



Question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests

Report of the Privileges Committee

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Summary of recommendations

We recommend by majority that the Rt Hon Winston Peters be censured by the House for knowingly providing false or misleading information on a return of pecuniary interests (p. 19).¹

We recommend by majority that the Rt Hon Winston Peters be ordered to file, within seven days of the House so ordering, amended returns for the years ended 31 January 2006, 2007, and 2008 covering any gifts, debts, or payments in kind that he has not previously registered (p. 20).

We recommend unanimously that the Standing Orders Committee review the Standing Orders relating to pecuniary interests (p. 20).

We recommend unanimously that the Clerk of the House of Representatives enhance the support available to the Registrar of Pecuniary Interests in order to provide an authoritative source of advice for members making returns of pecuniary interests (p. 21).

Referral of the question of privilege

On 5 August 2008 the Speaker ruled that a question of privilege arose from complaints that the Rt Hon Winston Peters failed to disclose a gift, and failed to disclose a debt and the name of the person who discharged it. The question consequently stood referred to us. The ruling is appended to this report (Appendix B).

Approach to considering the question

This is the first question of privilege relating to a complaint about the return of pecuniary interests of a member. To assist our consideration of the matter, we formulated some initial terms of reference for our inquiry, and invited the Rt Hon Winston Peters and Brian Henry to give evidence to us.

These terms of reference were as follows:

- the meaning of “debt” and “debtor” in the context of the Register of Pecuniary Interests
- the meaning of “gift” in the context of the Register of Pecuniary Interests, including how to determine who is the beneficiary of a gift

¹ In this report, the majority refers to Gerry Brownlee, Hon Peter Dunne, Te Ururoa Flavell, Hon Murray McCully, Dr Wayne Mapp, Dr Russel Norman, Simon Power, and Heather Roy.

- whether or not a debt existed in this case that should have been disclosed on a return of pecuniary interests
- whether, if a debt did not exist, a gift was received from a person whose name was known or would be reasonably discernable or a donation was made that covered expenses in an election campaign
- whether, if a debt or gift existed, Mr Peters knowingly provided a return that was inaccurate in a material way
- whether the rules for the disclosure of pecuniary interests require clarification or amendment
- any other relevant matters.

Having heard evidence from Mr Peters and Mr Henry, we invited Owen Glenn to appear before us to give evidence. Mr Peters and Mr Henry had a further opportunity to appear before us following Mr Glenn's appearance.

We received a communication from the Director of the Serious Fraud Office relating to the source of the payment of the court costs awarded against Mr Peters in the Tauranga election petition case. On hearing further evidence from Mr Peters, and receiving written evidence from Mr Henry, we determined this did not go to the heart of the matter referred by the Speaker. However, we note that if payments were made by a third party, these would have constituted a gift or discharge of a debt for the purposes of the Register of Pecuniary Interests, and our conclusions below would apply equally to this circumstance.

We made Mr Peters aware of our draft findings, and provided him with an opportunity to comment. His response is appended to this report (Appendix N).

Process followed by the committee

In considering this question, it was important that we followed an appropriate process. We have taken care to ensure that those at the centre of this question have had adequate opportunity to present their evidence to us, and to respond to the evidence of others. The members of this committee have been careful to approach this matter with the gravity it merits, and not to prejudge the situation before hearing all the evidence.

We remind counsel that, in appearing on behalf of a witness, they are not speaking on behalf of the witness and we refer them to Standing Order 229.

Evidence received

At the centre of the matter before us was a payment of approximately \$100,000 from Owen Glenn to the account of Brian Henry. The fact of this payment was not disputed, but we heard differing accounts of the related events both before and after the payment.

The evidence we received is appended to this report (Appendices C to G), as are transcripts of the hearings of evidence (Appendices H to M).

A number of matters were raised in evidence that did not relate to the question before us. We have not addressed these matters in this report.

Evidence of Rt Hon Winston Peters and Brian Henry

In their evidence, Mr Peters and Mr Henry described an arrangement they have had since 1991, through which Mr Henry has provided legal services in support of Mr Peters.

The legal costs would not be invoiced by my instructing solicitor to create an unpaid debt. The obligation to meet any outstanding fee was understood as a moral, not a legal, obligation. If the money was not fund-raised, then my time was donated. I would, where possible, fund-raise, and any funds raised would go towards the fees due. Where funds were raised Winston would not ask and I would not tell him the source.²

Mr Henry explained that the arrangement was structured in this way to ensure that Mr Peters remained unaware of the identity of any donors who contributed to the legal costs.

Provision of services by Mr Henry

Mr Peters and Mr Henry argued that the nature of the arrangement meant that Mr Peters had no legal obligation to pay fees to Mr Henry, as Mr Henry either donated his time or fund-raised to cover the costs incurred. There was no legal debt. At most, any “debt” was a moral one. Both witnesses noted that Mr Peters has paid Mr Henry money from time to time, and Mr Peters told us that members of his family had also made payments to Mr Henry. Mr Henry told us he had also received payment from the Parliamentary Service for work carried out for Mr Peters in his capacity as leader of the New Zealand First Party.

Mr Henry told us that it was lawful for him to donate time to assist a politician, “and that creates no obligation that must be disclosed by the politician.”³ Mr Henry also said that giving his time was not a gift in the context of pecuniary interest, as there was no debt unless Mr Henry decided to render a fee note for services to his instructing solicitor, who would then bill the client; Mr Henry told us he did not render such notes in relation to the work he undertook for Mr Peters.

Tauranga election petition

Following the 2005 election, Mr Henry agreed to issue a petition in relation to the Tauranga election result. The usual arrangement between Mr Peters and Mr Henry covered those proceedings.

To help meet the costs of the action, Mr Henry told us that he approached a number of potential donors. Amongst them was Owen Glenn, who agreed to pay \$100,000. Mr Henry told us that this payment covered most of his expenses in relation to the election petition. Mr Henry told us that when he talked with Mr Glenn, the conversation canvassed various matters in relation to the election petition and its outcome, and the stability of the supply arrangement with the New Zealand Labour Party, but did not cover any other matters. Mr Henry did not make a written record of the call. Peter Williams QC, in a statement to us, noted that this conversation must have occurred after 20 November 2005, as references were made in the conversation to comments made by Alexander Downer, then Australian

² See page 112 of this report.

³ See page 114 of this report.

Foreign Minister, during the APEC meeting held in Korea on 18–20 November 2005. Mr Henry reiterated this belief subsequently in his evidence to us.

Mr Peters and Mr Henry provided us with copies of their responses to the Speaker on the matters of privilege raised by Rodney Hide and Gordon Copeland. In his response, Mr Peters told the Speaker that he did not believe the payment fell within the definition of “gift” in the Standing Orders as the money went directly from Mr Glenn to Mr Henry, and because Mr Peters was unaware of the payment.⁴ Mr Henry later argued that electoral law was clear that the donation of time by a person expressly does not constitute an electoral expense. Mr Henry believed this principle also applied to the declaration of a pecuniary interest by a Member of Parliament, stating that “The voluntary provision of time to assist a Member of Parliament has never been required to be disclosed as a gift in the declaration of interest.”⁵

In his letter to the Speaker, Mr Peters noted that electoral expenses were explicitly excluded from the requirement to return, and that he believed that this would cover this particular matter, as it related to an election petition. However, Mr Williams said in his statement that legal expenses in relation to such petitions had not previously been treated as election spending and should not be, as such expenses were not spent in electioneering. Mr Williams also argued that no previous petitioner or respondent in such circumstances had been required to register a pecuniary interest in relation to such legal expenses.

In his letter to the Speaker, Mr Peters also argued that the payment was not the payment or discharge of a debt, as there was no debt to be discharged or paid.⁶

Costs awarded against Mr Peters

At our initial hearing of evidence, Mr Henry told us that he had paid the \$40,000 costs awarded against Mr Peters in relation to the electoral petition. Mr Peters told us that he believed he had reimbursed Mr Henry for that payment. Mr Henry subsequently told us that Mr Peters had reimbursed him for the payment of the \$40,000 shortly thereafter.⁷ Mr Henry and Mr Peters later clarified that the payment was made on behalf of Mr Peters by his brother Wayne Peters, by cheque from the Thompson Wilson Trust account as a partner of the firm.

Mr Peters’ knowledge of the payment

Mr Henry told us that the first time that he told Mr Peters about the payment by Owen Glenn was on 18 July 2008 at 5 pm. He decided to tell Mr Peters about the payment as he felt Mr Glenn was being unfairly attacked by the media at the time.

When asked whether he had discussed payments or donations in relation to the election petition with Mr Peters, Mr Henry said:

⁴ Clause 7(b) of Appendix B of the Standing Orders.

⁵ See page 74 of this report.

⁶ Clause 7(c) of Appendix B of the Standing Orders.

⁷ See pages 123 and 226 of this report.

I would have told Mr Peters that I had been paid.⁸ ...Mr Peters would have known there had been a donation or donations. He would not have any clue as to how it was made up or where it came from.⁹ ...The discussion was that the bill had been met. I think it was that the bill had been met and substantially met, because it hadn't been totally met.¹⁰

We asked Mr Peters whether he considered he should have known that some of the cost had been met, and have declared that on the register, but did not receive a direct answer. Mr Williams argued that if Mr Glenn made the payment at the request of Mr Peters, he would have sent a note directly to Mr Peters to let him know the payment had been made. Mr Williams believed the absence of such a note or a corresponding acknowledgement from Mr Peters pointed to Mr Glenn having dealt directly with Mr Henry. Mr Peters later told us that he had no recollection of having been told by Mr Henry that his fees and costs had been covered in relation to the election petition.

Mr Peters told us that he had no recollection of having approached Mr Glenn for money. He left those sorts of matters to others; but he had met Mr Glenn in Sydney in August 2005, before the 2005 election. Mr Peters recalled having had a conversation with Mr Glenn regarding a possible donation to the Millennium Project sponsored by the United Nations in 2000.

Mr Peters produced telephone records for his home, office, and mobile telephones, which did not show any call to Mr Glenn on 5 December 2005, as suggested by Mr Glenn. Mr Peters also did not recall having had any conversation with Mr Glenn between then and 14 December 2005.

Regarding a telephone call to Mr Peters' mobile number made by Mr Glenn on 14 December 2005, Mr Peters told us that he had no recollection of discussing money with Mr Glenn. He believed the topics discussed included the possibility of Mr Glenn taking on a role as a roving ambassador with a focus on trade and of Mr Glenn acquiring a diplomatic passport, Mr Glenn's interest in a consular role in Monaco, and the performance of Mr Glenn's horse in the Melbourne Cup.

Mr Peters told us it was possible that Mr Glenn requested Mr Henry's details during that conversation, but he did not directly recall his doing so; however, "the sequence of events tends to suggest that that occurred."¹¹ We asked Mr Peters whether he had asked Mr Glenn why he needed Mr Henry's details. Mr Peters told us that he would not consider it appropriate to ask a businessman why he needed the details of a professional such as Mr Henry.

Furthermore, Mr Peters would not have supposed that a request by Mr Glenn for Mr Henry's details could possibly be related to monetary support for himself, as he associated Mr Glenn with support for New Zealand Labour.

⁸ See page 123 of this report.

⁹ See page 124 of this report.

¹⁰ Ibid.

¹¹ See page 204 of this report.

Mr Peters' mobile telephone records showed a call to Mr Henry immediately following the call from Mr Glenn to Mr Peters.

Mr Henry told us that the suggestion that he approach Mr Glenn for a donation had come from a client of his, who had also suggested that Mr Peters might have Mr Glenn's contact details. Mr Henry obtained Mr Glenn's contact details from Mr Peters' office on 22 November 2005. He told us that he later rang Mr Glenn, but could not find a record of the call as he had been staying in various places during this period, as the Tauranga election petition was in progress.

Mr Henry also told us that he did not discuss any potential donation from Owen Glenn during his conversation with Mr Peters on 14 December 2005. He believed that Mr Glenn's name would have arisen during the conversation, and that would have reminded him to follow up on his earlier conversation with Mr Glenn by emailing his bank account details as a "memory jog".

Mr Peters believed initially that Mr Glenn was mistaken about the timing of a meeting at the Karaka horse sales, but subsequently agreed that they both attended a luncheon there in 2006. Mr Peters' account of the luncheon and conversations that took place there differed from Mr Glenn's. Mr Peters produced statements from others who had been in the hospitality tent at the time in question. Mr Peters rejects any suggestion that he thanked Mr Glenn for the payment of money to Mr Henry.

Legal professional privilege

In the course of the hearings of evidence, Mr Henry refused to tell us who had suggested he approach Mr Glenn for money, on the grounds that he would breach legal professional privilege by doing so. He told us that the person who did so was not Mr Peters or Mike Williams, the president of the New Zealand Labour Party.

We have received advice that legal professional privilege relates to communications made for the purpose of conveying legal advice and that it does not relate to the identity of a client, particularly when the issue does not relate to the communication of legal advice.¹² Mr Henry disagreed with this advice, although without producing authority, arguing that the privilege was the client's and he had been instructed by his client's solicitor to maintain privilege. Mr Henry later acknowledged that the "client" to whom he referred in the 14 December 2005 email was Mr Peters (and that he had been mistaken in asserting otherwise earlier).

We note that legal professional privilege should not be used as an excuse to withhold information requested by the Privileges Committee, particularly in circumstances where this privilege does not apply.

Evidence of Owen Glenn

In his initial evidence, Mr Glenn told us that he made a payment of \$100,000 on or about 20 December 2005 to the account of Brian Henry, to "assist funding the legal costs incurred personally by Rt Hon Winston Peters MP concerning his election petition dispute,

¹² *Police v Mills* [1993] 2 NZLR.

at his request.”¹³ Furthermore, Mr Glenn said that Mr Peters had approached him for this assistance in a personal conversation. Mr Glenn did not believe he or his assistants had ever spoken directly with Mr Henry other than to receive remittance details. Mr Glenn also told us that Mr Peters had thanked him at the Karaka yearling sales in 2006 for his assistance. Mr Glenn expanded on these points in subsequent evidence.

Mr Glenn said that he had been called by Mr Peters seeking financial assistance with the election petition and that he had agreed to provide such assistance as it would assist the New Zealand Labour Party, which had a confidence and supply arrangement with the New Zealand First Party. Mr Glenn said that he had “absolutely no doubt” that the request came from Mr Peters, as he “would not have made the donation on any other basis through any intermediary.”¹⁴ Mr Glenn told us he had no recollection of the concerns about Mr Peters’ role raised at the 2005 APEC meeting or having ever discussed these, or anything else, with Mr Henry.

Request for the payment

Mr Glenn told us of meeting Mr Peters in Sydney in August 2005, and of declining a subsequent request on behalf of the New Zealand First Party for financial assistance. He also noted that his office records showed that either Mr Peters or someone else representing New Zealand First had contacted the office in late November 2005. Mr Glenn agreed that the person in question could have been Brian Henry, but that whoever it was did not speak personally with Mr Glenn.

Mr Glenn noted that he had received a message from Mr Peters on his answering machine on 5 December 2005, although no detail was recorded about the call’s subject matter. Mr Glenn believes he returned that call and that he then discussed with Mr Peters his need for financial assistance with the Tauranga election petition. However, Mr Glenn could not find a record of the return call. He told us that, after speaking with Mr Peters on or shortly after 5 December 2005, he sought Mike Williams’ view on whether helping Mr Peters would be helpful to the New Zealand Labour Party. Mr Glenn believes this was discussed at a brunch meeting with Mr Williams on 14 December 2005, in Sydney.

Mr Glenn told us he telephoned Mr Peters later that morning (11.16 am Sydney time, 1.26 pm New Zealand time) to tell him that he would contribute to the cost of the petition. Mr Glenn said that in the course of that conversation he offered to provide \$100,000, as he believed the \$70,000 requested was not going to be sufficient to cover costs. Mr Glenn told us that Mr Peters then said that his lawyer would send account details, and requested that the donation be kept confidential. Mr Glenn said the subject matter of the telephone call did not include most of the topics mentioned by Mr Peters, although it was possible the Melbourne Cup was discussed.

Mr Glenn supplied us with a copy of the email he then received on 14 December 2005 from Mr Henry, which gave Mr Henry’s bank account details and referred to a conversation between Mr Glenn and Mr Henry’s client (sent at 1.40 pm New Zealand

¹³ See page 77 of this report.

¹⁴ See page 78 of this report.

time).¹⁵ Mr Glenn told us that he had not discussed the possibility of a donation with anyone other than Mr Peters, and that he therefore considered the words “my client” to be a reference to Mr Peters.

Mr Glenn also reaffirmed his statement that Mr Peters had thanked him for his assistance at Karaka in 2006, and produced an affidavit from his bloodstock adviser and racehorse manager in support of this contention.

Advice sought

In addition to the evidence we received, we sought expert advice on a number of matters. One issue we sought to clarify initially was whether there could be a debtor-creditor relationship between a barrister and the client they represent. We sought expert evidence from Stephen Kós QC on this matter, and later appointed him as an adviser to assist us with our consideration. We sought advice also from the Registrar of Pecuniary Interests, Dame Margaret Bazley, and from David McGee QC. We thank our advisers for their assistance.¹⁶

Assessing the evidence

We were advised that the standard of proof to be applied to determine matters of fact in this inquiry is the civil standard: on the balance of probabilities. The Privileges Committee’s role is inquisitorial in character, with the potential for making adverse findings in respect of members. It is therefore important that we conduct our proceedings in accordance with normal judicial principles.

The matters before us are not of a criminal nature, therefore the evidential standard applicable in courts of civil jurisdiction is appropriate. However, we note that the civil standard can vary, and that the requisite degree of probability must be commensurate with the subject matter being considered. Essentially, the more serious the allegation against the member, the higher the degree of probability required.¹⁷

We agree, however, that the complaints against the Rt Hon Winston Peters are serious, and are similar in severity to an allegation that a member has misled the House. As the 1980 report of the Privileges Committee relating to the Fitzgerald loan application observed, there is no right of appeal against the finding of the committee. On that basis a high standard of proof is required.

Our consideration of evidence in this matter was also affected by the limited number of agreed facts. The events that are the subject of this inquiry took place more than three years ago and the witnesses’ recollections of these events are often incomplete. In considering the evidence we have had to draw inferences from the known facts. We are satisfied that this is appropriate, provided that we exercise due caution in our reliance on circumstantial evidence.

¹⁵ See page 89 of this report.

¹⁶ Two key pieces of the advice we received are appended to this report (Appendix O).

¹⁷ Privileges Committee, *Report for 1980*, 1980, AJHR, I.6, pp 7–8.

Status of payment by Mr Glenn to Mr Henry

The first question we considered was whether the payment by Mr Glenn to Mr Henry was of a type that should have been declared on the Register of Pecuniary Interests.

Requirements of the Standing Orders

Standing Order 164 and Appendix B of the Standing Orders set out the requirements relating to returns. Under these provisions a member is required to make an initial return of pecuniary interest as at the date that is 90 days after the date when the member takes the oath or makes the affirmation required by section 11(1) of the Constitution Act 1986. This return must be made within 30 days of the effective date of the return. Following an initial return, members are required to make annual returns of pecuniary interests. The effective date of an annual return is 31 January of that year, and the return must be made by 28 February.

The content of the annual return is determined by Appendix B. The Standing Orders do not contain a general definition of pecuniary interest or a statement of purpose to assist in determining whether in the first instance a pecuniary interest is involved. Instead, clauses 4 and 7 of Appendix B prescribe categories of information that must be included in the return. Clause 4 contains information about financial interests that must be included as at the effective date of the declaration. Clause 7 describes the kinds of transactions that must be declared for the 12-month period ending on the effective date of the declaration.

No previous consideration by this committee

As noted earlier, this is the first time that a matter of privilege has been considered by this committee in relation to the declaration of pecuniary interests. We have examined carefully the provisions in the Standing Orders. We believe that this report will serve to elucidate the aspects of the rules that are considered below.

Payment was not to discharge a debt

One matter referred to us was the question of whether Mr Peters failed to disclose a debt and its discharge. We considered carefully whether a debt existed in terms of clause 4(i). Stephen Kós QC advised us that a barrister may be instructed only by a solicitor, and that a barrister has no right to recover fees from a client. A barrister cannot sue the instructing solicitor for unpaid fees. The only person who can recover the barrister's fee from the client is the instructing solicitor. There is therefore no debtor-creditor relationship between a barrister and a client. A debtor-creditor relationship may exist between the solicitor and the client only if an invoice for services has been issued by the barrister.

We also received a submission in writing from Peter Williams QC on behalf of Mr Peters on this issue. The submission, which incorporated a letter from Gary Gottlieb, does not differ materially from the analysis provided by Mr Kós. The submission notes that there are circumstances where it is not inappropriate for a client to pay a barrister directly.

We received no evidence of an invoice having been issued by Mr Henry, although he told us he had created a "pro forma" invoice following his receipt of the payment from Mr Glenn. While we heard evidence of a moral obligation on the part of Mr Peters to pay for

Mr Henry's services, we do not find that there was any legal debt. Therefore, there was in this instance no debt that Mr Peters failed to disclose.

Payment was not a donation to cover an electoral expense

The Standing Orders provide that donations made to cover expenses in an electoral campaign do not need to be declared on the Register of Pecuniary Interests. The issue we had to consider was whether expenses incurred in presenting an election petition can be considered electoral campaign expenses.

We consider that the exemption in clause 7(1)(b) covers those election expenses that are disclosed by law. Expenses are incurred on an election petition after an election, and are therefore not caught by the disclosure regime regarding election expenses.

The exemption in clause 7(1)(b) does not apply to donations made in respect of an election petition.

Payment was a gift

Clause 7(1)(b) of Appendix B of the Standing Orders requires a member to return a description of each gift (including hospitality and donations in cash or kind) received by the member with a value of more than \$500, together with the name of the donor of the gift. In considering whether this payment was a gift, we looked at whether there was a benefit to Mr Peters from the payment, the intention of the donor, and the response of the recipient. As this part of the Standing Orders is concerned with the transparency of members' benefits, it should be construed in a way that would accord with the reasonable expectations of constituents generally.

We consider that the payment was of benefit to Mr Peters. Mr Henry's work on the election petition did not create a direct legal obligation for Mr Peters to pay Mr Henry's fees. However, Mr Henry told us that Mr Peters "knows that he owes me in the moral sense..."¹⁸ and most clients would acknowledge such a moral obligation to pay a barrister. A third-party payment to a member's barrister benefits the member by discharging the moral (and potential legal) obligation to make payment and also by enabling the barrister to provide more assistance to the member in the future. Further, in these particular circumstances the payment contributed to funding an election petition which, if it had been successful, would have been of political benefit to Mr Peters.

It is clear that the intent of the donor in this case was not to benefit the barrister. It was the member's legal expenses that were being contributed to, not the barrister's wellbeing. Mr Henry's actions on receipt of Mr Glenn's money were also unusual. Mr Henry wrote a "pro forma" invoice for GST and income tax purposes. We do not believe this is the normal response of the recipient of a gift. For a GST invoice to have been written, there must have been a taxable supply of services by Mr Henry. The relevant services were received by the member (or his solicitor, Mr Gates, on his behalf).

Together, these elements show clearly that the payment constituted a gift to Mr Peters.

¹⁸ See page 131 of this report.

Corrected return

We note that Mr Peters has now lodged, without prejudice, a correction to his return for the period to 31 January 2006 to cover Mr Glenn's donation. The corrected return has been published on the parliamentary website.

Knowledge of payment

Having established that the payment was a gift for the purposes of the requirement to make a return, we next considered whether Mr Peters had knowledge of the payment before the deadline for making a return for the 2005 year (that is, 28 February 2006).

In considering this question, we were faced with two differing narratives about the way the payment was solicited, the conversations between the various parties in 2005 and early 2006, and the point at which Mr Peters became aware of the specifics of the donation.

There are some points of agreement between the two narratives. Mr Peters and Mr Glenn agree that they met in Sydney on 13 August 2005. The parties all agree that on 14 December 2005 there was a telephone call from Mr Glenn to Mr Peters, which was followed immediately by a telephone call from Mr Peters to Mr Henry, after which Mr Henry emailed Mr Glenn. There is no dispute that Mr Henry received the payment from Mr Glenn on 22 December 2005. Mr Peters and Mr Glenn agree that they were both at the Karaka yearling sales on 31 January 2006. While these points of agreement are helpful, there remain significant conflicts between other points in the narratives.

Given these conflicts, it was important that we considered carefully the test we should apply to decide whether Mr Peters had knowledge of the payment, and therefore should have declared it. We were conscious throughout that we had been asked to consider whether Mr Peters had "as a member, knowingly provided false or misleading information in a return of pecuniary interests".¹⁹ The context in which the rules regarding returns were developed has assisted us with the development of this test.

Members must make honest attempt to return all pecuniary interests

It is appropriate to expect members to make an honest attempt to return all of the pecuniary interests that they hold. In order to make such an honest attempt, members are obliged to turn their minds to the interests that they have. The onus is on members to recognise and declare relevant interests.

Initially, the rules for the register were to be set out in statute, which would have left open the possibility of the courts ruling on their application. This proposal was not pursued, and the House instead established its own rules to deal with pecuniary interests, within the Standing Orders.

If legislation had been employed, a legalistic approach to registering interests would have been appropriate. However, the House chose to keep the matter within its own confines. This places a stronger moral imperative on members to comply with the requirements, and to do so in the spirit of the House's own rules.

¹⁹ Standing Order 400(h).

If a member genuinely missed something, having turned his or her mind to the interests they hold, that would not be a contempt. However, if a member knew of an interest and decided not to declare it, the member would have “knowingly” failed to declare an interest if it were subsequently established definitively to be a pecuniary interest.

Members should follow the approach used in relation to the Standing Orders relating to the declaration of financial interests under Standing Orders 165 to 176—if in doubt, declare it.

Application of test to payment by Mr Glenn

We consider that Mr Peters was bound by the Standing Orders to make an honest attempt to ascertain whether he had received any gifts that were declarable. We are aware, however, that the understanding of the need to make such an honest attempt has evolved over the period since these requirements were introduced.

Nevertheless, Mr Peters would have known that there were new requirements about disclosing pecuniary interests (this was the first return required), that historic practice regarding knowledge of donations would not necessarily still apply, and that arrangements regarding donations in cash or kind needed more careful consideration. The requirement to make a return is a matter for individual members, unlike party funding, which is governed by other rules. Arrangements that seek to distance a party leader from funding for the party may be appropriate, but donations to an individual member of Parliament are required to be declared under the Standing Orders. We understand that Mr Peters thought he was representing wider interests in a titular sense in the election petition, but that does not protect him when the money is being received in his name.

Mr Peters had a long-standing arrangement with Mr Henry whereby donations were periodically sought to cover the costs incurred by Mr Henry in representing Mr Peters. Mr Peters knew that this arrangement was covering the election petition and he knew the likely costs of this kind of action.²⁰ Furthermore, Mr Henry said he would have told Mr Peters that his costs had been met²¹ and that Mr Peters would have known there had been a donation or donations to cover these costs.²²

It is less clear when Mr Peters became aware that the costs had been covered. Mr Henry indicated this was probably early in 2006, but could not be sure.²³ Nevertheless, given Mr Peters’ knowledge of how his arrangement with Mr Henry worked, he should have made an honest attempt to ascertain whether any donations had been received before making his return in February 2006. We have received no evidence that he did so. Indeed, Mr Henry repeatedly told us that he and Mr Peters did not discuss such details.

It is more difficult to infer that Mr Peters had direct knowledge of Mr Glenn’s donation in December 2005. We find it particularly challenging to resolve the two very different explanations put forward for the sequence of events on 14 December 2005.

²⁰ See pages 199–200 of this report.

²¹ See page 123 of this report.

²² See page 124 of this report.

²³ See page 125 of this report.

The majority of us believe it is extremely unlikely that Mr Peters and Mr Glenn could have had a conversation on that date without the issue of a donation being raised, even if the original contact with Mr Glenn had been by Mr Henry, as claimed by Mr Peters and Mr Henry. The majority of us consider that the sequence of telephone calls followed immediately by an email containing bank account details indicates that the topic must have arisen during one or both of those conversations. It would have assisted our consideration if Mr Peters or Mr Henry had been able to recall more detail of their telephone conversation. Given the evidence before us, the majority of us concluded that Mr Peters had some knowledge of Mr Glenn's intention to make a donation.

A minority of us²⁴ cannot dismiss the argument put forward by Mr Peters, which was that the conversation covered a number of topics but that money was not mentioned. Mr Peters told us that Mr Glenn could have asked him to remind Mr Henry to send through his details without Mr Peters enquiring further about the reason for the request. The minority of us note that there are no telephone records of the earlier telephone call Mr Glenn claimed to have had with Mr Peters and no records provided to show who made the call and who received it. The minority of us therefore find it difficult to rule out that it was Mr Henry who spoke with Mr Glenn. The minority of us note that it is not uncommon for party leaders to distance themselves from any discussion about donations, and believe Mr Peters would not be likely to engage in a conversation with someone on that basis. Mr Peters does not recall having been asked to provide Mr Henry's details, and Mr Henry believes that his conversation with Mr Peters acted as a prompt for him to email Mr Glenn to follow up on an earlier conversation. The minority of us do not conclude on the evidence provided that Mr Peters had direct knowledge of the donation at the time, given the gaps and inconsistencies in the evidence. The minority of us note that it is not surprising that many participants could not recall details of telephone conversations held three years ago.

Unpaid legal services (donations in kind) provided by Mr Henry

In addition to considering the payment by Mr Glenn, we considered whether the provision of unpaid legal services by Mr Henry ought to have been declared by Mr Peters. We have discussed this matter in some detail above. We received evidence of this from Mr Henry and Mr Peters in the context of explaining the arrangement under which they operated.

Mr Henry argued that under his arrangement with Mr Peters his services were treated as a donation of time, where payments by Mr Peters did not adequately cover his expenses. Mr Henry emphasised there was at no time a legal obligation on Mr Peters to pay him. Mr Henry distinguished a donation of time from a gift. A comparison was made between his donation of time and the voluntary work of many others supporting the work of political parties, particularly over an election period.

We note that under the arrangement described by Mr Henry, payment was received from third parties in respect of those services, and GST was paid in respect of those payments. The services clearly have a market value. Given these factors, services provided under this

²⁴ In this report, the minority refers to Hon Dr Michael Cullen, Hon Lianne Dalziel, Russell Fairbrother, Dail Jones, and Hon Paul Swain.

type of arrangement are more akin to a donation in kind than voluntary work. Donations in kind are required to be returned under clause 7(1)(b).

The explanatory notes issued to members to assist in preparing their returns provide examples of what should be declared as a gift. The guidance states that gifts include “services provided at no charge, such as work on your home and complimentary membership of airport lounges if these are provided by airlines.”²⁵

We wish to place on record the importance of members registering donations in kind. Members must disclose all pecuniary interests. The fact that a member has made some kind of arrangement to cover those interests, or formed a trust, makes no difference to the member’s obligation to declare distinct pecuniary interests.

We suggest that all members should give careful thought to such donations in kind when preparing returns in future.

Payment of costs awarded in election petition

One outcome of the Tauranga election petition was that costs were awarded against Mr Peters, in the amount of \$40,000. We asked Mr Henry whether the \$100,000 payment from Mr Glenn had covered these costs, and were told it had not. At our first hearing of evidence, Mr Henry told us that he had paid the \$40,000 himself. At the same hearing, Mr Peters told us he believed he had paid the costs himself.²⁶

Following the hearing of evidence, Mr Henry provided written evidence to us, in which he stated “...I paid the costs on the 5th of April 2006 and I was shortly thereafter reimbursed in full by Mr Peters.”²⁷ Clause 4(1)(i) of Appendix B of the Standing Orders requires a return to note the name of any creditor to whom a member owes more than \$50,000 as at the effective date of the return. On the face of the evidence we had received from Mr Henry, we were satisfied that the payment by Mr Henry did not raise any requirement for Mr Peters to make a return as the amount did not exceed the \$50,000 threshold and the debt had been extinguished prior to the effective declaration date (31 January 2007).

We were surprised, therefore, when we were approached by the Director of the Serious Fraud Office, who informed us that he had information that would demonstrate the provenance of the money used to meet the order for costs. We considered carefully whether to receive this evidence, and determined that it was relevant to the matters before us. We received the evidence in private, to ensure that Mr Peters and Mr Henry had an opportunity to give their account of the matter to us before the information reached the public domain.

We sought responses from Mr Peters and Mr Henry, and Mr Peters appeared before us to speak to his response. As we determined the method of payment of these costs did not go directly to the core of the narrow matters referred to us, we do not wish to make any further comment regarding this specific issue.

²⁵ *Register of Pecuniary Interest of Members of Parliament: Explanatory notes – 2005–06*, p. 8.

²⁶ See page 144 of this report.

²⁷ See page 72 of this report.

Finding of contempt

We have been asked to consider whether Mr Peters knowingly provided false or misleading information in a return of pecuniary interests. To make such a finding, there are two matters to be established. The first is whether false or misleading information was provided in a return. If that is established, it must also be shown that the member provided the false or misleading information knowingly.

We found that the payment of \$100,000 by Owen Glenn to Brian Henry constituted a gift to Mr Peters. Mr Peters benefited from the payment, as it reduced the amount he was morally obliged to contribute to meeting Mr Henry's fees. We have also found no evidence that Mr Peters made an "honest attempt" to ascertain whether any donations had been received before making his return in February 2006, despite his knowledge of his arrangement with Mr Henry and the likelihood of donations being received towards his costs.

The majority of us find that Mr Peters had some knowledge of the \$100,000 donation. Further, we find that Mr Peters, having an understanding of the arrangement by which funds were raised by Mr Henry, needed to make an honest attempt to file a correct return. For both these reasons, the majority of us find that a contempt occurred.

The minority of us do not agree that the evidence is sufficient to conclude that Mr Peters had knowledge of the \$100,000 donation and are uncomfortable in applying the test of an "honest attempt" retrospectively, as this test has emerged as a result of this committee's deliberations. The minority of us note that, had Mr Peters asked the registrar for advice, it is likely that he would have been advised to seek his own legal advice. Mr Peters' lawyer, Mr Henry, submitted to the committee that, in his view, donations of this kind did not require a return under the pecuniary interests register, which would lead to the conclusion that this is the legal advice Mr Peters would have received in any case.

This inquiry has revealed a lack of clarity in the definition of a pecuniary interest. We believe all members must make an honest attempt to declare all matters that may amount to a pecuniary interest. It is regrettable that Mr Peters did not make a return covering the donations received in support of his legal costs but, in the face of this uncertainty, the minority of us do not believe it appropriate to find that his actions amount to a contempt.

Proposed penalty

Making a false or misleading return is a serious matter, akin to misleading the House. The majority of us therefore recommend that Mr Peters be censured for knowingly providing false or misleading information on a return of pecuniary interests, and ordered to file, within seven days of the House so ordering, amended returns for the years ended 31 January 2006, 2007, and 2008 covering any gifts, debts, or payments in kind that he has not previously registered. We request that the registrar ensure that the amended returns are published, recording that they are made subject to an order of the House.

Recommendations

1. We recommend by majority that the Rt Hon Winston Peters be censured by the House for knowingly providing false or misleading information on a return of pecuniary interests.
 2. We recommend by majority that the Rt Hon Winston Peters be ordered to file, within seven days of the House so ordering, amended returns for the years ended 31 January 2006, 2007, and 2008 covering any gifts, debts, or payments in kind that he has not previously registered.
-

Review of Standing Orders

In determining that a question of privilege arose in this case, the Speaker suggested that we consider whether the rules regarding pecuniary interests required revision or clarification. We have not had time to consider this issue in sufficient depth, but believe it would be of benefit if the Standing Orders Committee of the next Parliament were to review the rules for the declaration of pecuniary interests.

Method of defining pecuniary interests

Members must make an honest attempt to return all of the pecuniary interests they hold. They are obliged to turn their minds to the interests they have. The onus is on them to determine and declare relevant pecuniary interests.

The Standing Orders do not contain a general definition of pecuniary interests or a statement of purpose to help determine in the first instance whether a pecuniary interest is involved. Members must simply determine the appropriate category from Appendix B and make a return. This approach works well where interests fall readily into the categories of Appendix B, but where there is doubt we consider an in-principle approach may provide a better chance of ensuring that no real pecuniary interests can be overlooked.

Payments in kind

In the course of our inquiry we have had to consider carefully the appropriate way in which unpaid legal services should be returned. It would assist members if the Standing Orders Committee were to give consideration to clarifying the application of clause 7(1)(b) of Appendix B, and if further guidance were provided for members in the registrar's explanatory notes.

Arrangements with third parties or trusts

We have accepted advice that all distinct interests must be declared, regardless of whether they are channelled through a trust or third party. The fact that a third party is involved makes no difference to the member's obligation to declare pecuniary interests. The approach should be "If in doubt, declare it". Arrangements that allow members to avoid the knowledge of pecuniary interests are no longer sustainable. We consider the relevant Standing Orders and the explanatory material provided by the Registrar should be reviewed to ensure this is clear to members.

Recommendation

3. We recommend unanimously that the Standing Orders Committee review the Standing Orders relating to pecuniary interests.

Assistance to members from the Registrar of Pecuniary Interests

The position of Registrar of Pecuniary Interests is established by the Standing Orders. The registrar's functions include compiling and maintaining the Register of Pecuniary Interests and providing advice and guidance to members in connection with their obligations under the Standing Orders.

The registrar advised us that she applies a “commonsense” approach to giving advice to members and does not purport to give legal or specialised advice.

I generally remind members that it is for their own judgment as to what they disclose in their returns. My role does not extend to telling members what to do or giving them specific advice. Where issues raised are complex or unusual, I will suggest that the member seeks independent advice from an accountant or lawyer.²⁸

Similarly, the explanatory notes issued to assist members in making their returns state:

For specific advice on whether particular interests should be registered and in the case of complex financial arrangements, you may need to obtain advice from an accountant or lawyer before completing your return.²⁹

We consider members require unequivocal advice from a person in authority to assist them in making their returns. We believe the role of the Registrar of Pecuniary Interests should be so developed. The Registrar requires the support necessary to provide more authoritative advice for members. However, we recognise that the responsibility to fulfil the obligation to make returns imposed on members resides ultimately with the members themselves.

Recommendation

4. We recommend unanimously that the Clerk of the House of Representatives enhance the support available to the Registrar of Pecuniary Interests in order to provide an authoritative source of advice for members making returns of pecuniary interests.

²⁸ Advice provided to the Privileges Committee, dated 18 August 2008, p. 2.

²⁹ *Register of Pecuniary Interest of Members of Parliament: Explanatory notes – 2007-08*, p. 10.

Appendix A

Committee procedure

We met on a number of occasions during August and September 2008 to consider the question of privilege. We heard evidence from Rt Hon Winston Peters MP, Brian Henry, Owen Glenn, and Stephen Kós QC. Peter Williams QC was counsel for Mr Peters, and Dr Geoff Harley was counsel for Mr Glenn.

We received advice from Dame Margaret Bazley, Registrar of Pecuniary Interests; Stephen Kós QC; Mary Harris, Clerk of the House of Representatives; and David McGee QC, Ombudsman.

Committee members

Simon Power (Chairperson)
Hon Dr Michael Cullen (Deputy Chairperson)
Gerry Brownlee
Hon Lianne Dalziel
Hon Peter Dunne
Russell Fairbrother
Nathan Guy
Hone Harawira
Rodney Hide
Dr Wayne Mapp
Dr Russel Norman
Rt Hon Winston Peters
Hon Paul Swain

For this item of business, Hon Murray McCully replaced Nathan Guy, Te Ururoa Flavell replaced Hone Harawira, Heather Roy replaced Rodney Hide, and Dail Jones replaced Rt Hon Winston Peters.

Committee staff

Catherine Parkin, Clerk of the Committee
Tim Workman, Clerk-Assistant (Legal Services)

Appendix B

Speaker's ruling of 5 August 2008

I have received a letter from Gordon Copeland raising as a matter of privilege Rt Hon Winston Peters' failure to disclose a gift. I have also received a letter from Rodney Hide raising as a matter of privilege Rt Hon Winston Peters' failure to disclose a debt and the name of the person who discharged it.

These are the first matters of privilege raised with the Speaker relating to compliance with a member's obligations under Appendix B of the Standing Orders dealing with pecuniary interests. Standing Order 400(g) and (h) establishes that the House may treat as a contempt a member knowingly failing to make a return of pecuniary interests by the due date, or providing false or misleading information in a return.

In considering a matter of privilege the Speaker is required to determine whether the facts alleged could, if true, amount to a contempt of the House. The Speaker does not inquire into the validity of the evidence presented and does not hold a full inquiry to establish the facts. The Speaker examines the facts presented by the member raising the matter of privilege and must determine if the allegation, as explained by the member who is the subject of the complaint, might reasonably lead to the inference that a contempt has occurred.

The allegations are serious ones and the standard of proof required reflects this. Knowingly providing false or misleading information is a significant test. A member's return must be inaccurate in a material matter, which the member knew to be incorrect at the time, or at least ought to have known.

The Speaker in considering a matter of privilege is also required under Standing Order 394(2) to judge the degree of importance of the matter raised, whether it is technical or trivial, and whether it warrants the further attention of the House.

