Senator Burston had written to the President on 27 September bringing to his attention matters relating to his dismissal from the position as Party whip and the deputy registered officer of Pauline Hanson's One Nation at both the national and state level. Senator Burston indicated that his assumption was that these actions related to his decision to vote in accordance with an agreement the party had brokered with the Government relating to legislation and from which the party had stepped away.

1.4 The referral of the matter to the committee followed a statement by the President on the day before, indicating that he had determined 'that the matter should have precedence as a matter of privilege'.¹ On the basis that it was the Senate's responsibility to determine whether the matter warranted investigation by the committee he also drew the Senate's attention to the work of the committee's predecessor in a related matter offering it as guidance to the Senate in its consideration of the matter. That matter involved 'former Senator Grant Tambling, whose preselection was withdrawn after he declined to follow his party organisation's directions on a piece of legislation'.²

1 *Senate Hansard*, 16 October 2018, p. 7204.

2 *Senate Hansard*, 16 October 2018, p. 7204.

1.5 The Senate's decision to refer the matter was made without any substantial debate, the Government indicating that it 'should be assessed and dealt with through the proper and appropriate process.'³

Role of the Committee

1.6 The committee has been charged by the Senate to establish, in the first instance, whether actions taken by Senator Hanson and others in relation to the removal of Senator Burston from certain party positions constituted an improper interference with Senator Burston in the free performance of his duties as a senator or to penalise him for his conduct as a senator. Secondly, the committee must consider whether any such actions may constitute a contempt of the Senate.

1.7 In addressing these matters, the committee has the guidance of the Privilege Resolutions, and in particular Privilege Resolutions 3 and 6. Privilege Resolution 6 sets out matters which constitute a contempt of the Senate, including 6(1) (2) and (4) which are relevant to this matter.

1.8 Privilege Resolution 6(1) relates to the 'free performance by a senator of the senator's duties as a senator', while 6(2) relates to influencing 'a senator in the senator's conduct as a senator' and 6(4) concerns imposing a penalty on 'a senator on account of the senator's conduct as a senator.'

1.9 In addressing the second aspect of the inquiry, the committee has the terms of Privilege Resolution 3 (Criteria to be taken into account when determining matters relating to contempt) to guide its deliberations, specifically:

- whether the actions taken can substantially obstruct the Senate and its committees from performing their functions;
- the existence of any other remedy;
- whether the act was committed with intent or whether there is a reasonable excuse for committing the act.

Conduct of the inquiry

1.10 The committee commenced its work by requesting a submission from Senator Burston which he provided and was considered at the committee's meeting on 29 November 2018. The submission contained material which went beyond the terms of the inquiry, and Senator Burston was invited to re-submit and reminded of the scope of the reference and the requirements of the Privilege Resolutions. The revised submission was considered at the committee's meeting on 14 February 2019.

1.11 In its consideration of Senator Burston's submission the committee took into account the Tambling case, as well as the requirements placed on it by Privilege Resolutions, including resolutions 2, 3 and 6. Privilege Resolution 2 sets out the procedures for the protection of witnesses to be observed by the committee in considering any matter referred to it which may involve a contempt.

3 *Senate Hansard*, 17 October 2018, p. 7430.

1.12 At the commencement of the inquiry the committee observed the requirements of Privilege Resolution 2 by writing to Senator Hanson, as the person who was the subject of the allegations. The letter advised Senator Hanson of the process of a contempt inquiry, particularly the requirements of Resolution 2 in governing an inquiry into a possible contempt.

