



New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Privileges Committee

Komiti Whiriwhiri Take Mōtika o te Whare

54th Parliament

August 2024

Question of privilege concerning investigations of possible breaches of court suppression orders in parliamentary proceedings

Presented to the House of Representatives
by Hon Judith Collins KC, Chairperson

Contents

Recommendation.....	3
Referral of the question of privilege.....	3
Court suppression orders and parliamentary proceedings	3
Freedom of speech and relationship between Parliament and the courts	4
Recommended approach.....	4
Appendix A—Committee procedure	6
Appendix B—Speaker’s ruling.....	7

Question of privilege concerning investigations of possible breaches of court suppression orders in parliamentary proceedings

Recommendation

The Privileges Committee has considered a question of privilege concerning investigations of possible breaches of court suppression orders in parliamentary proceedings, and recommends that the House take note of its report.

Referral of the question of privilege

On 29 August 2023, the Speaker of the House referred a general question of privilege to the committee. This followed allegations that a member, Rawiri Waititi, may have breached a suppression order imposed by a court by referring to potentially suppressed information in the House, which would be contrary to the Standing Orders.

The Speaker noted that he did not intend to inquire into matters that might be suppressed, as doing so could be inconsistent with the principle of comity between the legislative and judicial branches of government. He noted that it was difficult to investigate whether the member had committed a contempt, as an investigation risked compounding any harm caused by potentially confirming the existence of a suppression order and possibly identifying the subject of it.

The general question of privilege referred to the committee is how the House should deal with cases where a member may have referred to a matter in breach of a suppression order, but where investigating it could be inconsistent with the order if one exists.

In the situation that led to this referral, the Speaker dealt with the member's conduct as a matter of order. In the Speaker's referral, he noted the requirements of Standing Order 116, which sets out a process by which a member may notify the Speaker of their intention to refer to a matter that is suppressed, so that the Speaker may consider whether to allow it. He then stated that "Mr Waititi did not give notice but then referred to a matter that apparently is suppressed by a court. I do not know whether his failure to give notice is because he chose not to or because there is no such order." He noted that Mr Waititi's comments gave the reasonable impression that the member believed the matter was subject to suppression but referred to it anyway. The Speaker concluded that the conduct was grossly disorderly. He named the member and asked the House to suspend the member, which was agreed to.

The Speaker's ruling is appended to this report as Appendix B.

Court suppression orders and parliamentary proceedings

Standing Order 116 states that matters awaiting or under adjudication in, or suppressed by an order of, any New Zealand court may not be referred to in any motion, debate, or question (including a supplementary question). This is always subject to the discretion of the

Speaker and to the right of the House to legislate on any matter or to consider secondary legislation. To enable the exercise of the Speaker's discretion, any member who intends to refer to such a matter must give written notice to the Speaker of their intention. If a member follows this process, then there is a pathway for such information to be discussed in the House.

The general prohibition in Standing Order 116 on referring to matters before a court, or matters suppressed by a court order, was recommended by a previous Privileges Committee. The Privileges Committee of the 49th Parliament examined and reported on a question of privilege relating to the exercise of the privilege of freedom of speech by members in the context of court orders. Its recommendations were largely adopted by the Standing Orders Committee of that Parliament. The Standing Orders Committee also added the requirement for members wishing to discuss matters that are before a court to inform the Speaker in writing before raising the matter in the House. The committee noted that the Speaker could then advise the member, and the Speaker would be in an informed position to deal with the matter immediately in the House if the member proceeded to raise a matter contrary to the Speaker's advice. We note that in the situation that gave rise to our consideration of this general matter of privilege, Mr Waititi did not provide written notice to the Speaker.

Knowingly referring to a matter that is suppressed by a court order in any proceedings of the House or a committee, contrary to the Standing Orders, is specified in Standing Order 418(y) as an example of a contempt.

Freedom of speech and relationship between Parliament and the courts

One of Parliament's fundamental privileges is that of free speech in the House. Parliament's free speech privilege operates to protect parliamentary proceedings from legal action. However, Parliament has a responsibility to ensure that its privileges are not used in a manner that frustrates the courts' jurisdiction or that undermines the relationship between the branches, as the relationship is of fundamental constitutional importance. The branches' disposition towards each other's jurisdiction is expressed in our system by the principle of comity. Comity is often understood as mutual respect and restraint, and the effort exerted by both branches to uphold the other's privileges.