The facts presented in the two matters raised are similar, but two different allegations have been made.

It is not disputed that legal fees were incurred and defrayed. Firstly, what is in question is whether a debtor–creditor relationship actually existed. If it did, then it is not unreasonable to assume that the member knew or ought to have known and should have disclosed a debt and the name of any other person who may have discharged it. Secondly, if a debtor–creditor relationship did not exist, was a gift received and was the name of the donor known or reasonably discernible, or was a donation made that covered expenses in an election campaign?

These matters are technical, but of vital importance to a proper understanding of the rules for the disclosure of pecuniary interests. They require investigation. It is not the Speaker's role to investigate. That is the role of the Privileges Committee.

Accordingly, I have determined that a question of privilege is involved. Consequently, the question of privilege stands referred to the Privileges Committee.

In doing so I want to inform members that Mr Peters provided me with a very full and compelling explanation of his position. I was persuaded to determine that a question of privilege was involved because of the high public interest and the implications for the reputation of members and the institution of Parliament.

The issues raised are not peculiar to Mr Peters. They have the potential to affect members generally. The rules need to be clarified to assist members in making judgments about what is required to be disclosed as a pecuniary interest and what is not.

The House has exclusive right to control its own proceedings. The Standing Orders are a matter for the House alone to determine. Members themselves must take responsibility for the rules for the disclosure of pecuniary interests.

In determining this question of privilege, I trust that the Privileges Committee will examine the rules and make recommendations for the future that will ensure that the House is not brought into disrepute and thereby impeded in the performance of its functions.

Appendix C

Evidence of Rt Hon Winston Peters MP

We received the following written evidence from Mr Peters. This evidence is reproduced on the following pages.

Reference number	Date received
PR/PI/4	18 August 2008
PR/PI/5	18 August 2008
PR/PI/13	27 August 2008
PR/PI/18	4 September 2008
PR/PI/25	9 September 2008
PR/PI/27	10 September 2008
PR/PI/29	10 September 2008
PR/PI/31	15 September 2008
PR/PI/32	15 September 2008
PR/PI/33	16 September 2008
PR/PI/36	18 September 2008
Private evidence	18 September 2008



PR/PI/16

LEADER'S OFFICE

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BOWEN HOUSE
WELLINGTON

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Media Release

18 July 2008

STATEMENT BY RT HON WINSTON PETERS

My lawyer Brian Henry came to see me at 5 o'clock tonight which is the first time we have managed to meet since my trip to Fiji.

Beginning with the Wyatt Creech Electoral Petition he has been involved with fundraising to meet the cost of litigation involving politicians and has had a firm policy that the source of any donations towards legal fees are not disclosed to the client politician. The politician is only made aware of the short fall which the politicians have personally had to meet.

Since 1991 I have been involved in some 14 pieces of litigation which have been paid for in part by donations. About two hundred thousand dollars have been raised by donations for legal fees over this time. I have never been told the source of those donations but have personally met the short fall which has amounted to many hundred thousands of dollars.

Mr Henry decided due to the publicity over the past weekend in respect to Mr Owen Glenn that he should break this policy and inform me that Mr Owen Glenn had donated in 2006 a sum in the order of \$100,000 towards the legal costs of the Tauranga electoral petition.

He advised me that he had in 2006 personally spoken to Mr Glenn and arranged payments of any donation Mr Glenn decided to make to assist with those legal expenses.

Until today I have been unaware of the source of all donations for legal expenses and I have cause to be very grateful to Mr Glenn for his very generous contribution.

I told the Prime Minister what I then knew and today I have told her what I have learnt.

He did not make a donation to the NZ First Party but I am now aware he made a donation to a legal action he thought justified.

Mr Henry can be contacted on 021 888 224.

ENDS

PR19215

FILE COPY

30 JULY 2008

Hon Margaret Wilson MP
Speaker of the House of Representatives
Parliament Buildings
WELLINGTON

Dear Madam Speaker

I am writing to you regarding the "complaint of contempt of the House" by both Rodney Hide and Gordon Copeland.

While both of these members are clearly grandstanding in the vain attempt to revive flagging popularity and impending obscurity, this is a serious matter and should be treated as such.

As Standing Order 400 (h) states "contempt" in this instance requires a Member to "knowingly provide false or misleading information in a return of pecuniary interests".

From the outset let me be clear that I reject any claim of contempt. The facts simply do not support the claims which have been levelled.

Attached is a letter from my Barrister Brian Henry. In it he totally debunks the claims made by Mr Hide. Mr Henry requests that his letter to you be read into the record of the House.

In his letter Mr Henry clearly illustrates that no unpaid debt was ever generated (see the bottom of page 2). Mr Henry is clear that while he would fundraise to meet the cost of cases he worked on (on my behalf, any funds raised went to the fees due. We have always operated under an agreed system of Mr Henry not disclosing the source of fundraising and myself not asking.

While he explains the reasons for having broken this practice on 18 July, the assertion that I "knowingly" breached Standing Orders by not disclosing this situation does not make sense.

Further, as Mr Henry clearly states, I have no legal obligation to pay any fees (although I have personally paid hundreds of thousands of dollars worth over many years).

Mr Hide makes reference to Appendix B of the 2005 Standing Orders, but has failed to provide any substantive evidence of a breach of Standing Orders - in fact the situation is quite the reverse.

7 (b) addresses the issue of gifts above \$500. As Mr Glenn gave the money directly to Mr Henry, without my knowing, this could hardly constitute a gift to me.
That settles the matter, but you might also note that this section also explicitly notes that expenses incurred during an electoral campaign are excluded. As the particular case in question was in fact an electoral petition, this would fall within the ambit of an electoral cost.
7 (c) addresses the matter of debts above \$500 which have been paid or discharged by others. As Mr Henry clearly states - there is no debt to be paid or discharged.

On these grounds both Mr Hide's and Mr Copeland's complaints simply have no basis, either in law or fact.

I would suggest that there is no reason to send these complaints to the Privileges Committee. As Standing Order 400 (h) states, "contempt" in this instance requires a Member to "knowingly provide false or misleading information in a return of pecuniary interests". As this letter (accompanied by Mr Henry's) has clearly demonstrated, no case for contempt can be made.

As a matter of interest, my office has also made contact with Dame Margaret Barzeley to ensure that our understanding of the situation, as outlined by Nick Smith in relation to the pecuniary interests, is consistent with mine.

I look forward to your response.

Yours sincerely

RT Hon Winston Peters
Leader New Zealand First



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PR/PR/13

26 August 2008

Mr Simon Power MP
Chairperson
Privileges Committee
Parliament Buildings
Wellington

Dear Mr Power

I refer to Mr Owen Glenn's letter 19 August 2008.

I have not spoken to Mr Glenn since the New Zealand Herald article of 12 July earlier this year.

Addressing Mr Glenn's letter and in the less than 24 hours I and my staff have had to check the facts I can advise as follows:

Para's 1-3 require no response save the date 20 December 2005 in para 2 should, from Mr Henry's evidence, read 22 December.

Para 4, line 2 "at his request" is not factual and does not coincide with my recollections. I believe that I met Mr Glenn many years ago and on the weekend of 13 August, well before the 2005 election, in Sydney, Bledisloe Cup weekend which is the only time I met him in Australia. The "personal conversation" I believe relates to his conversation with Mr Henry, and the "Labour Party" in relationship with Mr Peters, seems odd now because months before December 2005 New Zealand First had entered a confidence and supply agreement with Labour on 17 October 2005.

Para 5, I have no knowledge of where and by whom any donation to New Zealand First was requested. I note Mr Glenn does not say I made it, or any donation was made, which is the substance of the New Zealand Herald 12 July allegation. Reported email in the New Zealand Herald, in fact contradicts his comment in his letter before you about donating to New Zealand First.

Para 6, for obvious reasons I cannot be of help here, not being part of the discussion or communication between Mr Henry or Mr Glenn.

Para 7 relating to the Karaka Sales 2006 appears to be a year out. I recall that in 2007 (and my diary confirms this) Mr Glenn and two others joined the table in which I and a friend shared a sit down lunch with about 8 leading names in the horse racing fraternity.

In my evidence to the committee and in my press statement of 18 July I did not thank him until my lawyer advised me on 18 July 2008.

My press statement of 18 July refers to my public appreciation of his help.

Yours sincerely

Rt Hon Winston Peters
Leader, New Zealand First



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FROM: HENRY PHILLIPS BRANTER

FRN NO.: 090701051

SEP. 03 2008 04:23PM P1

ADDRESS TO THE PRIVILEGES COMMITTEE

pp/pops

FROM: HENRY PHILLIPS BRANTER

FRN NO.: 090701051

SEP. 03 2008 04:23PM P2

- 1. Mr Chairman and members of the Privileges Committee, I have the honour of appearing before your distinguished Committee on behalf of the Right Honourable Winston Peters.
- 2. This enquiry has its origins in receipt of a sum of money paid by a wealthy expatriate and philanthropist, Mr Owen Glenn, to a highly respected Auckland barrister, Mr Brian Henry, in payment of professional services rendered.
- 3. The professional services related to a petition to the Court comprising that the result of the Tauanga elections should be annulled on the grounds of alleged misconduct by the successful candidate, namely Mr Clarkson.
- 4. The professional work carried out by Mr Henry had nothing to do with wooing or persuading voters but was based on alleged failure of Mr Clarkson to keep to the rules relating to election expenditure.
- 5. Although Mr Peters was the unilled petitioner in those proceedings, Mr Henry was in fact acting for a fairly large group of people who in a collective sense, considered that an injustice had occurred. Therefore, a number of people in the community committed to reversing the election result.
- 6. Mr Henry was no novice in these matters and in particular, in 1987, he had similarly acted for a National Party candidate, Mr Wyatt Creech. In Wyatt Creech's case, money for legal fees, had been subscribed by members of the public who believed an injustice had occurred, although finally, the National Party undertook the shortfall. Mr Peters, masterfully assisted Wyatt Creech in that successful case.

- 7. By the time of the Wyatt Creech case a convention had arisen from three recent election poll cases. In order to protect the petitioning candidate from allegations of political patronage, the identities of the donors was shielded from the petitioning politician.
- 8. It is noteworthy that it has never been previously suggested that the legal expenses of such a petitioning politician should be regarded as election spending. Election spending is money spent by a candidate to try and persuade voters to vote for him or her and includes such expenditure as election advertising, placards etc.
- 9. It is noteworthy that it has never been previously suggested that the legal expenses for an electoral petition are not spent to influence voters but to reverse an election result. As legal expenses related to a court case to reverse an election result are not money spent on electioneering, sound judgment would rule that it is not an item of expenditure that should be considered when totalling the money a candidate spends on his or her election campaign.
- 10. Neither should the money so subscribed be regarded as a donation to a political party. The money is neither paid nor received by a political party. The question remains whether the petitioning candidate should register such money as a donation.
- 11. Including the Wyatt Creech case there has been at least five of such petitions. With each petition there has also been a respondent who is an elected member of parliament. Ten politicians recently, have therefore previously been involved either as petitioners or respondents. None of these ten persons previously have been required to register a pecuniary interest in regard to legal expenses incurred for such a court case as there is no law covering this.
- 12. The Hon. Barry Brill was such a respondent in 1979 and Cabinet rules on disclosure applied to him.

13. The question must be asked why has the present allegation been levelled against Mr Winston Peters. The answer can only be that it is part of a political campaign to damage Winston Peters without any regard to the essential merits of merit contained in the allegation.

14. It is a firm principle of law that not only should the law be applied consistently but it should be applied equally to all. The present allegation is indeed a grave departure from that fundamental principle of law.

15. Mr Brian Henry has acted for Mr Peters for many years. Together they have fought many battles and have developed a close rapport. The money paid by Mr Glenn was deposited to Mr Henry's firm account for past legal services relating to a poll petition. Following the numerous precedents Mr Henry did not advise Mr Peters concerning this payment.

16. It is true to observe that Mr Peters could not (even if legally liable) register this payment if he was unaware of its existence. Mr Glenn has now stated in a letter that he spoke to Mr Peters about this payment. This allegation is contrary to the statements of Mr Peters and Mr Henry.

17. If Mr Glenn, an experienced business man with ample staff, had sent the money to Mr Henry at the request of Mr Peters, surely a note to that effect would have been sent to Mr Peters. Mr Glenn would have advised that the money had been so paid and Mr Peters would have sent a note of thanks.

18. The absence of such correspondence indicates that Mr Glenn's manner is faulty and the dealings were with Mr Henry to whom the dispatched the money.

3

19. Mr Henry filed with this Committee a further statement in regard to one of the two communications with Owen Glenn. In this further statement, Mr Henry recalls that during a conversation with Mr Glenn, Mr Glenn expressed concern about comments in the media by Mr Downer, Australian Foreign Minister.

20. Following this, Mr Glenn asked Mr Henry for an assurance that the coalition agreement between Winston Peters and Helen Clark would run the full term. Mr Henry pointed out to Mr Glenn that the previous coalition agreement that Mr Peters had with the National Party was breached after the National Party changed its leader to Jenny Shipley, who proceeded to breach this agreement.

21. Mr Henry said he assured Mr Glenn that Winston Peters' coalition agreement with Helen Clark would run the full term provided Helen Clark acted in accordance with the arrangement. Mr Henry said that it was after he gave this assurance to Mr Glenn that Mr Glenn agreed to pay the \$100,000 towards the cost of the Tauanga electoral petition.

22. The importance of this dialogue is that the timing of the events referred to in the conversation had to be after 20th November 2005, because of the contents of the conversation which correctly is consistent with the money arriving at Mr Henry's office on the 22nd of December 2005. This recollection by Mr Henry therefore is further proof that his version is correct. It should also be said that Mr Henry is a barrister of high repute and a person who can be relied upon.

23. In view of certain criticism that has been levelled against Brian Henry annexed hereto a letter by myself dated 27 August 2008 which confirms that Mr Brian Henry has acted impeccably and in accordance with the rules of the legal profession.

24. I referred this letter to Mr Andrew Burger, Ethics Director of the Auckland District Law Society and also Mr Gary Goddard Barrister who

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FROM: HERRINGHILLERS PARTNERS FRM. NO.: 052761051 SEP. 03 2008 04:24PM '05

FROM: HERRINGHILLERS PARTNERS FRM. NO.: 052761051 SEP. 03 2008 04:24PM '05

was for many years the convenor of the Auckland District Law Society Complaints Committee and President of the Auckland District Law Society for 2 terms. Both these gentlemen agreed with the contents of my letter. (A letter from Mr Gary Gollish dated 2 September 2008 is appended hereto).

26. Mr Peters does not deny meetings with Mr Glenn but each occasion was purely social as was the situation in Sydney before the 2006 election, the Karaka Sales (cancel), and the last tribunal meeting at the World Rugby Cup in Paris.

28. Since the last Select Committee hearing, Mr Peters has given further thought to the statement by Mr Glenn. Mr Peters now recalls reference to a Millennium Project during one of his conversations with Mr Glenn.

27. Mr Peters recollection however was that he brought this reference to the Millennium Project sponsored by the United Nations in 2000 where 189 countries including New Zealand had agreed to work together for 15 years to reduce extreme poverty. Mr Peters does recall Mr Glenn saying that he intended to contribute to the Millennium Project and he was very taken with that suggestion.

28. I understand Mr Glenn did in fact contribute \$100,000 to a Millennium Project, but it was the Millennium Project that raised money for a sports facility on the North Shore, Auckland, something that Mr Peters denied any knowledge of when the media put the \$100,000 to the Millennium Project North Shore to him.

28. Again, this illustrates how without notes or diaries, entries, people of integrity can make honest mistakes in regard to recollections of conversations some years ago.

30. In regard to Mr Glenn's credibility I quote from an article in the Herald on Sunday dated 31st August 2008 entitled "Suits Lock Horns and the

Outcome is Bloody" written by Deborah Coddington which alleges that Mr Glenn said that he gave \$900,000 to the Labour Party:

"... to even the score over the Exclusive Brethren, but that didn't check out because his donation was made long before the 2005 election."

31. See article attached giving further examples of bizarre statements attributed to Mr Glenn.

32. I have perused the transcript of the proceedings of the Honourable Committee in respect of this matter on the 18th of August 2008. It appears from that transcript that the National Party members of this Committee have taken a hostile attitude towards Mr Peters, with the Right Honourable Mr Brownlee, a prominent member of that party, acting like a Crown prosecutor.

33. It would be a sad day for democracy in New Zealand if such issues as this were decided upon party lines with an implicit inference that the leader of a party (who has prejudged these issues) had so influenced his members.

34. The Privileges Committee is a Court from which there is no appeal. The Committee has power to rule on matters essential to the rule of law and affecting the reputation of men and women who have spent many years of their lives fighting injustice.

35. In the Winobax affair, Winston Peters used his slender resources to reveal corruption and greed on a huge scale by wealthy individuals and corporations. Some might say that those same people are the shadowy figures behind the politicians now striving to destroy Winston Peters.

FROM: HEENHILLIPS BARRISTERS FAX NO.: 093761083 SEP. 03 2003 04:25PM P7

FROM: HEENHILLIPS BARRISTERS FAX NO.: 093761083 SEP. 03 2003 04:25PM P8

36. One of the most essential qualities of adjudication and making judgement upon other people is one of fairness.

37. In this regard, I quote from Lord Bingham of Cornhill, the most senior Law Lord in Britain regarding fairness:

"First and foremost, I suggest, that decisions are made by adjudicators who, however described, are:

- *independent and impartial; independent in the sense that they are free to decide on the legal and factual merits of a case as they see fit;*
- *free of any extraneous influence or pressure; and*
- *impartial in the sense that they are, so far as humanly possible, open-minded;*
- *unbiased by any personal interest or partisan allegiance of any kind."*

38. In summary there is likelihood that Mr. Peters had no liability to register this money but further on the preponderance of evidence it is established he was unaware of the Glenn payment and obviously could not register what he did not know.

39. But lest prejudice may exist for reason, I quote the immortal words of the great bard John Donne, who wrote a few centuries ago:

*And therefore never send to know for whom the bell tolls;
It tolls for thee.*

P. A. Williams QC CM

(Legal Counsel for the Right Honourable Winston Peters)
4th Seat 2006

- List of documents referred to:
1. Deborah Coddington's Article.
 2. Letter by Peter Williams QC.
 3. Letter by Gary Gattieb.

FROM : HEBURN PHILLIPS BARRISTERS FAX NO. : 093761064 Sep. 03 2009 04:32PM P2

FROM : HEBURN PHILLIPS BARRISTERS FAX NO. : 093761064 Sep. 03 2009 04:32PM P3

Peter Williams QC CM

PO Box 26123 Grey Lynn, Auckland, New Zealand
Tel/Fax: 64 9 3761061 Mobile: 64 27 331111 Email: peterwilliams@hepbarr.co.nz

Hon. Winston Peters
Minister of Foreign Affairs
Parliament Buildings
WELLINGTON

27 August 2008

Dear Winston

Mrs Farmer QC has publicly criticised Lawyer Brian Henry in a column written by Friday Masoodi that appeared recently in the Sunday Star Times.

It is neither appropriate nor proper for a legal practitioner to publicly castigate another with a punitive law society disciplinary action.

The rules require a confidential report to the society not a blatant public outburst.

Many barristers receive remuneration direct from the client via the consent of a briefing solicitor. This practice reduces the overall expense of the client.

The late David Lange former Prime Minister kept his investments in a blind trust so he would not be accused of politically favouring companies that he had invested in.

Similarly a politician such as your good self can quite legally insist that the identity of people assisting with your legal fees not be discovered to you. There is nothing in the rules to prohibit such a sensible practice.

In numerous cases throughout this country client's fees are not paid by the client but by friends, relatives and others. Again provided the payment is not made to direct the lawyer from his duty in his client such payments are legal and proper.

Brian Henry has become the Chinese Throwing of New Zealand lawyers and should reflect upon the words of Hamlet:

"Whether 'tis nobler in the mind to suffer / the slings and arrows of outrageous fortune / Or to take arms against a sea of troubles"

Kind regards

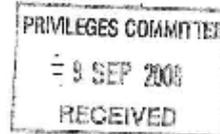
Peter Williams QC



PR/PI/25

9 September 2008

Mr Simon Power MP
Chairperson
Privileges Committee
Parliament Buildings
Wellington



Dear Mr Power

In my earlier evidence to the Committee I said I thought Mr Glenn was a year out on the Karaka meeting date. I asked my staff in the few hours I had available to check information which said that I had an operation in 2006. They overlooked that there was a hospital strike and the operation was postponed until 2007. I am not certain that the Karaka date was 2006 or 2008 and I will try and help you further.

Yours sincerely

Rt Hon Winston Peters
Leader New Zealand First



THE RT HON WINSTON PETERS MP
NEW ZEALAND FIRST LEADER
Parliament Buildings, Wellington
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Notes dictated by Rt Hon Winston Peters
Privileges Select Committee Meeting – Wednesday 10th September

PR/P1/27

First of all on the question of debt and gift, Mr Peter Williams, QC, in his evidence before the committee, and in his September 8th letter to you has made it clear that (a) no debt existed; (b) no gift existed; (c) that I as the titular Head of a cause, had no pecuniary interest, and (d) Mr Henry was paid for his services. Mr Gary Gottlieb formerly the President of the Auckland District Law Society and the Criminal Bar Association supports in his letter Mr Williams view on how he handed the account was totally proper. I said in my letter to the committee of the 26th August 2008 that Mr Glenn's evidence "is not factual and does not coincide with my recollections". I have never spoken to Mr Glenn since this controversy broke in February, I did not want any allegations of collusion with him.

Mr Henry gave evidence on the 18th August before the committee that it was he who spoke by phone to Mr Glenn. In Mr Henry's later letter of 2nd September and before Mr Glenn's testimony yesterday Mr Henry recalled the substance of his conversation with Mr Glenn, the Dowler controversy of Apac of 18th 19th 20th November 2005. This means Mr Henry had a conversation with Mr Glenn sometime after that date. In Mr Henry's letter to the committee of 7th September for this committee's perusal and before Mr Glenn's new evidence again makes it clear that the reference to a "client" in the sense that this person was behind the reference to Mr Glenn by Brian Henry is not Winston Peters. This issue broke out in February this year with claims in the media about a Glenn donation to New Zealand First.

My staff drew it to my attention when I was in Africa. They said they had already checked the New Zealand First records and advised me that it was not true. I then advised the Prime Minister of that

But, when I returned to New Zealand, that donation to New Zealand First claim had become a donation to Winston Peters.

1

I have had one bank account since 18 years of age. I get regular bank statements. I knew that it was not correct. So it was no to both allegations then, was on a further series of claims that was made in and on the 12th July, also no and is still no to both allegations.

The PM checked with me after the Glenn Business School opening and I told her that the newspaper claims were not true. She did not mention any conversation with Mr Glenn as I recall but the answer was no either to the donation to New Zealand First in February claim, and later to a donation to New Zealand First or Winston Peters in the July claim.

At no time was I in a position to answer any other way.

Remember, it was Mr Glenn in the PR firm February 21 email that was claiming to have given money "to New Zealand First". I found the claim bewildering and challenged its authenticity and offered the Herald a complete examination of the party's accounts in July.

The Herald refused that offer, suffice to say.

The claim is proven now by Mr Glenn's changed statements to have always been untrue.

On 19th August, Mr Glenn wrote to this committee claiming the money was to assist with the legal costs incurred personally by Rt Hon Winston Peters MP concerning his electoral petition dispute" and further, "that Mr Peters sought help from me in a personal conversation sometime after I first met him in Sydney".

Those claims cannot be correct. My only conversation on my records and my memory and Mr Glenn's records after Sydney in August was 14 December and Owen Glenn spoke to me at that time about the following matters.

The following is my recollection of events on the 14th of December 2005.

2

1. Mr Glenn obviously called me on that date. We would have discussed a number of matters but I do not recall talking to him about money during that conversation. This is why I have always denied knowing of Mr Glenn's contribution towards my legal costs for the Tauranga electoral petition until 18th July 2008.

2. I believe now that Mr Henry had called him on 5th of December to solicit the funds and I believe Mr Glenn is aware of this which is why no evidence has been produced. My office and cell phone records confirm I made no such call on 5th December.

3. During the phone call on the 14th I believe he mentioned being interested in a roving ambassadorship with focus on trade. Mr Glenn mentioned he wanted to be in a similar position to Mike Moore.

4. To the best of my knowledge Mr Glenn also wanted a diplomatic passport to help get quickly through airports and facilitate his travel

5. Mr Glenn did mention, I recall, that he was interested in a consular role in Monaco and I remember told him we had no such office in Monaco.

6. Another point I recall was that he had a horse in the Melbourne Cup that year so we would have talked about horse racing and the performance of his horse in the big race.

7. It is quite possible that he asked for Brian Henry's details and the sequence of events tends to suggest this occurred.

Mr Glenn's claim on 19th August not to recall "that either I or my assistants had any discussion or communication with Mr Henry other than to receive remittance details," given Mr Henry's evidence before this committee, and Mr Henry's statement to the committee of the 2nd September, quite extraordinary.

3

In a further letter to the committee on the 27th August Mr Glenn wrote "my recollection is that I was called by Mr Peters to seek financial assistance for his electoral petition challenge." That, by Mr Glenn's oral and written evidence has to be incorrect: he now claims that conversation happened on the 14th December when he made the call to me not the other way around.

Mr Glenn's evidence yesterday makes it clear to me that he has been seriously coached by Mr Harley whose record as a partner for Russell McVeagh acting for Fay Richwhite during the Winebox came into extreme criticism, the nature of which I am making today.

Apparently he is acting pro bono, and the irony in that contrast to Mr Henry seems to have escaped everyone.

Mr Glenn confirms he never discussed party funding with me in Sydney.

On his letters to the Committee on 19th and 27th August Mr Glenn confirms "that the contents of both of them are true and correct in all respects." From the facts you have heard yesterday that cannot be true.

He refers to Mr Peters or "someone representing New Zealand First" first contacted my office in late November. His records on this are not helpful.

But why would I be reminding him of my biographical details in November? Further "Mr Peters left a message on my telephone answering service on 5 December." My phone records show no such call.

Mr Glenn says he will have responded over the next few days. He would have the records, not me. He does not, and I have no such memory.

But most telling is his claim that I raised with him "his need for financial assistance."

He has no records nor have I.

4

Page 5 para 2
Prove that Mr Glenn knew about the legal costs at that brunch, and it did not come from me.

Para 3
Glenn made the phone call 14 December not me. Why I would state a cost less than half of my own case 27 years ago in Hinua is beyond me. It's a credibility issue. On 12 August 2008 I received information that Mr Glenn had advised his lawyer 1) that it was \$70,000 and 2) Brian Henry had called him. This is coached evidence. Why would I, if Mr Glenn's 14 December memory is correct, wait a further 7 weeks to thank him at Karaka. But Mr Glenn was caught by his 19 August Karaka sales comment. 2008 Karaka is the date but I dispute the setting, know that about 14 people were present, that I sat across a wide long table from him, and never mentioned money. Mr Glenn doesn't even remember the 2 hosts' names.

Page 6, para 2
He raised Monago on 14 December 2005.

Para 9
There is no record of me speaking with him between 5 and 14 December. Moreover, what would the 14 December call be about?

Page 8
I never answer the phone. Hello Owen, its Winston. His secretary had already established that before giving the phone to Mr Glenn. Remember he was calling me.

Page 9
Why the claim to tell the PM the donations was for legal costs. That's rebutted by his 21 February email that it was for "NZ First".

Page 10

5

Mr Glenn's answers to Mr Jones are totally confusing and nowhere in the evidence did Mr Henry say he was acting on his own initiative.

Page 12
Mr Glenn's "Well, that doesn't mean he contacted me personally" means just that, from Mr Henry's evidence.

Page 17
Mr Glenn on Peters "He has some unique ways of fundraising" refer to a meeting on 22 December 2007 evidence from which I will place before the committee (read out). Owen was wearing a beige sweater.
3rd to last para
14 December I was in my Wellington office

Page 18
Reference to Brian suggested Glenn knew him.

To Michael Cullen "I wasn't differentiating between Peters as a politician and his party". Surely in light of the February controversy that is not credible.

Last para Glenn "Mr Peters is very skilled at asking for donations". No, I'm not. That is why others do it.

Page 20, para 14
I was asked to call Glenn. He referred to a sunny day with Howard Morrison in Raglan sharing time wine. That surprised me for I thought Sir Howard was not well.

Page 21
Somebody else, from the evidence, had already told Owen Glenn about the petition.

Page 22
The Prime Minister was never told that money had gone to legal costs.

6

Page 23

"To him personally" begs the obvious answer, but not a cent went to Peters.

Page 24

To Mr Dunn Mr Glenn now changes his evidence to something else.

Page 27

"Did the money arrive OK?" begs the answer a) surely the bank statements prove that to Mr Glenn. b) I have never seen Mr Henry's bank statements, was not told, so again why would I know that?

This is not the first time my memory has been challenged by a businessman. For over a month Sir Bob Jones gave the media more than 7 versions of an event. Professor Malcolm Wright proved every version was wrong. 1) I wasn't in the room when the subject was raised 2) became very angry when back in the room I learnt that 3) was not there the next day when the cheque was made out. Nor was Sir Robert.

Mr Glenn says Mr Williams came to Monaco uninvited - on this evening's news Mr Williams has an email inviting him.

Mr Chairman, fair minded New Zealanders know that I have never enriched myself on any battle fought on their behalf.

A former implicated Russell McVeigh lawyer for Fay Richwhite prepared Mr Glenn's evidence. All the same faces with whom over 2 decades I have had so many battles.

I have spent my whole political life to preserve New Zealand for New Zealanders. This is an attempt to undo the people's will, bring down a government, then govern alone. My enemies and an elite media have surely proven that.

7

My character is being impugned here and I will not stand by and let that happen. My record over many years speaks for itself. I have made more sacrifices than most.

Mr Chairman, you promised natural justice here. Do you really think that promise has been kept?

I wish to be judged by decent New Zealanders who understand justice and the essence of democracy, not bias, prejudice and pre-judgment before any of the facts are even known.

With committee members and party leaders making telephone books of comments during this hearing, that is the only enduring issue before my fellow New Zealanders tonight.

END

34	23 Dec	07:46:36	TXT Message		TXT	FR	0.00	\$0.17
35	23 Dec	07:46:34	TXT Message	61417086184	TXT	FR	0.00	\$0.17
36	23 Dec	07:46:38	TXT Message	61417086184	TXT	FR	0.00	\$0.17
37	23 Dec	07:48:48	TXT Message	61417086184	TXT	FR	0.00	\$0.17
38	23 Dec	07:55:37	TXT Message		TXT	FR	0.00	\$0.17

RS/02/27208 Bd 3: 035230131

CREDIT/DEBIT

PAGE 34/35

Marcio Matinkovich

From: Hoare, Marcio, VF-NZ [mailto:hoare@vodafone.com]
Sent: Tuesday, December 02, 2008 2:34 PM
To: marcio@creditkemp.com
Attachments: Invoice02100800_Mar-Matinkovich_Account02081735_APS; Vodafone_Invoice02100800_Mar-Matinkovich_APS

Hi Marcio
 As requested screen shot and pdf of invoice attached. Shows 2 text messages sent to 61417086184 from
 phone number 027599880 (Masao Matinkovich)
 Please let me know if you need anything else.

Regards, DOI 0830 828 708
 Fax 0900 777 778

Matt Hoare Customer Services 0900 800 021



Useful Contacts:-

Mobile Customer Services = 777 or 0900 800 021

Land Line & Internal Customer Services = 0800 436 436

BlackBerry & Mobile Broadband Solutions Support = 0800 821 821

Apple iPhone Support = 0800 780 787

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15 September 2008

To the Clerk of the Privileges Committee

Re: Privileges Committee Enquiry

I am submitting to the Committee, as promised, three further statements that relate to the Karaka sales in 2006 from Donald McIlraith, Peter Vela, and Philip Vela.

Mr. Moroney's evidence, submitted by Mr. Glenn, was as follows:

Paragraph 3 "From diary records that are available to me" – Mr. Moroney produced no diary records nor did he claim that those diary records were his. Further in that paragraph he claims to have attended that lunch with Mr. Glenn and Laura Ede and Winston Peters who sat next to Mr. Glenn.

In paragraph 4 the claims to have overheard a conversation between Mr. Glenn and me, and that before the lunch Mr. Glenn had told him that he was meeting me "over the lunch", because he had made a donation to help Mr. Peters fund his legal expenses ... and further "I recall Mr. Glenn telling me that Mr. Peters had contacted him to ask for his help with this".

I am submitting, an article from the *Weekend Herald* page 6, 13 Sept. Mr. Moroney is reported having been challenged by Mr. Glenn's host, Mr. McIlraith, and that "his statement never said they actually ate lunch together, and that they had obviously met earlier on in the tent, recalling Mr. Peter's coming in then enjoying a glass of wine as they sat together" and further "Mr. Peters, Mr. Glenn and the Vela brothers all in the same place together" and further "Mr. Glenn mingled with the Vela brothers too".

I am also submitting an article, *Waikato Times* page A4 of 13 Sept where Mr. Moroney is quoted as saying "Other people did join us later at the lunch, around a seating of about 10. One of the questions that was first asked when we first sat down, Mr. Glenn asked Mr. Peters 'Did you get the money?' Mr. Peters replied to the affirmative and thanked him for it."



PR/PL/31



THE RT HON WINSTON PETERS MP
NEW ZEALAND FIRST LEADER
Parliament Buildings, Wellington
Telephone: (04) 772 2200
Fax: (04) 772 2042
Email: winston.peters@parliament.govt.nz

In Mr. McIlraith's statement paragraph 6 he says that at no time did Mr. Peters sit at Mr. Glenn's table, hosted by Mr. McIlraith, and that any later stand up conversation between Mr. Peters and Mr. Glenn was not witnessed by Mr. Moroney because "by this time I think he had left". Moreover Mr. Moroney claimed the conversation happened over lunch – see his affidavit B-9-2008. In the statement of Peter James Vela, paragraph 2, he says that Mr. Glenn's comments are "inaccurate and misleading". In paragraph 3 Mr. Peter Vela says that he was not in the hospitality area until late that afternoon and paragraph 4 that he did not have lunch with Mr. Glenn, Mr. Peters, Mr. Moroney or Laura Ede on any day.

In Mr. Philip Vela's statement he says paragraph 2 that Mr. Glenn's comments are "not accurate". In paragraph 3, that Mr. McIlraith was Mr. Glenn and associational host, paragraph 4 that Mr. Peter Vela was not present in the hospitality area, and paragraph 5 that Mr. Peters was not seated at the table Mr. Glenn was at "at any time".

And paragraph 6 that Mr. Peters lunch host was Mr. D. Ellis, with a group of his friends and clients, in other words at a different table as I described to the Committee last Wednesday night.

The three statements I am submitting with this letter dispose of Mr. Moroney and Mr. Glenn's evidence and in particular paragraph 3 of the Moroney statement.

Mr. Moroney's statement "I had his legal expenses" cannot be true because Mr. Glenn in the 21 February email, which the Committee has, said the money was "for New Zealand First".

As for Mr. Glenn telling Mr. Moroney that Peters had contacted Mr. Glenn, last sentence paragraph 4 of Moroney's statement, it is clear that this statement is also contrived as is any suggestion that Mr. Glenn knew he was going to have lunch with me. That cannot be true on three counts. First, Mr. Glenn didn't get an invite to lunch until 30 January, the day before the 31st January, second, he did not sit at the Ellis table, and third, in my evidence to the Committee I pointed out how far away Mr. Glenn actually was from where I was sitting.

In conclusion, Mr. Moroney's attempt to back up Mr. Glenn is manifestly incorrect and inaccurate. Having heard my evidence from Wednesday night they then later changed the number of people at the table to about 10, *Waikato Times* 13 September, and further from the Vela and McIlraith evidence it is clear that Mr. Peter Vela was never in the hospitality tent at the time in question, *Weekend Herald* 13 September. Moreover, Mr. Moroney later claims that the newer said they actually ate lunch together, and that they had obviously met earlier on in the tent". It follows then from all the evidence, including the McIlraith and Vela statements, and Mr. Moroney's later press



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statements that Moroney's claims that Glenn and Peters met earlier in the tent, and lunched together, cannot be true.

Should the Committee want the evidence of others I am happy to supply it but they all will refute Mr Glenn's statement to the Committee and Mr Moroney's affidavit accompanying it.

Rt Hon Winston Peters
Leader
New Zealand First

Statements attached:

1. McInraith
2. Peter Vela
3. Philip Vela
4. NZ Herald Sep 13
5. Waikato Times Sep 13



THE ELECTION COMMISSION
140 RANGIOTEAPUA AVENUE
PARNELL, AUCKLAND
Telephone: (06) 474 3400 Facsimile: (06) 474 3442
Email: comfion@ec.govt.nz

In the Matter of an inquiry concerning statements made by the Right Honourable Winston Peters

Statement of Donald Hamish McInraith

1. My name is Donald Hamish McInraith. I live in Hamilton. I am a Director of companies comprising the Vela Group.
2. I have read the statement of Paul Moroney, annexed, which is placed on the witness file case. The statement is not accurate.
3. In 2008 I was Chairman of New Zealand Bloodstock Ltd. I remain a Director as well as being a director of Penarrow Stud Ltd. On Tuesday the 31st January 2008 I hosted Owen Glenn, his assistant Lorna Ede and Paul Moroney for lunch in the Penarrow Stud hospitality area at the Rarua Teaching Stable, Premier session, which commenced the previous day for 3 days.
4. I invited Mr. Glenn to lunch after being introduced to him by Mr. Moroney in the driveway a few days prior to the sales auction, which earlier in the day occurred the previous day. On the point of which I extended the invitation I am not quite sure, but Mr. Glenn did mention that he wanted to catch up with "Winston". I did not know when Mr. Peters would be at the sales, but he was expected.
5. During the lunch, Peter Vela was not present in the area. I introduced Mr. Philip Vela to Mr. Glenn and they exchanged pleasantries when Mr. Glenn departed.
6. Mr. Peters also had lunch that day in the Penarrow Hospitality area starting a little later than Mr. Glenn. He did not sit at the same table as Mr. Glenn.
7. Mr. Peters had lunch with another group hosted by Mr. David Ellis. After lunch I saw Mr. Peters speaking with Mr. Glenn. At the time both men were on their feet and I did not see Mr. Moroney with them, by which time I think he had left.
8. On the last day of the Premier session, upon our invitation, I hosted Dr. Don Brasch, Mr. John Key, Mr. David Burnard, Dr. Richardson and I drank tea, Lindsay Tisk, all for lunch in the Penarrow Hospitality area.
9. The Penarrow Hospitality area can cater for about 130 people for lunch over 2 to 3 hours. It is mainly patronized by horse trainers and prospective buyers.

Signed by Donald Hamish McInraith
This 1st day of September 2008

Witness:

Witness: Helen Lynde

1 Sep 08 14:16

P. J. Vela

+351269391376

P.1

In the Matter of an Inquiry concerning the Right Honourable
Winston Peters

Statement of Peter James Vela

1. My name is Peter James Vela. I am part owner of Pencarrow Stud with Philip Vela.
2. I have read the comments in the New Zealand Herald attributed to Mr Owen Glenn, under the heading "Dinner at the Same Table". The statement is inaccurate and misleading.
3. I was not present in the hospitality area of Pencarrow Stud until late in the afternoon of 31st January 2008.
4. I did not have lunch with Mr Glenn, Mr Peters, Mr McCreaney or Laura Ede on that day or any other day or any other combination of those people.

Signed by Peter James Vela
This 12th day of September 2008.

Witness

1 Sep 08 22:47

P. J. Vela

+351269391376

P.1

In the Matter of an Inquiry concerning the Right Honourable
Winston Peters

Statement of Philip Malcolm Vela

1. My name is Philip Malcolm Vela. I am part owner of Pencarrow Stud with Peter Vela.
2. I have read the comments in the New Zealand Herald attributed to Mr Owen Glenn, under the heading "Dinner at the Same Table". The statement is not accurate.
3. Mr Glenn, Mr McCreaney and Laura Ede had lunch in the Pencarrow Hospitality area on 31st January 2008, invited by Mr D.H. McIlwraith.
4. Mr Peter Vela was not present in the hospitality area.
5. I did not join Mr Glenn for lunch and Mr Peters was not present on any other day or any other combination of those people.
6. Mr Peters had lunch in the hospitality area with a larger group, hosted by Mr D.C. Ellis, with a group of the firm's and clients.
7. Mr Glenn thanked me for lunch so he left and invited me to his house (I was ever in Monaco. Mr McCreaney had left earlier.

Signed by Philip Malcolm Vela
This 12th day of September 2008

Witness ROBERTO COVAREZ

Print this article in PDF format

Page 2 of 2

Mr McInerney said this meant Mr Motrony's version was "not accurate".

But Mr Motrony said his statement never said they actually ate lunch together, and that they had obviously met earlier on in the week, recalling Mr Peters coming in then enjoying a glass of wine as they sat together.

Mr Motrony said Mr McInerney had actually backed him up, putting Mr Peters, Mr Cleary and the Vela brothers all in the same place together. "Interesting," he said, given that Mr Peters had initially claimed he was not even at the sales that year.