1.13 The committee discussed Senator Burston's revised submission noting the President's statement and the guidance offered to the Senate indicating that there is 'a high degree of reluctance to intervene in internal party matters but does not entirely close the door on the possibility that the Senate's contempt jurisdiction might be invoked in such circumstances.'⁴

1.14 In the Tambling matter the committee's predecessor characterised its role as 'finding a balance between the obligations of a member of a political party and what may be regarded as improper coercion of that member in fulfilling parliamentary duties'.⁵ Ultimately, the party's withdrawal of Senator Tambling's preselection was not found to be a contempt:

1.58 The committee is of the view that it was appropriate that a political resolution within the organisation concerned was reached. Problems involving preselection are best resolved by political parties ensuring that their practices, procedures and rules minimise any possibility of challenge either in the courts or in the parliament, rather than by turning to other bodies in an attempt to force a solution. The committee has therefore followed the court in staying its hand in respect of an internal party matter. Thus, while it is open to the committee to find a contempt, under the circumstances it would not be appropriate to do so...⁶

1.15 In effect, the committee took the view that action taken within political parties to control the votes of their members – at least, within the rules and practices of those parties – was an internal matter and should not amount to a contempt of coercion or intimidation. Further, it argued that the Senate should not have any role in determining such disputes. However, the committee indicated that it did not intend to lay down a blanket rule here, concluding that there may be circumstances when a contempt finding could be made.

1.16 The committee notes that since the first case of alleged intimidation of a senator was investigated in 1904, the Senate has taken a fairly robust view as to whether senators have been improperly obstructed, on the basis that senators are generally capable of looking after themselves. The only area in which the committee has departed from this view is where it has been asked to consider allegations of interference arising from covert conduct, which is not a relevant factor in this matter.

4 *Senate Hansard*, 16 October 2018, p. 7204.

5 103rd Report, *Possible improper influence and penalty on a Senator*, June 2002, p. 16. para. 1.51.

6 103rd Report, *Possible improper influence and penalty on a Senator*. June 2002, p. 18.

1.17 In its deliberations the committee was also cognisant of the time taken by Senator Burston to raise the matters and that there was no indication that the conduct referred to the committee had the effect of intimidating him. He had voted for the legislation, and was vocal in his criticism of his removal from party positions.

1.18 In the three months between the actions taking place and the referral of the matter to the committee, Senator Burston departed One Nation and joined a new political party, while retaining his Senate seat. It is not clear on the evidence presented by Senator Burston to date, that he has been impeded in his duties as a senator. The committee therefore came to the view that the first of the criteria required to be taken into account by Privilege Resolution 3 and those of Privilege Resolution 6 were not met.

Conclusion

1.19 Parliamentary privilege and the associated resolutions of the Senate are designed to protect the Parliament, its committees and individual senators in the performance of their parliamentary duties, not as a mechanism to resolve internal party politics or quarrels between senators. It is the committee's firm view that without compelling grounds to bring these resolutions to bear, such matters should not be subject to its consideration.

1.20 In relation to the actions taken by Senator Hanson and others in removing Senator Burston from positions within Pauline Hanson's One National Party and pressing him to resign from the Senate, the committee has concluded that these actions were party matters and therefore do not amount to interference with Senator Burston's duties as a senator. The committee therefore did not pursue the matter with Senator Hanson in accordance with Privilege Resolution 2 and will not be publishing the submissions.

1.21 However, the committee expresses concern that some of the material provided by Senator Burston and regarded as extraneous to the inquiry related to Senator Burston's view of Senator Hanson's Senior Advisor. Senator Burston ascribes the pattern of the Senior Advisor's behaviour as intimidating him to the point that he ensures that he does 'not access any area of APH alone'.⁷ Given the events in the Great Hall on the night of 13 February which included a scuffle between the two, the committee initially was prepared to further consider the allegations of intimidation. The committee notes the President's statement to the Chamber on the afternoon of 14 February and the subsequent restrictions place on the Senior Advisor's access to the building. The committee recognises that this action will permit Senator Burston to access the Parliament without impediment, which is the right of all members of Parliament.

1.22 On 19 March 2019, Senator Burston provided the committee with additional information on the inquiry. The additional information included notification that he had made an application to his local court for an Apprehended Personal Violence Order against the Senior Advisor.

7 Senator Burston, *Submission*, 8 December 2018, p. 4.

1.23 The committee notes the practice that an inquiry into matters under police investigation was not to commence until those investigations or subsequent court proceedings were finalised.⁸ It therefore has concluded that it would be inappropriate for it to inquire any further on this matter.

Senator Deborah O'Neill
Chair

8 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th edition, Department of the Senate, 2016, p. 89.