The House, under Standing Order 116, has imposed an expectation that referring to matters before a court, or matters suppressed by a court order, should only be undertaken in accordance with that Standing Order as a reasonable limitation on the privilege of free speech in the House. This is an important expression of Parliament's respect for the judicial branch's jurisdiction; it is appropriate for the courts to be able to decide what information about their proceedings should be publicly available.

Recommended approach

It is important for Parliament to uphold the privileges of the courts, just as it expects that the courts will uphold Parliament's privileges. Members must abide by the rules that Parliament has set for itself and follow the appropriate process when they wish to raise a matter which may be before a court or suppressed by a court order. However, if members raise matters that may be suppressed by a court, without first notifying the Speaker of their intent to do so,

there are inherent practical difficulties in investigating whether a matter is indeed suppressed, as investigating this could in itself disclose suppressed information.

In this case, the Speaker took the approach of taking time to review the situation after it was raised during oral questions, and then raising it again as a matter of order at a subsequent sitting. We consider that taking time to consider the matter, while also preventing ongoing discussion of the matter on the day, could reduce the exposure of potentially suppressed information. We consider that the approach adopted by the Speaker in this case was the most appropriate course of action, given that it was not clear that a suppression order existed and investigating the matter further might risk compromising any suppression that was in place. We encourage other presiding officers to consider taking this approach if a similar situation arises in the future.

Appendix A—Committee procedure

This question of privilege was referred to the Privileges Committee of the 53rd Parliament on 29 August 2023. It was reinstated with our committee in the 54th Parliament. We met between 8 May and 27 August 2024 to consider it. We received advice from the Office of the Clerk.

Committee members

Hon Judith Collins KC (Chairperson)

Hon Chris Bishop

Mariameno Kapa-Kingi

Ricardo Menéndez March

Dr Parmjeet Parmar

Rt Hon Winston Peters

Hon Scott Simpson

Tangi Utikere

Hon Dr Duncan Webb

Camilla Belich, Hon Simeon Brown, Hon Casey Costello, Hon Paul Goldsmith, Hon Chris Penk, Hon Jenny Salesa, and Dr Lawrence Xu-Nan participated in some of our consideration.

Appendix B—Speaker’s ruling

29 August 2023

Members, I have been considering how to respond to allegations that, during oral questions last week, Rawiri Waititi may have breached a suppression order imposed by a court.

In 2009, the Privileges Committee reported to the House on the exercise of the privilege of freedom of speech by members in the context of court orders. This led to Standing Order 116 being adopted in its current form in 2011. It balances the House's privilege of free speech with the relationship between the House and the judiciary. Standing Order 116 gives the Speaker responsibility for balancing these important interests. To allow the Speaker to exercise discretion, it requires a member who intends to refer to a matter that is subject to a suppression order to give written notice to the Speaker. Mr Waititi did not give notice but then referred to a matter that apparently is suppressed by a court. I do not know whether his failure to give notice is because he chose not to or because there is no such order.

I do not intend to inquire further into matters that may be suppressed, as my doing so may itself be inconsistent with the principle of comity. Standing Order 418(y) is clear that it is a contempt of this House to knowingly make reference to a matter suppressed by an order of a court, contrary to the Standing Orders. In this case, the difficulty is that investigating whether Mr Waititi has done so risks compounding the harm caused by the original breach by confirming the existence of a suppression order and possibly identifying the subject of it.

So I have decided to deal with this matter in two ways. First, I will refer a general question of privilege to the Privileges Committee asking to consider how the House should deal with cases such as this, where a member may have made reference to a matter in breach of a suppression order but where investigating it could be inconsistent with the order if one exists.

Second, I intend to deal with Mr Waititi's comments as a matter of order. The words Mr Waititi used in the House indicate that he believed that the matter concerned was subject to a suppression order, and, yet, he raised it without first notifying the Speaker. Parliament's relationship with the courts is of utmost constitutional importance. Reckless use of the freedom of speech enjoyed by the House damages that relationship and undermines the standing of this Parliament and the privileges on which it depends.