Mr Cleary mingled with the Vela brothers too.

While Mr Cleary and Mr Peters no longer get along, he still has some connection to the Vela brothers, who are believed to have given \$80,000 that went via the Spencer Trust to New Zealand First last year.

The two countering versions of the lunch essentially pit Mr Cleary's side against the Vela side.

Not that this worried Mr Motrony, who did not fear a backlash from the Vela brothers or industry insiders upset that he had poked their populist minister.

As he told the *Weekend Herald*: "This is about the truth."

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1



"Gaye Trickett" <gaye.trickett@parliament.govt.nz>
12/09/2008 08:35 am

To: "James Funnell" <james.funnell@parliament.govt.nz>
cc: kcc
Subject: Hon Winston Peters call reports

PR 102/52

Hello James

I can confirm that after filtering the billing report (cost centre 6604) and the Tassera report for the Ministers' home and office numbers, there appears to have been 10 calls made on their phone on 14th December 2008, and no calls from the other phone on the 5th December 2008.

Regards

Gaye Trickett
ICT Telecommunications Advisor
Parliamentary Services
WELLINGTON

DOI: 04 8179857
Fax: 04 4735035
Email: gaye.trickett@parliament.govt.nz

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PARLIAMENTS COMMITTEE
15 SEP 2008
RECEIVED

Branch Date	Call Type	Charged To	EXTN	Time	Mins:secs:Rate or UNITS	Rate	Chals	Number Called	CallTrack Number	Place Called	Amount (excl. GST)
Usage Detail Charges for December 2008 36701 Page: 1											
Charged to:											
5.12.05	4-472 0937	Direct Dial	4-472 0937	7:57pm	9:00	Off Peak	7-576 0577			Tauranga	1.52
5.12.05	4-472 0937	Direct Dial	4-472 0937	5:20pm	8:00	Peak	7-576 1721			Tauranga	3.2
5.12.05	4-472 0937	Direct Dial	4-472 0937	6:57pm	2:00	Off Peak	7-576 1721			Tauranga	0.34



PR/PT/33

Catherine Parkin
 Privileges Committee Clerk
 Select Committee Office
 Parliament Buildings
 Wellington

16 September 2008

Dear Ms Parkin

At last Wednesday's hearing you asked me to supply phone records for the 5th of December 2005 which my staff advised they supplied yesterday and the phone record for 14th December 2005 which is attached hereto.

There are other phone records which we are checking relating to Mr Henry's evidence by videoconference and in his letter of 2nd September.

There are a number of phone record possibilities which we cannot complete in the time available to us and relating to para 2. However, we will press on with those enquiries.

You asked also for Dame Margaret Bazley's letter to me of 9th September relating to Hon Dr Nick Smith. This letter is enclosed, as is my prior correspondence to her of 5th August and 4th September as well as a letter written to Debra Angus, Deputy Clerk of the House of Representatives, dated 13th August.

Yours sincerely

Rt Hon Winston Peters
 Leader New Zealand First



THE RT HON WINSTON PETERS MP
 NEW ZEALAND FIRST LEADER
 Telephone: (06) 477-6600 Fax: (06) 477-2042
 Email: winston.peters@parliament.govt.nz

to	date	time	phone	mobile	number	area	rate	minutes	charge
136	18 Dec	10:00	021 222 222	021 222 222	021 222 222	021	0.00	0	\$0.00
137	18 Dec	10:00	021 222 222	021 222 222	021 222 222	021	0.00	0	\$0.00
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Registrar of Pecuniary Interests of Members of Parliament
Office of the Clerk of the House of Representatives
Te Tari o te Maharahi o te Whare Maniri

9 September 2008

Ri'itan Winsom Peters MP
Level 16
Bowker House



Dear Mr Peters

I acknowledge receipt of your letter dated 4 September 2008, enclosing a new form 11 for your return for the Register of Pecuniary Interests for the year ended 31 January 2006.

Where members supply additional information for their returns, I arrange for a summary of that information to be published on Parliament's website. You can find these summaries under the heading MP's and Parties' MP's Financial Interests. I will ensure that a summary of your new information is published to the website in accordance with my usual practice, as soon as possible. The wording that I intend to publish on the website is as follows:

Ri'itan Winsom PETERS (New Zealand First, List

11
Gifts

Cash donation towards Tauranga District prison costs (new brown). (Overn Glass

The summary of returns includes a description of gifts, with a value of more than \$500, but does not disclose the actual amount or value of the gift. You should also note that I do not issue any public statement relating to the publication of information to the website or publication in any way, however, my staff will advise you when the information is published to the website.

You referred in your letter to an opinion by Mr JS Koo, QC, prepared for the Privileges Committee. I have not seen that opinion and so I am unable to comment on it or the other legal advice to which you refer. However, I have noted that you have filed your variation on a "without prejudice" basis.

You also ask me to confirm whether my office or I gave Hon Dr Nick Smith the advice which he referred to in the House on 23 July 2008. My usual practice is that all discussions that I have with members, and advice that I give to them, are confidential. The reason for confidentiality is that members need to be assured that I will not disclose their personal affairs to third parties, including other members. However, in the present circumstances where your actions are the subject of a Privileges Committee inquiry and you are relying on Dr Smith's statements that he

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has received relevant advice from the Registrar. I believe you are entitled to know whether advice has been given on a particular subject.

Accordingly, I can state that my records do not contain any record that advice was given to Dr Smith on the subject of how he should declare a pecuniary interest in a trust established to provide financial support for legal action. I have no personal recollection of having given advice on that subject to the member. The previous Registrar has confirmed to me that he also has no such recollection.

You may wish to approach Dr Smith to see if he is able to give you any details of the advice that he believes he has received.

In accordance with my usual practice, you are welcome to approach me to discuss any issues which arise in relation to the filing of your amended declaration.

Yours sincerely

Dame Margaret Beckett DPM

5 August 2008

FILE COPY

Dame Margaret Bazley
Registrar of Pecuniary Interests
Parliament Buildings
WELLINGTON

Dear Dame Margaret

I am writing to you to seek clarification regarding the declaration of pecuniary interests.

As you are by now no doubt aware, Madam Speaker has referred a complaint to the Privileges Committee regarding a donation to Brian Henry for legal costs in the Tauranga Electoral Petition as it relates to my need to make a declaration of pecuniary interest.

Having written to Madam Speaker (see attached), with an accompanying letter from Brian Henry explaining my situation, I had reached the understanding, consistent with the service Mr Nick Smith claims to have received, that no declaration is required.

However, despite this I am writing to you in order to ensure that we share the same understanding of there being no need for a declaration in this specific case, but if we do, what steps I must take in order to remedy the situation.

Yours sincerely

Rt Hon Winston Peters
Leader New Zealand First

end



THE RT HON WINSTON PETERS MP
NEW ZEALAND FIRST LEADER
Parliament Buildings
Wellington, New Zealand, PO Box 647, 6140
Tea Room, Parliament Buildings
Wellington, New Zealand, PO Box 647, 6140

4 September 2008

FILE COPY

Dame Margaret Bazley DNZM
Registrar of Pecuniary Interests
Parliament Buildings
Wellington

Dear Dame Margaret

Re: Pecuniary Interests Letter

I write further to my letters to you of 5 August 2008, the response of 13 August 2008, and my further letter of 13 August 2008.

In my letters I draw your attention to the Ruling on a legal action which Dr Nick Smith said he had received from your office. This was a reference to the statement in Parliament by Dr Nick Smith on 23 July 2008 at pages 17316 where he said:

"I raise a point of order, Madam Speaker. I contacted the registrar of pecuniary interests and sought advice as to what disclosures requirements I was to make. The registrar was clear that what I needed to declare was a pecuniary interest in a trust. I have done just that. I seek leave to table the pecuniary interest declaration that I made on that advice, which clearly states there was a trust that provided support for that legal action."

I note I have not had a written response that answers my queries in my letter of 13 August 2008.

I have now had drawn to my attention your letter to the Privileges Committee with regard to members responsibility for filing returns. I have also had referred to me the *Opinion of Mr J S Kos, QC, to the Privileges Committee*.

Other legal opinion from a QC before the committee does not hold that view.

In order to remove any doubt about the matter, I am lodging a return, without prejudice, which is made on Mr J S Kos, QC's advice. It differs from the advice you gave Dr Nick Smith and the legal advice I have received.



THE RT HON WINSTON PETERS MP
NEW ZEALAND FIRST LEADER
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Wellington, New Zealand, PO Box 647, 6140
Tea Room, Parliament Buildings
Wellington, New Zealand, PO Box 647, 6140

As is well known, and confirmed by Brian Henry, Barrister, to the select committees, I have for many years been involved in proceedings relating to electoral challenges, starting with my own electoral challenge in 1979. A financial system was established to fund such proceedings, and in Kapiti 1979, Taupo 1981, and the Wyatt Creech case of Waitarapa 1987.

A procedure similar to that well established procedure was adopted with regards to the Tauranga electoral petition which was in my name.

In any event, however, and without prejudice I am now filing a Pecuniary Interests Register Variation to take into account the following:

My knowledge of the fact that I was aware of a procedure similar to that of the Wyatt Creech election petition being adopted in the Tauranga electoral petition in the period 2005/2006

Please let me know whatever you or your office gave Dr Nick Smith the advice referred in the above Hansard extract upon which I am relying.

I trust this now completes my obligations under the requirements of Standing Orders, but if there are any queries, please do not hesitate to contact me. In any event, I would appreciate an opportunity to have a discussion with your office to clarify any issues which may arise from the filing of this Declaration.

Yours sincerely

Rt Hon Winston Peters
Leader New Zealand First



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13 August 2008

Debra Angus
Deputy Clerk of the House of Representatives
Parliament Buildings
Wellington

FILE COPY

Dear Debra

I was disappointed to receive your letter of 11 August, where you in effect obfuscated the duty of the Registrar of Pecuniary Interests as it related to my particular case.

The advice of the Registrar of Pecuniary Interests is germane to the entire Privileges Committee hearing on Monday 18 August. If the Registrar's advice to me is the same as that received by National MP Nick Smith (in relation to donations to his legal case being recorded as "Debts" or "Gifts" in the Register of Pecuniary Interests), then please say so. Surely if due process is to be followed then such advice should come before the Privileges Committee hearing, which is at 7pm in the evening of the 18th.

I am asking you to please ensure that I have what I am entitled to as an MP, the advice of the Registrar of Pecuniary Interests on this matter, prior to the Privileges Committee hearing on Monday 18 August.

I look forward to your quick reply to my letter.

Yours sincerely

Rt Hon Winston Peters
Leader New Zealand First



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Green Glenn Donation: 27 Points of Inconsistency by Mr. Glenn

PR/PT/36

The reference to Ms Ede indicating Mr Glenn's call to me and "she was close by me" is irrelevant. Nor does she suggest that she heard any telephone conversation.

Paragraph 6A – Mr Glenn admits "the request first occurred before the telephone call that I made to Mr Peters on 14 December". Mr Glenn then refers to a voice message of 5 December from Mr Peters. In Mr Glenn's prior evidence he said that related to "Mr Peters in someone else" but more importantly I have submitted my telephone records for 5 December which clearly show that no such call was made by me.

Paragraph 6B – Mr Glenn says "until 14 December, I had not made any agreement with anyone to make the donation". That claim is rebutted by Mr Glenn's statement in the preceding paragraph, and his earlier evidence before the Committee.

Point 7 – Mr Glenn had discussed the "Monaco possibility" as long ago as the 2002 Americas Cup and there are witnesses to that.

Point 9 – All the other witnesses, excepting Mr Monrocy, state that I arrived at the luncheon after Mr Glenn, that I did not sit at Mr Glenn's table, and that I sat at a separate table with about 14 others.

Point 12c – Mr Glenn's memory is rebutted by the fact that he clearly had discussions on the issue of the petition and his exit well before he made the call on 14 December and moreover had discussed it with Mr Mike Williams at brunch. That is in his earlier evidence.

Point 12d – Mr Glenn could not have known that he was to meet me at lunch on 31 January 2006. Other statements before the Committee confirm that, as I do.

In addition to that contrary evidence Mr Glenn has made 27 seriously conflicted statements.

1. On offering Howard Morrison \$1 million to stand for Parliament as an independent.
2. The Exclusive Brethren being the reason why he donated to the Labour Party when chronologically that cannot be true.
3. That he was offered a job as Transport Minister.
4. The whole events around the Karika Sales on 31 January 2006 and including Mr Monrocy's statement, Weekend Herald 13 September, that he had never "said they actually ate lunch together, and that they had obviously met earlier on in the tent". These statements are rebutted by my having arrived at the tent after Mr Glenn and Mr Monrocy's own affidavit on the issue of lunch.
5. That the PMJ that the donation was "for legal costs" in February. That statement is false. His evidence about legal costs is rebutted by his own email of 21 February.
6. That I called him on 5 December. As I have pointed out I did not and my phone records confirm that.
7. That on 5 December 2005 I left a message on his telephone service. The only phone records produced refute that statement.
8. Peter, prior to 14 December, "sought help in a personal conversation". That statement is false. He produced no evidence on that.
9. Said I called him when the reverse is true.
10. Denied Mr Henry's earlier conversation with him before 14 December. We are still searching a number of phone records.
11. I reminded him of my biographical details in November. I did not, why would I. He produced no proof of that.
12. Mr Glenn claims that I talked to him about legal costs but his evidence, page 2, para 5, proves the hater about the legal cost issue and the amount before he called me on 14 December. He did not admit that before 12 August 2008, in his conversation with his lawyer, he told that lawyer that Brian Henry had called him.
13. Claimed he first raised the issue of Monaco on 14 December 2007. He first raised it at the Americas Cup in Auckland in 2002.
14. Quotes "Hello Owen, it's Wynken" is debunked by his secretary's press comment that she had already established who she was talking to on 14

Deporter:

15. Mike Williams came to Monrow uninvited — Mike Williams has an invite in email form.
16. That Mike Williams asked him for a job. In fact in Mike Williams' statements he offered Mike Williams a job.
17. He does not admit that I did not give Brian Henry his phone number. Brian Henry already had it on 14 December, together with sufficient details to be able to email him.
18. His 19 August letter to the Committee is rebutted by his later evidence before the Committee.
19. His 22 August letter to the Committee is rebutted by his later evidence to the Committee.
20. His claim that his 19 and 22 letters were "true and correct in all respects". Evidence later before the Committee from Mr Glenn proves that to be false.
21. Mr Glenn says he would have responded over the next few days after 5 December. He did not, and provided no telephone records on that.
22. That I talked of \$70,000 but "we rounded it up to \$100,000". In that statement if by "we" he means himself and me it is patently false.
23. "Did you get the money okay?" That statement is rebutted by my earlier evidence, and also his 20 December 2005 email to Brian Henry which requests "Please confirm to me that funds are received okay".
24. Claimed he knew before the Karaka Sales he was to have lunch with me. That statement is rebutted by my evidence and that of other independent witnesses, including the host.
25. Said he met Peter Vela during lunchtime that statement is rebutted by Mr Vela's own evidence.
26. Claims to have had the 14 December discussion with me but that I didn't thank him until 7 weeks later at the Karaka Sales. That is not believable. Who would not thank someone the moment they knew?
27. That the 14 December phone call was made by him, so I could ask him for money. That proposition is preposterous.

Mr Glenn's evidence contained 27 totally conflicting statements, which begs the question, why would any fair hearing find Mr Glenn's evidence more compelling than mine?

Private
EVIDENCE

1. Background to SFO

The New Zealand Serious Fraud Office is a department established to detect, investigate and prosecute cases of serious and complex fraud. It is an office which depends heavily upon the discretion of the Director who is bound by the SFO Act 1990.

"It is an important constitutional principle in New Zealand that decisions by law enforcement agencies on the investigation and prosecution of individuals should not be subject to political control or direction." – NZSFO website

The SFO Act provides that:

"In any matter relating to any decision to investigate any suspected case of serious or complex fraud, or to take proceedings relating to any such case or any offence against this Act (the SFO Act), the Director shall not be responsible to the Attorney-General, but shall act independently."

The SFO is an organisation designed to act within strict statutory guidelines. Its objective examination of cases is intrinsic to the fulfilment of its purpose. As an independent body it can investigate serious acts of fraud which may be of public interest and concern without the real or perceived risk of political interference or direction.

2. Current SFO Investigation

The Serious Fraud Office announced an investigation into New Zealand First on 28/08/08. This investigation coincided with an investigation by the Parliament Privileges Committee. These two investigations were however completely separate matters as was made clear by the SFO director, Grant Liddell.

"I want to make clear that matters that the Privileges Committee is considering and any possible issues of failing to report dimensions as required by the Electoral Act are not part of the SFO investigation." Serious Fraud Office director, Grant Liddell, The NZ Herald 29 August 2008.

Mr Liddell was correct in this statement. It is constitutionally important that these investigations are kept separate. The Privileges Committee operates under rules of the house (standing orders), its members are members of Parliament and this process is transparent for issues of public interest and fairness despite the partisan composition of the committee. The SFO's procedural integrity is ensured by its independence, and its statutory guidelines.

Grant Liddell has approached Simon Power in a letter 16/09/08 offering information that he has.

Through its approach and supply of materials obtained in the course of its investigations to the Privileges Committee, and in contradiction of its own stated objectives to matters being investigated, the Serious Fraud Office has violated its independence and separation from the political process. The SFO has violated an important constitutional principle in New Zealand – the separation of powers. It is in breach of the rules of its own existence – The Serious Fraud Act 1990 and it is asking outside its powers. The SFO in acting ultra vires of their powers has meant the well established principle you cannot use the fruits of the forbidden tree has occurred here (Eve acted illegally and with all the consequences that then followed).

3. Surrounding Facts

The proposed **Serious Fraud Office (Abolition and Transitional Provisions) Bill** repeals the Serious Fraud Office Act 1990 and establishes the Serious Fraud Office (SFO). The functions of the Serious Fraud Office will be taken over by the Organised and Financial Crime Agency of New Zealand (OFCANZ), which will be hosted within the New Zealand Police. The bill was referred to the Law and Order Select Committee on the 20th of May 2008, the majority recommended that it be passed with amendments, the minority (the National party) opposed.

Following this decision, a staff member of the SFO anonymously contacted Ron Mark MP, the chair of the Law and Order Select Committee expressing concern over the future of the SFO and condemning the role that New Zealand first played in the decision to abolish the office. Although this letter is unsigned, the envelope is postmarked from the SFO and the contents reveal details of the understandable atmosphere within the SFO. Mr Mark is prepared to hand the original letter to the SFO or Police for forensic examination or interviews with SFO staff members. The letter is included in this submission. Here are some extracts:

"...the abolition was orchestrated from the start was plainly dishonest, with your committee lined up at the end to rubberstamp it."

"The most clever of our corporate crooks will relish the return to the halcyon days of the 1980's."

Extracts of the letter received 22/04/08 (Please see attached the full letter)

Seven days after this letter was received an investigation was officially launched into New Zealand First regarding donations from Bob Jones and the Vela family. It should be noted that neither Mr Jones nor the Vela family reported any concern or complaint to the SFO.

The SFO investigation was clearly laid out by Mr Liddell on August 28 he states:

3

"...the SFO will inquire into the issue of donations made to the New Zealand First Party in particular the allegations that funds donated to the NZ First Party by the Sir Robert Jones and Vela family interests did not reach their intended destination."

"I have decided on the information currently available that I do not have a basis for using statutory powers to inquire into allegations that Mr Glenn's donation was misappropriated...."

"As present there is not enough material to give me a 'reason to suspect' in terms of the statutory threshold, on those two matters. The case of the Glenn donation, it is clear from both Mr Peters' and Mr Glenn's accounts that the money was donated for Mr Peters' legal expenses."

"I want to make clear that matters that the Privileges Committee is considering and any possible issues of failing to report donations as required by the Electoral Act are not part of the SFO investigation."

"Should the scope of the inquiry be substantially broadened, I will make a public statement."

The SFO is therefore focused on the issues of donations as outlined, and will not be looking at matters to do with the Glenn donation as it did not meet the "statutory threshold". The SFO said it would make a public statement if it broadened its inquiry. It has not made any such statement.

4. Legal Issues

Mr Liddell invoked his discretion under 36 (2) (c) of the Serious Fraud Act 1990:

2) Notwithstanding subsection (1) of this section, the Director may disclose such information, or authorize any other member of the Serious Fraud Office to disclose such information,—

4

- (g) If the person who disclosed the information to the Serious Fraud Office consents to that disclosure; or
- (h) To the extent that the information is available to the public under any Act; or
- (i) For the purposes of this Act or in connection with the exercise of powers under this Act; or
- (j) For the purposes of any prosecution anywhere; or
- (k) To any person who the Director is satisfied has a proper interest in receiving such information.

Grant Liddell claims that the committee has "proper interest".

The term proper interest should be defined within the context of the Act which makes reference to the courts and judiciary. The Act does not imply and cannot apply to the privileges committee which operates outside of the courts and judiciary. Mr Liddell does not address the fact that section 36 (2) (e), is subject to s 37 and s 39.

36(3) This section is subject to section 37 and section 39 of this Act.

Section 37 relates to Secrecy of information protected under Ireland Revenue Department Act 1974 and is not of concern in this particular issue.

39. Secrecy of information protected under other Acts

(1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to any information which is provided under any Act other than the Tax Administration Act 1994.

(2) Notwithstanding subsection (1) of this section or anything in the Act that protects the information—

- (a) Any member of the Serious Fraud Office may disclose any such information to any other member of the Serious Fraud Office for the purpose of investigating or prosecuting any offence involving serious or complex fraud; and
- (b) The Director may disclose any such information, or authorise any other member of the Serious Fraud Office to disclose any such information—
- (i) With the consent of the person who disclosed the information to the Serious Fraud Office; to any other person;

- (i) To any Judge for the purpose of obtaining a search warrant under the Act;
- (ii) To any person communicating or conducting any proceedings relating to any suspected offence involving serious or complex fraud;
- (iii) To any Court hearing any proceedings relating to any suspected offence involving serious or complex fraud.
- (3) Every member of the Serious Fraud Office commits an offence, and is liable on summary conviction to a fine not exceeding 55,000, who knowingly contravenes this section.

Mr Liddell has sectionally misused his discretionary powers and section 36(2)(e) (subject to 39).

The Privileges Committee is not a Judge.

The Privileges Committee is not a Court.

The Privileges Committee is not hearing any proceedings relating to any suspected offence involving serious or complex fraud.

5. Privileges Committee

The basis of the Privileges Committee

A matter of privilege, including an alleged contempt, is raised by a Member of Parliament by making a complaint to the Speaker at the earliest opportunity. The Speaker makes an assessment of whether a question of privilege is involved. If so, the Speaker rules on the matter in the House and it is referred to the Privileges Committee, which is a select committee of the House. That committee investigates the matter and makes a recommendation to the House, which then decides whether to adopt the recommendation.

The Privileges Committee is operating within a narrow scope.

09/09/08 Simon Power statement under Standing Order 225 "The matters referred to this committee by the Speaker are very limited. The committee has two allegations of contempt before it: that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a gift of \$100,000 from Mr Owen Gleeson and that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a debt and a discharge of part or all of \$100,000 from Mr Owen Gleeson. What is at issue is the issue of a donation or gift. What is at dispute is when Mr Peters became aware of it and in the time frames under consideration of the payment..."

On page 52 of my evidence before the Committee Mr Fairbrother raises a point of order and asks a question.

Mr Fairbrother: "Point of order. First is the \$40,000 court costs ordered on the failure of the petition in Taranui, is that part of your consideration?"

Power: "No."

The Privileges Committee is concerned with a narrow investigation of two counts of contempt, they have explicitly ruled out investigation into the \$40,000 court costs.

6. Information Supplied to the Privileges Committee

The Serious Fraud Office has supplied the Privileges Committee with a payment path showing that a quantity of money went from the Spencer Trust to Brian Henry which seems to show payment of the legal costs for the failed Taranui petition.

Spencer Trust → Brian Henry Beneficiary; New Zealand First (Peter)

Brian Henry → P Kelly → National Party Beneficiary; National (Clarkson)

The money tracking diagram is misleading and does not adequately reflect the money trail.

1. After the Spencer Trust and before Brian Henry it should show the transfer to Thompson Wilson 545B Bank transfer to Brian Henry ASB Account
2. Ledger BH payment to the National Party (not Clarkson)

What it also shows is that money from Brian Henry went to Kelly Thompson Cansley to the credit of the National Party. This reveals that the National Party paid for Mr Clarkson's court costs.

This was not declared in Mr Clarkson's pecuniary interests as either a debt or a gift in 2006 or 2007 (see copy of pecuniary interests attached to this document). This then shows that both Mr Peters and Mr Clarkson are in the same situation as in the Hon Nick Smith.

The serious Fraud Office has inadvertently defended Winston Peter's position in the Privileges Committee that no declaration was needed.

7. Summary

This inquiry is driven by media speculation and political expediency. The case is being judged by the media and my political foes.

Here is just one example of trial by media/politics. Commentator and radio personality Bill Ralston, who sparked a defamation case by me before he was sued by TVNZ, has daily abused me in three different media, print, radio and television. His partner Janet Wilson is the media trainer for National's leader John Key.

Yesterday I was forbidden to talk to any persons about the SFO material. This placed me in an impossible position for making an adequate response.

The Serious Fraud Office is granted absolute power in its investigations. This is a classic case of who watches the watcher.

The SFO acted "ultra vires" and violated important constitutional principles for its own ends. (See letter from P. Williams QC dated 18 September 2008.)

The SFO director Grant Liddell is aware that the Privileges Committee acts under Parliament's Standing Orders and not within the independent judicial system. It is a partisan grouping of Members of Parliament.

The SFO director volunteered information to the Committee on the basis of media reports.

The Committee must be aware this is the submission of an organisation acting outside its powers and previously publicly stated parameters at a time when the survival of that organisation rests on:

1. Its investigation into New Zealand First lasting beyond the dissolution of Parliament, meaning the SFO (disestablishment) bill is unable to be passed before the election; and
2. the National Party forming the next Government, as it has publicly stated it was "extremely concerned" about the disestablishment of the SFO and described its disbandment as a "folly" (Simon Power, 26 May 2009)

Staff members in the SFO felt a sense of betrayal that New Zealand First MP Ron Mark did not support them during a hearing of the law and order select committee. They told him this. A week later the SFO announced an investigation into political donations to New Zealand First without having received any complaint about them, except from a political foe of New Zealand First.

This inquiry has been a travesty of natural justice driven by politics with no attempt by some members to be impartial, neutral and fair. It has become a kangaroo court and media spectacle and the public of New Zealand are heartily sick of it.

The SFO has joined this case after questions by Wayne Mapp MP provided an opening for it outside the terms of reference – an interesting coincidence.

Not only is the SFO tracking plea deliberately false and misleading, nowhere does it highlight any fraud.

Colleagues, the Serious Fraud Office cannot find anything outside for their inquiry. That is why they have illegally resorted to enter this inquiry and jeopardise the standing of this committee with their ultra vires action.

Appendix

Hansard comments from Simon Power MP 20/05/2008

Simon Power Press release 26/05/08

Serious Fraud Office (Abolition and Transitional Provisions) Bill as reported back by the Law and Order Select Committee

Register of Pecuniary Interests - Bob Clarkson MP 20/06 & 20/07

Letter Peter Williams QC 18/08/08

Letter (and envelope) to Ken Mack MP from SFO staff member and the SFO website without outlining postal details

Peter Williams QC CM

PO Box 2013, Great Lagoon, Auckland, New Zealand
Tel/Fax: 61 6 570 0061 Mobile: 654 21 83110 Email: peterwilliamsqc@bt.com

18 September 2008

The Chairman
Simon Kovona MP
Privileges Committee
Parliament
WELLINGTON



Dear Sir

Re: **The Rt Hon. Winston Peters M.P.**

I have been informed that the Serious Fraud Office (SFO) have supplied to your committee by letter information regarding Mr. Peters.

I am currently in Fiji conducting important litigation and therefore cannot attend the time at present to research this matter in depth. It is my opinion however that the SFO have acted ultra vires their statutory jurisdiction and that their letter is tainted with illegality and is inadmissible.

It is fundamental to the machinery of a democratic society that prosecutorial entities such as the SFO be seen to run political and not weighing a personal vendetta against an individual.

The SFO were seized with particular matters contained within parameters that it publicly announced.

It is respectfully submitted that the SFO should confine itself to carrying out its statutory purpose and not involve itself in political forums such as your highly respected committee.

The SFO's action in supplying this letter could be interpreted as placing its weight, albeit improperly to a politically motivated complain by Mr. Rodney Hide MP and this in itself in my submission is unduly and objectionable.

The SFO in the past have lost favour with many because of its history of unsuccessful endeavours to punish people. This lack of balance has been a critical factor supporting the judgment of members of the public and some politicians that the SFO should be dismantled.

The SFO was particularly conspicuous at the time of the Wine Box Enquiry for its non prosecution of certain prominent and wealthy persons. Now the SFO is left at its present station could be seen to be prejudiced against Mr. Peters who was the main instigator of the Wine Lux Enquiry.

In conclusion the material supplied to your committee is tainted with illegality, and there is at least a suspicion of political bias and it would be improper and unfair for your honourable committee to use this material in your deliberations

Yours faithfully

Peter Williams QC

Register of Pecuniary Interests of Bob Clarkson 31 January 2006**Bob CLARKSON (National, Tauranga)**

1 Company directorships and controlling interests
 Baypark Speedway Limited - stadium operation
 Bob Clarkson Limited - construction company
 Tauriko Farms Limited

2 Interests (such as shares and bonds) in companies and business entities

Bowles and Clarkson Investments - landlord

Clarkson Trust Partnership - landlord

RM Clarkson Trust - landlord

BOMA Trust - landlord

BOPELU (Baypark Joint Venture) - promotion of Air New Zealand cup games at Blue Chip Stadium

BOMVA Trust - landlord

4 Beneficial interests in trusts

ME Clarkson Trust

RM Clarkson Trust

ROMVA Trust

BOMVA2 Trust

6 Real property

Family home, Tauranga

Aparanui, Tauranga

Property, Morrinsville

Property, Malvern Street, Tauranga, as landlord

Half share in property, Aotika, Kawhia

Half share in property, View Kaeai, Kaitiaki, as landlord

7 Superannuation schemes

Westpac Superannuation Scheme

8 Debtors

Deputy machinery purchase - 7%

KMA Group - machinery purchase - 7%

11 Gifts

Kauri Club - Air New Zealand

Register of Pecuniary Interests of Bob Clarkson 31 January 2007**Bob CLARKSON (National, Tauranga)****1 Company directorships and controlling interests**

Baypark Speedway Limited - stadium

Bob Clarkson Limited - construction company

Tauriko Farms Limited - landlords

Baypark Speedway Promotions Limited - speedway promotion

2 Interests (such as shares and bonds) in companies and business entities

Bowles and Clarkson Investments - landlord

RM and ME Clarkson Trust Partnership - landlord

RM Clarkson Trust - landlord

BOMA Trust - landlord

BOMVA No.2 Trust - landlord

BOPELU/Baypark Joint Venture - promotion of Air New Zealand Cup games at Blue Chip Stadium

4 Beneficial interests in trusts

ME Clarkson Trust

RM Clarkson Trust

BOMA Trust

BOMVA No.2 Trust

6 Real property

Family home, Tauranga

Aparanui, Tauranga

Property, Malvern Street, Tauranga

Property, Aotika, Kawhia

Property, Trauzan Road, Tauranga

Several properties, Jean Bitten Drive, Tauranga

Two properties, Cameron Road, Tauranga

Several properties, Hawksley Road, Tauranga

Property, Kaitiaki Lane, Tauranga

7 Superannuation schemes

Westpac Superannuation Scheme

8 Debtors

DPEPZ - machinery purchase - 7%

KMA Group - machinery purchase - 7%

9 Creditors

Westpac - mortgage

202 WEST WINDYCLIFFS
 OFFICE OF
 PRIMAVERA VINCIGUADRE
 RON MARK MP

Mr Ron Mark
 Member of Parliament
 New Zealand First Party
 Parliament Buildings
 Wellington

Dear Mr Mark,

When we learned that I shared a plan to abolish the SFO, we to be referred to the law & order select committee, those of us working at the offices of the SFO took huge comfort knowing that you are were the chair of that committee and that any decision you or the bill would be yours.

For as long as I can remember, self at the SFO have thought of you as a man of integrity, a man who rightly demanded that law enforcement be accountable but who also brought a strong and effective law enforcement. Furthermore, you were such a someone who understood the demanding impact of white collar offending on our communities.

Most of all, you were seen as a man who would be prepared to do what was right, regardless of the political implications that seem to drive so many of our elected representatives.

Over the years, whenever SFO management came back from appearing at select committee hearings, they would relay to us that mostly it was you who had asked the searching questions, you who had probed the deepest, you who had listened most attentively, and you who seemed most concerned with scaling a fair and balanced assessment of the SFO's performance in any year.

We know that you heard what David Readshaw had to say in 2007 on his very last appearance in front of your committee as Director. My own manager returned back to us on the very dignified and fair hearing that the committee (and you in particular) gave him that day. We know that you heard from David again this year when he made submissions to your committee on the bill - submissions he was prepared to make in the face of hostility and pressure from other individuals and groups, because he knew it was the right thing to do to inform the committee.

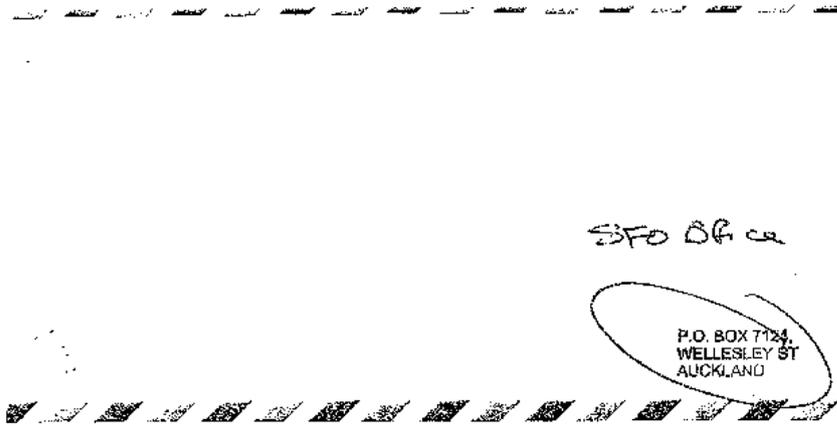
We think comfort that you read and listened to all the other submissions. We believe that you would see simply didn't want to see the SFO as a mere tool of the state, and a risk taken that overwhelmed from the start was probably your committee lined up at the end to hopefully either attempt it. They you would NOT see any compelling evidence to support the abolition. How could you? There was none. We took comfort of Mark, that you were clear in the Chair and that you would digger some integrity, some honesty and most of all, some courage into the decision making.

Now, last Friday, we learned that you declined to kick for touch and word to get the of the one agency that could properly investigate and prosecute serious crimes in this country. My Mark, New Zealand's white-collar criminals are laughing. The one agency that they loved might find them to account for or be closed, destroyed by the vote of someone who needed to demonstrate and champion the qualities of integrity and courage that those within the SFO strive to reach.

You must know that the capability of the SFO will never survive a transfer into the Justice. In 6 months it will be gone. It is being split further apart every day. That touch is very clear to those of us who work here. My manager is valiantly trying to hold the cliffs together, but he is like King Canoe and the sea. Mark any words, people will be leaving. Count who is still there 6 months into the new agency. Some, nearly 20 years of institutional knowledge will be lost to our country. The Police will pay their service to serious fraud, they always have (I know that first hand) and they always will. The public will be fed the line that everything is okay and that they will change to they do it. No one will want to find out the truth. The most clever of our corporate circles will relish the return to the halcyon days of the 1980's.

Friday was a sad day for the SFO and for all the committed and capable workmates that I am proud to work with. Most of all, it was a sad day for those 1000's of workers, Kiwis who needed someone like you to stand up to the pressures and just do what was right, to reject the bill. It's a shame that you did not.

I have been told by workmates and to sign this letter to you. Public servants aren't meant to have views it appears. But I wanted to write it because I think you need to read it. Sadly, I expect political expediency will prevail anything important in spite of it.



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Appendix D

Evidence of Brian Henry

We received the following written evidence from Mr Henry. This evidence is reproduced on the following pages.

Reference number	Date received
PR/PI/6	18 August 2008
PR/PI/9	20 August 2008
PR/PI/16	3 September 2008
PR/PI/28	10 September 2008
Private evidence	18 September 2008

29th July 2008

The Speaker
House of Representatives
Parliament
Wellington

PH/PL/16
PH/PC
Brian Henry Chambers

Dear Madam

Re: Winston Peters

1. I have acted for Winston Peters since 1991. We first met in 1987 when I was counsel for Wyatt Creech, a National Party candidate for the seat of Waitarapa.
2. The National Party had refused to conduct or fund the Waitarapa electoral petition so it was conducted on funds that we raised. Wyatt Creech had the ultimate responsibility for the final costs. In the final event, as we won the petition, the National Party had to underwrite the shortfall.
3. In the early stages of the petition we had a visit from the former electorate chairman of the Taupo electorate. He was the electorate chairman at the time of the Taupo Electoral Petition. I cannot recall his name but recall he was elderly and had a huge wealth of experience in political administration.
4. He and I discussed the petition at length and the need to fund raise as the party was refusing to support the petition. A key part of his advice was to protect the candidate (to me that meant the client) from subsequent political allegations that the politician had been "purchased" by a financial contribution. I saw this as the principled way to conduct the fundraising. I have adopted and followed this principle throughout all of my dealings with Winston Peters.
5. Winston and I developed an easy rapport during the Waitarapa electoral petition. At that time I was politically very comfortable with the National Party philosophy and was involved with investigating issues involving the BNZ. This work was voluntary on my part.
6. Winston had an issue with the National Party. I agreed to act for him as this

was the first time I acted for him. The dismissal from the Party, if properly conducted by the National Party, was low litigation risk. The proceeding was not run properly. I changed my role to being a witness and Colin Pigeon QC led as the barrister conducting the application for review.

7. During a reconstituted procedure Winston was dismissed from the National Party which I regard to this day as a major travesty of justice. I was told (and had no reason to doubt) that in the middle of the deliberation by the National Party Council, Mr Cox (who had been excluded for potential bias) a fundraiser for the National Party, entered the room and told the Council he had a substantial sum pledged to the Party if they dismissed Winston Peters. They decided to dismiss Winston.
8. I had a long "where to from here" discussion with Winston. He wanted to pursue the BNZ issue and felt he had the ability to politically contribute to New Zealand.
9. I agreed that I would help him to return into mainstream politics; this included a political/legal campaign to enquire into the BNZ.
10. Winston faced well funded corporates with well resourced legal teams from the large law firms. These corporates were willing to use every legal technicality to attack and discredit Winston.
11. The key for the corporate tactics was to open litigation Winston could not afford to run. The classic was the "FAY CALLS PETERS A LAR" headline in the Herald. We understand the Herald was indemnified by Fay to run this headline. The plan was we would sue and they would tie up the small resource we had in yet more litigation.
12. We did not respond as we understood their tactics.
13. The reality is Winston has had to use the law in the same way they were using it against him or else he would never have survived the years of sustained legal attacks by certain corporates.
14. Since 1991 the procedure we have adopted regarding the legal fees is:
 - I would provide the legal resources that he required.
 - The legal cost would not be invoiced by my instructing solicitor to create an unpaid debt.

