

Rt Hon Trevor Mallard

Speaker

House of Representatives

Mr Speaker,

Privilege complaint RE: Electoral (Integrity) Amendment Bill and NZ First MPs' \$300,000 Resignation Obligation Contract Liability.

I wish to raise, under Standing Order 402, a matter of privilege in respect of a contempt under Standing Order 410 (f), in which Members of Parliament have failed to declare a financial interest they have in the Electoral (Integrity) Amendment Bill. This privilege issue is in respect of Rt Hon Winston Peters, Hon Tracey Martin, Hon Ron Mark, Hon Shane Jones, Darroch Ball, Jenny Marcroft, Clayton Mitchell, Mark Patterson and Fletcher Tabuteau.

The summary of the privilege issue is that these nine Members of Parliament have a personal financial interest in the Electoral (Integrity) Amendment Bill in that they have entered into a resignation obligation contract with a personal liability of \$300,000 dollars as required under the New Zealand First Party Constitution section 57 (h). This \$300,000 liability is nullified under NZ First's constitution in the event of legislation such as the Electoral (Integrity) Amendment Bill being passed.

The first test is whether these nine MPs have a financial interest under Standing Order 164. A financial interest is a direct financial interest that might accrue to a member personally as a result of the House's consideration of a particular item of business. The specific contract affecting each member for the sum of \$300,000 is clearly a financial interest, and the fact that this liability is nullified by the passage of the Electoral (Integrity) Amendment Bill means they have a financial interest in terms of Standing Order 164. The passage of the Bill removes this significant potential financial liability.

The passage of the NZ First constitution relating to this is: "... the Board shall not enforce the resignation obligation contract under this article 57 (h) at any time that legislation exists which requires or determines that a member of parliament to resign or relinquish his/her parliamentary seat upon the grounds contained in or similar to those specified in article 57 (g)."

The second test is whether the member failed to declare this financial interest before participating in the consideration of the item of business – in this case the Electoral (Integrity) Amendment Bill. The record is clear that none of these nine members declared any interest. Darroch Ball, Ron Mark, Tracey Martin and Winston Peters have all participated in the debate and questions on this Bill and all nine members have had their votes recorded in the dozens of votes on this measure. Standing Order 165 (2) exempts members from declaring a financial interest where it is declared in the Register of Pecuniary and Other Special Interests, but none of the members have done so.

The third test is set out in Standing Order 410 covering examples of contempt. 410 (f) is not conditioned by being deliberate or knowing. The issue is simply whether the member failed to declare a financial interest before participating in the consideration of the item of business. Participating must include the actions of speaking and voting. These members have, whether knowingly or not, failed to declare their financial interest.

It is important to also consider context and the degree of importance. The reason for the standing orders on financial interests is to ensure Members of Parliament are considering matters in the public interest and not in their private interest. The practical reality is that a \$300,000 potential liability is financially significant and a substantial risk for any member, and that any member subject to such a contract would be motivated to have this potential liability removed. The fact that this is being achieved through a very controversial Bill that would not pass into law without these members' support makes it even more important that such financial interests are properly disclosed.

A second issue that requires consideration of the Privileges Committee is that these contracts referred to in NZ Firsts constitution are a pecuniary interest that were not declared by any of these MP's. Appendix B of Standing Orders define a pecuniary interest to be a matter of financial interest and covers debts and other contracts. My submission is that these sort of contracts are a pecuniary interest, are covered and should be declared. If they were not specifically covered then it is similar to the issue dealt with by Speaker Smith in 2010 on legal fees and needs to be considered by the Privileges Committee. This is an important issue because the contracts are certainly inconsistent with the parliamentary practice of MP's being representatives of the whole people, not bound by order, instruction or any contract, and responsible only to their conscience.

I also recognise my obligation under Standing Order 402 (1) to raise such a matter of privilege in writing at the earliest opportunity. I was alerted to the presence of these contracts by a person from NZ First last weekend. I sought a full copy of the party's constitution earlier this week to verify the claim, and have subsequently checked the debating records and prepared this letter to lodge the complaint at the earliest opportunity.

This matter of privilege and failure to disclose a financial interest should be referred to the Privileges Committee for consideration.

Yours sincerely,

Hon Dr Nick Smith

Nelson MP

Copied to: Rt Hon Winston Peters, Hon. Tracey Martin, Hon. Ron mark, Hon. Shane Jones, Darroch Ball, Jenny Marcroft, Clayton Mitchell, Mark Patterson, Fletcher Tabuteau.

Attached:

- (1) Article 57 (h) of NZ First Party constitution.
- (2) Electoral (Integrity) Amendment Bill.