☉ **Brian Henry** Barrister

Level 35, 48 Shortland Street, PO Box 4070, Shortland Street, Auckland, New Zealand
Ph: +64 9 509 1785 Fax: +64 9 366 3031

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2

- The obligation to meet any outstanding fee was understood as a moral, not a legal obligation. If the money can not be fundraised, then my time is donated.
 - I would, where possible, fundraise and any funds raised would go towards the fees due.
 - Where funds were raised, Winston would not ask, and I would not tell him, the source. This is the same practise as used in the National Party.
15. This procedure means Winston has at no time had a legal obligation to pay me any fees. The fees are either a donation of my time or fundraised. Winston has (although not legally obliged to) paid me money from his own resources.
16. The relationship between us was recently described in the media as going back to the Winebox and we are like "blood brothers" (Linda Clark on TV3 22/7/2008). This is apt; the relationship must be explained to be understood:
- In 1991 Winston faced a campaign commenced to denigrate him and end his political career. He then faced a range of defamation actions that had the sole aim of financially ruining him. The arrangement I described arose out of these attacks.
 - I saw the intent of his political foes as seeking a chequebook judgement with the aim of bankrupting him. I considered this as unacceptable and decided I would ensure such attacks did not succeed.
 - In 1993 a client of mine, Powerbeat, received a quote to do a prospectus of \$80,000 from Fay/Richwhite. They did the prospectus themselves. They were later prosecuted for breaches of the Securities Act. I acted for them. They were approached by a person who advised them the charges would be dropped if they discontinued using me as a lawyer. They did not, but Rodney Harrison was used to conduct the trial, at which they were acquitted.
 - New Zealand First was also launched that year. After the launch, Winston scheduled a meet the media where he would disclose the details of the Party. I had the constitution and other documents to complete. An unknown person attempted to kidnap my son at his school. This threw the Party preparation into disarray. At no time did he mention that the reason was the attempted abduction of my son.
- The Securities Commission report on the BNZ reinsurance scheme was another attack on him but reviewing that report in the Courts was beyond our legal resources. The report attempted to validate in the public mind the falsifying of the BNZ's profit by some \$40m. The BNZ shares at the time were a listed stock, and the backers of the scheme were European Pacific, a company set up in the Cook Islands by the BNZ, and Fay/Richwhite. Capital Markets Ltd (in which F.R. were the major shareholders) was a major investor in the BNZ listed stock. The scheme had the effect of maintaining the share price of the BNZ after the 1987 share fallout.
 - The Winebox was delivered to me for Winston. I assisted in this campaign to obtain a Commission of Inquiry. This was successful. Eventually my fees were paid by the government under a legal aid arrangement with the Solicitor General. Until this funding arrived, I operated as per our understanding. In this regard Winston personally paid substantial fees to me. The government refused to backdate the funding.
 - I accept the political gamesmanship leading up to the labelling of the Winebox as robust politics, however, one incident that really concerned me was after the Winebox was tabled in Parliament, there was a refusal by the then government to enable the media to see the Winebox. This stalemate which lasted for a period of time was unprecedented. Finally, the government was forced to permit the documents to be printed.
 - The Commission of Inquiry was another example of the lengths that those involved will go to in order to discredit Winston. I applied for funding (I had to apply to the Commissioner, Sir Romali Davidson) for A Malloy, QC to give expert evidence after Davidson had finished his three month preliminary examination of the transactions. Davidson had decided to embark on a full ranging investigation and orally declined the application saying to me, "I do not need Tony's help with what the Americans call 'Grand Larceny'."³⁶
 - Davidson reported that the transaction did not involve fraud. This result was contrary to the law and was resulting from his earlier position. To make matters worse, he criticised me for not calling A Malloy, QC and Paul Darvell. Darvell was at all material times dead.

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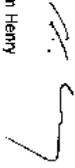
- The report was, in my opinion, a corrupt result as the legal analysis of the Magnuson transaction was not only patently wrong, but from his coasts ruling, known to Davison to be patently wrong.
 - I issued proceedings on behalf of Winston Peters to review the report. The proceedings were struck out in the High Court but reinstated unannounced by a full Court of Appeal (the Richardson Court of Appeal).
 - There was a subsequent trial before a full High Court (2 Judges), resulting in Davison's report being quashed.
 - Attempt to destroy Winston Peters confidence, especially the so-called "Scamper" scandal. There is a current defamation case I am conducting for Winston.
 - The Tauranga election conduct was drawn to my attention before the election day. I went to Tauranga and saw a campaign that was contrary to my understanding of the law. I agreed to issue an election petition for Winston; this was filed and conducted. The same fees arrangement seamlessly continued. I was directly involved with fundraising with a range of potential donors.
 - I phoned Owen Glenn and he forwarded \$100,000.00 which was paid to me on account of my fees. My instructing solicitor has never sent Winston an invoice for this work. I can invoice this work at anytime I choose, but to do so would break our agreement not to create a debt due. The \$100,000 was paid into my fees account. This was a payment towards completed work. All tax has been paid, including GST. Had these not been paid, then our arrangement would still be in place, ie a moral obligation to pay me, but not a legal debt.
 - I am lawfully allowed to donate my time to assist a politician and that creates no obligation that must be disclosed by the politician.
 - The disclosure of this arrangement will empower Winston's opponents to reformulate their "length of cheque book" strategy. For this reason, I have been deliberately less than forthcoming to the media but have stated he has not breached the rules of Cabinet or Parliament.
17. I have never received any government appointments. I was offered the role of Counsel Assisting the Inquiry into the BNZ that National promised before the 1990 election. After the landslide election, I was told there was never any
- 5
18. Inquiry and I should appoint an agent in the caucus and I would get jobs. I walked away very disillusioned as I had voluntarily stepped in to help the National Party when they were out of power with few friends. I found offices where I was once welcome closed apart from Winston Peters who was the Minister of Maori Affairs.
19. The campaign in 1990 was to remove the new right. Instead, we had changed Roger Douglas as the new right leader to the new right clone of Rich Richardson. I decided at that time I would not accept the political patronage of any politician. Winston is of a similar view in refusing to accept patronage. We believe the right person for the job is more important. The appointment by Winston of Michael Stassary in the racing industry is a classic example.
20. Winston has the ability to ensure I receive many kinds of government work, but he doesn't. We do not work that way. I am often told by those in the body politic that I am stupid not to demand such work. I do accept work for Winston in his capacity as the leader of a political party, where the work qualifies for payment out of Parliamentary Services. The work, once complete, is charged to Parliamentary Services.
21. In the past 3 years I have been paid in this manner. The work invoiced was checked with his Chief of Staff, who worked at the time for Winston, to ensure the work did comply with the appropriate funding guidelines. I have also done a wide range of work outside the guidelines which is a voluntary provision of my time.
22. The position is I have not rendered a fee note to the solicitor for the work done and that solicitor has not rendered a bill to Winston. Until my instructing solicitor renders a bill to Winston, there is no debt owed by Winston.
23. All payments received were for actual work done. They are not payments on account of work to be done which, under the Law Society rules, would be required to be held in my instructing solicitor's trust account. I meet my proper tax responsibilities in respect of any money received.
24. On a personal note, I find it repugnant that major corporate/wealthy individuals can freely maintain sustained legal attacks on a politician with impunity. I find that this behaviour seriously and deeply offends my sense of natural justice.
25. Please note that I am not and never have been a member of any political party. Further, I have acted for MPs from both sides of the House, including members of Cabinet, in former governments. On the public record, I have appeared for
- 5

Hugh Watt, Garry Knapp, Wyatt Creech and Winston Peters. There are others that I have represented that remain confidential and privileged.

25. Judith Collins has described the approach I have taken as unorthodox and has cast aspersions on my reputation, including suggestions that her experience puts her in a position to comment on the practice of a barrister. She stated she had never seen a similar situation in her time on the Law Society Council. Given that my conduct is both lawful and up to professional standards, the inuendo of wrong doing is untrue and the Law Society has better things to do than worry about practitioners like myself who are conducting themselves in accordance with the law.

26. I request that this letter be introduced to the record of the House of Representatives to correct the attack on my character.

Yours faithfully



Brian Henry
Barrister

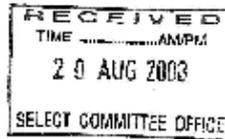
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20-AUG-2006 WED 09:55

FAX NO.

P. 02

PR/PI/9
 dhc.
 Brian Henry Chambers

20th August 2006

The Chairman
 Privileges Committee
 Parliament
 WELLINGTON

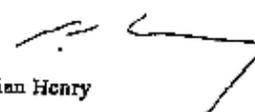
Dear Sir

Re: Inquiry regarding Declaration by Winston Peters

When giving evidence on Monday before the Select Committee, I was asked who paid the \$40,000 costs awarded to Mr Clarkson after the Tauranga Electoral Petition. I answered from memory that I had paid the costs.

I did not check my records in this regard before giving evidence as I did not consider it was within the terms of reference. I have since checked my records and they show that I paid the costs on the 5th of April 2006 and I was shortly thereafter reimbursed in full by Mr Peters.

Yours faithfully



Brian Henry

◆ **Brian Henry** Barrister

Level 35, 48 Shortland Street, PO Box 4070, Shortland Street, Auckland, New Zealand
 Ph: +64 9 309 1785 Fax: +64 9 366 3030

03-SEP-2008 WED 09:00
BB-JAN-2008 17:04 FROM:

FAX NO.

P. 01

TO: 005-93063200

F:1/1

PR/PI/16

Could you please pass on this note to the Parliamentary Privileges Committee.

Re Parliamentary Privileges Committee.

The phone call I had with Owen Glenn was with him personally. I did not make a written record of the call.

Having seen his statement I can recall him saying he supported Labour and was concerned as to the stability of the agreement for supply with Helen Clark. There had been a lot of adverse media comment, I think by that time this included Mr Downer.

I assured him that as one of the stipulations of the agreement I believed it would last the full three years explaining that the previous agreement with National was breached after the National party changed its leader to Jenny Shipley who breached the agreement by using the Cabinet rules. With this structure this could not reoccur.

I assured him Winston Peters would up the agreement for supply full term provided Helen Clark acted in accordance with the arrangement.

It was after I gave him that assurance that he agreed to pay \$100,000 towards the costs of the Tauranga Electoral Petition.

This is not a full recollection of our discussion but I understood that the success of the Clark government was important to Mr Glenn in his decision to support the Petition costs.

Alan Henry
2008

PRIVILEGES COMMITTEE
3 SEP 2008
RECEIVED

09/29/2008 09:29
09/14/2008 09:21
08-SEP-2008 MON 18:25

NO. 069 081

FAX NO.

PR/PI/28

Please forward to the Privileges Committee.

The subject matter of the e-mail, dated the 14th December 2005, by me to Mr. Glenn is Mr. Peters but the client referred to is not.

I have always stated that there are two clients involved in this subject matter.

I am prohibited by privilege from divulging the name of the other client.

The sole issue before this committee is whether there is "debt" or "gift" that Mr. Peters was required to disclose in his declaration of interest.

The legal position is clear that there is no debt.

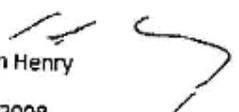
It is equally clear that there is no gift.

Mr. Kos QC has overlooked the axiomatic principle of electoral law that the donation of time by any person to an election is encouraged and expressly does not constitute an electoral expense.

This principle also applies to the declaration of interest by a Member of Parliament.

The voluntary provision of time to assist a Member of Parliament has never been required to be disclosed as a gift in the declaration of interest.

Indeed the declaration of interest document would be an unwieldy responsibility if the time donated by constituents and supporters to every Member of Parliament had to be recorded.


Brian Henry

7/9/2008

17-SEP-2008 WED 12:33



F. 01

PRIVATE EVIDENCE

17 September 2008

Chairperson
Privileges Committee
Parliament House
Fax: (04)499 0486
WELLINGTON

Dear Sir

Re: Privileges Committee Inquiry

I have seen the Serious Fraud Office memorandum and comment as follows:

1. In accordance with my evidence, it confirms I sent a practice cheque to Kjetil Thompson Casley.
2. In accordance with my evidence, it shows that I was reimbursed by Winston Peters.
3. I was not asked for any further details on the reimbursement. My records show that I was reimbursed by a cheque from Wayne Peters' Trust Account. As far as I am concerned, this is a reimbursement to me by Mr Winston Peters, being his brother.

Apart from this payment of \$40,000.00, I have never had any other dealings with the Spencer Trust.

I do not see how the information contained in the email in any way relates to the issues as was specified to me at the start of my last oral evidence. Indeed, this is an express contradiction with what I was told I could talk about and I cannot see how this matter comes remotely within the terms of reference.

If the terms of reference have changed, please send me a copy of these new terms of reference so that I may see whether there is any further relevant material I should provide.

Yours faithfully

BP Henry

Brian Henry
Barister

☛ **Brian Henry** Barister

Level 35, 48 Shortland Street, PO Box 4070, Shortland Street, Auckland, New Zealand
Ph: +64 9 309 1785 Fax: +64 9 366 3030

Appendix E**Evidence of Owen Glenn**

We received the following written evidence from Mr Glenn. This evidence is reproduced on the following pages.

Reference number	Date received
PR/PI/8	20 August 2008
PR/PI/15	28 August 2008
PR/PI/21	9 September 2008
PR/PI/22	9 September 2008
PR/PI/23	9 September 2008
PR/PI/35	17 September 2008

PR/PI/8

Mr Simon Power MP
 Chairperson
 Privileges Committee
 House of Representatives
 Parliament Buildings
 WELLINGTON

29th August, 2008



RE: Complaint concerning my donation to Rt Hon Winston Peters MP

Dear Mr. Power,

I refer to your letter of 19 August 2008 concerning what I understand originated as a complaint made by Mr Rodney Hide MP. I do not know Mr Hide. I have not had any communication with him.

I am happy to cooperate with you about the \$300,000 payment that I instructed to be made on or about 30 December 2005, which I believe was to the practice account of Mr BP Henry, an Auckland barrister, detailed below.

I wish to make no comment on any of the seven matters listed in the bullet points in your letter. I can provide a statement of the facts concerning the payment. I do not wish this letter to be treated as being private or secret. The facts of the matter are simple. I am happy for them to be public information.

The payment was made by me to assist funding the legal costs incurred personally by Rt Hon Winston Peters MP concerning his election petition dispute, at his request. Mr Peters sought help from me for this purpose in a personal conversation, some time after I had first met him in Sydney. I agreed to help in the belief that this step would also assist the Labour Party, in its relationship with Mr Peters. I supported the Labour Party.

I have never made any donation to the New Zealand First Party. I declined an earlier request to do so.

I understand that Mr Henry is Mr Peters' lawyer. I do not know Mr Henry. I do not believe that we have met. I do not recall that I, or my assistants, had any discussion or communication with Mr Henry other than to receive remittance details. I expected to receive those details, following my agreement to assist Mr Peters meet his legal costs. My office was given bank account details for payment ASB BSB #123030 Acc#0678010-50 BP Henry Practice Account, Remuera Branch. The payment instruction on my Westpac account was given accordingly, on my authority.

Mr Peters subsequently met me socially at the Karaka yearling sales, I believe in early 2006. He thanked me for my assistance.

I also consider it prudent that I take legal advice in New Zealand. I have requested a Wellington barrister Dr GJ Harley to assist me with your enquiry and with any other that may follow. If there are any other particular matters that you would like me to address, please let me know what they are.

Because I travel frequently, email communication is the most convenient and effective for me. I am happy to answer any further questions in correspondence.

Yours faithfully

Owen G. Glenn



PR/PI/15

Owen G. Glenn, ONZM
c/o 18 Boulevard Suisse
Monaco, MC 98000
Ph/Fax + 377 977 00 8 44

Mr Simon Power MP
Chairperson
Privileges Committee
House of Representatives
Parliament Buildings
WELLINGTON

27th August, 2006

Dear Mr Power:

RE: Complaint concerning my donation to Rt Hon Winston Peters MP



I refer to my letter of 19 August and to the reply to it of Rt Hon Mr Winston Peters MP dated 26 August.

First, I confirm that the letter sent to you on 19 August was from me, but was unsigned because of the difficulty I had at the time with the location of a law machine. The Clerk of the House was asked whether a signed copy was needed. This was not responded to. I attach with this letter a signed copy of the letter of 19 August, to tidy that aspect up accordingly.

Second, I would like to affirm to you the correctness of what I have said to you in my letter of 19 August, and to comment on some of the observations that Rt Hon Mr Peters has made in his letter to you of 26 August:

(a) I gave the authority for the payment instructions to be made on 20 December 2005 to Mr BP Henry's account. Mr Henry supplied the ASB bank account detail in an email from him addressed to me on Wednesday 14 December 2005. That email from Mr Henry refers to an earlier telephone conversation between me and a person Mr Henry refers to as "my client" that same day. My recollection is that I was called by Mr Peters to seek financial assistance for his electoral petition challenge. I agreed to that request because I understood that it would be of assistance to the Labour party, which had the confidence and supply agreement with New Zealand First at the time we spoke. I do not recall that I had any conversation with Mr Henry about my donation. There is absolutely no doubt that the request came to me from Mr Peters. I would not have made the donation on any other basis through any intermediary. I did not do so.

(b) I believe that I first met Mr Peters at 8pm in Sydney on Friday 12 August at the Four Seasons Hotel. My personal assistant was with me at the meeting. I have no recollection of meeting him on an earlier time but it is possible.

(c) I was not at the kororo sales in early 2007. I was at the sales in early 2006. I believe that the statement I made to you in my letter of 19 August is factually accurate.

I am happy to respond to any further questions from you, if that would be helpful.

Yours faithfully

Owen G. Glenn

- The report was, in my opinion, a corrupt result as the legal analysis of the Magnum transaction was not only patently wrong, but from his coasts ruling, known to Dawson to be patently wrong.
 - I issued proceedings on behalf of Winston Peters to review the report. The proceedings were struck out in the High Court but reinstated unaminously by a full Court of Appeal (the Richardson Court of Appeal).
 - There was a subsequent trial before a full High Court (2 Judges), resulting in Dawson's report being quashed.
 - Attempt to destroy Winston Peters continue, especially the so-called "Scampt" scandal. There is a current defamation case I am conducting for Winston.
 - The Tauranga election conduct was drawn to my attention before the election day. I went to Tauranga and saw a campaign that was contrary to my understanding of the law. I agreed to issue an election petition for Winston; this was filed and conducted. The same fees arrangement seamlessly continued. I was directly involved with fundraising with a range of potential donors.
 - I phoned Owen Glenn and he forwarded \$100,000.00 which was paid to me on account of my fees. My instructing solicitor has never sent Winston an invoice for this work. I can invoice this work at anytime I choose, but to do so would break our agreement not to create a debt due. The \$100,000 was paid into my fees account. This was a payment towards completed work. All tax has been paid, including GST. Had these not been paid, then our arrangement would still be in place, ie a moral obligation to pay me, but not a legal debt.
 - I am lawfully allowed to donate my time to assist a politician and that creates no obligation that must be disclosed by the politician.
 - The disclosure of this arrangement will empower Winston's opponents to reformulate their "length of cheque book" strategy. For this reason, I have been deliberately less than forthcoming to the media but have stated he has not breached the rules of Cabinet or Parliament.
17. I have never received any government appointments. I was offered the role of Counsel Assisting the Inquiry into the BNZ that National promised before the 1980 election. After the landslide election, I was told there was never any
- 5
18. The campaign in 1990 was to remove the new right. Instead, we had changed Roger Douglas as the new right leader to the new right clone of Ruth Richardson. I decided at that time I would not accept the political patronage of any politician. Winston is of a similar view in refusing to accept patronage. We believe the right person for the job is more important. The appointment by Winston of Michael Stassry in the racing industry is a classic example.
19. Winston has the ability to ensure I receive many kinds of government work, but he doesn't. We do not work that way. I am often told by those in the body politic that I am stupid not to demand such work. I do accept work for Winston in his capacity as the leader of a political party, where the work qualifies for payment out of Parliamentary Services. The work, once complete, is charged to Parliamentary Services.
20. In the past 3 years I have been paid in this manner. The work invoiced was checked with his Chief of Staff, who worked at the time for Winston, to ensure the work did comply with the appropriate funding guidelines. I have also done a wide range of work outside the guidelines which is a voluntary provision of my time.
21. The position is I have not rendered a fee note to the solicitor for the work done and that solicitor has not rendered a bill to Winston. Until my instructing solicitor renders a bill to Winston, there is no debt owed by Winston.
22. All payments received were for actual work done. They are not payments on account of work to be done which, under the Law Society rules, would be required to be held in my instructing solicitor's trust account. I meet my proper tax responsibilities in respect of any money received.
23. On a personal note, I find it repugnant that major corporate/wealthy individuals can freely maintain sustained legal attacks on a politician with impunity. I find that this behaviour seriously and deeply offends my sense of natural justice.
24. Please note that I am not and never have been a member of any political party. Further, I have acted for MPs from both sides of the House, including members of Cabinet, in former governments. On the public record, I have appeared for
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PR/P/121
 The Privileges Committee of the House of
 Representatives of New Zealand

PRIVILEGES COMMITTEE
 9 SEP 2008
 RECEIVED

Inquiry into a question of privilege relating to
 compliance with a member's obligations under the
 Standing Orders dealing with pecuniary interests

STATEMENT OF EVIDENCE OF OWEN GEORGE GLENN
 Tuesday 9 September 2008

TABLE OF EXHIBITS PRODUCED IN EVIDENCE

- Exhibit A** email Wednesday 9 August 2005 from Mr. McCleary to Mr. Glenn's office seeking meeting appointment for Mr. Peters with Mr. Glenn in Sydney.
- B** email Thursday 4 August 2005 from Mr. Glenn to Mr. M. Williams and to Sir Howard Morrison seeking any comments about Mr. Peters.
- C** email Saturday 13 August 2005 from Mr. Glenn to Mr. Williams reviewing meeting with Mr. Peters.
- D** email Monday 22 August 2005 to Mr. McCleary from Mr. Glenn's assistant, Ms. Ede, with Mr. Glenn's personal note to Mr. McCleary.
- E** emails 2 December 2005 from Mr. Glenn's assistant, Ms. Ede, to Mr. Glenn and to Mr. Williams concerning Mr. Peters' voice message asking Mr. Glenn to call.
- F** email Monday 12 December 2005 from Mr. Glenn's assistant, Ms. Ede, to Mr. Glenn re meeting on 14 December 2005 with Mr. Williams.
- G** telephone call from Mr. Glenn's Sydney house at 11.28am Sydney time Wednesday 14 December 2005 (1.28pm NZ time) to Mr. Peters 021 613 953.
- H** Mr. Peters' V. Card mobile number 021 613 953.
- I** email Wednesday 14 December 2005 from Mr. Peters' lawyer, Mr. BP Henry, to Mr. Glenn at 1.40pm NZ time referring to Mr. Glenn's conversation with Mr. Henry's client at 1.30pm NZ time 11.30am Sydney time, providing Mr. Henry's bank account.
- J** email Tuesday 20 December 2005 from Mr. Glenn's assistant to Mr. Henry concerning payment details.
- K** email/letter confirming Mr. Glenn's presence in Europe over 28-30 January 2007 (Karaka Yearling Sale).
- L** email Tuesday 31 January 2006 from Mr. Glenn to University of Auckland Business School Dean recording Mr. Glenn's lunch appointment with Mr. Peters.

Courtesy to Mr. O. G. Glenn
 Dr G. J. Hanley
 Member
 L7, Sybase House
 101 Lambton Quay
 P O Box 5241, Wellington 6145
 Telephone: (04) 471 4270
 Facsimile: (04) 473 1105

012716-12023

STATEMENT OF EVIDENCE OF OWEN GEORGE GLENN

1. Name and occupation
 My full name is Owen George Glenn. I live in the principality of Monson, a global transport group involved in international shipping.
2. Personal history
 I was born in India in 1940. My family immigrated to New Zealand in the early 1950s. I left school at 15. I joined the Bank of New Zealand and then took labouring jobs to earn enough money to pay for travel to Europe. In the UK I worked in various jobs, such as fruit packing, landscaping, as a butcher, plumber and lift driver at Harolds.
3. On my return to New Zealand in 1962 I joined TEAL (the forerunner to Air New Zealand). I was offered a position with Emery Airfreight, a substantial global airfreight forwarder and was then transferred by them to Australia. I was headhunted to a position in London in 1969, and was responsible for establishing a global freight forwarder for the Swire and Ocean Group.
4. In 1978 I started a US based shipping container business. The business has since grown to substantial size, with operations in 105 countries. It has an annual turnover of US\$740m. It has been very successful over the years.
5. I have a substantial interest in the racing industry. I buy New Zealand thoroughbreds. What I have won the Caulfield, Metropolitan and BMW Cups. I am still chasing the elusive win in the Melbourne Cup.
6. I have long been a donor of money and my time to various charities. I established the charitable Glenn Family Foundation in 1991. My philanthropic interests are global, encompassing hospitals, leper colonies, schools, the relocation of trafficked children, and the upgrading of villages with the provision of education, sanitation, clean water, medical facilities, new crop cultivation and the formation of cottage industries in Southern China and North East India.
7. I also support New Zealand projects, such as the donation I made to assist with the construction of the new Business School building at the University of

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Auckland, an endowment to honour the recently retired Dean of that school, the funding of the Centre of Excellence Sports Academy at Albany, and the funding of young New Zealanders to achieve their ambitions in their studies. In January 2009, my foundation is sponsor to the Kaiti Cup, which is an international regatta for disabled sailors, which is to be held in the Westmeath Harbour.

8. I have also been a financial supporter of the New Zealand Labour Party. I have admired the Government led by the Rt Hon Helen Clark. I supported the re-election in 2005. I have long enjoyed a good relationship with the Party's President, Mr Mike Williams. He has been my guest on my boat. We have met on a number of occasions in both New Zealand and different parts of the world during our travels.

My personal/business records

10. I travel frequently to different parts of the world. I do not keep records myself, including my emails. I have an executive assistant Laura Ede, who is currently London based. I also have a personal assistant, Julie Smith, who travels with me. They keep records of and manage my meetings. They arrange for travel, accommodation, telephone calls and assist me with managing my appointments diary and also with email. If they are a copy party with emails to, or from, me, then it is likely that they keep most them for a period of time.

11. My own personal email records are therefore substantially incomplete. The records of both Laura and Julie are necessarily complete, where they were copied in on my emails. The mobile telephone records show outwards calls but not inwards details. I have used these records to establish the factual position, set out below.

12. I am able to show clearly and accurately from these business records the factual situation concerning the donation that I made to assist Rt Hon Winston Peters with his legal expenses for the Tauranga Election Polling.

Rt Hon Winston Peters MP

13. My recollection of first meeting with Rt Hon Mr Peters was on Friday 12 August 2005, before the General Election. [ATTACH EMAIL "A" - Summary email Wednesday 3 August 2005 from Mr R McCloy to Mr Glenn's office seeking meeting appointment for Mr Peters with Mr Glenn in Sydney.] Mr Peters

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asked to meet me. We arranged to meet in Sydney before the Bledisloe Cup match the next day. I do not recall meeting him before that date.

14. I met Mr Peters at his hotel at 3pm, with my executive assistant Laura Ede present. I had asked Mr Williams for his perspective, and Sir Howard Morrison, whom I know well. [ATTACH EMAIL "B" - Summary email Thursday 4 August 2005 from Mr Glenn to Mr M Williams and to Sir Howard Morrison seeking any comments about Mr Peters.] I was generally aware that it was considered likely that New Zealand First was polling well, and could well have an influential role in the formation of the Government post-election. I was interested to meet with Mr Peters accordingly.

15. I spent an informative hour meeting with Mr Peters, during which time he outlined his views about encouraging business start-ups, and the use of tax incentives. We did not discuss the New Zealand First Party needs for financial support. [ATTACH EMAIL "C" - Summary email Saturday 13 August 2005 from Mr Glenn to Mr Williams reviewing meeting with Mr Peters.]

16. Shortly after, Mr Roger McCloy followed up after the meeting with Mr Peters with the latter requesting funding for New Zealand First. This request was declined by me. [ATTACH EMAIL "D" - Summary email Monday 22 August 2005 to Mr McCloy from Mr Glenn's assistant, Ms Ede, with Mr Glenn's personal note to Mr McCloy.]

17. I followed the general election outcome on Saturday 17 September 2005 with interest. I was aware subsequently that New Zealand First was about to or had entered into a supply and confidence agreement with Labour.

18. Following the election, Mr Peters launched an Election Petition concerning the electoral seat of Tauranga. I understand from the High Court's Judgment the date sequence of events to have been as follows:

- Election petition date - 6 October 2005;
- Court hearing date 28 November - 1 December 2005; and
- Court decision date 18 December 2005.

19. I refer to my letters to the Privileges Committee dated 19 and 27 August 2008.
20. First, I confirm that the contents of both items are true and correct in all respects.
21. Secondly, I wish to explain the sequence of events with reference to the detail of the records that are available to me, as to Mr Peters' approach to me for financial assistance concerning the Election Petition costs. The matter developed as follows:
- (a) from the office email records, it seems that Mr Peters or someone representing New Zealand First again contacted my office in late November 2005. Those records do not say what this was about. They show that I was reminded about Mr Peters' biographical details;
- (b) I was next approached by Mr Peters in a personal call from him to me, while I was in Sydney in the early part of December 2005. My records show that Mr Peters left a message on my telephone answer service on 5 December 2005. There is no detail concerning what this call was about. However, this contact was immediately advised to Mr Williams, before I responded [ATTACH EMAIL "E" - Summary: email 5 December 2005 from Mr Glenn's assistant to Mr Glenn and to Mr Williams concerning Mr Peters' voice message asking Mr Glenn to call];
- (c) at some point over the next few days, I would have responded to Mr Peters' request that I call him. I cannot locate a telephone account record of this call now. It may be that he called me again or that I used another office telephone. In this call, Mr Peters raised with me his need for financial assistance with his legal costs incurred in the Tauranga election petition;
- (d) I was generally aware of the petition, and of the relationship that New Zealand First had formed with Labour. I have not been able to locate specific email references to this approach;
- (e) I am absolutely certain the request for assistance came to me from Mr Peters himself. I was asked by him to consider assisting him with the legal costs and expenses. I agreed to consider making such a

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- contribution. Before making any response to Mr Peters, I was again in contact with Mr Williams about the approach. I wanted to make sure that I agreed to contribute, this would not be seen by Labour as being unhelpful to its own interests. I would not have proceeded if the response that I got from Mr Williams was that such a contribution would be unhelpful to Labour. The Labour Party was my primary interest. I was told by Mr Williams that the Labour Party had no problem with my assisting Mr Peters. I believe this occurred over lunch with Mr Williams in Sydney on 14 December 2005. [ATTACH EMAIL "F" - Summary: email Monday 12 December 2005 from Mr Glenn's assistant to Mr Glenn re meeting on 14 December 2005 with Mr Williams.];
- (f) I called Mr Peters on 14 December 2005 to inform him that I agreed to contribute. [ATTACH PHONE RECORD "G" - Summary: telephone call from Mr Glenn's Sydney house at 11:26am Sydney time Wednesday 14 December 2005 (1:26pm NZ time) to 021 613 939.] From our office records, this number is Mr Peters' mobile number. [ATTACH MR PETERS' V CARD PRINTOUT "H" - Summary: Mr Peters' V Card mobile number 021 613 939.] Although Mr Peters had initially told me that he needed to raise \$70,000, it became clear to me in the conversation that in fact he needed more than that figure. I offered to contribute \$100,000 towards these legal costs;
- (g) When I enquired where the funds should be sent, Mr Peters informed me that his lawyer would send the account details. He further requested that any such donation be kept confidential, and
- (h) immediately after that call, I received an email from Mr Peters' lawyer, Mr BP Henry, which referred to the conversation with his client and which provided bank account details for remittance. [ATTACH EMAIL "I" - Summary: email Wednesday 14 December 2005 from Mr Peters' lawyer, Mr BP Henry, to Mr Glenn at 1:48pm NZ time referring to Mr Glenn's conversation with Mr Henry's client at 1:30pm NZ time/1:30am Sydney time, providing Mr Henry's bank account details.]

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22. I gave the payment instructions on 19 December 2006. [ATTACH EMAIL "y" - Summary: email Tuesday 20 December 2006 from Mr Glenn's assistant to Mr Henry confirming payment details.]

23. In my (second) letter to the Committee of 27 August, I said that I did not make the payment at the request of Mr Petre's lawyer. I would never have agreed to make the donation without Mr Peters' direct and personal request, and without checking with Mr Williams that such support would be acceptable to the Labour Party. My motivation in offering the support to Mr Peters was to support the Labour Government. I do not have any recollection of discussing the request of Mr Peters with Mr Henry.

24. In his same letter to the Committee, I said that Mr Peters was incorrect about meeting me at Karaka in 2007. I was not there at the sales that year. I was in Europe. [ATTACH EMAIL "K" - Summary: email details confirming Mr Glenn's presence in Europe over 29-30 January 2007 (Karaka Yearling Sales)] I met Mr Peters in 2006 at the Karaka sales. [ATTACH EMAIL "L" - Summary: email Tuesday 31 January 2006 from Mr Glenn to University of Auckland Business School Dean recording Mr Glenn's lunch appointment with Mr Peters.] Mr Peters did then thank me for my assistance, as I have recorded in my first letter to the Committee.

25. Since I wrote these letters, I have further checked our office records. I have established that my bloodstock adviser and racehorse manager was also present. He heard the conversation about the donation with Mr Peters. An affidavit has been provided to the Committee confirming this aspect.

Prime Minister

28. I met the Prime Minister privately at her request when she attended the opening of the new Business School building which is named after me at the University of Auckland in February 2008. In a private and personal discussion with Ms Clark, I told her that I had made a donation to Mr Peters for his legal costs. I also told her of my conversation with the Labour Party's President, Mr Williams, before I agreed to make that donation back in 2005. It was my understanding Mr Williams would have had to clear this with his colleagues.



7

Consult-General/Monaco

27. During 2007 I initiated a proposal that I could represent New Zealand as Honorary Consul-General in Monaco. My offer was to provide an office at my expense. Part of the concept was an ambassador role in trade development. Nothing has come from these suggestions, which is the Government's prerogative.

Conclusion

29. I take no pleasure from having to deal with these matters in this way. I have come before the Committee at my expense, to state the facts, and to show how they are documented.

29. I am aware that Members of Parliament who are members of this Committee have questioned the authenticity of the letters that I have written. I am also aware that it has been said that I am 'confused' and 'a liar'.

30. These remarks are damaging to my reputation. These comments are wrong, as the documents I have produced show.

Owen George Glenn

Date: Tuesday 8 September 2006

PRIVILEGES COMMITTEE
11 SEP 2008
RECEIVED

BEFORE
The Privileges Committee of the House of Representatives of New Zealand

PR/PC/22
11/11/22

Inquiry into a question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests

TABLE OF EXHIBITS PRODUCED IN THE
STATEMENT OF EVIDENCE OF OWEN GEORGE GLENN
Tuesday 2 September 2008

- A email Wednesday 3 August 2008 from Mr F McO'Carroll to Mr Glenn's office seeking meeting opportunity for Mr Peters with Mr Glenn in Sydney.
- B email Thursday 4 August 2008 from Mr Glenn to Mr F McO'Carroll seeking any comments about Mr Peters.
- C email Saturday 13 August 2008 from Mr Glenn to Mr Williams re: meeting with Mr Peters.
- D email Monday 22 August 2008 to Mr McClay from Mr Glenn's assistant, Ms Ede, with Mr Glenn's personal note to Mr McClay.
- E email 5 December 2005 from Mr Glenn's assistant to Mr Glenn and to Mr Williams concerning Mr Peters' voice message asking Mr Glenn to call.
- F email Monday 12 December 2005 from Mr Glenn's assistant to Mr Glenn re meeting on 4 December 2005 with Mr Williams.
- G telephone call from Mr Glenn's Sydney house at 7:12pm Sydney time Wednesday 4 December 2005 (1:28pm NZ time) to Mr Peters 021 813 969.
- H Mr Peters' V Card mobile number 021 813 969.
- I email Wednesday 14 December 2005 from Mr Peters' lawyer, Mr JP Henry, to Mr Glenn at 1:40pm NZ time referring to Mr Glenn's conversation with Mr Henry's client at 1:30pm NZ time on 11/12/05 in Sydney time, providing Mr Henry's bank account.
- J email Tuesday 20 December 2005 from Mr Glenn's assistant to Mr Henry confirming payment details.
- K email details confirming Mr Glenn's presence in Europe over 29-30 January 2007 (Karna Vearring Sales).
- L email Tuesday 31 January 2005 from Mr Glenn to University of Auckland Business School Dean reporting Mr Glenn's lunch appointment with Mr Peters.

Counsel to Mr O G Glenn:
Dr G J Henry
Barrister
17, Spence House
P O Box 524, Auckland 9 445
Telephone: (09) 471 4320
Facsimile: (09) 473 1105

Correspondence re: Whiston Peters

Date: Wed, 3 Aug 2005 16:59:47 +1200 OZST
From: Roger McClay <rogermclay@parliament.nz>
Subject: The Rt Hon Whiston Peters
To: peter@chickenshops.com

Greetings Roger,
I work out of the office of the Hon Whiston Peters, leader of the NZ First political party. Mr Peters has asked me to enquire whether you would be possible to arrange to meet with him with Mr Owen Glenn. Mr Peters will be in Sydney on business on Fri & Sat 12 and 13 August and would welcome the chance to meet on one of those two days. I would be happy to speak with you by phone about this and ask that you give me the best number and time to ring.
Sincerely,
Hon Roger McClay QSO
Skel. Advisor

This is the signature marked 'R' referred to in the annexed Statement of Evidence of Owen Glenn dated 22/09/08 before the Privileges Committee of the House of Representatives.



"B"

From: Owen Glenn [mailto:owenglenn@bhntrial.com]
Sent: Thursday, 7 August 2008 8:57 AM
To: 'James; Chris; Stephen; Malcolm; Susan; Scott'; James; Chris; Stephen; Susan; Scott
Cc: Mike; Greg; Scott
Subject: Re: AM: Federal trial

Leslie PM at 3pm would be OK - will be happy to discuss what the agenda is for the meeting. Owen
Myself - Roy; Greg; Jason; who he is but not sure what the venue.
I expect have done in made up with the short presentation?
OGE

Owen Glenn
Executive Chairman
OGE
1200 22nd Street SW
Suite 201, 2nd Floor
Portland, Oregon, 97201
USA

This is the amended market "B" referred to in the amended
Statement of Evidence of OWEN GEORGE GLENN read
at Wellington this 5th day of September 2008 before the
Privileges Committee of the House of Representatives.

"C"

From: Owen Glenn [mailto:owenglenn@bhntrial.com]
Sent: Saturday, 13 August 2008 11:13 AM
To: James; Chris; Stephen; Malcolm; Susan; Scott
Subject: Re: Invitation Sir Howard Morrison - 14th Sept

Mike had a very informative hour with the chairman. My name (I would guess he will) increase
his seats to 13 and popular vote to a little over 3%. He has some interesting thoughts on encouraging
new business start ups with tax incentives. One the various score business visitors and a shot to the arms to
develop both new industries and give the old a shot in the arm. I am going to continue a dialogue with
him.

This is the amended market "C" referred to in the amended
Statement of Evidence of OWEN GEORGE GLENN read
at Wellington this 5th day of September 2008 before the
Privileges Committee of the House of Representatives.

From: Laura Bide [mailto:laurabide@ontlegis.ca.gov]
 Sent: Monday, 22 August 2005 12:22 PM
 To: Roger Wickley
 Subject: RE: vty egnh

Hi Roger,

Mr. Ghem has asked that I pass the following message onto you. I have cc'ed him in on this message.

"Dear Roger,

In respect to your letter of 7th August I regret I am unable to assist as I have many other commitments at this time. It was a pleasure to meet Mr. Peters and I thank you both for your time.

Yours sincerely,
 Owen C. Ghem."

Kind regards,

Laura Bide
 Executive Assistant to Chairman

u



This is the amended marked "u" referred to in the amended Statement of Evidence of OWEN GEORGE GLENN read at Wellington this 9th day of September 2005 before the Privileges Committee of the House of Representatives.

From: Laura Bide [mailto:laurabide@ontlegis.ca.gov]
 Sent: 07 December 2005 5:04:25
 To: owen.ghem@parliament.nz
 Subject: RE: Owen's message
 Sensitivity: Personal

I sent this to Mike. Have you had a reply? You might want to call him? Or have you spoken to Winston?

Kind regards,
 DS to Chairman of the OTS (Advisory Group)

From: Laura Bide [mailto:laurabide@ontlegis.ca.gov]
 Sent: Monday, December 05, 2005 10:02 AM
 To: Mike Williamson [mailto:mike@nzli.org.nz]
 Subject: Owen's message
 Sensitivity: Personal

Owen wanted me to pop a quick email through - Winston has left a message cc. His answer is: "He's today and Owen is due to call him back. Owen wanted to know if you had any flight prior to his call to Winston. If so, can you call Owen on his mobile here in Australia + 61 437 277 464. Hope you are well. Beautiful day here - and I've noted in my diary that you might be over on the 19th/20th Dec so will hopefully catch up then."

All the best,
 Kind regards,
 LALR

u



This is the amended marked "u" referred to in the amended Statement of Evidence of OWEN GEORGE GLENN read at Wellington this 9th day of September 2005 before the Privileges Committee of the House of Representatives.

Amount 211 8280 500
Issue of Act of
Page 7 of 78

Item International Direct Calls - Itemized continued

Date	Time	Area	Number	Rate	Answer	End GST?	Int GST?
27 Dec	11:11am	New Zealand	[REDACTED]	Special	0.06	0.34	0.38
02 Nov	07:52pm	New Zealand	[REDACTED]	Special	0.47	0.47	0.92
14 Nov	10:39pm	United King	[REDACTED]	Int'l Mob	6.04	8.13	3.44
17 Nov	08:47am	USA, Calif	[REDACTED]	Special	8.83	3.64	7.70
08 Dec	11:31am	USA, Calif	[REDACTED]	Special	5.41	0.64	3.71
08 Dec	11:40am	USA, Calif	[REDACTED]	Special	0.28	0.84	0.71
07 Dec	10:41am	New Zealand	[REDACTED]	Special	0.28	0.30	0.48
10 Dec	10:52am	New Zealand	[REDACTED]	Special	4.66	0.34	0.37
10 Dec	10:52am	USA, Calif	[REDACTED]	Special	1.57	0.83	0.88
14 Dec	08:07am	USA, Calif	[REDACTED]	Special	0.48	0.83	0.70
14 Dec	08:07am	USA, Calif	[REDACTED]	Special	0.48	0.27	0.61
14 Dec	11:29am	New Zealand	[REDACTED]	Int'l Mob	2.41	4.02	4.48
20 Dec	10:27am	USA, Calif	[REDACTED]	Emergency	3.03	7.78	8.24
21 Dec	12:07pm	USA, Calif	[REDACTED]	Special	1.32	6.36	6.93
21 Dec	04:21pm	USA, Calif	[REDACTED]	Special	3.15	0.87	0.48
24 Dec	07:43am	USA, Calif	[REDACTED]	Special	0.11	0.25	0.33
28 Dec	07:58am	USA, Calif	[REDACTED]	Special	8.53	0.84	0.71
28 Dec	08:19am	USA, Calif	[REDACTED]	Special	1.31	0.81	0.87
28 Dec	01:31pm	USA, Calif	[REDACTED]	Special	0.42	0.28	0.33
28 Dec	01:31pm	USA, Calif	[REDACTED]	Special	1.82	1.82	1.76
28 Dec	08:21am	USA, Calif	[REDACTED]	Special	0.06	3.35	0.37
29 Dec	08:22am	USA, Calif	[REDACTED]	Special	1.34	0.85	1.05
Total for International Direct					\$31.54	\$92.47	\$27.47

FastStream 0115 International calls
 Telephone 82 8287 3982
 50 Riv. Oceanfront USA, Calif
 Total for 08 Dec 89 6987
 Total for FastStream 0115 International
 * Appearing next to a call design indicates calls made under a Plan/Sky

Item Information Calls - Itemized

Date	Time	Area	Number	Rate	Answer	End GST?	Int GST?
14 Nov	08:43am	USA, Calif	[REDACTED]	Special	0.58	0.51	0.59
18 Nov	08:04pm	USA, Calif	[REDACTED]	Special	4.03	4.03	8.28

Information calls
 Telephone 82 8287 3982
 50 Riv. Oceanfront USA, Calif
 Total for 08 Dec 89 6987
 Total for FastStream 0115 International

Continued from page 6

Full Name: Winston Peters
 Last Name: Peters
 First Name: Winston
 Business Address: P.O. Box 11000, Wellington
 Wellington, New Zealand

Business Address: P.O. Box 11000, Wellington
 Wellington, New Zealand
 Email: wpeters@parliament.govt.nz
 E-mail Display As: Winston Peters (wpeters@parliament.govt.nz)
 Categories: Business

Secretary - Civil Concern + 64 4 471 4258
 James Funnell (Private Secretary) + 64 21 328 372

This is the summary provided to the members of the House of Representatives at Wellington this 9th day of September 2000 before the Privileges Committee of the House of Representatives.

17

From: Brian Henry <b.henry@abn.com.au>
 To: <owen.gleam@nab.com.au>
 Date: Wed, 14 Dec 2005 13:52:10 +1300
 Further to your discussion with my client at 11.30 AM I provide my bank details as ASB
 a/c 128390 - 0678019 - 50

Regards
 Brian Henry
 Director
 Auckland

[Signature]
 This is the signature made and used to, in the enclosed
 statement of evidence of OWEN GLEAM read
 at the hearing on the 5th day of September 2005 before the
 Pwngwa Committee of the House of Representatives.

From: Owen Gleam [mailto:owen.gleam@nab.com.au]
 Sent: 14 December 2005 14:28
 To: b.henry@abn.com.au
 Subject: RE:

Hi I need the account name and bank branch, regards Owen

Owen Gleam
 Executive Chairman
 CRT Logistics Group
 Gate 58, 2 Burnstock Point Road
 Port Botany, Sydney, NSW 2036
 Australia

From: Brian Henry <b.henry@abn.com.au>
 To: Owen Gleam <owen.gleam@nab.com.au>
 Subject: RE:
 Date: Wed, 14 Dec 2005 14:29:21 +1300

[Signature]
 This is the signature made and used to, in the enclosed
 statement of evidence of OWEN GLEAM read
 at the hearing on the 5th day of September 2005 before the
 Pwngwa Committee of the House of Representatives.

Apologies:
 The account is the B F Henry - Trustee a/c of the ASB Bank Remuneration Branch
 regards

17

From: Louise Ede [mailto:louise.ede@abn.com.au]
 Sent: 26 December 2005 09:41
 To: Henry
 Subject: RE: RE:

Hi Brian,
 Sending instructions to the bank today so should actually go through in next 3-4 days.
 Please confirm to me that funds are received OK.
 Thank you.

Kind regards,
 Louise Ede

BA to Chairman of the CRT Logistics Group
 P+61 2 9594 0942; F+61 2 9594 9995
 M+61 408 847 080; E louise.ede@abn.com.au
 Gate 58, 2 Burnstock Point Road, Port Botany, 2036
 Sydney, NSW, Australia. www.crllogisticsgroup.com

[Signature]
 This is the signature made and used to, in the enclosed
 statement of evidence of LOUISE EDE read
 at the hearing on the 5th day of September 2005 before the
 Pwngwa Committee of the House of Representatives.

08-09-2008 17:07 FR

44-1-886211 T-384 P.001/002 F-437

08-09-2008 17:07 FROM: BELL & HOWELL

+61-7-4688711 T-384 P.002/002 F-437

PR/PL/23
PR/PL/23

BEFORE

The Privileges Committee of the House of Representatives of New Zealand

CONCERNING

Inquiry into a question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests

PRIVILEGES COMMITTEE
19 SEP 2008
RECEIVED

AFFIDAVIT OF PAUL ANTHONY MORONEY

Dated: 5 September 2008

Solicitors to Mr. A. Moroney:
Wes Miller
Bell & Graham
Solicitors
58 Broadway
Mataimua
Telephone: (07) 588 8152
Facsimile: (07) 588 0711

1. PAUL ANTHONY MORONEY of Mataimua, male oath and say as follows:

1. I am a bloodstock consultant and racehorse trainer;

2. Among my clients is Mr. Owen Glenn, I am his racing manager in both Australia and New Zealand. Apart from that relationship, we have become very good friends. I have enjoyed Mr. Glenn's hospitality on his boat;

3. From diary records that are available to me, which I have carefully checked, on Tuesday 31st of January 2008 I was invited to attend a lunch hosted by Pencaitow Stud in its hospitality tent at Karaka during the Premier sales. I attended this lunch with Mr. Glenn and the Executive Assistant Ms Laurel Eda. One of the guests at the table was Mrs. Rt Hon Winston Peters MP, who sat next to Mr. Glenn;

4. During the luncheon discussion, part of the conversation between Mr. Peters and Mr. Glenn involved Mr. Peters thanking Mr. Glenn for his help to him. Mr. Glenn had told me before the lunch that he was meeting Mr. Peters over the lunch, because he had made a donation to assist Mr. Peters fund his legal expenses concerning the Tauranga election result. I recall Mr. Glenn telling me that Mr. Peters had contacted him to ask for his help with this;

5. I understand the context of that part of the luncheon conversation between them to relate to the donation with Mr. Peters expressing his thanks to Mr. Glenn for that assistance;

Sworn at Mataimua by the said
PAUL ANTHONY MORONEY
the 5th day of September 2008
before me:

F. M. HAROLD
SOLICITOR
MATAIMUA



Oswin G. Gahan, QC
c/o 13 Blvd du Sales
Monaco, MC 98000
PR/Box # 277 977 00 8 44

PR/PI/35

Mr Simon Power, MP
Chairperson,
Parliamentary Committee
House of Representatives
Parliament Buildings
WELLINGTON
27th September 2005

Re: Conduct of a consented investigation to Mr. John Nicholson, former MP

1. I refer to my letters of 17 and 27 August and to my statements and evidence given before the Committee on Tuesday 8 September 2005.
2. I am aware in outline of the allegations which were made on Wednesday 18 September to the Committee by Mr. Henry, made on Tuesday 14 September 2005. I understand that the Committee asked Mr. Henry to address the meeting but I am not aware of what reply was specified.
3. Mr. Peter's contribution to the meeting is set out in four minutes:
 - (a) the pastime from it was the lawyer Mr. Henry who specified the donation from Mr. Peter's Electoral Political Trust, both Mr. Peter and Mr. Henry associate this relevant with the controversy about comments of Mr. Downer at the AGPS meeting which Mr. Peter had made in 2002. Mr. Peter's office has been told that Mr. Peter was absent from when the message was sent to call from Mr. Henry to my office on 5 December 2005;
 - (b) he made a number of points about the content of the late afternoon conversation between us on 14 December 2005. Mr. Peter's office has not yet made a discussion of the donation and that it involves a specific receipt concerning my testimony in March;
 - (c) the lunch meeting at Kaitaki, also outlined by Mr. Mitchell; and
 - (d) the assertion that my statements at my evidence were "corrected".
4. My response to each of these four points is set out below. I have copied separate copies of the document to the Committee on 15 September concerning points (b) and (c).
5. My, and I am talking specifically to Mr. Peter's, further evidence concerning Mr. Henry's role in referring to Mr. Henry's own explanation in the paragraphs & following:

(c1) I have no recollection of the issue concerning the role of Mr. Peter as Mr. Henry's solicitor from the AGPS meeting, or of ever discussing them with Mr. Henry around 22 November 2005 or of trying further this. I do not recall ever discussing anything with Mr. Henry, including the donation that I made to assist with Mr. Peter's legal costs. We have no record of any such contact with Mr. Henry. His details are not in the Office Outlook system, as I would expect them to be, if it was having any such discussion with him concerning Mr. Peter and a donation concerning his legal fees and

(c2) The interview email from Laura Cole to me of 8 December 2005 refers specifically to a message from Mr. Peter from the time of her arrival. It was the first message I received, and I copied/forwarded to me by her at the start of the day on the day. It does not mention Mr. Henry. Mr. Cole had met Mr. Peter with me in August. I did not have a conversation about why left the message. I thought the subject-matter to be important enough to follow up with Mr. Peter's assistance. From that time, I am quite clear that I was asked directly by Mr. Peter to assist with the legal costs. I discussed the matter with Mr. Williams. I had an assurance from him that I would not be asked to do so. I was also informed that Mr. Peter had not been meeting with Mr. Williams. My sole income is of course from my telephone, and my bank was closed down when I discussed what was, initially \$75,000 and then the agreed amount of \$100,000 with Mr. Peter. She then linked the steps with my bank with my credit card, for the transfer to occur from the 1st of December with my funds being credited.

(c3) I now refer to the statement made by Mr. Henry before the Committee on 12 September at which my lawyer was present:

(c4) I understand that Mr. Henry claimed that I have altered my own account of the sequence of events concerning my association with the donation from Mr. Peter. I do not accept this. I have said consistently that it was Mr. Peter who crossed the bar with the request for assistance. The request that occurred before his telephone call that I made to Mr. Peter on 14 December. The only record that I have of Mr. Peter's the only message from Mr. Peter which was referred to me by Laura Cole on 5 December. My call to Mr. Peter on the 14th December was a simple request to provide the agreed \$100,000. I had made no agreement with anyone to make a donation exceeding Mr. Peter's legal costs before that date.

(c5) I understand that Mr. Henry acknowledged in his evidence in his evidence of 16 September that, following my telephone discussion with Mr. Peter on 14 December, Mr. Peter immediately called Mr. Henry. The email from Mr. Henry then immediately followed to me. I understand that Mr. Henry sympathized that during the conversation with Mr. Peter, there was some agreement to donate \$100,000 for Mr. Peter's legal costs, which he said was the earlier agreement to donate \$100,000 for Mr. Peter's legal costs. Mr. Henry said that this was a coincidence. Until 14 December, I had not made any agreement with anyone to make the donation. My lawyer said not to be regarded as a solicitor. After my birthday meeting with Mr. Williams, I called Mr. Peter and made that agreement with him. I have no recollection of knowing that Mr. Henry was Mr. Peter's lawyer until that telephone call, and the immediate small confirmation established the exact date of when was arranged between Mr. Peter and me, there was no coincidence about this. I received exactly the information that expected.

- 7. Secondly, most of Mr Peters' account of the subject-matter of the telephone conversation on 14 December 2005 is incorrect. At the time, I had to Sydenham. I had then made no decision about reappointing John Basse to Monaco. At that time, much less could I have done for the New Zealand Government. These possibilities were not discussed until well into 2007.
- 8. We have discussed on 14 December the Melbourne Cup which had been run about the same time. I did not make the call to Mr Peters for that reason. We certainly discussed and agreed the \$100,000 donation. That was the only purpose of my making that telephone call to Mr Peters after my discussion with Mr Williams.
- 9. Third, the Kelvin Lunch meeting – and Mr Malcolm's statement of 13 September to the US committee – Mr Malcolm's contact on 10 being our last – and that the introduction to me by Yvonne Jones, one of Malcolm's people, as given to me by my statement of 5 September records, I certainly knew that I was seeking to see Mr Peters for the lunch on 31 January. Mr Peters was instructed to sit. He did not do so for some period, during which we spoke about the donation. After a period of discussion about a range of matters, Mr Peters invited to another table. I also had other people dining the course of the lunch at other tables.
- 10. I fully understood the seriousness of the issue that the Committee's chairing will. I cannot comment on whether or not the disclosure was surprising to me. I do not recall Mr Peters' statement of the facts to you is very simple. There is, fourthly, nothing "concealed" about it.
- 11. In summary:
- 12. (a) I made an agreement to donate \$100,000 to Mr Peters personally or his request concerning the legal expenses for his Election Petition;
- (b) I am certain I had no agreement with Mr Peters on 14 December 2005, and that I did not make any such agreement with anyone else;
- (c) Mr Henry's email to me that day did not say any more on my part about any financial agreement with him. There was nothing in it that would have made me such an agreement. It simply confirmed what I had agreed to minutes earlier with Mr Peters; and
- (d) I was at Kelvin in January 2005. I knew I was to meet Mr Peters at lunch on the 31st and I did so. He acknowledged the donation to me, in what was a pleasant occasion. When he said beside me the words "please" in the presence of Miss Minnow and other people.

Yours faithfully,

 David G. Syme

Appendix F**Evidence of Stephen Kós QC**

We received the following written evidence from Mr Kós. This evidence is reproduced on the following pages.

Reference number	Date received
PR/PI/3	18 August 2008

15 August 2008

Mr Simon Power MP
Chairman
Privileges Committee
House of Representatives
Parliament House
Wellington

Dear Sir

PREJUDICIAL INTERESTS INQUIRY: BARRISTERS' FEES

Your letter of 13 August asks for expert assistance to explain:

Whether a doctor/teacher relationship could exist between the barrister and the client they represent, and more generally – from whom barristers can receive payment for services and who could contribute a dollar or three circumstances.

The relevant principles are these:

Barristers and their fees

1. A barrister is a sole legal practitioner who holds a barrister's practising certificate.
 - > Barristers do not practise in firms or in partnerships. They do not operate trust accounts. Therefore, the onerous Solicitors Trust Account Regulations did not apply to them. They did not need to contribute to the Law Society's Fidelity Fund. Until recently, they could not be sued in respect of their work. They were not subject to the same regulatory protection as a barrister. Only barristers could become Queen's Counsel.
2. A barrister may only be instructed professionally by a solicitor. The barrister may not accept professional instructions direct from a lay client.
 - > That is why some barristers' yellow page adverts say, "sollicitur referral required". The rule exists to protect the barrister's independence, there are some legitimate exceptions to the rule. Some barristers (about 1 in 10) are part of a solicitor's firm. In this case, the barrister's rights, or the client's obligations, are then governed by the solicitor's contract.
3. A barrister has no right to recover fees from the client.
 - > The barrister has no contractual relationship with the lay client. The barrister cannot sue the client for unpaid fees. The barrister's right to sue the client is based on the fact that the barrister has a "special right" at the outset of the instruction. This practice has fallen away in New Zealand. However, a solicitor will sometimes provision for the barrister's fee by holding client funds in trust.
 - > Ref: *Atkinson v Murguly* [1997] 3 NZLR 104, 110-3 (High Court, Wellington, December 1996); *Lewis v New Zealand Lawyers & Conveyancers*, para 81; *Woolf ethics, Professional Responsibility & the Lawyer*, 148.

STOUT STREET CHAMBERS
PO BOX 14000
WELLINGTON 6142
TELEPHONE: 480 9 422 8862
WWW.STOUTSTREET.CO.NZ

PA2/PA2/3
STOUT STREET CHAMBERS

3/2/1/50

STOUT STREET CHAMBERS

4. A barrister cannot sue the instructing solicitor for unpaid fees.

- > "The obligation of a solicitor to pay a barrister is one which is owed in honor and not in debt. The barrister and solicitor have a professional relationship and the barrister's obligation to sue the barrister's client. That professional obligation can be excluded by agreement. In many cases the solicitor will send the instruction to the barrister in their terms. We accept no responsibility for your fees." If the barrister accepts instructions on that basis the solicitor has no further professional responsibility for the fees.
- > If the professional obligation has not been excluded, and the solicitor still does not pay the barrister, there is professional misconduct. But the solicitor still cannot be compelled to pay.

Ref: *Atkinson v Murguly* [1997] 3 NZLR 104, 110-3 (High Court, Wellington, July 2007; barrister's claim for fees brought against his instructing solicitor struck out as an abuse of process); *Rules of Professional Conduct*, rule 6.08.

5. The only person who can recover the barrister's fee from the client is the instructing solicitor.

- > The solicitor has a contractual relationship with the client. The barrister does not. The solicitor will bill the client. The solicitor's bill can incorporate the barrister's fee as a disbursement. It may even be the sole sum within the solicitor's bill. If the bill is not paid, the solicitor can sue the client.
- > Ref: *Law Practitioners' Act 1982* (amended at the relevant time), s 140; *Woolf v Thomson* (High Court, Wellington, July 2009).

"Debt"

6. There is no definition of the word "debt" in Appendix B of the Standing Orders. I am advised that there is no Speaker's ruling on the subject. As with almost any word, a range of possible meanings exist:

- > The principal dictionary definitions are "that which is owed or due; a sum of money, or other thing, which one person is under a legal obligation to pay or render something", and "being under obligation to pay something". In essence, a present liability to pay money (or provide something).
 - > In public usage, "debt" can have a wider meaning. A moral obligation to pay, or a mere expectation of payment, neither being enforceable at law nor a "liability" as such, can sometimes colloquially be called a "debt" – e.g. a "debt of honour".
 - > The ordinary legal meaning of "debt" is however narrower (and similar to the dictionary): it is "a certain sum due from one person to another". Typically it will arise under a contract or a judgment. The right to payment exists already; the amount has been fixed, and it can be recovered by legal proceedings; *Cassidy v Auld* (1802) 2 East 325.
- The Committee has asked my view. I note the following: Appendix B describes "debt" in procedural terms. The obligation to sue is a procedural one. The consequences of non-compliance with the Speaker's ruling are procedural. The parallel procedure for the declaration of financial interests (SO 4, SO 5) concerns

Shour Street
Lawrence, MA

“direct” financial benefits. While taking an expansive, colloquial view of “direct” may encourage greater levels of disclosure, it may also cause real difficulty in application. Both unintended levels of disclosure, and inadvertent or unintended non-compliance, are likely outcomes. Moral obligations and mere expectations do not sit easily within the “framework” of Appendix B. They are difficult to value. Applying the ordinary legal meaning will produce a brighter line for compliance.

6. The intended meaning of “direct” in Appendix B is therefore more likely to be the ordinary meaning of “direct” (i.e. a sum of money that can be recovered by legal proceedings).

Conclusions

- 9. A barrister’s fee may create a moral obligation – for both the client and the solicitor (but a professional obligation for the solicitor). But it will only create a legal “debt” if it is claimed by the solicitor via a solicitor’s bill of costs.
 - > At no point will a debtor/creditor relationship exist between the client and the barrister.
 - 1. Not will it exist between the instructing solicitor and the barrister.
 - > It will however exist between the client and the solicitor, if a bill of costs has been issued.

Yours sincerely

Stephen Kee QC

DOI: 64-472-3126
Fax: 64-4-772-5027
Mob: 0274-577-111
Email: stephen.kee@courts.govt.nz

Appendix G

Evidence of the Serious Fraud Office

We received the following written evidence from the Serious Fraud Office. This evidence is reproduced on the following pages.

Reference number	Date received
Private evidence	16 September 2008



SERIOUS FRAUD OFFICE

— THE PARLIAMENTS BUILDINGS —

PRIVATE EVIDENCE

14th September 2008

Mr Simon Power MP
 Chairperson of the Privileges Committee
 House of Representatives
 C/- Office of the Clerk of the House of Representatives
 By email: c/- Mary.Harris@parliament.govt.nz

Dear Mr Power,

Privileges Committee: Inquiry into the question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests

1. The Privileges Committee expects, according to reports in the media, to have heard evidence relating to a \$40,000 debt allegedly paid on behalf of the Rt Hon Wynona Peters. I have information concerning the payment of this money, obtained in the course of my office's investigation into matters relating to donations to the New Zealand First Party, I sought advice from the Clerk of the House and from the Auditor General as it was not clear to me if issues relating to the payment of this cash order were properly before the Committee. The Clerk of the House confirmed that the committee heard evidence about the \$40,000 payment and suggested that I write to you about the information that I have. The Auditor General expressed the view that the information properly should be provided to your committee.
2. I am informed by the Clerk that it is for the Committee to decide how deeply to investigate a matter within the terms of the inquiry which relates to the declaration of Mr Peters's pecuniary interests, and that within those confines, relevancy is determined by you and/or the committee. However, media reports of the inquiry, coupled with information at my disposal derived from my investigation into donations to the New Zealand First Party, suggest that the explanation to the Committee of an earlier hearing, as reported to the news media, about the payment of these costs may be misleading, or at the very least, incomplete.
3. I have information that demonstrates the provenance of the money used to meet the order for costs on the Tairāwhiti electoral petition case. It is my present view

20/09/2008 10:27:00 AM C:\ProgramData\seriousfraud\com\clerk\form\privilege\2008\9\14.doc

Level 3, Durbie Wythe Building, One Waterloo Street & Mervyn Drive, PO Box 7124, Waterloo Street, Auckland, New Zealand
 Telephone (649) 309 0121, Faxphone (649) 309 0122, Email: info@seriousfraud.govt.nz Web: www.sfo.govt.nz

2

4. I am not providing the information to the committee that I would provide it in a form that kept anonymous the identity of the donor of the money, given that the money was provided to the Spencer Trust for it then to pay on, and that the use of a trust has been a commonly accepted means by which donors of funds to political parties have been able to keep their identities confidential.

Please advise whether this information is within the scope of your inquiry. I have a discretion under section 36(2)(e) of the Serious Fraud Office Act 1990 to release the information if I believe that the Committee has a proper interest in receiving the information. I am of the view that the Committee does have a proper interest provided the \$40,000 payment is within the scope of its inquiry.

Yours faithfully

Grant Liddell
 Director and Chief Executive



PRIVATE CONFERENCE

SERIOUS FRAUD OFFICE

TE ŌHANGA Kaitiaki Take Kōwhiri

16 September 2009

Mr Simon Power MP
Chairperson, Privileges Committee
House of Representatives

By email: Simon.Harris@parliament.govt.nz

Dear Mr Power:

Privileges Committee: Inquiry into the question of privilege relating to compliance with a members' obligations under the Standing Orders dealing with pecuniary interests.

I refer to my letter to you of 10 September 2008 regarding whether information the SFO has relating to the origin of funds used to meet the County Order for costs on the Tauranga electoral petition is relevant to the committee's inquiry and the response of the Clerk by telephone to me this afternoon.

- 2. I am satisfied that the Privileges Committee has a proper interest in receiving information the SFO has relating to the provenance of funds used to meet the County Order for costs on the Tauranga electoral petition, and have accordingly authorised its release to you, as Chair of the Privileges Committee, in the exercise of my discretion under s 34(2)(c) of the Serious Fraud Office Act 1990. In making this information available, I have considered my responsibilities as head of a law enforcement agency where I have information that is relevant to possible breach of the laws of New Zealand. In this case, the possible breach concerns the obligations under Standing Orders to file returns of pecuniary interests. The standing orders are the laws governing the House and its members and are thus part of the laws of New Zealand. The information I have speeports relevant to the question of what should have been returned and appears to provide information different from evidence heard by the committee. Any question of possible breach is, of course, for the committee and so of course is the question of what weight to give to the information.
- 3. The information has been obtained from documents secured using powers under the Serious Fraud Office Act. It explains where money came from. I do not yet have information why the arrangements were made. There may be a matter that the committee is interested in, but that is or course for the committee to determine.

Simon.Harris@parliament.govt.nz

Level 2 of the Waiver Building, 1 of Market Street, Auckland 1010, New Zealand
Telephone: +64 9 303 0121 Fax: +64 9 303 0122 Email: info@parliament.govt.nz

4. Enclosed:

- a. a chart prepared by a Serious Fraud Office forensic accountant showing money flows;
- b. a note to be read with the chart that explains the money flows in narrative terms;
- c. a schedule of documents, which documents themselves prove the money flows.

5. I have not provided the corroborating documents listed in the schedule. They can be provided if required. I am sure an appropriate way to provide them as proof of the information I am supplying while at the same time protecting donors' privacy interests and removing irrelevant (and otherwise private) information could be worked out if the committee requires the information. One option would be to have the original documents viewed by a person on behalf of the committee, perhaps the Clerk herself.

6. I have redacted details in the three attached documents that might lead to the identity of the donors of the \$40,000 and of other donated amounts. It appears to me that identity of the donors is not relevant to the matter before the committee, which is whether the debt was paid by anyone, and not the identity of that other. If you disagree and would assist you and the committee if I explain further why I have redacted identifying details.

7. The Serious Fraud Office has certain secrecy obligations, enforced by criminal penalties for breach. In providing this information in the exercise of my discretion, and in redacting identifying details, I have tried to take the privacy interests of donors and therefore the wider interests of all political parties that receive donations into account without hampering the committee in the exercise of its responsibilities.

4. Political parties in New Zealand have operated under the applicable electoral legislation on the assumption that placing interests between a donor and the political party has been effective to conceal the identity of donors who do have undertaken privacy interests. A Crown Law Office opinion on the Electoral Commission website supports this view. Donors have made their donations on the assumption that their identities are protected. There may be a question in law whether the responsibility of donors between a donor and political party is effective to achieve the anonymity of donors but regardless of the correct position in law, it would be wrong for the SFO to proceed in any other assumption. If I were now to disclose the identity of donors that could have the effect of undermining the donation rules as understood by all political parties for many years.

5. At the point of providing this information to the committee, the SFO investigation has not yet concluded. The information is provided to the committee now because I understand it is well advanced in its programme of business on this inquiry. Protecting donors' identities in the way that I have done is also for the object of avoiding compromise in any aspect of the present SFO investigation that may need further scrutiny.

6. I am aware that the Committee can subpoena witnesses to provide the information that I have had redacted. I accept that the House's powers to require information (and those of the committee on behalf of the House) are not constrained by the provisions of the

Simon.Harris@parliament.govt.nz

Serious Fraud Office

Inquiry into donations to New Zealand First & others - file number 1737

Explanatory note - origins of and distribution of the \$40,000 paid to R Clarkson

Step 1 on the Chart

1. Kelly Thompson & Caskley ("KTC") acted for Mr Bob Clarkson in the Tauranga Electoral dispute. On 27th March 2006 and then again on 4th April 2006, KTC emailed Brian Henry (who acted for Mr Winston Peters in the same dispute) asking for payment of the \$40,000 that had been awarded by the Court to Mr Clarkson.
2. On 5th April 2006, Brian Henry raised a cheque on his "practice account" in order to purchase an A&P Bank cheque the same day, made payable to KTC. The bank cheque was issued for \$40,000 and Mr Henry's bank account was debited for the amount of the cheque and a \$3 cheque fee. The debit increased the overdraft in the Practice Account by \$40,003.
3. KTC received the \$40,000 on 5th April 2006 and credited the appropriate amount in their records.

Step 2 & Step 3 on the Chart

4. On the 5th April 2006, the Spencer Trust account had a balance in it of only \$15,600 (rounded). This balance was made up of money previously received as donations given at an earlier time from the Donor A interests. Clearly, \$15,600 was insufficient to meet a payment of \$40,000. However, on 5th April 2006, an additional sum of \$24,400 was credited to the Spencer Trust account, recorded as a loan from a particular individual (not Mr Winston Peters). This additional sum raised the Trust's account balance to just over \$40,000.
5. A day before this, on the 4th April 2006, Brian Henry had faxed Thompson Wilton (the law firm where two of the former Spencer Trust trustees worked) asking Ueno of his bank account details.

Step 4 on the Chart

6. On the 5th April 2006 the Spencer Trust remitted \$43,000 to Mr Henry's bank account. Mr Henry was therefore reimbursed for the payment to KTC that he had made that day. The Spencer Trust had funded the reimbursement out of the loan from the individual and from one-off donations from Donor A interests that it still had on hand.

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Step 5 on the Chart

7. On the 7th April 2006 four separate payments of \$9,996 each (so \$39,984 in total) were made to the Spencer Trust. The money (paid in 4 cheques) came from Donor A subsidiaries (E, L1, P and L2). Each cheque was made payable to the Spencer Trust and each was below the \$10,000 threshold.

Step 6 on the Chart

8. On the same day that the \$39,984 was received on 7th April 2006, an amount of \$24,600 was repaid by the Spencer Trust to the particular individual and recorded as the repayment of the loan that person had made just two days earlier. Without the receipt of the \$39,984 from Donor A's companies, there were insufficient funds in the Spencer Trust to repay the \$24,600.
9. The remainder of the \$39,984 after the loan was repaid, i.e. some \$15,400 (rounded) remained in the Spencer Trust account and was utilised at a later point in time.

10. In summary, Mr Henry paid the \$40,000 to Mr Clarkson's lawyers and was reimbursed on the same day through a payment from the Spencer Trust. The Spencer Trust itself funded that reimbursement in part from unexpended Donor A donations received at an earlier point in time and from the loan from the individual. Two days after the reimbursement, new donations from the Donor A interests allowed the Spencer Trust to repay the individual lender and restore its bank account balance.

15th September 2008

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Appendix H

Corrected transcript of evidence 18 August 2008

Members

Simon Power (Chairperson)
 Hon Dr Michael Cullen (Deputy Chairperson)
 Gerry Brownlee
 Hon Lianne Dalziel
 Hon Peter Dunne
 Russell Fairbrother
 Dail Jones
 Wayne Mapp
 Dr Russel Norman
 Hon Murray McCully
 Heather Roy
 Hon Paul Swain

Staff

Mary Harris, Clerk of the House
 Tim Workman, Clerk-Assistant (Legal Services)
 Catherine Parkin, Clerk of the Committee

Witnesses

Stephen Kós QC
 Brian Henry (by videoconference)
 Rt Hon Winston Peters

Power If we could call proceedings to order, please. [*Introductions*] Mr Kós, thank you very much for undertaking this task for the committee. The committee will have received your letter of 15 August on the specific issue of debt and if that relationship occurs between a barrister and/or somebody in the role of a client. The floor is yours, Mr Kós, if you would like to take us through your evidence. No doubt there will be some questions for you at the conclusion of that evidence.

Kós Thank you, Mr Chairman, and members of the committee. I'm very conscious that I'm merely the overture to the opera that follows. My evidence is of a fairly technical nature, so I'll be brief in summarising it. But you've got the letter that I've prepared for you, and that itself is quite succinct anyway.

You've asked me for some expert assistance on the question of whether a debtor/creditor relationship exists between a barrister and a client. In the

first part of the advice that I've provided the committee with, I've summarised the key differences between barristers and other lawyers. I've noted in the first paragraph that barristers don't have trust accounts, which means that they're not subject to audit regulations and they weren't subject to the fidelity fund levies that applied to solicitors. I've noted also that they cannot be instructed directly by lay clients, only by solicitors, and that's a significant disability in the practice of a barrister. But the major disability, at least economically, is that a barrister cannot recover fees from his or her client. So if the fees aren't paid, the barrister can't sue the client—and that's been so since the days of the Romans—and the barrister can't sue the instructing solicitor, either. They've tried, and they've been knocked back every time by the High Court.

The short point is there's simply no contractual relationship between a barrister and a client, and there's no contractual relationship between a barrister and his or her instructing solicitor. So that leaves the default position being—and it's quite clear—that the only person who can recover the barrister's fee from the client is the instructing solicitor: the person whom they are required to deal with. They can do that only if the solicitor has issued a bill. The solicitor's bill can incorporate the barrister's fee as a disbursement, and that may be the entirety of the solicitor's bill, and if the bill is not paid, then the solicitor can sue the client. So that's what barristers are, that's why they're different, and those are the limitations under which they operate.

Directing myself, then, to the specific question you've asked, which is whether a debtor/creditor relationship could exist between a barrister and a client, that of course turns on the word "debt" that appears in clause 7 of your appendix B. I've noted in my paragraph 6 that the word "debt" has a range of meanings. The legal and the dictionary meanings are quite similar: a present liability to pay a specific sum of money. A wider colloquial meaning could be used. We talk about the expression "a debt of honour" sometimes, which is obviously a wider meaning than a legal debt or the dictionary definition of debt that I've outlined in paragraph 6. But I've expressed my view, in paragraph 7, that it is probably the case that clause 7 of your appendix B, where it uses the word "debt", means it in the ordinary legal sense of the word—that is to say, a present liability to pay a specific sum of money.

In some ways my opinion on this point doesn't matter, because whether it is the legal meaning or the dictionary meaning of the word "debt", a barrister's relationship with a client is not a debt. Because the barrister cannot recover the sum of money, there is no liability of a barrister's client to the barrister.

So that's all I've concluded in my conclusions, at the end of the advice. I've noted that a barrister's fee will only create a legal debt if it's claimed by the solicitor, through a solicitor's bill of costs. No debtor/creditor relationship between the client and the barrister exists. No debtor/creditor relationship

- between the barrister and the solicitor exists. But a debtor/creditor relationship can exist between the client and the solicitor if a bill of costs has been issued. That's the sum of my advice.
- Power Just one opening question, then. You're saying that regardless of whether the definition of debt is a narrow legal one or a wider colloquial one, to use your phrase there, it makes no difference to the nature of the contractual relationship between the barrister and the client?
- Kós It makes no difference to the nature of the contractual relationship between the barrister and the client. There is no contractual relationship.
- Brownlee Are you telling us, Mr Kós, particularly with regard to your comments here, that a barrister can be instructed professionally only by a solicitor; a barrister may not accept professional instructions direct from a lay client, and that that is always the case and there are never any exceptions to it?
- Kós No, and you will see, Mr Brownlee, that I've said some barristers honour that in the breach.
- Brownlee Which means, effectively?
- Kós Which means that barristers sometimes will have a very direct association with a client. Sometimes the instructing solicitor will be a postbox. Sometimes there will not be an instructing solicitor. If that is the case, that's professional misconduct, and I know at least in the case of the Auckland District Law Society it has prosecuted, in the last 3 or 4 years, a barrister for not having an instructing solicitor.
- Brownlee So there's a well-established principle that may lead to the loss of a practising certificate or whatever it is that a barrister might have, if in fact there is not a client/instructing solicitor arrangement, and that instructing solicitor would need to be a real person?
- Kós Absolutely—a real person who is a real solicitor with a real practising certificate.
- Fairbrother There's a fiduciary relationship between the barrister and the client though, isn't there?
- Kós There's a fiduciary relationship. There's certainly a relationship that gives rise, for instance, to the ability of a client to sue a barrister.
- Fairbrother And is there no reciprocal obligation, then, between the client and the barrister?
- Kós Not economically.

- Fairbrother How about the lawyers and conveyancers rules that came out, under the new Act? Do they create any obligation, because a barrister can't disengage on the grounds of inadequate fee without proper notice?
- Kós I have specifically not looked at that, because the instructions that I received indicated that the events here occurred before 1 August, so I don't think the Lawyers and Conveyancers Act affects that.
- Fairbrother But that rule pre-exists the regulations, doesn't it? Isn't it in the present code of ethics as well that you can't disengage without adequate notice? Doesn't the rule against disengaging for non-payment of a fee presently exist?
- Kós No, a barrister can withdraw if their fees are not paid in due course, but that doesn't affect the question of what the nature of the liability is to the client.
- Mapp Would you expect a barrister to be soliciting third parties to get his fees paid?
- Kós Well, it's not what I do.
- Mapp Have you heard of it happening?
- Kós It probably varies according to the nature of the practice. I think one has to understand that there are different kinds of barristers, just as there are different kinds of politicians—there are those who comply with Standing Orders, and those who flout them. So in answer to your question, it's not something that I've seen, but I know, for instance, that the intervention rule, which is the rule I was talking to Mr Brownlee about a moment ago—which is the requirement that there be a solicitor between the client and the barrister—is probably less observed by some younger barristers, and it's probably less observed by some barristers in the criminal field than it is in the civil field, in which I practise.
- Mapp Would it be a breach of professional ethics to then directly solicit for payment of a fee from third parties other than the instructing solicitor?
- Kós No.
- Swain Would it be the normal practice that if a third party made a financial contribution to a solicitor in order to, in the long term, defray some of the barrister's costs, the solicitor would advise the barrister of that?
- Kós Yes, I would have thought so, because the solicitor has the professional responsibility to pay the barrister's fee. What is more, I would also expect in the situation where a solicitor received payment towards a barrister's fee, that the solicitor would advise not only the barrister but also the client, who after all is the one with the contractual liability, and that contractual liability has just gone down.

- Jones Mr Kós, hasn't this principle, apart from having been established for many years, been confirmed in the New Zealand courts in *Atkinson v Pengelly*— and I can give you the quote from the New Zealand Law Society ethics committee ruling; it's on the web. I quote: "It is trite law that a barrister cannot sue either their instructing solicitor or a lay client for their fees. The relationship between the barrister and the instructing solicitor is said to be one of honour, not debt."—*Atkinson v Pengelly* [1995] 3 NZLR 104; New Zealand Law Society ethics committee view of 14 August 2003, and confirmed again on 1 August 2008?
- Kós As you would appreciate, Mr Jones, I've read *Atkinson v Pengelly* in preparation for this, but it's a principle that didn't start with Atkinson and Pengelly. I said that it began in the days of the Romans. My barrister's gown has on the front of it a cord and at the back a small pocket, and the reason for that is that the Roman advocate was not allowed to settle his fee directly with his client before. The client would put an honorarium in the small pocket on the back of the gown, and the advocate could pull on the cord to see if there was a sufficient fee, and if there was, the advocate would step forward. And things have not changed.
- Fairbrother That raises the question of the quantum of fee, Mr Kós. Many people probably assume that all barristers charge out on a time-fee basis, but that's not always the case, is it?
- Kós No.
- Fairbrother So a quantum doesn't necessarily need to relate to the time involved?
- Kós Not at all. The Law Society has a variety of different criteria that are considered, and time is one of them. And a barrister's fee can be revised. I'm not sure what the provision is under the Lawyers and Conveyancers Act. I didn't address myself to that, because the events here occurred in 2006. But certainly a barrister's bill, just as a solicitor's bill, can be revised. If the barrister's bill is in a disbursement to a solicitor's bill, as I've indicated is the basis to create a liability on the part of the client, both or either can be revised or could have been revised.
- Fairbrother The concept of the honorarium you mentioned is really a figure apart from any question of hours worked. It can be hours worked, but it's also a setting of fee through some obscure means.
- Kós Well, yes, but if it's very obscure the Law Society wouldn't have upheld it on revision. It has to be rational.
- Norman I'm not an expert at this kind of stuff, but when a barrister does some work effectively for a client, does the barrister have any direct financial contact with the client? Would the client pay the barrister directly, or would they only ever pay the solicitor, who would pass the money on?

- Kós No, there's no rule about that. The barrister is supposed to render a bill to the solicitor, and that would be normal and proper practice because one of the things that the solicitor who instructs is supposed to do is to look at that bill. I mean, the solicitor is there to represent the client, so the solicitor is the person who would look at that bill and say: "Well, that's a bit much, isn't it?", or perhaps even: "That's not enough."—but they probably shouldn't say that. In that event the solicitor would expect to be the person paid. The practice is that sometimes a client will pay the bill directly, but the bill should come from the solicitor. It should go from the barrister to the solicitor to the client. How the cheque goes is another question, and it doesn't concern us.
- Norman So in practice the bill might be a direct relationship between the barrister and the client, in practice?
- Kós In practice it may be that the barrister or the barrister's secretary gives the bill, instead of to the solicitor, to the client. But my point is that the bill should go to the solicitor.
- Norman However, in practice it often doesn't?
- Kós In practice it sometimes doesn't.
- Norman So it goes straight from the barrister to the client.
- Kós Sometimes.
- Cullen The bill goes straight from the barrister to the client—I don't think you were saying that, were you?
- Power Sometimes. That's what he said.
- Kós It sometimes will. It shouldn't, in the sense that that shouldn't be the only communication of it. It would be quite normal for a barrister to render a bill directed to the solicitor, who's the person who's professionally liable to pay it, and to copy it to the lay client at the same time. There's nothing wrong with that. The important thing is that the solicitor gets to see the bill. And the important thing also is that the solicitor is the addressee of the bill.
- Power Was it not Dr Norman's point, though, that on occasion it's not unknown for a barrister to render a bill directly to the client? Is that what you were saying, Dr Norman?
- Norman That's right.
- Kós Render, in the sense of making—at the top of the bill it says the client's name as the person to whom it's addressed.
- Norman That's right.

- Kós It might happen; it shouldn't happen.
- Norman And then, in reverse it's common, or not common, for the client to make a cheque directly to the barrister?
- Kós It would be more common for the client to pay the barrister directly than it would be for the barrister to direct the bill directly to the client. The latter should not occur; the former can occur.
- Norman OK, so you get a bill done one day and a cheque done on the other.
- Cullen If a barrister did, somewhat unusually—in your view, not correctly—send the bill directly to the client, addressed to the client, that still does not establish a debt?
- Kós Oh, most certainly not. It can't change the relationship. Nothing can change the relationship. It doesn't matter if you instruct me, Dr Cullen, to do something and you and I enter into an agreement or a contract to do it, because it's not worth the paper it's written on. I can't contract with anyone.
- Dunne If a solicitor sends an account to a client, following the process you have described, and another party pays that account, does that technically absolve the client of the debt?
- Kós Yes.
- Dunne So there's no residual linkage at that stage?
- Kós So long as the third party has accepted that they are liable to pay it, or volunteer to pay it, certainly that will reduce or resolve—
- Dunne Or is aware that the money they are paying will be used for that purpose?
- Kós Yes. It certainly reduces the liability of the client to the solicitor.
- Dunne How would they have to indicate that? Is there any formal process, or is it just being aware of the fact that the money advanced is going to be used for that purpose?
- Kós There would be a communication then between the third party and the solicitor, in which the third party will say: "I am paying this towards the client's bill, or the client's expenses." It might be necessary to identify which particular bill that related to, because there might be a number of pieces of litigation and it wouldn't be clear which one it was in reduction of. But once that was clear, it would be deducted.
- Dunne But the third party would have to identify that they were doing this? Someone couldn't say: "Oh, this money has been advanced and it's for this purpose?". Someone couldn't do that on their behalf?

- Kós Would you put the question again?
- Dunne The third party, the donor, would have to say: “This money is to be used for that purpose.”, not someone else say: “We have received this money. We determine it should be used for this purpose.”?
- Kós It’s difficult to answer that in the abstract. I would have thought it would be necessary to be clear that the payment was against a particular liability.
- Brownlee If in that case you, as a barrister, had someone come to you and say: “I’ve now got the IRD on my tail, because I paid a bill for someone else and they’re claiming it’s a gift.”—which is also material to our inquiry—what would your advice be to them?
- Kós Well, I would probably advise them to go and talk to someone else, because I don’t do tax law. The practical point is this: a payment that is made to reduce a solicitor’s bill might not mean that there was the payment of a client’s debt because if the bill related to a barrister’s bill, then, as I’ve said, in my view there’s no debt. But a payment made in reduction of a solicitor’s bill, which might incorporate a barrister’s fee, could still clearly be a gift, because the idea of a debt and a gift are quite distinct concepts. So a payment that was made to reduce a particular client’s liability to a solicitor, ultimately to a barrister, can clearly be a gift.
- Norman If my solicitor says: “I’ve got this bill here for this work that this barrister has done for you.”, and the solicitor comes to me and says: “You’ve got to pay this bill.”, and I say: “Well, I’ll pay for the bit that you’ve done, as the solicitor. But I’m not going to pay for that barrister bit, because I know that I don’t really have to pay it.”, what happens then?
- Kós The answer to that—and Mr Jones will be able to give you all the authorities in support of this—is that the solicitor can sue to recover the barrister’s bill. The authority is a case called *Weal v Thomson Wilson*.
- Norman So the solicitor can sue the client for the barrister’s fee?
- Kós That’s absolutely clear.
- Power Mr Kós, thank you for appearing this evening and for your evidence. It’s much appreciated. Thank you.

We’re now going to hear from Mr Brian Henry by videoconference. Mr Henry, welcome to the committee. You would have heard the introductions of everybody on the committee during the last hearing of evidence, so I won’t go through that again. I will leave it to you to make any opening statement that you wish in respect of the two allegations of contempt currently before the Privileges Committee, and then no doubt members will have some questions for you. So welcome to the committee.

Henry Thank you. I do have a statement that I will read. It's not too lengthy but I will work through it slowly.

I have acted for Winston Peters since 1991. We first met in 1987 when I was counsel for Wyatt Creech, the National Party candidate for the seat of Wairarapa. The National Party had refused to conduct or fund the Wairarapa electoral petition, so it was conducted on funds that we raised. Wyatt Creech had the ultimate responsibility for the final cost. In the final event, as we won the petition, the National Party had to underwrite the shortfall.

In the early stages of the petition we had a visit from a former electorate chairman of the Taupo electorate. He was the electorate chairman at the time of the Taupo electoral petition. I cannot recollect his name but recall he was elderly and had a huge wealth of experience in political administration. He and I discussed the petition at length and the need to fund-raise as the party was refusing to support the petition. The key part of the advice was to protect the candidate—to me that meant the client—from subsequent political allegations that the politician had been purchased by a financial contribution. I saw this as the principled way to conduct the fund-raising. I have adopted and followed this principle throughout all of my dealings with Winston Peters.

Winston and I developed an easy rapport during the Wairarapa electoral petition. At that time I was politically very comfortable with the National Party's philosophy and was involved with investigating issues involving the BNZ. This work was voluntary on my part. Winston had an issue with the National Party. I agreed to act for him as his counsel. This was the first time I acted for him. The dismissal from the party, if properly conducted by the National Party, was low litigation risk. The proceeding was not run properly. I changed my role to being a witness, and Colin Pidgeon QC led as the barrister conducting the application for review.

During a reconstituted procedure Winston was dismissed from the National Party, which I regard to this day as a major travesty of justice. I was told, and had no reason to doubt, that in the middle of the deliberation by the National Party council, Mr Cox, who had been excluded for potential bias—a fund-raiser for the National Party—entered the room and told the council he had a substantial sum of money pledged to the party if they dismissed Winston Peters. They decided to dismiss Winston. I want to emphasise I do not know whether or not Mr Cox did that. I am just simply saying what I was told he did, and anywhere in the statement where I say I have been told things, I am giving evidence as to what I am told; I am not giving evidence as to the truth or otherwise of what it is that I have been told.

I had a long “where to from here” discussion with Winston. He wanted to pursue the BNZ issue, and he felt he had the ability to politically contribute to New Zealand. I agreed that I would help him to return into mainstream

politics. This included a political legal campaign to inquire into the BNZ. Winston faced well-funded corporates with well-resourced legal teams from the large law firms. These corporates were willing to use every legal technicality to attack and discredit Winston.

The key to the corporate tactics was to open litigation Winston could not afford to run. The classic was the “Fay calls Peters a liar” headline in the *New Zealand Herald*. We understand the *New Zealand Herald* was indemnified by Fay to run this headline. The plan was Winston would sue and they would tie up the small resource he had in yet more litigation. Winston did not respond, as we understood their tactics. The reality is Winston had to use the law in the same way they were using it against him, or else he would have never survived the years of sustained attacks by certain corporates.

In 1991 the procedure we’ve adopted regarding his legal fees is: I would provide the legal resources that he required. The legal costs would not be invoiced by my instructing solicitor to create an unpaid debt. The obligation to meet any outstanding fee was understood as a moral, not a legal, obligation. If the money was not fund-raised, then my time was donated. I would, where possible, fund-raise, and any funds raised would go towards the fees due. Where funds were raised Winston would not ask and I would not tell him the source. This is the same practice as used in the National Party. This procedure means Winston has at no time had a legal obligation to pay me any fees. The fees are either a donation of my time or fund-raised. Winston has, although not legally obliged to, paid me money from his own resources. The relationship between us was recently described in the media as “going back to the wine box”, and we were “like blood brothers” was Linda Clark on TV3 on 23 July. This is apt. The relationship must be explained to be understood, and I need to make 17 points.

First, in 1991 Winston faced a campaign commenced to denigrate him and end his political career. He then faced a range of defamation actions that had the sole aim of financially ruining him. The arrangement I described arose out of these attacks.

2. I saw the intent of his political foes as seeking a chequebook judgment with the aim of bankrupting him. I considered this as unacceptable and decided I would ensure that such attacks did not succeed.

3. In 1993 a client of mine received a quote, to do a prospectus, of \$80,000 from Fay Richwhite. They did the prospectus themselves. They were later prosecuted for breaches of the Securities Act. I acted for them. They were approached by a person who advised them the charges would be dropped if they discontinued using me as a lawyer. They did not, but Rodney Harrison was used to conduct the trial at which they were acquitted.

4. New Zealand First was also launched that year. After the launch Winston scheduled a “meet the media”, where he would disclose the details of the party. I had the constitution and other documents to complete. An

unknown person attempted to kidnap my son at his school. This threw the party preparation into disarray. At no time did he mention that the reason was the attempt to abduct my son.

5. the Securities Commission report on the BNZ reinsurance scheme was another attack on him, but reviewing that report in the courts was beyond our legal resources. The profit attempted to validate in the public mind the falsifying of the BNZ's profit by some \$40 million. The BNZ shares at the time were a listed stock, and the backers of the scheme were European Pacific, a company set up on the Cook Islands by the BNZ and Fay Richwhite. Capital Markets Ltd, in which Fay Richwhite were the major shareholders, was a major investor in the BNZ listed stock. The scheme had the effect of maintaining the share price of the BNZ after the 1987 share fallout. It also had the effect of providing the BNZ with the ability to pay a very substantial dividend, and that dividend was, in the main, paid to Capital Markets Ltd.

6. the wine box was delivered to me for Winston. I assisted this campaign to obtain a commission of inquiry. This was successful. Eventually my fees were paid by the Government under a legal aid arrangement with the Solicitor-General. Until this funding arrived I operated as per our understanding. In this regard Winston personally paid substantial fees to me, as the Government refused to backdate the funding.

7. I accept the political gamesmanship leading up the tabling of the wine box as robust politics. However, one incident that really concerned me was after the wine box was tabled in Parliament there was a refusal by the then Government to enable the media to see the wine box. This stalemate, which lasted for a period of time, was unprecedented. Finally, the Government was forced to permit the documents to be printed. The point is simple: the media were not allowed to see what was tabled, and that, to me, is unprecedented in New Zealand politics.

8. the commission of inquiry was another example of the lengths that those involved will go to in order to discredit Winston. I applied for funding. I had to apply to the commissioner, Sir Ronald Davison, for Tony Molloy QC to give expert evidence after Sir Ronald had finished his 3-month preliminary examination of the transactions. Sir Ronald had decided to embark on a full-ranging investigation, and orally declined the application, saying to me, and I quote: "I do not need Tony's help with what the Americans call 'grand larceny'".

9. Sir Ronald reported that the transactions did not involve fraud. This result was contrary to the law and was resiling from his earlier position. To make matters worse, he criticised me for not calling Tony Molloy QC and Paul Darvell. Paul Darvell was, at all material times, dead. The report was, in my opinion, a corrupt result, as the legal analysis of the Magnum transaction was not only patently wrong but, from his costs ruling, known to Sir Ronald to be patently wrong. I issued proceedings on behalf of Winston Peters to

review the report. The proceedings were struck out in the High Court but reinstated unanimously by a full Court of Appeal. That was the Richardson Court of Appeal.

12. There was a subsequent trial before a full High Court of two judges, resulting in Sir Ronald's report being quashed, based on the fact he had the Magnum law completely wrong.

13. Attempts to destroy Winston Peters continue, especially the so-called scampi scandal. There is a current defamation case I am conducting for Winston against Television New Zealand and others.

14. The Tauranga election conduct was drawn to my attention before election day. I went to Tauranga and saw a campaign that was contrary to my understanding of the law. I agreed to issue an election petition for Winston. This was filed and conducted. The same fees arrangement seamlessly continued. I was directly involved with fund-raising with a range of potential donors.

15. I phoned Owen Glenn and he forwarded \$100,000, which was paid to me on account of my fees. My instructing solicitor has never sent Winston an invoice for this work. I can invoice this work any time I choose, but to do so would break our agreement not to create a debt due. The \$100,000 was paid into my fees account. This was a payment towards completed work. All tax has been paid, including GST. Had these not been paid, our arrangement would still be in place—i.e. a moral obligation to pay me but not a legal debt.

16. I am lawfully allowed to donate my time to assist a politician, and that creates no obligation that must be disclosed by the politician.

17. The disclosure of this arrangement will empower Winston's opponents to reformulate their length-of-chequebook strategy. For this reason I have been deliberately less than forthcoming to the media but have stated he has not breached the rules of Cabinet or Parliament.

I have never received any Government appointments. I was offered the role of counsel assisting the BNZ that National promised before the 1990 election. After the landslide election I was told there would never be an inquiry, and I should appoint an agent in caucus and I would get jobs. I walked away very disillusioned as I had voluntarily stepped in to help the National Party when they were out of power with few friends. I found offices where I was once welcome closed, apart from Winston Peters, who was Minister of Māori Affairs.

The campaign in 1990 was to remove the new right. Instead we had changed Roger Douglas as the new-right leader to the new-right clarion of Ruth Richardson. I decided this time I would not accept the political patronage of any politician. Winston is of similar view in refusing to accept patronage. We believe the right person for the job is important. The

appointment of Winston of Michael Stiassny in the racing industry is a classic example.

Winston has the ability to ensure I receive many kinds of Government work, but he doesn't. We do not work that way. I am often told by those in the body politic that I am stupid not to demand such work. I do accept work for Winston in his capacity as a leader of a political party, with a work-qualifying price for payment out of the Parliamentary Service. The work, once completed, is charged to the Parliamentary Service. In the past 3 years I have been paid in this manner. The work invoice was checked with his chief of staff—who worked at the time for Winston—to ensure that the work did comply with the appropriate funding guidelines. I have also done a wide range of work outside the guidelines, which is a voluntary provision of my time.

The position is I have not rendered a fee note to the solicitor for the work done, and the solicitor has not rendered a bill to Winston. Until my instructing solicitor renders a bill to Winston, there is no debt owed by Winston. All payments received were for actual work done. They are not payments on account of work to be done, which under Law Society rules would be required to be held in my own instructing solicitor's trust account. I met my proper tax responsibilities in respect of any money received.

Due to the comments in the media slurring Owen Glenn, who has done nothing wrong, I decided to tell Winston Peters that I had received a sum of approximately \$100,000 from Owen Glenn, which was paid directly into my fees account towards the legal costs of the Tauranga electoral petition. On 18 July 2008 I saw Winston Peters at 5 pm, and told him for the first time that Owen Glenn had paid me approximately \$100,000 towards the time I had spent conducting the Tauranga electoral petition. In my presence he immediately telephoned the Prime Minister. He then issued a media release.

On a personal note, I find it repugnant that major corporate, wealthy individuals can freely maintain sustained legal attacks on a politician, with impunity. I find that this behaviour seriously and deeply offends my sense of natural justice. I am not, and have never been, a member of any political party. Further, I have acted for MPs from both sides of the House, including members of Cabinet in former Governments. On the public record I have appeared for Hugh Watt, Garry Knapp, Wyatt Creech, and Winston Peters. There are others that I have represented that remain confidential and privileged. Giving my time is not a gift. There is no debt until I decide to render a fee note for my services to my instructing solicitor, and he sends a bill to the client.

Power Thank you, Mr Henry. Mr Fairbrother has indicated that he has a question.

Fairbrother You are a barrister sole?

Henry I am.

- Fairbrother And you were a barrister sole at all times during the things we're talking about now?
- Henry Yes. I've been a barrister sole since 1986.
- Fairbrother Thank you.
- Brownlee Who is the instructing solicitor?
- Henry Dennis Gates.
- Brownlee Who suggested to you that you approach Owen Glenn?
- Henry I am unable to divulge that because it's privileged and it's not Winston Peters' privilege to waive. I can tell you it was not the president of the Labour Party or Winston Peters.
- Brownlee We don't want to know who it wasn't; we want to know who it was.
- Henry Well, that is privileged, and it's not mine to tell unless I give privilege away. I have checked with the person concerned and I have a refusal to waive the privilege from that person.
- Jones Point of order, Mr Chairman. Is this really relevant to the inquiry that is before us?
- Power It's a pretty wide-ranging statement, Mr Jones, and I think Mr Brownlee's questions are relevant, so I'm going to allow him to continue at this point.
- Brownlee So your position is that although you are giving evidence to the Privileges Committee of Parliament, you won't give an answer to that particularly salient question?
- Henry No, my position is that as a barrister, that is a legally privileged position. Until privilege is waived, I cannot in any court or any Privileges Committee answer that question unless my client, who has the privilege, authorises it. That's a fact of being a barrister.
- Brownlee Can you explain to us the nature of the instruction that you got from this anonymous person?
- Henry Not without breaching the legal privilege that I'm not allowed to go into.
- Brownlee Well, do you see the difficulty for us Mr Henry? This is probably the most interesting part of the whole aspect—as to how, out of the blue, you knew that pursuing Mr Glenn would see payment of some of the costs that you had incurred. You're an officer of the court, and so we haven't required that you speak under oath, but the expectation is that you would be very cooperative with this whole inquiry. But the position you take is extremely obstructive.

- Henry The position I take is the legal position I must take. I am required by the privilege of my client—who is not Winston Peters—to do it. And you should know that, Mr Brownlee, as well as I do.
- Brownlee Are you able to indicate the passage of the transaction? We have, from Mr Glenn, confused reports that firstly he thought he paid the money to New Zealand First, but now you tonight are saying that he paid it directly into your fees account.
- Henry The position is on 22 December 2005 the sum of \$99,980 was deposited by Mr Glenn into my practice account.
- Brownlee When you said that you expected somebody else to be funding this but then had to go off and find someone, what was the range of discussions you had with various people in your pursuit of someone to meet the debt?
- Henry I had a talk with a range of people, including members of the committee in Tauranga that was organising the petition, and I was given a range of names of people who they anticipated would make donations. That never turned into any money being paid. At the end of the petition, once the hearing was complete and finished, we did a dig around to see who else we could find, and a client of mine made the suggestion that I approach Mr Glenn.
- Brownlee You've said that this is not an uncommon sort of practice for you; that you've gone into this sort of fund-raising exercise over the years. Has the person who suggested you go to Mr Glenn been a source of funds in the past?
- Henry No.
- Brownlee You also said that you thought that there had been no patronage—I think it was—accepted by you or Mr Peters. What would you otherwise describe the \$100,000—or thereabouts—as being?
- Henry Mr Brownlee, the whole purpose of the structure is to ensure the politician does not know who is paying the money. I was taught that by your party when I was acting for Wyatt Creech, and it is the principled way to do it. Your party—and every political party—should never know who the major donors are. That is why there has always been a split—as I understand the operation of the National Party and New Zealand First, and, I believe, Labour—where the party people who raise the funds are not the politicians, and a division is always maintained between the politicians and the donors, and I believe you should not know who your donors are.
- Brownlee That, to some extent, changed, though, didn't it, with the Standing Orders requiring that all politicians disclose their pecuniary interests? It's in fact why we are here this evening. So a question would arise: when should a politician not know that a debt that might otherwise fall to them has been paid?

- Henry Well, there's no debt falling to Mr Peters, and if you'd listened to Mr Kós you'd understand that.
- Brownlee With all due respect to you, Mr Henry, you said on the radio earlier this year: "In this particular case we actually had another person" etc., and you explained the process for going out to Mr Glenn. The presenter then said: "This was to pay your bill, which is really a donation to Mr Peters, isn't it?", and your response was: "In a way, yes." So I would ask you, if you're going to say you've qualified that "yes", in what way would it not be a donation to Mr Peters?
- Henry Mr Brownlee, I was speaking there in terms that the media and the public would understand. This is an inquiry formally set up and I am explaining to you the exact legal position, and what I've said in the media and what I've said here—please have regard to what I've said here, because I've told you I was less than forthcoming in the media, but here I have told you the full story.
- Brownlee Well, with all due respect it's not a matter of whether you were forthcoming or not. The question that we've got to decide is: should Mr Peters have declared on his pecuniary interest register the \$100,000 paid to you by Mr Glenn? You've just—
- Henry Are you asking for my—
- Brownlee Were you saying that when you were telling the media that "In a way, yes, this is a donation to Mr Peters.", that somehow the less than forthcoming part of that has been explained by your previous history? I don't think it has. So I ask you again: when is "In a way, a donation." not a donation?
- Henry Are you asking for my opinion?
- Brownlee Well, I'm asking you what you meant.
- Henry The position is very simple. I am a barrister. Until I render a fee note to the solicitor—as Mr Kós explained to you—there is no obligation on the solicitor to pay me. Even then, it is not a debt.
- Brownlee You're not being very helpful.
- Henry When the solicitor renders a bill—let me finish please; I have the courtesy to listen to you, have you got the courtesy to listen to me?
- Brownlee I will.
- Power He'll wait.
- Henry Thank you. When the solicitor renders a bill—as Mr Kós explained—there is then a debt. This is, as I understand it, a declaration of pecuniary interests. A pecuniary interest is monetary, and it is only at the time that the

- solicitor renders a bill that there is a pecuniary interest to declare. That is the way the law has worked for hundreds of years.
- Brownlee Well, I'll go back and ask you the question again. Given that you said in response to the question that the \$100,000 was to pay your bill—"which is really a donation to Mr Peters, isn't it?"—you said "In a way, yes." In what way was it not a donation?
- Henry It's not a donation, because what has happened is I am prepared to donate my time—and donating my time has always been an acceptable thing for people to do in politics. What has happened is instead of me donating the time I have been paid, for which I am very grateful. What you are asking, and what you're inquiring into here, is the definitions of what is required to be declared. What is required to be declared are debts and gifts of a pecuniary nature, and you are talking about something wholly different.
- Brownlee No, I don't think I am. The question arises from the long history you've given us. You've made it very clear that at various times Mr Peters has personally met some of the expense incurred in the various legal actions that you've represented him in. So the question would always arise: who ultimately would be responsible for meeting those costs?
- Henry Until I render a bill, nobody.
- Brownlee Well, OK, we'll come back.
- Henry And I choose not to render a bill.
- Brownlee There are other people who've got some questions.
- Henry Can I finish, please? Can I finish please, Mr Brownlee?
- Power Go ahead, Mr Henry.
- Henry When I choose to render a bill, then my instructing solicitor will render a bill and there will be a legal debt that requires to be disclosed. Until I choose to do that, there is no debt, and that is a completely lawful position.
- Brownlee What did you take the \$100,000 for?
- Henry I couldn't hear you.
- Brownlee What did you take the \$100,000 for?
- Henry The \$100,000 was taken towards the costs that I have provided in terms of time to conduct the Tauranga electoral petition.
- Brownlee But you argue that—
- Henry And until I render a bill, there is no legal debt. I can volunteer that time if I choose, or I can render a bill when I choose.

- Brownlee So what would you say the \$100,000 was as a proportion of your costs for the unrendered bill, and therefore the donation—I would presume—towards the debt?
- Henry Can we make that out into a question instead of a statement?
- Brownlee It was a question. What were your total costs?
- Henry Well, a question mark after a statement is not a question. Can you ask it as a question in part that I can answer?
- Brownlee Well, you haven't answered too many so far, but—
- Henry Do you want to know—
- Brownlee Try this then—
- Henry Do you want to know how much—
- Brownlee What was—
- Henry Do you want to know how much it contributed towards the total costs?
- Brownlee Yes, thank you.
- Henry It is slightly under the—
- Jones Point of order. Is that relevant?
- Power Well, he was about to answer the question.
- Jones But I'm saying we could be here all night if we want to—
- Power We're not planning on being here all night, Mr Jones, but Mr Henry had a broad opening statement. He's been answering as many questions as he's been able, to date, and he was just about to answer that one.
- Henry It is just under the total bill.
- Norman In terms of the Tauranga case there was \$40,000 that was awarded to Bob Clarkson. Is that right?
- Henry Sorry, I can't hear you.
- Norman In the Tauranga case, you actually lost some costs, didn't you, to Bob Clarkson?
- Henry I lost the deposit?
- Norman There were costs awarded.
- Henry There was a cost award made against Mr Peters, yes.

- Norman Were you involved in any way in the paying of that cost?
- Henry Yes.
- Norman In what way?
- Henry Well, the costs were paid by a cheque from me.
- Norman So you wrote out a cheque to Bob Clarkson?
- Henry I can't hear you.
- Norman You wrote out a cheque—did you write out a cheque to Bob Clarkson?
- Henry You're vibrating—I can't hear you.
- Power The question was, Mr Henry—I believe Dr Norman was asking—did you write out a cheque to Mr Clarkson?
- Henry No. I wrote out a cheque to the instructing solicitor of Mr Clarkson.
- Norman Right. And where did the money come from for that cheque?
- Henry Me.
- Norman It was you personally? It was a personal donation?
- Henry It was paid by me personally.
- Norman Right. And when you said previously that the \$99,000—or close to \$100,000—you received from Owen Glenn paid most of the bill, were you including the \$40,000 within that?
- Henry No.
- Norman So the cost was a hundred—
- Henry That is my fees for the work I did. The work was over \$100,000 for the bill.
- Norman Right, so there was \$100,000 for your fees, plus another \$40,000 of costs. Were there any other costs associated with the case?
- Henry No.
- Norman. OK. Just going back to the Owen Glenn conversation, when you rang Owen Glenn and asked for a donation, or asked for money to cover the costs, what exactly did you ask?
- Henry I told him that I'd represented Winston Peters in the electoral petition and I was looking for a contribution towards the costs of that petition.

- Norman And so was it clear that it was a personal contribution, if you like, not a New Zealand First contribution?
- Henry I was not talking about New Zealand First; I was only talking about the legal costs of Winston Peters conducting the petition. I did not act for New Zealand First in that regard.
- Norman What else happened in the conversation? What were the other elements to it, or is that it?
- Henry That is the kernel of what the conversation was about.
- Norman OK. When you say it's the kernel, did anything else come up? Obviously, one of the issues that's come up during this whole discussion is the Monaco stuff.
- Henry Well, you don't ring up and say "Please send me a cheque for \$100,000". You talk about what it's about, you talk about the petition, you talk about the result—because the result was out. So there is a general discussion in that sense, but all we did was talk about the petition.
- Norman In terms of these funds that you've been raising, have you had anything to do with the Spencer Trust during any of this time?
- Henry I have nothing to do with the Spencer Trust.
- Norman So they've never paid any of your legal fees?
- Henry I wouldn't have a clue. I'd have to go and check my records and I haven't checked my records as to whether they've ever paid any of my fees.
- Norman. OK, just one last question. Have you ever rendered any bills to the instructing solicitor with regard to the work you do for Winston Peters?
- Henry I would have to go and check my records. I've been acting for him since 1991, and I can't, sitting here, answer that.
- Norman What about with regard to the Tauranga petition?
- Henry There is no bill being rendered to Mr Peters for that.
- Cullen Could I just try and get something clear in my own mind? The donation from Mr Glenn was paid in in December 2005?
- Henry 22 December 2005 it was paid into my practice account.
- Cullen So if it had been a gift to Mr Peters—I'm not asking you to comment whether it is or not at that point. If it had been, it would have been included in Mr Peters' declaration of pecuniary interests for early 2006, since that would cover the 2005 year?

- Henry I can't answer that.
- Cullen. OK. But you say very clearly that Mr Peters didn't know about this donation until 18 July 2008.
- Henry He did not know about it until July when I told him.
- Cullen So it would have been very hard for him to make a declaration in early 2006, wouldn't it?
- Henry That would seem logical to me.
- Cullen Yes, thank you.
- Mapp When did you pay the court costs to the instructing solicitor for Mr Clarkson?
- Henry I cannot remember the date, but the court costs were not determined until the following year.
- Mapp So you received the \$100,000 at one point and then subsequently paid the \$40,000?
- Henry It doesn't work that way, Mr Mapp. I received the \$100,000 as my money, I paid tax on it as my money, and I am entitled to do what I like with my money, aren't I?
- Mapp You had this arrangement going back to 1991 about the way fees would be paid—donations, and so forth. Did you have any discussions of any type whatsoever of a donation in relation to the electoral petition with Mr Peters?
- Henry I would have told Mr Peters that I had been paid.
- Mapp When would you have told him that?
- Henry I wouldn't have a clue, but it would have been after I received the cheque from Mr Owen Glenn.
- Mapp A month or so? A week or so? More, or less?
- Henry You're talking 2005-06. I couldn't answer that, honestly.
- Mapp Would you be able to check that, looking in your notes?
- Henry No. There'll be no notes of any discussions with Mr Peters.
- Mapp But it would be reasonably close to the time, I guess.
- Henry I would be speculating; I just can't honestly answer it.

- Mapp So, in short, what you're telling us is that Mr Peters would have known that there had been a donation in relation to the electoral petition?
- Henry Mr Peters would have known there had been a donation or donations. He would not have any clue as to how it was made up or where it came from.
- Mapp Would there have been any discussion about the size of it?
- Henry No.
- Mapp None whatsoever?
- Henry That would be a breach of the arrangement.
- Mapp So just simply the fact that there was a donation?
- Henry The discussion was that the bill had been met. I think it was that the bill had been met and substantially met, because it hadn't been totally met.
- Mapp So that would have indicated to Mr Peters, wouldn't it, that that would have to have been a sizeable donation?
- Henry No, there could have been many donations.
- Mapp Even collectively, the total amount of the donations, whether a single or many, they would have had to have indicated to Mr Peters that they would have been sizable?
- Henry I do not recall ever telling Mr Peters how much my bill was, so Mr Peters would be totally in the dark. The whole arrangement is to keep him totally in the dark. It's deliberately set up that way. We did that for Wyatt Creech, and I believe that is the ethical and principled way to do it, Mr Mapp.
- Mapp So you put him on notice, nevertheless, that there had been donations in relation to the electoral petition, even if you can't tell us when?
- Henry He would have known that somehow fundraising had been done and payments had been made to me.
- Mapp Did you tell him when the court costs were paid?
- Henry No.
- Mapp You had no discussions about that whatsoever?
- Henry No. He will have learnt for the first time tonight that I paid those costs personally.
- Mapp He certainly would have known, however, about the amount of court costs—after all, it was against him personally.

- Henry Yes.
- Mapp And he would have known that they'd been paid as well, wouldn't he?
- Henry Yes.
- Mapp When would he have known that?
- Henry I can't remember the date the court costs were ordered, but he certainly would have known some time after the order was made.
- Mapp So again he was put on notice—because he didn't receive the bill; you've just told us that—that donations were received, and the court costs paid.
- Henry Mr Mapp, you're missing the point. Until such time as a bill is rendered from the instructing solicitor, there is no debt. What we are talking about here is whether or not a debt needs to be declared. Until the instructing solicitor renders a bill there is no debt, full stop.
- Mapp We are also talking about donations—two parts to this inquiry. I'd just like to—
- Henry Where are you talking about donations? I'm sorry, I've got the terms of reference here; I can't see donations anywhere. It's talking about gifts and it's talking about debt—gifts and debt in a pecuniary sense.
- Brownlee That's right. Donations are gifts.
- Mapp Yes, it's the same thing.
- Henry And what I'm saying is that until—
- Power Mr Henry, Dr Mapp is just finishing his question to you.
- Mapp I want to get some sense of the time in which you advised him that you'd received donations—as we've called them—in relation, and when you advised him that the court costs had been paid. Early part of 2006, or not?
- Henry Mr Mapp, you have to understand the way we operate. We do not need to communicate in huge ways on these issues because of the understanding we have, and we stick to it. Any discussions—and I'm only guessing—would have probably occurred in 2006, simply because of the proximity of Christmas. I did not see Mr Peters over Christmas and I'd been out of New Zealand probably—in fact, I was out of New Zealand on 22 December, in Australia.
- Mapp So you put Mr Peters on notice that the \$40,000 court costs had been paid, and that there had been donations to effectively cover that and maybe some of your other time?

- Henry You put it in a very formal way. He would have been simply told that it had been looked after.
- Jones Is the point, Mr Henry, that as there was no debt—as legally, there could be no debt—it therefore follows there was nothing to repay, and there could therefore be no donations because there was no legal liability whatsoever?
- Henry That is the position. I understand Mr Kós explained that is the position, and I agree with him.
- Mapp Although the \$40,000 cost was paid out of your account—
- Jones I raise a point of order again. We're not here to inquire about the \$40,000 costs, Mr Chairman. Our terms of reference are very clear. It's a question of Mr Glenn's contributions, and that was the point raised by Mr Hide. A separate point was raised by Mr Copeland. Neither of them mentioned this issue. We're now widening the range of the discussion well beyond the terms of reference, I suggest.
- Power The matter was already addressed, actually, in the discussion between Dr Norman and Mr Henry. It's not particularly new, if you're talking about the fact that both the witness and the committee have had an opportunity to ask a question. Go ahead, Dr Mapp.
- Mapp Although you paid the \$40,000 out of your account to the instructing solicitors for Mr Clarkson, Mr Peters wouldn't have expected you to have paid that unless you'd received the donation—a donation—to effectively cover it. Is that the case?
- Henry No.
- Mapp Are you seriously—
- Henry Just let me finish, Mr Mapp. I made it very clear in what I said: I will go to huge lengths to make sure that large corporates do not destroy Mr Peters. I take the view that he contributes seriously to the democracy of this country, and it's my decision what I do. So you can take it from me that I do what I do and I do it for the reasons I've told you.
- Mapp Are you seriously suggesting that you would've paid \$40,000 in court costs which were against Mr Peters and you advised Mr Peters of that fact, and that Mr Peters would not have understood that that would've effectively come out of the \$100,000—well, the donations received?
- Henry Mr Mapp, I'm not seriously saying it; I am saying it. I'm not suggesting; I'm telling you exactly what I did.
- Power Thank you, Mr Henry. Ms Heather Roy—
- Henry So don't slur it—this is what I did. I'd like to finish with Mr Mapp.

- Power Go ahead.
- Henry Mr Mapp, I am telling you what I did. So please do not slur it or belittle it by saying: “Are you seriously suggesting ...”. This is actually what I did. You mightn’t like it, but that’s what I did.
- Roy Mr Henry, you explained to the committee what you said to Mr Glenn about what the request for the donation was for. Did you document in your records that conversation and what you had explained to him that the \$100,000 was for?
- Henry No, I didn’t.
- Roy So you have no documents, no written record, of the conversation with Mr Glenn for the explanation of what the \$100,000 was for?
- Henry It’s not my practice to document phone calls.
- Roy Did you make a record, quite apart from the phone call, about what the \$100,000 was for, or the fact that you’d had contact with Mr Glenn about that?
- Henry There is a pro forma invoice that I created for the purpose of paying GST and income tax. That is it.
- Roy That’s the only record available?
- Henry Yes.
- Roy OK. What do you have to say about Mr Glenn’s statement, just in light of the fact that you’ve said that you had explained to him that the \$100,000 was to pay for legal costs incurred by the Rt Hon Winston Peters? Mr Glenn made a statement, reported in the media, that his donation of \$100,000 was for the benefit of New Zealand First, and not for application to the Rt Hon Winston Peters’ ostensible legal fees owing to you.
- Henry I have related to you my discussion with Mr Glenn. I can’t speculate on what Mr Glenn took from that conversation, but I do not believe I in any way indicated to him it was for anything other than payment of the Tauranga electoral petition fees. He may have taken from that what he will, but the discussion was on the basis that he would be paying my fees for conducting the Tauranga electoral petition.
- Roy So somehow, as a result of that conversation, he’s got completely the wrong end of the stick, thinking that he was donating money to New Zealand First?
- Henry Well, I can’t answer for him; all I can tell you is what I did. But it would not be unusual for people to align the fact he was paying for the Tauranga

electoral petition with the political party whose leader ran it. But I can't explain that away for him, and I'm not trying to.

Roy So, just to clarify, then, there is no record of the conversation you had with him, there's no record of the fact that you explained to him that the \$100,000 you were asking for was to pay for legal costs, and he was under a misunderstanding that that was a donation to New Zealand First?

Henry I'm not saying there was a misunderstanding it was a donation to New Zealand First. What I'm saying is that I explained to him it was to meet my costs for running the Tauranga electoral petition. How he took that or saw that was an inference for him to draw. He could quite properly draw the inference it was New Zealand First or Winston Peters—I don't know; it was up to him to draw it—but I do know that I made it very clear that the money was to go to my fees for conducting the Tauranga electoral petition.

Roy But you've no record of that?

Henry Well, if I did, it's something I wrote—and I could've written it down—but I have a good memory.

Roy OK, in respect of your approach to Mr Glenn seeking the donation, were you aware at the time that it was publicly known that Mr Glenn was keen to be appointed New Zealand's honorary consul to Monaco; if not, when did you become aware of that fact?

Henry I didn't know it at the time, and it was only when the debate broke out this year that I became aware of that comment.

Roy Mr Henry, did you ever provide legal services to New Zealand First, as distinct from those that you provided to the Rt Hon Winston Peters?

Henry For what?

Roy Any legal services at all. The question was fairly clear: did you ever provide—have you ever provided—legal services to New Zealand First, as distinct from the legal services you have provided to the Rt Hon Winston Peters?

Henry So you're talking about from the time New Zealand First was first established?

Roy Yes.

Henry I did the constitution. I was involved in the incorporating of an incorporated society for name protection. I was at one stage what was described as a judicial officer, which was someone who was not necessarily a member of the party, to resolve disputes. But that is going back to when the party was first established. I do not believe I have done any jobs for New Zealand First in the last 2 years, but I have done work, certainly at the

- initial stages of New Zealand First, to help get it set up—I provided legal services.
- Roy And was the party ever invoiced or charged fees for those services?
- Henry No. I don't believe I've ever rendered a bill to New Zealand First. I could be wrong on that, but I don't believe I have.
- Roy OK. I've submitted a number of questions to the committee, Mr Henry. I'm probably about to run out of time to ask you all of those. Would you be happy to respond in writing to the questions I've submitted to Mr Power, as chair of the committee?
- Henry Well, why don't you ask me while I'm here, because I'm about to leave the country and won't be able to do it for a month.
- Power Well, it's a decision for the committee anyway as to—
- Roy There's 70 questions. I'm happy to ask all of those.
- Cullen Has Mr Henry seen those questions?
- Brownlee Well, he hasn't seen any other questions.
- Roy He hasn't seen them, because the questions were submitted through the committee—
- Power They were tabled.
- Roy —they were tabled—and I will ask the committee to submit them to Mr Henry for written answer.
- Swain I think you've established two things: one, that there was no debt and, secondly, that Mr Peters couldn't have declared something that he didn't know about—I think that was kind of the summary of what you're saying. If he had known about that money, would it still have had to be declared under the pecuniary interests issue, given that it was a donation to you, not Mr Peters?
- Henry No, he wouldn't have had to. There's no pecuniary interest to declare.
- Brownlee Very briefly, Mr Henry, which of your statements do you stand by the most: the statements you've made to this committee tonight, where you've repeatedly said that there was no bill rendered for your services, or your comments on 21 July to Radio New Zealand, where you said: "He"—meaning Mr Peters—"gets bills and he gets told that certain parts of the bills have been covered, and he meets the balance."?
- Henry Mr Brownlee, I'm here before the committee and this is a serious occasion, the *Herald's* editorial notwithstanding. What I have told you here is how the situation lies.

- Brownlee So you were incorrect when you said on Radio New Zealand, on 21 July: “He gets bills and he gets told that certain parts of the bills have been covered, and he meets the balance.”?
- Henry He has made payments personally to me for work that has been done.
- Brownlee No, that’s not the question.
- Henry Let me finish, please, Mr Brownlee. In respect of the Tauranga electoral petition, there is no bill. In respect of earlier work, I have not gone and checked back through my records as to whether my instructing solicitor has rendered bills. I just can’t, from the top of my head, tell you the answer to that. But what I said to you here was I have been in some aspects less than forthcoming with the media; I have been totally forthcoming with you here.
- Brownlee Well, would you expect us to—would you think it unreasonable for us to reach the conclusion that, rather than being less than forthcoming with the media, you were misleading with the media?
- Henry Mr Brownlee, you can form any view you like—you have that power. I’m in a situation here where I have come and I have explained quite accurately to you the position. But having said that, the comment I made to the media, it is correct—Mr Peters has personally paid me money. Whether or not there was legally a bill delivered by the instructing solicitor is a wholly different issue, and I certainly wasn’t attending to that sort of detail with the media, which I’ve dealt with you today. And you wouldn’t expect me to deal with the media in that detail, because they’d go to sleep—and you know that.
- Brownlee Well, they generally like to know whether, in fact, the bill was received or not. But do you stand by your statement—
- Henry Which bill, Mr Brownlee? Ask me the direct question, and I’ll answer it.
- Brownlee Well, what was the bill that you spoke of on 21 July, when, in an interview with Radio New Zealand, you said: “He gets bills”—meaning Mr Peters, in relation to this case, because you wouldn’t have been on the radio for any other—“he gets told certain parts of the bills have been covered, and he meets the balance.”
- Cullen That’s called interpolation, Mr Chairman.
- Henry Mr Brownlee, the word “bill” is a very loose one used with the media. What we’re talking about here is the legal position. He had never had an account from my instructing solicitor which creates a legal debt, and maybe I was talking slightly loosely with the media, but here we are dealing with precision. You’ve had Mr Kós here to deal with it with precision, and you’re getting your answers with precision.

- Brownlee OK. Do you stand by your statement also in that interview that “The plaintiff is my client and it was a donation towards my client, and that is Winston Peters.”?
- Henry That is exactly what I said in the media, but the legal structure and the legal position is what I’ve explained to you today.
- Dunne Mr Henry, can I just clarify that what you’ve been saying to us in essence this evening is that over the years that you’ve represented Mr Peters, you have never rendered an account to him for work undertaken, because of your belief in the principle that he shouldn’t know about where the money’s coming from; and that where amounts have had to be funded, you and others have either sought to fund-raise for those amounts without involving Mr Peters or you’ve borne any shortfall, effectively, as a donation against your time? Is that a fair summary of what you’ve been saying to us this evening?
- Henry Unfortunately, your voice has been cutting out because of vibration, but it sounds to be a reasonable summary from what I could hear. The position is that yes, I have always borne any shortfall. I have never put Mr Peters in a position where there is a legal debt that can ever be used against him.
- Dunne Could you estimate for us what proportion of those total figures you might have borne as a legal shortfall?
- Henry I’ve never worked it out.
- Dunne Substantial?
- Henry But I have conducted I can’t remember how many defamation cases in the early 1990s. I conducted the early wine-box campaign right through until 1995, when I think the Government funding started. I have spent many, many hours that have ended up being donated to Mr Peters. Having said that, Mr Peters, when he can, has tried to make sure money comes to me, and he has in that time paid a lot of money to me.
- Dunne And that would be by way of him saying: “I must owe you something for this. Here’s a cheque to cover that amount.”, or how would that discussion have occurred?
- Henry The discussion would occur on the basis that he’s got some money and he’s said: “Look, here’s some money.” He knows that he owes me in the moral sense, and when you work through the number of actions he’s been involved with and the amount of legal work, anybody charging it out at a big-firm rate—and I’m not a cheap barrister—would have a very substantial amount of bills they could render. The point is, I won’t.
- Dunne You have never indicated to him, when he has made payment to you, that this covers 20, 30, 40, 50 percent of the outstanding amount—you’ve just simply taken that as a payment being made as it could be made?

- Henry I have never ever sat down and worked out the total amount that would be due, so I couldn't make that comment.
- McCully Mr Henry, you'll recall a press conference that the Rt Hon Mr Peters gave in which he denied receiving funds from Mr Glenn, complete with props, and these have been rerun a number of times subsequently. It was some time after that that you decided to approach Mr Peters—I think, according to your earlier evidence—and inform him of the contribution towards his fees from Mr Glenn. This suggests that, I guess, you made an additional decision, when you saw Mr Peters' denial of a receipt of money from Mr Glenn, not to tell him of your receipt of those funds, and then had a change of heart subsequently. Could you just tell us how that worked—is it the case that there was a change of mind; if so, what was the thing that changed your mind?
- Henry The thing that changed my mind was that in the week leading up to my telling him there was a very substantial attack in the media on Owen Glenn. Owen Glenn has done absolutely nothing wrong. Owen Glenn is, as far as I'm concerned, a very honourable man. He decided to assist in respect of the Tauranga electoral petition, for which I'm very grateful, and I took the view it was time the vilification of him in the media, which was entirely unjustified, was stopped. For that reason, I went to see Mr Peters and I told him of the donation. If that hadn't happened, he would not know to this day.
- Norman Just following up on the Hon Peter Dunne's questions, how often does Mr Peters give you a cheque? Like, did he give you one last year or the year before?
- Henry I quite honestly can't answer that sitting here, because I'd have to go back and check my records, but I do know that in the early 1990s he did pay quite a lot of money to me. But in the last couple of years, I really can't answer.
- Norman Right—during the time that you've been involved in the various court cases, particularly the Tauranga one?
- Henry Over the Tauranga electoral petition?
- Norman Yeah.
- Henry Nothing.
- Norman Nothing?
- Henry No. I have no recollection of any cheques since the Tauranga electoral petition.
- Norman OK, thank you.

- Henry I could be wrong on that.
- Power Thank you, Mr Henry, for your evidence before the committee today. Thank you for making yourself available earlier, as well.
- Henry Mr Chairman, can I clarify please the issue of the written questions. I'm currently conducting a trial until Wednesday, and on Thursday I leave the country for 2½ weeks. If there are written questions for me to answer, it's a matter of when I can get to do it. I will not be back until early September, and I simply will not have a chance to address them between now and when I leave. But I'm happy to answer them.
- Power Thank you, Mr Henry. We'll consider that when the committee deals with the issue later in the proceedings. Thank you for your time tonight.
- Henry Thank you.
- Power We'll move then to the Rt Hon Winston Peters. Good evening, Mr Peters. You may wish to make an initial statement to the committee and then, as is the usual custom, questions will follow. We're very much in your hands.
- Peters Thank you, Mr Chairman and members of the committee. I wrote to the Speaker on 30 July the following letter: "I'm writing to you regarding the complaint of contempt of the House by both Rodney Hide and Gordon Copeland. While both of these members are clearly grandstanding in a vain attempt to revive flagging popularity and impending obscurity, this is a serious matter and should be treated as such. Standing Order 400(h) states contempt in this instance requires a member to 'knowingly provide false or misleading information in a return of pecuniary interests:'. From the outset let me be clear that I reject any claim of contempt. The facts simply don't support the claims which have been levelled.

Attached is a letter from my barrister Brian Henry. In it he totally debunks the claims made by Mr Hide. Mr Henry requests that his letter to you be read into the record of the House. In his letter Mr Henry clearly illustrates that no unpaid debt was ever generated, and Mr Henry is clear that while he would fund-raise to meet the costs of cases he worked on, on my behalf, any funds raised went to the fees due. We have always operated under an agreed system of Mr Henry not disclosing the source of fund-raising and myself not asking. While he explains the reasons for having broken this practice on 18 July, the assertion that I knowingly breached Standing Orders by not disclosing the situation does not make sense. Further, as Mr Henry clearly states, I have no legal obligation to pay any fees although I personally have paid hundreds of thousands of dollars' worth over many years.

Mr Hide makes reference to Appendix B of the 2005 Standing Orders, but has failed to provide any substantive evidence of a breach of Standing Orders; in fact, the situation is quite the reverse. Clause 7(b) addresses the issue of gifts above \$500. Mr Glenn gave the money directly to Mr Henry without my knowing. This could hardly constitute a gift to me. That settles

the matter.” I also go on to say: “But you might also note that this section also explicitly notes that expenses incurred during an electoral campaign are excluded. As the particular case in question was, in fact, an electoral petition, that would fall within the ambit of electoral cost. But that is not my case. As I said at the beginning of this paragraph, that settles the matter.

Clause 7(c) addresses the matter of debts above \$500 which have been paid or discharged by others. As Mr Henry clearly states, there is no debt to be paid or discharged. On these grounds, both Mr Hide’s and Mr Copeland’s complaints simply have no basis either in law or in fact. I would suggest that there is no reason to send this complaint to the Privileges Committee. As Standing Order 400(h) states, contempt in this instance requires a member to ‘knowingly provide false or misleading information in a return of pecuniary interests:’. As this letter, accompanied by Mr Henry’s, has clearly demonstrated, no case for contempt can be made.

As a matter of interest, my office has also made contact with Dame Margaret Bazley to ensure that our understanding of the situation as outlined to Nick Smith and by Nick Smith in relation to his pecuniary interests and now a part of the record of the House, is consistent with mine.”

I just want to mention also that on the day I learnt about that, on 18 July, I put out this press statement: “My lawyer Brian Henry came to see me at 5 o’clock tonight which is the first time we have managed to meet since my trip to Fiji. Beginning with the Wyatt Creech Electoral Petition he has been involved with fundraising to meet the cost of litigation involving politicians and has had a firm policy that the source of any donations towards legal fees are not disclosed to the client politician. The politician is only made aware of the short fall which the politicians have personally had to meet.

Since 1991 I have been involved in some 14 pieces of litigation which have been paid for in part by donations. About two hundred thousand dollars have been raised by donations for legal fees over this time. I have never been told the source of these donations but have personally met the short fall which has amounted to many hundred thousands of dollars. Mr Henry decided, due to the publicity over the past weekend in respect of Mr Owen Glenn that he should break this policy and inform me that Mr Glenn had donated in 2006 a sum in the order of \$100,000 towards the legal costs of the Tauranga electoral petition. He advised me that he had in 2006 personally spoken to Mr Glenn and arranged payments of any donation Mr Glenn decided to make to assist with those legal expenses.

Until today I have been unaware of the source of all donations for legal expenses and I have cause to be very grateful to Mr Glenn for his very generous contribution. I told the Prime Minister what I then knew and today I have told her what I have learnt. He did not make a donation to the NZ First Party but I am now aware he made a donation to a legal action he thought justified.”

- Brownlee In the same radio interview that I think followed Mr Henry, 21 July, you were asked: “He was helping you pay your bill?”, and you replied: “Yes, that’s a fact. I’m not denying that.” Now, if that’s the case, then doesn’t that immediately mean that you had some pecuniary interest?
- Peters Well, you did say 21 July, didn’t you?
- Brownlee Yes, I did.
- Peters And there was a contempt proceeding before the House, wasn’t there? Therefore, I am bound by the sub judice rule that applies to this committee. That’s all I said.
- Brownlee Hang on a minute. I’ll make it clearer for you. You are agreeing in this interview that Mr Glenn helped you pay your bill?
- Peters Well, it was the fact of my press statement on the 18th, preceding 3 days the date you mentioned.
- Brownlee Yeah, so there’s no question in your head that you received—*[Interruption]* Let me finish, or I’ll do a Brian Henry on you.
- Peters I’ve just read you the press statement dated 18 July. What is the point you’re trying to dispute about that? I said on 18 July, when I knew about it, at 5 o’clock, to the Prime Minister and to the public, exactly what I had then known.
- Brownlee We all know that. The question is, when you were saying that this is a donation to you, you were accepting that it was a donation to you personally?
- Peters It was a donation to the legal costs of a petition, in the same way as I spent considerable time, 10 months in fact, in 1987 every night going from here to Wairarapa, coming back at 4.30 in the morning and starting a usual day—10 months, including fund-raising for Wyatt Creech. And I don’t regard myself at that time as doing anything other than trying to advance the cause of democracy.
- Brownlee But that’s not at issue here, is it?
- Peters Well, it seems to be with you.
- Brownlee No, it’s not. What’s at issue here is whether or not you should’ve declared that \$100,000 on the pecuniary interest, which leads to the question—
- Peters With respect, when—
- Power We’ll just let Mr Brownlee finish, Mr Peters, and then you can have a fair go.

- Brownlee —which leads to the question: since you knew that the rules post-2005 had changed, shouldn't you have legitimately asked the questions about what interests you might have had? I mean, when is an MP supposed to know when they are in fact in receipt of—
- Peters When he's supposed to know, Mr Brownlee, is when he knows.
- Brownlee Let me finish, if you don't mind me—just let me finish.
- Peters Well, try and organise your question—
- Jones Point of order. Can we have a question, instead of a speech?
- Peters —not a mindless babble over there—
- Power Hey, hey! We'll have the questions first, and then we'll have the answers.
- Jones Can he ask the question, though?
- Brownlee Well, I did start with the word “When”, so we'll try a different one. We'll try a “What” this time—*[Interruption]* Calm down, Dail—calm down.
- Power We'll have the question, then we'll have the answer—it's pretty straightforward.
- Brownlee What's the obligation on an MP to know when they have been in receipt of substantial funds for a debt that is required to be paid by them? And I note, Dr Cullen, that you've said in the same interview—
- Cullen Point of order, Mr Chairman. There's no point in asking questions with an assertion of fact which is completely wrong. We have had clearly explained to us the legal position—that there cannot be a debt owing to a barrister sole. So we can't ask the question in that form, because it simply doesn't make any sense.
- Power Do you want to rephrase the question, Mr Brownlee?
- Brownlee Well, to suit everybody I will rephrase the question. When it comes to the expenses incurred by Mr Henry, do you stand by your statements that you would have ended up paying the bill and, of course, have?
- Peters That statement on the 21st?
- Brownlee Yes.
- Peters Well, on the 18th I put out a press statement setting out what the new situation was that I had just learnt about, and at the same time I realised that there may have been obligations which I wasn't aware about. I still don't believe that to be the case, because I take the view that Nick Smith's situation is identical to mine, and that's my comprehensive answer. But I

- don't know why you think there's anything special in the 21 July statements, given that I had made a full public statement on the 18th.
- Brownlee Do you think it leads to the conclusion, given what Mr Henry had said, that you should have known that some of your bills were met—if nothing else, at least the \$40,000—and declared that in your pecuniary interests?
- Peters I will answer that, but it leads me to the conclusion that—you've just had two experts in front of you, both of whom are barristers. Both have given you the same legal opinion. It leads me to the conclusion that you've decided to ignore it. But on the question of the \$40,000, let me say this. I've paid hundreds of thousands in to my lawyer over the years, and some that he never saw because the costs were direct, such as in a defamation case. I don't know how much that money was, but it was a huge amount of money.
- Power Sorry, for my benefit perhaps, Mr Peters, could you explain that to me. What do you mean by, you paid it directly so he wouldn't know?
- Peters If there is a case of an action where costs are required there and immediately, I would pay those to Dennis Gates, the instructing solicitor. That's the difference. But this was all made very clear to you, Mr Brownlee, and I've asked you to please try and follow it, because I've lived this thing personally for a long time and I know exactly the arrangement.
- Brownlee Am I right in saying that some time after December 2005, post the payment of \$100,000 to Mr Henry on your behalf, there was a court order for costs of \$40,000 which fell due to you, and that at a later time Mr Henry said: "Don't worry about them. They've been covered.", but there was no declaration of that, either?
- Peters No, no, excuse me. I don't believe that he said it that way at all, or anything like that, because I've paid \$148,000 out in one day in a specific case, and then had to pay my lawyer as well. That's an action I lost. I took the matter to the High Court and won half of that as well and couldn't afford to go on to the Court of Appeal because I'd just run out of money, but that's the arrangement we've had. If you think that it's of no moment, let me just say that when you've paid that amount of money in and that's your arrangement, there's no reason that you would ask a question. And there's no reason, because we particularly had that arrangement, that he'd tell me.
- Brownlee That's somewhat irrelevant, isn't it, to the issue of what you should declare in your pecuniary interests?
- Peters Well, Mr Kós just told you what the declaration requirements were, and so did Mr Henry.
- Brownlee No, they haven't, because the—
- Peters Not to your satisfaction, but he has told me as a lawyer what the obligations are.

- Brownlee With respect, Mr Henry said in fact it was a court order against you, not something he was—
- Jones Point of order, Mr Chairman. It has been very clear that there was an order of \$40,000. The debt was paid. Therefore, there was no obligation to put it in a pecuniary interests register, because there was nothing outstanding. So why do we keep on going on about something which is not necessary to go into a pecuniary interests register, because there's no debt outstanding?
- Power All right. Could I ask Mr Brownlee to rephrase that.
- Brownlee Yes. Do you consider the \$40,000 paid on your behalf by Mr Henry to have been a gift?
- Peters Mr Brownlee, that's irrelevant. Let me just say very clearly to you, you don't understand that if there is no outstanding debt, there the matter rests. You can extrapolate every little tease into it you like, but, I'm sorry, you're caught with the blunt facts, and the blunt facts are there was and is no debt.
- Mapp Surely if \$40,000 which is an order against you personally is paid by your lawyer, that has to be a gift to you?
- Peters Did you not hear the legal advice you got tonight?
- Mapp I'm talking about the order of \$40,000 against you.
- Peters No, no, I'm asking you: did you not hear the legal advice you got tonight?
- Mapp Yes, I did, but I'm asking a question about a court order—
- Peters I know you're not a practising lawyer—you're an academic one—but this is a practising lawyer's matter, and a barrister and a solicitor would know that. Now Mr Henry has set out very clearly to you, as did the QC tonight, how a debt arises or does not arise.
- Mapp I'm talking about the court costs of \$40,000, as well you know. Surely, if someone else paid that on your behalf, that's a gift to you?
- Peters Only if that was the case. You don't know that, and nor do I.
- Mapp You just heard it. He just told us.
- Peters Let me just say this here. Mr Henry sought to give an answer here. I'd like to check my own payments to him, to see whether or not he is seeing it the right way, because I honestly don't think that that is—well, I won't say it. I just don't think, when you pay the amount of money I've paid him, that you can come to those sort of conclusions automatically.
- Roy Did you believe that you would have to pay Mr Henry for his legal services for the Tauranga electoral petition, and if so, did you have any idea what the cost of those services would be or how the funds would be met?

- Peters Well, if I never got an account, I'd not know that. I didn't get an account—that's a fact. Let me just tell you that I've been involved in five electoral petitions, and the cost can substantially vary. In fact, I know of a barrister—in fact, he's called Temm, who's dead now—who rendered a bill to the National Party with a "but say" on it. He put the "but say" down to emphasise to the National Party that at the time he was making what he believed was a sizable contribution of his own time to a democratic tradition. That's why that document—which is still available to you, if you've still got your records—will demonstrate that.
- I also know that when I went to see Wyatt Creech with Roger McClay, we went to find a barrister, someone who was up and coming, aggressive, and who would do a great job for the minimum amount of money. That was the deal we struck with Brian Henry—that while it would not be a paying proposition, we'd make him famous.
- Roy That's all very interesting, Mr Peters, but did you believe that you would have to pay Mr Henry for his legal services for the Tauranga electoral petition?
- Peters It's in that circumstance—
- Roy Yes or no, Mr Peters.
- Peters It's not a yes or no answer, with the greatest respect. You don't understand this issue. Clearly, you would never have paid such money, and I just might say, putting a lot of written questions in, which I've seen, I might say—I know who they were drafted by, because of the grammatical and spelling mistakes—is not proper questioning. I'm telling you straight that I did not know, because there was no reason why I would know.
- Roy Point of order, Mr Chair. Could I please ask for the witness to answer the question. *[Interruption]*
- Power Mr Jones, I'm perfectly capable; you can sit still. Go ahead, Ms Roy.
- Roy Thank you. So you did believe that you would have to pay Mr Henry for his legal services?
- Peters I always knew that I'd have to make a contribution, which I have made.
- Roy And how did you believe that those funds would be met, if you didn't pay them?
- Peters Because over the years I've paid hundreds and hundreds of thousands of dollars to Mr Henry for legal cases.
- Roy No, I'm talking about the portion of the bill that you wouldn't be able to pay, that you believed that he would go and find a donation from somewhere else.

- Peters Oh, no. The reality is that if Mr Henry had created a bill for me, in time I'd have paid it, as I've paid a lot of them in the past. Some of those times he's had to wait a year or 15 months until I've sold something substantial, but I've paid him.
- Roy Have you any explanation, Mr Peters, as to why Mr Glenn would state publicly that his donation of \$100,000 was advanced for the benefit of the New Zealand First Party and, therefore, not for the benefit of the Rt Hon Winston Peters and his alleged debt?
- Peters Excuse me, when did he say that?
- Roy He said that in the media.
- Peters Have you seen evidence for that?
- Roy Yes.
- Peters Have you seen the proof of that?
- Roy Mr Peters, it's quite well known that Mr Glenn—
- Peters Are you asking me to respond to media information?
- Roy Point of order, Mr Chairman. I believe I'm asking the question, not the Rt Hon Winston Peters, who's required to answer the question.
- Power Go ahead.
- Jones Just speaking to the point of order, Mr Chairman—
- Power No. Go ahead, Mrs Roy.
- Jones At least she's got to give a proper source and date it.
- Power Well, that'd be a first.
- Roy Thank you, Mr Chairman. Mr Peters, have you any explanation as to why Mr Glenn believed he had given \$100,000 to the New Zealand First Party, not to you or to Mr Henry, for the payment of the legal services in the Tauranga electoral petition?
- Peters You phrased that off the email, didn't you? I want to know, what's the date of that email?
- Roy I never mentioned an email. It is well known that Mr Glenn believed that he thought he was giving \$100,000 to the New Zealand First Party, not to cover your legal costs. Mr Henry said that there was some misunderstanding about that, but Mr Glenn clearly believed he was giving \$100,000 to the New Zealand First Party, not to cover your legal costs.

- Peters And in your question, three back, you mentioned the email in which you're making this reliable statement—
- Roy I've never mentioned an email. I said it was publicly known.
- Peters The transcript will show you mentioned the email. I'm asking you, what's the date of that document? You're sitting in a quasi-legal situation here. Proof is what you're required to have now. You've got to have evidence, not hearsay. Tell me, what's the date of that email, and I'll respond to you.
- Power Mrs Roy is asking the questions at the moment. If it's not a question that you want to answer or don't feel it's properly sourced at this point, it's for—
- Peters Mr Chairman, with respect, I'd love to answer the question, if you could show me the evidence which I should be addressing. Hitherto, no one in the media has seen it. I've requested it of the *New Zealand Herald*. I've asked that they show the public and the media, and they won't. Now, perhaps I'm entitled now to hear and see that evidence.
- Roy Your barrister believes that Mr Glenn, Mr Peters, thought that he was giving \$100,000 to New Zealand First. Are you saying that he doesn't believe that at all?
- Peters The barrister said nothing of the sort. Don't make it up as you go along.
- Roy Mr Peters, did you ever have discussions with Mr Glenn over his desire to be appointed an honorary consul to Monaco?
- Peters That's irrelevant.
- Roy Are you refusing to answer the question?
- Peters No, I'm not refusing to answer the question. My answer is that your question is irrelevant, with respect, and it is not part of this inquiry. Besides which, if you want to really know this, I gave a speech to a student group at Auckland University recently on that very subject. I pointed out that they might not know this, and certainly certain people don't, but I would think a member of Parliament should know that it's the Secretary of Foreign Affairs, in tandem with the Governor-General, who makes such appointments. That's where it rests.
- Power Could I just pick up then there, before we go to the Hon Lianne Dalziel on that point? The issue at point here is the payment of the \$100,000 from Mr Owen Glenn, and in fact whether it was failed to be disclosed as either a gift or a debt. Was there a discussion about some deal with Mr Glenn regarding the position that Ms Roy outlines? I think it is relevant.
- Peters Well, you know, there may have been, before I became Minister of Foreign Affairs, with some other Minister of Foreign Affairs, but that's why it's

irrelevant. You would know very well that the only person who has been nominated in writing for that job in Monaco is, in fact, somebody put up by Richard Worth. Let's have the facts here, rather than the kind of myth-making that is so prevalent around this story. Oh, and by the way, Mr Worth did not nominate Owen Glenn.

Dalziel Just running through the allegations that we're looking at, first of all, failing to disclose a pecuniary interest—a gift of \$100,000 from Mr Owen Glenn. You've confirmed here tonight that you didn't know about Mr Glenn's contribution to your barrister's fees until 18 July 2008.

Peters About 5 o'clock in the afternoon.

Dalziel So you couldn't have declared it in your register of pecuniary interests in 2006?

Peters Not unless I was a soothsayer or clairvoyant.

Dalziel You don't have that ability?

Peters Well, sometimes I go close.

Dalziel Mr Henry indicated tonight that you wouldn't have known that he had paid the \$40,000 cost. Is that correct?

Peters That's a fact. I just might say this: in some ways I thought I might have paid it myself, but that's because of the arrangement we have.

Power Sorry? Just explain that.

Peters Because if you're paying tens and tens and hundreds of thousands of dollars into an account, you somewhat think it's covering a lot of things.

Power Oh, so you thought that a portion of that could have gone to that—

Peters All of it. But, clearly, you know that's—

Power Not the case.

Peters Well, you know, I've also got five defamation cases going now, so you can see why they give me some confusion on this matter.

Dalziel So you would have money sitting in your instructing solicitor's account for the payment of such matters?

Peters Well, when they arise I write a cheque, yeah.

Dalziel The final question is around this question of pecuniary interest. You refer to the position that Nick Smith outlined in the House. I recall him tabling a document which indicated what the responsibility was with respect to

- pecuniary interest. Can you outline your understanding of that to the committee?
- Peters Well, the statement made by Nick Smith to the House when I was at the ASEAN conference, a copy of which I have got here, sets out what my understanding would have been always the case, but is particularly the case now. But in case I am wrong I have written twice to the registrar of pecuniary interests, Dame Margaret Bazley, to see whether her interpretation, as given to Nick Smith, remains the same for me. But I think it stands on all fours with my situation, and that's why I say it's astonishing that somehow some may be sitting here thinking they'll get a different judgment.
- Dalziel So that clearly stated that you don't have to name the individuals that contribute in a court action?
- Peters Well, no; that's what I believe the situation is.
- Dalziel That's the way it sounded when it was tabled in the House, but I just wondered whether you had a copy of that.
- Peters Yes, well I've got what Nick Smith said. But, just in case, I wrote to the registrar of pecuniary interests, saying: "Please confirm that what you told him applies to me, or otherwise, in which case I'll lodge a declaration now that I know." I've heard some astonishing statements in the last few weeks. For example, it was Martyn Finlay, a former Attorney-General, Peter Williams QC, and Max Gunn, a senior accountant, who set up a trust for me to help pay the wine box. This was all publicly announced. I invited you media people to come, but all of a sudden I'm told it's some sort of secret operation going on. This is absolutely fallacious. I also read in the *Listener*, of course, that a man called Fisher doesn't understand that when you register under the Incorporated Societies to protect a name, you file every year but there would not be any income or expenses. That he wrote as some sort of awful non-disclosure. We shouldn't have to—how shall I put it, to be polite to the media—train morons.
- Dalziel So that was to protect the name of your party?
- Peters It was set up for the exclusive purpose in May of 1993, and it has no other purpose, to ensure that no other body, business, or, for this matter, political party could take the name—pretty obvious, really.
- Norman With regard to the \$40,000—the costs that were lost in that court case—you say that you don't see it as a gift from Brian Henry to you, because you think you may have paid that already to Brian Henry?
- Peters Well, there was no debt created on it, so that was the end of it.
- Norman When you lost the court case, you directly owed a debt to Bob Clarkson—you personally—didn't you?

- Peters Pardon?
- Norman When you lost the court case, you personally owed Bob Clarkson a \$40,000 debt.
- Peters Look, it was an electorate exercise backed by a great number of people in the electorate, and we saw it that way. But somebody has to apply for an electoral petition in their name.
- Norman That's right, and the name was yours.
- Peters That's why it bears the candidate's name, but in all other respects—and I can tell you I've been involved in five petitions—that is merely the name given to the person on the suit, but it is not the reality. The reality is hundreds of people helping out.
- Norman This whole discussion tonight has kind of been spinning on legal technicalities, and the legal technicality is that you were personally responsible for a \$40,000 debt to Bob Clarkson.
- Peters No, the legal technicality would be those who in a room decided that they would bear the cost all together and make this thing go.
- Norman So you're saying there was no legal requirement for you personally to pay Bob Clarkson \$40,000?
- Peters Well, only if the matter had remained outstanding that that may have arisen, but it would not arise, because it was met.
- Norman It was met by Brian Henry.
- Peters That's what he says, yes.
- Norman So Brian Henry paid your \$40,000 of debt?
- Peters Well, that's the first time I've heard about it tonight. I thought that I'd paid.
- Norman That's right. So Brian Henry paid your \$40,000 debt, but you thought you'd paid it because you'd been putting a whole bunch of money into Brian Henry's account?
- Peters It didn't really matter to me. What mattered to me was that I thought there was a great and worthy cause here, and I know that this was a case where someone spent, by our allegation, \$89,000. We made an allegation to the court, I might tell you, that the Exclusive Brethren Church was involved. It was denied by the National Party lawyers at court. Now I know 150 were involved in push-polling out of the Hawke's Bay into Tauranga, all of which is a chargeable cost. That's what you should know.
- Norman Which is all very interesting.

- Peters Well, it might be interesting, but, you know, if you are interested in how democracy works—
- Norman The question is—
- Peters —it's important.
- Norman There's this kind of balance going on between you and Brian Henry over time—some kind of balance. You talk about how you paid a shortfall, which amounted to many hundreds of thousands of dollars, in your statement.
- Peters Yes, but over many cases.
- Norman That's right, and so you must have had some sense or some knowledge of what the balance was in order to know there was a shortfall.
- Peters No, when I say "shortfall", an account would not be created, at all, until the thing was in substantial credit, whereupon an account could be created. No debt is there as a consequence, and there the matter rests.
- Norman But you had some sense of the shortfall, but you also thought that you'd probably paid in so much money that maybe you yourself had ended up paying that \$40,000 through Brian Henry, but you just said you didn't know that Brian Henry paid the money.
- Peters If you asked me whether we have been in substantial credit sometimes, I believe yes, but I never asked.
- Norman Except you told us you didn't know Brian Henry paid the 40 grand.
- Peters Well, he told you that.
- Norman Tonight.
- Peters Yes. It's the first time I've heard that.
- Norman That's right, so how did you know that he might have paid that?
- Peters Oh, look. Actually, Mr Chairman—
- Power I think the point has been well made.
- Peters This is not some wild fishing expedition you are going to go on here.
- Power No, no, no, it's not a wild fishing expedition.
- Peters Well, it's beginning to sound like it.
- Mapp Mr Henry said tonight that he had discussed with you back in 2006 that he had received some donations. Why didn't you declare at least the existence

of donations, even if you didn't know the amount or who they were from, in your register of pecuniary interests?

Peters Sorry, did you not hear the QC tonight? Please focus on that.

Mapp I'm asking—

Peters You're an academically trained lawyer. He gives you a clear definition, which is the only thing you can peg your argument on. Please stick to that and not waste everybody's time.

Mapp I've asked an explicit question: why didn't you think to declare the donations in relation to the electoral petition, which you had been told about back in 2006—

Peters Because I wasn't clairvoyant, Mr Mapp—nor are you.

Mapp Isn't it the case, Mr Peters, that Mr Henry said tonight that he had a discussion with you that he had received donations during 2006, and that discussion took place in 2006.

Cullen No, he didn't say that.

Peters No, he didn't say that, sorry. That's not true. He didn't say anything of the sort.

Mapp I think he did.

Peters Dr Mapp, I'm not here to ask what you might think; I'm here to ask what's a fact.

Dunne I just want to go back to Dr Norman's questioning, and just clear up what I think is an apparent inconsistency between what Mr Peters is saying and what Mr Henry said earlier. I heard Mr Henry; he said that, essentially, a debt had never been raised, a bill had never been rendered, but where money was required it was either fundraised or borne by him as part of a shortfall, and that Mr Peters, in the early 1990s in particular, had paid substantial amounts towards that but had paid lesser amounts in subsequent years. Mr Peters says—if I hear you correctly—that you paid in what you imagine were fairly regular contributions towards these outstanding debts. Two questions arise: can you clear up the discrepancy, first, between what Mr Henry is saying and what you're saying? Secondly, what were you paying against? You must have had some indication or some sense of likely cost, or were you just paying regular payments into an account, and how did Mr Henry keep tab of those?

Peters I believe with the greatest of efficacy, but you've got to remember this, that members of my family also paid substantial sums—that is, my brothers and sisters. These sums are not to be accounted against anyone, because that is the exemption, as well, but they paid substantial money, as well. So when

- you think there's been a lot of money paid over and nobody's asking for any money, you tend to think you can keep ahead of the cases on that basis. Since 1991 I have, so I think the system works.
- Dunne But you must have known since 1991 what the level of cost being incurred was, or had some appreciation of that, to keep on making regular payments. I mean, you're paying 14 different cases.
- Peters Well, it suddenly became obvious because of the nature of the cases involved. In some cases they were not obvious. Brian would not have created an account at all if he thought things had been too tight lately.
- Dunne But he never discussed with you, and you never discussed with him, what the likely—
- Peters No, most certainly not—not where anybody else was involved. That was the arrangement that we had.
- Cullen Did you take from what Mr Henry said that he told you in 2006 at some point that his costs in relation to the electoral petition had been met? Because that's what I understood him to say.
- Peters Well, he didn't say that.
- Mapp Yes, he did say that.
- Peters Well, he might have said it. But I just want to say that I think at the time—I didn't hear that so very clearly as members here obviously did, and I would like to see the transcript again. But if that's what he said, he said it.
- Cullen But in that instance there was no debt owed by you, and the donations were not to you; they were to Mr Henry.
- Peters Well, precisely. We're dealing with the law here, and that's how lawful obligations are either created or not created. They need that trigger thing to happen—that is, a debt to be created. A debt was not.
- McCully Mr Peters, you may recall the *New Zealand Herald* at one stage ran an email, a copy of a leaked email from Mr Glenn to yourself, in which he advised that he had made a substantial donation to the Millennium Institute, expressed some interest in the purchase of racehorses, and expressed interest also in the Monaco appointment. I just wondered whether you could give us any context to that email.
- Peters Excuse me, I don't recall seeing any email with horses in it, and things like that in it.
- McCully The reference in particular was to a substantial donation to the Millennium Institute on the North Shore in Auckland.

- Peters North Shore?
- Cullen But they don't do horses.
- Peters It didn't include anything about horses. I don't recall any email mentioning that, but if you've got a copy I'd love to see it.
- McCully I'll supply one for you. You can't recall seeing that email?
- Peters Not with horses in it, no.
- McCully Can you recall seeing an email from Mr Glenn, published in the *New Zealand Herald*—I think on the front page—about a substantial donation to the Millennium Institute, a sporting organisation on the North Shore? Can I tell you why I'm asking the question?
- Peters I can recall seeing some correspondence in the *Herald* to that effect, yes.
- McCully The reason I'm asking the question, Mr Peters, is pretty simple. That correspondence—and I emphasise that it was from Mr Glenn; it wasn't from you—suggested that there had been a discussion, or he believed there'd been a discussion, between you and him about this donation to the Millennium Institute and one or two other charitable contributions. I just wanted to ask whether you could give the committee an assurance that if there were any such conversations, that there was no conversation that moved further into any contribution towards either your court case or contributions to the New Zealand First political party.
- Peters Could I ask you this question: why on earth would that be part of an email that is, I think, dated some time in May of 2008, when we have just heard tonight that the payment was made on 22 December 2005? Why would that be part of an email? I think the National Party has written to me under the Official Information Act, and I have released that to them. So if that's what you're talking about, I can say that the reason that the second and third paragraph are not part of that release is they have nothing at all to do with any of what this committee's dealing with. And you'll know that, of course, because the *Herald* leaked the whole lot itself, didn't it? So you'll know what I'm saying here is the truth.
- McCully Mr Peters, the simple question that I'd like to ask is that to a casual reader of that email it appeared that there had been—that Mr Glenn was under the impression that there had been a discussion about contributions to charitable organisations in New Zealand, and he wanted to convey to you information to the effect that he had made those contributions. I just wanted to seek your assurance that there hadn't, in the context of any of those conversations that preceded that letter, been any discussion about contributions to New Zealand First or to your legal situation in Tauranga.
- Peters First of all, if you're using the Official Information Act and you've got the document you'll know that's irrelevant and totally out of order with respect

- to the hearing this evening. Most importantly, I have no connection to the Auckland University business establishment. I never even went to the opening—in fact, I wasn't even invited to the opening. I have no connection with the North Shore project, and I wasn't invited to the opening of that, either. Someone might point out to you that you're flying here without any feathers, Mr McCully.
- McCully Well, Mr Peters, the point I make was that this was simply Mr Glenn's perception; I wasn't attributing this to you. I was simply trying to seek from you an indication that if there had been any conversation—he clearly wrote that email, as I read it, to impress you with the fact that he had made these contributions, in the light of some previous discussion that you'd had with him—
- Peters No, no. I'm on to what you're saying now in only one respect. Mr Glenn had been met by some New Zealand interests in terms of a long-term savings strategy for this country. I was of the view that this would be fascinating, what he thought of it. That is what he is writing about when he mentions the word "projects"—that in its entirety.
- McCully So before that email there wasn't a direct communication discussion between yourself and Mr Glenn that led him to write that communication to you?
- Peters Well, I do notice that the *New Zealand Herald* claimed that I was in Europe earlier this year and I met him. I have been back with my staff over every part of my itinerary, in five countries, and that statement in the *Herald* is demonstrably false, as everything else they've written is, as well.
- McCully Can I just go back to the question: was there a discussion between yourself and Mr Glenn directly that preceded the email he wrote to you?
- Peters No. No, I was asked by a New Zealand entity whether they knew any people around the world who might look at this, and from a long-term saving strategy for New Zealand, and I gave them a few names. Mr Glenn was one of them. And that's what he's talking about.
- McCully But there was no direct conversation between yourself and Mr Glenn that led to him being—
- Peters No, I didn't take part in the conversation—and I did not see him in Europe as Audrey Young baselessly claimed in the *Herald*. But then in a way I'm not surprised—everything she's written so far is a lie.
- Roy Just following up on that question of Mr McCully's, Mr Peters, on what dates and where had you met with Mr Glenn?
- Peters I beg your pardon?

- Roy On what dates and where have you met with Mr Glenn, or have you never met him?
- Peters With respect, that is irrelevant. But let me just say that it is impossible, also, for me to answer it, in this sense—I have been going to the Karaka sales for many, many years. So has Mr Glenn—where he has bought some decent horses, I understood. One won the Caulfield Cup. If you want me to give you the dates on which I have been there casually and may have met him or not met him, then I think that’s a bit impossible for me to do.
- Roy But you have met him—
- Peters And I am not going to give you—to sit here and go through my diary on what is a totally irrelevant question, and would not have been drafted by a lawyer but by some amateur economist.
- Roy In that case, Mr Peters, I would just like to take you back to the question I was asking previously about whether Mr Glenn believed, or did not believe, that he had given the \$100,000 donation to the New Zealand First Party, as opposed to you personally for your legal costs. On July 12 the *New Zealand Herald* published an article citing a private email between Mr Glenn and his public relations man, Steve Fisher, managing director of Baldwin Boyle. I have it here and I am happy to table it. The article states that Mr Fisher emailed Mr Glenn on 21 February this year, and Mr Glenn said: “Steve—are you saying I should deny giving a donation to New Zealand First when I did?” Steve Fisher replied: “No, just stick to the line of referring stuff to New Zealand First. What I’m saying is we don’t want to contradict Winston.” Do you still stand by your claim that Mr Glenn has never said that he thought he believed he was donating \$100,000 to the New Zealand First Party, not to your legal costs?
- Peters Before I answer, you said you were happy to table something; can I see it? No, no—can I see it here?
- Roy I am happy to table it.
- Peters So it is not the email at all?
- Roy I never mentioned an email.
- Power This is a different matter.
- Peters I want to know is she talking about an email, and she’s got the email there as she suggested?
- Power As I understand it, she is talking about a reference to a story in the *New Zealand Herald*. Is that right?
- Roy That’s right.

- Peters Look, I am not going to answer questions about an email you've never seen, nor has any other journalist, and which the *New Zealand Herald* will not give over. And I also answered that question earlier this evening, and I made it very clear that in this court—which it is—you're not going to be able to get away with no proof, no evidence, and with some hearsay exposition.
- Roy Can I ask Mr Peters then, has he taken legal action against the *New Zealand Herald* for publishing something that doesn't exist?
- Peters Pardon—say again?
- Roy Have you taken legal action against the *New Zealand Herald* for publishing an email that you say doesn't exist?
- Peters Excuse me—that is not actionable that way, but on other legal matters you would be fascinated as to what we are going to do.
- Powers OK. Thank you, Mr Peters. Mr Brownlee, and then—
- Peters But Mr Chairman, what on earth did that last question have to do with this inquiry?
- Powers Well, I thought it was dealt with, Mr Peters. I thought you dealt with it.
- Brownlee Given the longstanding arrangement you have had with Mr Henry over those years you spoke of, and the history of him seeking financial contributions to support the various legal actions that you were involved in, were you aware that there had been financial support given to the Tauranga petition costs?
- Peters To the what?
- Brownlee The costs of the Tauranga petition.
- Peters I knew that at 5 o'clock on 18 July, as I said in my press statement.
- Brownlee So you knew of no other donations to that work?
- Peters I said, on 18 July I learnt what had happened there, and that's why I felt compelled to call the Prime Minister and advise the media.
- Brownlee Well, I certainly agree that you possibly only knew about the Owen Glenn donation, but you certainly knew that the \$40,000 had been covered before that date.
- Peters Well, I mean, one would make an assumption, particularly if you are paying money in.
- Brownlee Well, we could go over the issue—

- Peters Could I just make a point to you here? I don't think you seem to follow. This is going on while five defamation cases are happening at the same time.
- Brownlee Yeah. Well, I suppose what I'm driving at is: why didn't you make a declaration similar to the one that Nick Smith made?
- Peters Because I wasn't clairvoyant.
- Brownlee Well, but the history is that you've had these donations coming in for all sorts of actions—perhaps any one of those five—over that period of time, so why wouldn't you cover yourself by putting in some sort of a catch-all statement to make sure that you didn't breach Standing Orders?
- Peters Look, I understood Mr Kós QC; I'm sad you don't.
- Brownlee Well, I will ask you, then—you could help me, perhaps. Mr Kós gave us three definitions of debt. Which one do you think should apply to the Register of Pecuniary Interests?
- Peters What I think should apply is when he told you that if no debt is created, no debt exists.
- Brownlee Well, he didn't tell us that entirely. He actually said—
- Members Yes, he did.
- Peters Yes, he did, and look, excuse me—he not only told you but he wrote it to you.
- Brownlee That's right. And what he wrote is that in public usage "debt" can have a wider meaning—a moral obligation to pay, or a mere expectation of payment. Now, I think what we heard from Mr Henry was that there was an expectation, because you always met the shortfall. What we've heard from you tonight is that you've paid hundreds of thousands of dollars, so what I'm asking you is: is it unreasonable for a pecuniary interest register—which has got to be a much lower test than the strict legal test, in my view—
- Peters Is this a question?
- Brownlee —it is a question—should that second suggestion from Mr Kós be the test that this committee uses, as to debt, gift, or otherwise?
- Peters Mr Brownlee, the taxpayer paid for Mr Kós QC to turn up tonight. They paid good money for it. I suggest you pay attention to what he wrote and what he said to you, rather than to carry on in the way you are, as though his advice to you is of no moment whatsoever.
- Brownlee Well it is, and I am asking you which bit of it you agree with the most.

- Peters The part where he said that no debt was created. If no debt was created, then the question doesn't arise before this committee. That's what he gave you as a conclusion.
- Brownlee I'm reading his evidence in front of me, and it makes it very clear that in public usage—and this is a public issue, because we are public property in lots of ways—debt can have a wider meaning: a moral obligation to pay. Do you accept that you have—
- Peters Mr Kós went on to say—
- Brownlee Do you accept that you have indicated tonight that you at all times felt a moral obligation to pay? You just said to Mr Dunne before—
- Jones Point of order, Mr Chairman. There has been a misquotation here. Can we read the whole thing? In public usage, debt can have a wider meaning: a moral—not legal—obligation to pay, or a mere expectation of payment, neither being enforceable at law, nor a liability as such. So there is no debt, and I think it is very clear to everyone, but not to Brownlee.
- Brownlee I'll take a point of order. Well, firstly, I would point out that we are not talking about whether or not a debt was legally enforceable. We are talking about whether or not a sum of money, received for the benefit of a member of Parliament, should have been declared on the register. And I am asking Mr Peters, does he think that it would be reasonable for the public of New Zealand to accept that MPs, in consideration of the register, might refer to the second understanding of “debt”, as opposed to the two tighter definitions either side of that?
- Cullen Speaking to the point of order, it is a register of pecuniary interests, and I suggest very strongly that if we are to have notions that we have moral obligations entered on the Register of Pecuniary Interests, some of us would have very long lists indeed.
- Brownlee Speaking to the point of order, might I just say that this issue may never have arisen if it weren't for the suggestion—factual or otherwise—that Mr Glenn paid the money to secure a position as honorary consul in Monaco. That's why we're here.
- Peters With respect, I have heard 3½ minutes of a question here—all over the place. You had a QC here tonight, and Dr Cullen asked him a specific question, and he said nevertheless, his conclusion was, as he has written here, this is not a matter of moral, ethical, or honourable obligations—that's what people resort to when they make an allegation of criminality, and they've found out that they're wrong.
- Brownlee Nobody's done that.
- Peters That is precisely what people do when they want to ignore the law, as by the advice structure given to you.

- Power We've had the question put. Mr Peters has referred to a specific answer that Mr Kós QC has given. We'll leave the matter there. Mr Fairbrother, then we're finishing with Mr Swain.
- Fairbrother Point of order first. Is the \$40,000 court costs ordered on the failure of the petition in Tauranga, is that part of our consideration?
- Power No, but it has assumed a certain relevancy given that it has been entered into discussions by people who have presented witness evidence today.
- Fairbrother Mr Peters, you were the petitioner in the Tauranga petition?
- Peters Yes, I put my name on the _____ .
- Fairbrother But you said that it was really the initiative of a number of other people concerned about what happened in Tauranga?
- Peters Of the whole organisation, yes.
- Fairbrother So do you consider that you were in name only, or a trustee of those people?
- Peters Well, you head the thing, and you carry the aspirations of a case, yes.
- Fairbrother So you were doing it on behalf of those people?
- Peters Yes, on behalf of my campaign organisation. We felt we had been cheated. *[Interruption]* Cheating is cheating, Mr Brownlee.
- Brownlee Point of order. Can I have a clarification of what that was?
- Peters You said I got voted out. I said: "Cheating is cheating, Mr Brownlee."
- Brownlee How is that relevant?
- Peters How is that relevant? Well, it's not part of this inquiry but if you want to have a select committee about that I am happy to come along.
- Powers Points made on both sides. Let's go to the final question: Paul Swain
- Swain I hate to be pedantic, but I want to go back to what this inquiry—
[Interruption]
- Jones Point of order. I hope that people who are sitting outside this committee, as the public, will not make interjections.
- Power I didn't hear anything.
- Jones The point that was just made was not made by you, Mr Brownlee. It might have been made by somebody else.

- Power Well, I didn't hear that, but if that is the case, could I remind people that it is for members of the committee and the witnesses to discuss these issues.
- Swain I hate to be pedantic, but just going back to the things we're actually supposed to be looking at here.
- Peters I would be very grateful if you would.
- Swain There are two things that we are asked to look at in the question of privilege: one, that you failed to disclose a gift of \$100,000 from Mr Owen Glenn, and you are saying you didn't know about it, so it was hard to declare; secondly, that you failed to disclose, as a pecuniary interest, a debt, and we have just heard there was no debt. So it seems to me, as I understand it from what I have heard tonight, in trying to address those two issues, those things have been addressed by you and Mr Henry. My question is our terms of reference, however, go slightly wider. One of the questions is whether the rules for the disclosure of pecuniary interest require clarification or amendment. Do you have any thought or comment on that?
- Peters Yes, I do have thoughts on this to the extent that I think that what I have seen, in the advice given to Nick Smith, should remain. I mean, these causes are bigger than the candidate or political party. We're talking about democracy here. I've been involved with many of them here, but I have also watched them in Samoa, in Cook Islands. The paramountcy of the right candidate being there, and the Government being legitimate, rides on these issues. I do not see why, now, any candidate should be carrying all this by him or herself. It should be part of the responsibility of society itself. That's how democracy survives. So I would like members, if I could make a submission in all humility, to have regard to that, because that is what matters at the end of the day. If you frighten everybody away from standing up for democratic traditions, you can be certain of the kind of society you're going to get in the future.
- Power Mr Peters, thank you for your evidence. I would ask the public and the media please to clear the room so that the committee can have further discussions.
- Peters You have finished with me now?
- Power Thank you, Mr Peters.
- Peters OK, thank you very much.

conclusion of evidence

Appendix I

Corrected transcript of evidence 4 September 2008

Members

Simon Power (Chairperson)
 Hon Dr Michael Cullen (Deputy Chairperson)
 Gerry Brownlee
 Hon Lianne Dalziel
 Hon Peter Dunne
 Russell Fairbrother
 Te Ururoa Flavell
 Dail Jones
 Dr Wayne Mapp
 Hon Murray McCully
 Dr Russel Norman
 Heather Roy
 Hon Paul Swain

Staff

Mary Harris, Clerk of the House
 Tim Workman, Clerk-Assistant (Legal Services)
 Catherine Parkin, Clerk of the Committee

Stephen Kós QC, adviser

Witnesses

Rt Hon Winston Peters
 Peter Williams QC, counsel for Rt Hon Winston Peters, with Heeni Phillips

Power Good morning, Mr Peters; good morning, Mr Williams; and good morning, Ms Phillips. Could I just start this morning by making a brief statement under Standing Order 225, which allows time to be taken before a hearing to discuss how the examination will run; in effect, to explain scope.

I think it is just worth reminding members of the committee, the media, and the public that we are dealing with a number of very narrow issues here. The matters referred to this committee by the Speaker are very limited, and the committee has two allegations before it. The first is that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a gift of \$100,000 from Mr Owen Glenn. The second is that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a debt and discharge of part or all of that

debt by Owen Glenn. What is at issue relates just to the matters surrounding donations, gifts, and knowledge as to those matters.

By way of background, so everybody is clear, Mr Glenn has indicated in his written statement to this committee, dated 19 August 2008, that Mr Peters sought help from him for this purpose—that is, to assist funding the legal costs incurred personally by Mr Peters. Mr Glenn further states in his evidence: “Mr Peters subsequently met me socially at the Karaka yearling sales, I believe, in early 2006. He thanked me for my assistance.” In contrast, Mr Peters told the committee in his letter of 26 August 2008: “I believe that I met Mr Glenn many years ago and on the weekend of 13 August, well before the 2005 election, in Sydney, Bledisloe Cup weekend which is the only time I met him in Australia. The ‘personal conversation’ I believe relates to his conversation with Mr Henry”. Mr Peters further states in his letter to the committee dated 26 August 2008: “Para 7”—that is, of Mr Glenn’s letter dated 19 August—“relating to the Karaka Sales 2006 appears to be a year out.” Mr Peters further stated: “In my evidence to the committee and in my press statement of 18 July I did not thank him until my lawyer advised me on 18 July 2008.” What is in dispute, then—to repeat—is that issue of when, if at all, Mr Peters became aware of that particular payment.

These are narrow and specific issues, and those are the only relevant matters to this committee. I just remind members of this committee and those appearing that under Standing Order 226 the chairperson is the sole determiner of relevancy.

So that everybody is clear, and in fairness to Mr Peters, the committee has resolved this morning to hear from Mr Owen Glenn immediately after question time on Tuesday, 9 September 2008.

Mr Peters, I understand that you have elected to give evidence following Mr Glenn’s evidence.

Peters

Let me just give you the answer to that, because it is not so simple. I was under the understanding that I was to make a submission by 5 o’clock yesterday and that I would be heard today. A time during the day became known to me, and not by any direct reference from this committee, that there was going to be a change of plan. I just want to make this point to you, because it is rather serious: it is extraordinarily expensive business, and preparation is required, and other people’s schedules have to be worked on. So I was astonished by that, and in light of that I have had to make a change, and I will so elect.

But I want to make one point to you. I have written to the Registrar of Pecuniary Interests twice. I have relied upon her interpretation as was told to Parliament by Nick Smith. I now find out that the Registrar of Pecuniary Interests is not prepared to give me a ruling—

- Power Well.
- Peters —and that that is part of this committee. So if I could just suggest to you, with all respect, that is also, narrow as it might be, something that is still before the committee and on which I think you should hear evidence because there is alternative opinion to QC Kós on this matter.
- Power Thank you, Mr Peters. I understand, Mr Williams, that as Mr Peters' counsel you wish to make a statement or to offer the committee some view.
- Mr Williams, just so that you are aware and in fairness to all in these proceedings, Standing Order 229, with respect to counsel representing a witness before the Privileges Committee, enables that counsel certain rights. It does not allow that counsel the ability to give evidence on behalf of a witness. What it does allow counsel to do under Standing Order 229(2) is to address the committee on procedure. So, Mr Williams, if you wish to proceed, I just wanted to make those definitions very clear.
- Williams I am obliged.
- Power You are not able to speak on behalf of Mr Peters without leave of the committee, but if you do wish to address the committee on a narrow issue of procedure, the floor is now yours.
- Williams I am obliged. Thank you, Mr Chairman. I have with me my junior counsel, Miss Phillips as well.
- Power Welcome, Miss Phillips.
- Williams May I proceed, Mr Chairman?
- Power Bearing in mind that we are talking about a very narrow issue relating to procedure, Mr Williams, you may.
- Williams The matters that I will refer to are essential to the procedures of this committee.
- Power Thank you, Mr Williams.
- Williams I am obliged. Mr Chairman and members of the Privileges Committee, I have the honour of appearing before your distinguished committee.
- This inquiry has its origins in respect of a sum of money paid by a wealth expatriate and philanthropist, Mr Owen Glenn, to a highly respected Auckland barrister, Mr Brian Henry, in payment of professional services rendered. The professional services relate to a petition to the court complaining that the result of the Tauranga elections should be annulled on the grounds of alleged misconduct by the successful candidate, namely, Mr Clarkson. The professional work carried out by Mr Henry had nothing to

- do with the wooing or persuading voters but was based on alleged failure of Mr Clarkson to keep to the rules—
- Power Mr Williams, if I could just interrupt you, and I apologise for doing that, but the Standing Orders make it very clear that the matter that you may address the committee on is on the procedure to be followed by the committee, not on the substantive issue that the committee is hearing.
- Williams I follow that, but, with respect, I must develop the argument. I cannot argue in vacuo, I must have a sequence—any lawyer must have a sequence. I must develop. I cannot just act without reference to the facts, even though I am not trying to persuade in any way in relation to credibility or issues like that. The matters that I have, with great respect, are essential and fundamental to fairness and democracy and the rule of law. If you are going to suffocate me, then this will be sad day for democracy in this country. I will refer to the matters of procedure, but it is necessary for me to develop my argument. I cannot be stopped. These matters are not controversial, even.
- Power No, but the matters are well known to the committee and they are part of the substantive matter that is before the committee. I have asked you to, please, address your comments to the issues of procedure as you are able to under the Standing Orders. Thank you.
- Williams Although Mr Peters was the intitled petitioner in those proceedings, Mr Henry was in fact acting for a fairly large group of people who, in a collective sense, considered that an injustice had occurred.
- Brownlee Point of order. All of these points are well known to the committee—
- Williams They're not, actually.
- Brownlee We have the text in front of—
- Williams They're not, actually.
- Brownlee Well, they are certainly nothing to do with how this committee goes about conducting its inquiry.
- Williams Mr Brownlee, with great respect—
- Power Well, no, you don't get to respond to Mr Brownlee, I am afraid, Mr Williams, I do. The substantive issues are well known to committee members. The time line that you are describing is well known to all of those members around the table. I just repeat what I said, Mr Williams, because we are moving into territory which is—I am not going to allow this meeting to move outside the Standing Orders. Please address issues of procedure only.
- Williams Yes, sir. I am assured by Mr Peters—I have also read the transcript—that the matter I am developing here is not known to the committee, that this is

- a very valid matter that relates to fairness. If this matter is not considered, then it could well be there could be an erroneous conclusion.
- Power All right, well, I am going to allow you to continue but I am going to caution you at this point. Standing Order 229(2) makes clear that counsel may “with the committee’s agreement,”—Mr Williams, with the committee’s agreement—“address the committee on the procedure to be followed by the committee”.
- Williams Right. Mr Henry was no novice in these matters, and in particular in 1987 he had similarly acted for a National Party candidate, Mr Wyatt Creech. In Wyatt Creech’s case, money for legal fees had been subscribed by members of—
- Power No, Mr Williams, I am sorry. We have heard this evidence from Mr Henry with respect to what allegedly occurred in the 1990s; I am not going to traverse this matter again.
- Peters Excuse me.
- Power Please move to the issues of procedure. No, Mr Peters, you’ve elected to let Mr Williams speak, and I want him to speak.
- Williams By the time of the Wyatt Creech case a convention had arisen from three recent election poll cases. In order to protect the petitioning candidate from allegations of political patronage, the identities of the donors were sheltered from the petitioning politician.
- Roy Point of order, Mr Chairman. Mr Chairman, under Standing Order 229, this is Mr Peters’ counsel giving evidence on his behalf; we are not hearing matters of procedure. Could you make a ruling on that, please?
- Power I am going to rule that the continuation of dealing with matters outside of procedure to be followed by the committee is disorderly. Your comments must be restricted to those matters. Mr Williams, I have to say that if we continue along the line of dealing with substantive issues, I will move, as I am entitled to, to suspend the proceedings and move this committee back into committee to further consider this issue. So please address the issue of procedure only. I am not going to ask again or I will move under Standing Order 178(1) to suspend these proceedings.
- Fairbrother Point of order, Mr Chairman. We are dealing with a very senior advocate here, who says he cannot make his submissions on procedure without getting into context. He knows he is not giving evidence, and what he says isn’t evidence, it relates to procedure. But you have a very experienced advocate who is trying to—
- Power I appreciate that.

- Fairbrother —lead his client through a thicket of uncertainty, and I think he should be allowed to develop his argument, even if it is in a factual context. Everyone understands that it is not evidence. I think it is also disrespectful to Mr Williams to cut him off, knowing that he knows what the rules are.
- Power Well, there is no intention to be disrespectful to Mr Williams; the intention is to make sure, Mr Fairbrother, that the Standing Orders are followed. Mr Williams.
- Williams I am obliged. Legal expenses for an electoral petition are not spent to influence voters but to reverse an election result. As legal expenses related to a court case to reverse an election result are not money spent on electioneering, sound judgment would rule that it is not an item of expenditure that should be considered when totalling the money a candidate spends on his or her election campaign. Neither should the money so subscribed be regarded as a donation to a political party. The money is neither paid or received by a political party. The question remains whether the petitioning candidate should register such money as a donation.
- Including the Wyatt Creech case, there have been at least five of such petitions. With each petition there has also been a respondent who is an elected member of Parliament. Ten politicians recently have therefore previously been involved, either as petitioners or respondents. None of these 10 persons previously have been required to register a pecuniary interest in regard to legal expenses incurred for such a court case, as there is no law covering it. The Hon Barry Brill was such a respondent in 1979, and Cabinet rules on disclosure applied to him.
- Mapp Point of order, Mr Chairman. With respect, Mr Williams, it seems to me what we are hearing from you is essentially a legal argument on the pecuniary interests issue, not the issue of how this committee conducts its procedure. Mr Chairman, it seems to me that this has been made fairly clear and, from what I can see, Mr Williams simply is continuing to read the document that he has prepared, rather than turn his mind to the very points you have respectfully asked him to turn his mind to.
- Power Mr Williams, I am going to allow you to continue, but I would urge you, in the strongest possible terms, to get to the nub of the issue surrounding the procedural matter.
- Dunne Point of order, Mr Chairman. Mr Chairman, I want to go back to the point raised by Mr Fairbrother. If the information being imparted by Mr Williams now is not to be treated as evidence, then what is it. What is its status?
- Power That is the difficulty we are in, Mr Williams. The Standing Orders make it abundantly clear that counsel may not give evidence on behalf of a witness, that, unless they have leave of the committee, they may address the committee on only the procedural issues. So I take Mr Dunne's point, and I

- am going to say this: this is the final chance. Please move to the nub of the procedural matters that you wish to address to the committee.
- Jones Point of order, Mr Chairman. If Mr Williams has a conclusion, perhaps he could move to the conclusion, and that would be helpful—just to wrap it up.
- Power Well, the committee clerk has just put a piece of very—Mr Williams, if it would help, would it be possible for us to seek to have that matter tabled by the committee and then have you speak directly about the matter of procedure? Would that assist you?
- Williams You mean the notes themselves—
- Power The written notes, yes.
- Williams —and the enclosures therewith?
- Power Yes, and then you would know that the information was before the committee and then you could speak directly to the issue of procedure. That seems like a pretty helpful suggestion. Is that your wish?
- Williams Yes.
- Power Well, I move that that document be—
- Dunne Point of order. Mr Chairman, can I raise my question again. The statement to the document, does it become a part of the record?
- Power Well, I think it does.
- Brownlee Well, it can't, without the leave of the committee.
- Power Well, that's why I am putting the motion.
- Cullen A very sensible suggestion, Mr Chairman.
- Williams Yes, I will, on your invitation, apply to table this document.
- Power OK, thank you. Those in favour, those opposed? Thank you. Now that we have the matters, you can now proceed directly to the issue of procedure, knowing that the information in that document will be put before the committee.
- Williams Essentially, the procedure that I am referring to is that the convention that has been established over a period of cases where unsuccessful candidates have applied to the courts for redress is that the money that the public and other people apply to such cases is not a pecuniary expense that needs to be disclosed. The convention has arisen that that money is not money used for electioneering—

- Brownlee Point of order.
- Williams —after all, the election is over at that stage.
- Brownlee This is exactly the question that we are required to answer. No one is disputing that that is the nub of why we are sitting here. That was made explicitly clear from the Chair at the start of the meeting. We did say that it was a very narrow issue that we were considering. So I would contend that what we are getting now is argument on one side of that particular issue and, therefore, purely evidence.
- Jones Speaking to the point of order. I draw your attention to the Standing Orders, page 126, 7(1)(b): “Every return must contain the following information for the period specified in clause 8”—
- Power Sorry, which Standing Order?
- Jones Page 126, the pecuniary interests one. The Standing Orders. Pecuniary interests, appendix B. “Every return must contain the following information for the period specified in clause 8: ... (b) a description of each gift (including hospitality and donations in cash or kind but excluding any donation made to cover expenses in an electoral campaign)”. I think the procedure which Mr Williams is referring to is the procedure that should be followed with regard to that. And he is indicating that this is a matter which procedurally the committee must take into account.
- Power Is that your submission, Mr Williams?
- Williams Yes. Essentially, the position is that in the past no candidate who has been unsuccessful, who has later become an MP, has been asked to declare the moneys that were spent on the court case as a pecuniary interest. So this is *de novo*, you are establishing a new rule—
- Power That’s correct.
- Williams —and the question becomes why, with Mr Peters, this has suddenly emerged, why wasn’t this alleged against the 10 other people previously. With great respect, it indicates prejudice.
- Brownlee Point of order.
- Cullen Perhaps, Mr Chairman, the answer is that there was no declaration of pecuniary interests.
- Power You are aware that the pecuniary interests registrar is a relatively recent addition to the parliamentary Standing Orders?
- Brownlee The only reason we’re here.
- Peters Not for Barry Brill. He was a Cabinet Minister.

- Williams There were several matters that I wish to traverse, but it seems that because of the narrowness of my role here today—
- Power It is very narrow, Mr Williams.
- Williams —I am unable to traverse those. I wish to make it very plain that there are some very important matters which I would like to have spoken about. I do, however, come to purely procedural matters.
- Power Thank you.
- Williams That is all I am now going to speak about.
- Power Thank you.
- Williams And I am going to speak about this: that it would be a very sad day for democracy in this country if this committee voted or appeared to be instructed on party lines.
- Brownlee Point of order.
- Williams I have perused the transcript of the proceedings of this honourable court—
- Brownlee Point of order. Mr Chairman, that is not a procedural matter; that is a political statement. This is a very, very important matter, a very, very simple matter, and the Chairman has made it abundantly clear this morning just how narrow the considerations of this committee are going to be. And we have made it clear to you, further, that the Standing Order that you referred to via Mr Jones is where our deliberations are going to be considered. These sorts of comments from you don't help in that deliberation.
- Power You see, Mr Williams, the difficulty that we are getting ourselves into is that in not dealing directly with specific procedural issues, disorder is being created. I've given you a number of chances to make those particular—
- Fairbrother Mr Chair.
- Power —no, I am speaking, Mr Fairbrother—procedural references. I am now putting you on notice, Mr Williams. This is the final opportunity. If the next statement is not one of procedural matters, these proceedings will be suspended under Standing Order 178(1).
- Fairbrother Point of order, Mr Chairman. I think the submitter is entitled to know whether this is going to be decided on party lines or on a judicial basis, and that is the point of his query now.
- Power I think you can be assured that members of this committee will take their responsibilities extremely seriously and act within the Standing Orders.
- Williams Well, the transcript doesn't seem to demonstrate that, but any rate—

- Power Well, Mr Williams, you cannot cast aspersions on the motives of the people on this committee, who take their responsibilities very seriously, and, on the evidence that is presented before this committee, will make some determination, if any, in accordance with the Standing Orders.
- Jones Point of order, Mr Chairman. This is not a committee that is known to the public generally and parliamentary per se. I expect that the question as to whether the principles of natural justice are part of our procedure might be relevant to the whole thing—
- Power Of course they are.
- Jones —and that is the aspect which I think might be developed.
- Williams I am obliged.
- Power Thank you. Mr Williams.
- Williams My submissions really go to the nub of democracy. They go to the nub of fairness, and fairness is the essential quality of democracy. I have quoted from Lord Bingham, who is the most senior Law Lord in Britain. He was talking about committees such as this which are part of the democratic process. Democracy is not just where people vote at the polls; democracy is where fairness is right through the whole system. Lord Bingham set out these rules, which relate to committees such as this. “First, I suggest, that decisions are made by adjudicators who”—however described—“are independent and impartial: independent in the sense that they are free to decide on the legal and factual merits of a case as they see it, free of any extraneous influence or pressure”. And the problem here, of course, is that we’ve had—
- Power No, I wouldn’t. You’re on the procedural stuff; OK at the moment but I wouldn’t stray.
- Williams All right. “...impartial in the sense that they are, so far as humanly possible, open-minded, unbiased by any personal interest or partisan allegiance of any kind.” I am just cutting bits out here. I would actually like to say a lot more.
- Power I’m sure you would but you’re not able to.
- Williams I finish with this.
- Power Thank you.
- William Lest prejudice may enslave reason, I quote the immortal words of the great bard John Donne, who wrote a few centuries ago: “And therefore never send to know for whom the bell tolls. It tolls for thee.” I am obliged.
- Power Thank you, Mr Williams. That concludes the hearing at this point. The committee will now move into closed session to consider the matters that

have been put before it in recent days. Could we clear the room, please. Thank you for your appearance.

Peters Could I just—

Power We are finished, Mr Peters.

Peters No. Regarding next Tuesday—

Power The committee staff will be in touch.

Peters Yes. I just want to know how long do you perceive it to go on.

Power They will be in touch. We are discussing those matters now.

Jones We are going to do it now.

Peters Mr Power, it takes a lot of time and money to organise resources. Could I get some more certainty than that?

Power Mr Peters, your office will be contacted this afternoon.

Peters It wasn't last time, as you well know.

Power It will be this afternoon.

Peters It was not yesterday.

Power Mr Peters, don't get out of order. The open hearing is concluded.

Peters But, you know, yesterday I was not told by you, at all.

Power The open committee is concluded. Thank you. Please clear the room.

conclusion of evidence

Appendix J

Corrected transcript of evidence 9 September 2008

Members

Simon Power (Chairperson)
Hon Dr Michael Cullen (Deputy Chairperson)
Gerry Brownlee
Hon Lianne Dalziel
Hon Peter Dunne
Russell Fairbrother
Te Ururoa Flavell
Dail Jones
Dr Wayne Mapp
Hon Murray McCully
Dr Russel Norman
Heather Roy
Hon Paul Swain

Staff

Mary Harris, Clerk of the House
Tim Workman, Clerk-Assistant (Legal Services)
Catherine Parkin, Clerk of the Committee

Stephen Kós QC, adviser

Witnesses

Owen Glenn
Dr Geoffrey Harley, counsel for Mr Glenn
Laura Ede, executive assistant to Mr Glenn

Power Mr Glenn and Dr Harley, welcome to the committee. If I could just take a moment to introduce members of the committee to you, then I intend to make a statement outlining how the process will unfold over the next short while. [*Introductions*]

I just want to take this opportunity, as I did last week, Mr Glenn and Dr Harley, to make a statement under Standing Order 225. That Standing Order allows time to be taken before a hearing of evidence to discuss how the examination will be run—in essence, to explain the scope of what is to occur. The matters referred to this committee by the Speaker are very limited. The committee has two allegations of contempt before it: that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a gift of \$100,000 from Mr Owen Glenn; and that the Rt Hon Winston Peters failed

to disclose as a pecuniary interest a debt and a discharge of part or all of that debt by Mr Owen Glenn. What is at issue is the issue of a donation or gift. What is in dispute is when Mr Peters became aware of it all in the time frames under consideration of the payment by yourself, Mr Glenn.

You have indicated, sir, in your written statement to this committee, dated 19 August 2008, that Mr Peters sought help from you for this purpose—that is, to assist the funding of legal costs incurred personally by Mr Peters. Your further stated in your evidence “Mr Peters subsequently met me socially at the Karaka yearling sales, I believe in early 2006. He thanked me for my assistance.”

In contrast, Mr Peters has told the committee in a letter dated 26 August, among others, that he believed he had met Mr Glenn “many years ago and on the weekend of 13 August, well before the 2005 election, in Sydney, Bledisloe Cup weekend which is the only time I met him in Australia. The “personal conversation” I believe relates to his conversation with Mr Henry.” Mr Peters further stated in his letter to the committee that in response to your paragraph 7 relating to the Karaka Sales 2006, that appears to be a year out, and we have received some further evidence in that regard today to try to clarify that particular issue. Further, he has stated in his evidence to the committee and in his press statement of 18 July that he didn’t thank you for the gift until his lawyer advised him of that gift on 18 July 2008.

So what is in dispute then, to repeat, is when Mr Peters became aware of the payment by you, Mr Glenn. These are narrow and specific issues, and, for the committee, they are the only relevant matters. If I could just remind both gentlemen that under Standing Order 226 the chairperson of the committee is the sole determiner of relevancy on these issues.

We have an hour, Mr Glenn, or thereabouts, to hear your evidence. I understand that you have a written statement that you wish to speak to. That has been tabled and released, and then members of the committee will have questions for you. So, we are in your hands. Welcome to the committee.

Glenn Thank you Mr Chairman, members of the committee.

Harley Mr Chairman, if it is in order with you and members of the committee, the first nine paragraphs of the statement are personal in terms of who Mr Glenn is and his interests. In order to manage time effectively, if we could take that as read and start at paragraph 10. In relation to the documentary exhibits that are supplied with the statement, within the written statement there is a summary of each of them—

Power Sorry, Dr Harley, I will just interrupt you. You will be aware we had a discussion before this committee last week about the application of Standing Order 229 to counsel or somebody appearing before this

committee. I accept the point that you have made with respect to paragraphs 1 to 9. That is a matter of procedure. You are quite right to draw that to the committee's attention under that Standing Order. Mr Glenn is required to give the evidence unless the committee gives leave otherwise.

Harley Of course. Is it in order that he starts at paragraph 10?

Power No problem with that, sir.

Harley Thank you.

Glenn I travel frequently to different parts of the world. I do not keep records myself, including my emails. I have an executive assistant, Laura Ede, who is sitting at the table, who is currently London-based. I also have a personal assistant, Julie Smith—who is somewhere in the audience—who travels with me. They keep records of and manage my meetings. They arrange for travel, accommodation, telephone calls, and assist me with managing my appointments diary and also with emails. If they are copy party with emails to or from me, then it is likely they keep most of them for a period of time. My own personal email records are therefore substantially incomplete. The records of both Laura and Julie are reasonably complete where they were copied in on my emails.

The mobile telephone records show outward calls but not inward calls. I have used these records to establish the factual position as set out below. I am able to show clearly and accurately from these business records the factual situation concerning the donation I made to assist the Rt Hon Winston Peters with his legal expenses for the Tauranga election petition.

My recollection of first meeting with the Rt Hon Mr Peters was on Friday, August 12th, 2005 before the general election.

Harley Can we take that exhibit as read? Thank you.

Glenn Mr Peters asked to meet me. We arranged to meet in Sydney before the Bledisloe Cup match the next day. I do not recall meeting him before that date. I met Mr Peters at his hotel at 3pm with my executive assistant, Laura Ede, present. I had asked Mr Williams for his perspective and Sir Howard Morrison, whom I know well.

Harley Again will Exhibit B?

Power There is no difficulty with those, Dr Harley. Just take them as having been tabled and released.

Glenn I was generally aware that it was considered likely that New Zealand First was polling well and could well have an influential role in the formation of the Government post-election. I was interested to meet Mr Peters, accordingly. I spent an informative hour with Mr Peters during which time he outlined his views about encouraging business start-ups and the use of

tax incentives. We did not discuss the New Zealand First Party's need for financial support. Shortly after, Mr Roger McClay followed up the meeting with Mr Peters with a letter requesting funding for New Zealand First. This request was declined by me. I followed the general election outcome on Saturday 17 September 2005 with interest. I was aware subsequently that New Zealand First was about to or had entered into a supply and confidence agreement with Labour. Following the election Mr Peters launched an election petition concerning the electoral seat of Tauranga. I understand from the High Court judgment that the date sequence of events to have been as follows. Election petition date, 6 October 2005; court hearing, 28 November to 1 December 2005; and the court decision, 15 December 2005.

I referred to my letters to the Privileges Committee, dated 19 and 27 August 2008. First, I confirm that the contents of both of them are true and correct in all respects. Secondly, I wish to explain the sequence of events with reference to the detail of the records that are available to me as to Mr Peters' approach to me for financial assistance concerning the election petition costs.

The matter developed as follows. (a) From the office email records it seems that Mr Peters or someone representing New Zealand First contacted my office in late November 2005. These records do not say what this was about. They show that I was reminded about Mr Peters' biographical details. I was next approached by Mr Peters in a personal call from him to me whilst I was in Sydney, in the early part of December 2005. My records show that Mr Peters left a message on my telephone answering service on 5 December 2005. There is no detail concerning what this call was about. However, this contact was immediately advised to Mr Williams before I responded.

At some point over the next few days I would have responded to Mr Peters' request that I call him. I cannot locate a telephone account record of this call now. It may be that he called me again or that I used another office telephone. In this call Mr Peters raised with me his need for financial assistance with his legal costs incurred in the Tauranga election petition. I was generally aware of the petition and of the relationship New Zealand First had formed with Labour. I have not been able to locate specific email references to this approach. I am absolutely certain the request for assistance came to me from Mr Peters himself. I was asked by him to consider assisting him with the legal costs and expenses. I agreed to consider making such a contribution.

Before making my response to Mr Peters I was again in contact with Mr Williams about the approach. I wanted to make sure that if I agreed to contribute this would not be seen by Labour as being unhelpful to its own interests. I would not have proceeded if the response that I got from Mr Williams was that such a contribution would be unhelpful to Labour. The Labour Party was my primary interest. I was told by Mr Williams that

the Labour Party had no problem with my assisting Mr Peters. I believe this occurred over brunch with Mr Williams in Sydney on 14 December 2005.

I called Mr Peters on 14 December 2005 to inform him that I agreed to contribute. From our office record this number is Mr Peters' mobile number. Although Mr Peters had initially told me he needed to raise \$70,000 it became clear to me in the conversation that in fact he needed more than that figure. I offered to contribute \$100,000 towards these legal costs. When I inquired where the funds should be sent to, Mr Peters informed me that his lawyer would send the account details. He further requested that any such donation be kept confidential. Immediately after that call I received an email from Mr Peters' lawyer Mr B P Henry, which referred to the conversation with his client and which provided bank account details for remittance. I gave the payment instructions on 19 December 2005.

In my second letter to the committee of 27 August I said that I did not make the payment at the request of Mr Peters' lawyer. I would never have agreed to make a donation without Mr Peters' direct and personal request and without checking with Mr Williams that such support would be acceptable to the Labour Party. My motivation in offering the support to Mr Peters was to support the Labour Government. I do not have any recollection of discussing the request of Mr Peters with Mr Henry.

In the same letter to the committee I said that Mr Peters was incorrect about meeting me at Karaka in 2007. I was not there at the sales that year. I was in Europe. I met Mr Peters in 2006 at the Karaka sales. Mr Peters did then thank me for my assistance, as I recorded in my first letter to the committee. Since I wrote those letters I further checked our office records. I have established that my bloodstock adviser and racehorse manager was also present. He heard the conversation about the donation with Mr Peters. An affidavit has been provided to the committee to confirm this aspect.

I met the Prime Minister privately at her request when she attended the opening of the new business school building which is named after me, at the University of Auckland in February 2008. In a private and personal discussion with Miss Clark, I told her I had made a donation to Mr Peters for his legal costs. I also told her of my conversation with the Labour Party's president, Mr Williams, before I agreed to make that donation back in 2005. It was my understanding Mr Williams would have had to clear this with his colleagues.

During 2007 I initiated a proposal that I could represent New Zealand as honorary consul-general in Monaco. My offer was to provide an office at my expense. Part of the concept was an ambassador role in trade development. Nothing has come from these suggestions, which is the Government's prerogative.

Conclusion: I take no pleasure from having to deal with these matters in this way. I have come before the committee at my expense to state the facts and to show how they are documented. I am aware that members of Parliament who are members of this committee have questioned the authenticity of the letters I have written. I am also aware that it has been said that I am confused and a liar. These remarks are damaging to my reputation. These comments are wrong, as the documents I have produced show.

Power Thank you, Mr Glenn. Do you wish to add anything further to your written statement at this point?

Glenn I do not, Mr Chairman.

Power Members of the committee, the matter is now in your hands as to any questions you may have for Mr Glenn.

Dunne Mr Glenn, I have just one question. I have read through all of this. You say that there are certain points where your records are incomplete or you are unable to access them, but then you go on and are very specific in the latter part of your evidence that you did speak to Mr Peters in December 2005 about the donation.

Glenn Yes.

Dunne And that you had a separate conversation with Mr Williams, but somewhere between the 5 and 14 December 2005 you spoke to Mr Peters about the donation. That is absolutely clear, as you recall?

Glenn Correct.

Dunne Thank you.

Brownlee Just the nature of the involvement of Mr Williams from the Labour Party. You have stated here that without Mr Williams' explicit condoning of this donation, it would not have been made.

Glenn Correct.

Brownlee And, furthermore, am I to assume from the general track of all this that Mr Peters would have known it appropriate to approach you because of discussions he might have had with Mr Williams?

Glenn I can't presume this.

Norman Mr Glenn, it seems to me, one of the key pieces of evidence that you've presented us today—together, the two pieces—is this phone record of the call that is from Mr Peters, with his phone number on it, and that is on 14 December at 11.26am, and this is when you were in Australia, have I got that right?

- Glenn Correct.
- Norman So this is 2 hours earlier than New Zealand time. So then there is the email from Brian Henry on the same day, which says “Further to your discussion with my client 1.30 nzt...”. So you’re saying that this exactly matches up—it’s 11.30, which is 1.30 New Zealand time. That is the killer bit of evidence in here, as far as I can tell—those two pieces together show that you got the phone call from Winston Peters, and then the email from his lawyer with reference to “my client”, which could only have been Mr Peters, because you have got the phone record of it.
- Glenn Well, I can’t presume it was Mr Peters, because he didn’t mention it by name, but your deducing of the timing is probably critical.
- Fairbrother Thank you, Mr Glenn. The statement you’ve read today, is that in your own words or has that been compiled from information you have given someone?
- Glenn You mean the whole statement?
- Fairbrother Yes, the whole statement.
- Glenn It’s in my own words. Mr Harley has helped me to put it together on a pro bono basis.
- Fairbrother Has he?
- Glenn Well, he’s an advisory member of the University of Auckland advisory committee, as I am.
- Fairbrother Do you know Mr Wayne Peters?
- Glenn I’ve never met him. I know of him.
- Fairbrother Do you know if you ever spoke to Mr Wayne Peters?
- Glenn I honestly can’t recall. He may have been at a lunch at Winston Peters’ private house in Herne Bay. I think he came late; it could have been him. I may have met him, but there was no—it was just a lunch.
- Fairbrother You know he’s a lawyer, don’t you?
- Glenn A what, sorry?
- Fairbrother A lawyer, Mr Wayne Peters.
- Glenn Yes.
- Fairbrother And he is involved with the Spencer Trust, which is a vehicle that channels money to New Zealand First.

- Glenn I only know as much as I read in the papers.
- Fairbrother When you spoke with Mr Wayne Peters at lunch, he has a voice very similar to Winston Peters?
- Glenn I don't make any distinction of that.
- Fairbrother You don't, or you couldn't make any distinction?
- Glenn I don't—it's never occurred to me.
- Fairbrother We have a conflict here between Brian Henry, who's a barrister of some standing, as you are a businessman of some standing, and Mr Henry has said quite clearly that he made a call to you and he discussed the donation. Is it possible that there is a conflict between the evidence because you're relying upon Winston Peters' cellphone number to give you a guide as to whom you were actually speaking to?
- Glenn I don't see how. He told me that was his private mobile number, and—
- Fairbrother But you've got your records which show that it was Winston Peters' mobile used on 14 December?
- Glenn Yes.
- Fairbrother Are you able to say definitely that it was Winston Peters you spoke to in that conversation; or is it that, as you've tracked the phone number down you're able to recreate from that?
- Glenn Well, he was speaking in the first person, as though he knew me and I knew him. "Hello Owen, it's Winston."—not Wayne or Alvin.
- Fairbrother Sorry?
- Glenn Well, he was acting—speaking to me as Winston Peters.
- Dunne He said: "It's Winston."?
- Fairbrother Did he say: "It's Winston.", did he?
- Glenn Well, he was talking to me as Winston Peters, yes.
- Fairbrother Did he use the—
- Glenn Well, I can't recall the whole conversation word for word, but it was him I was talking to.
- Fairbrother Did he use the name Winston Peters, or did you just assume you knew each other?
- Glenn I think he—I have no doubt in my mind it was him.

- Power OK, Mr Fairbrother. Anything else?
- Mapp I'd just like to turn to the discussion you set out in paragraph 26 with the Prime Minister. You say there "I ... told her of my conversation with the Labour Party's President, Mr Williams ..." and also that you told her that you had made a donation to Mr Peters for his legal costs. So you have a specific recollection that you actually told the Prime Minister that your donation was specifically for Mr Peters' legal costs?
- Glenn Yes. I did say it was my understanding it was to him personally, not to the party, just for him to help with his costs.
- Mapp And paid to his lawyer?
- Glenn Yes, under his instruction.
- Mapp What was her reaction to that comment?
- Glenn Oh, I don't think the Prime Minister ever has a violent reaction to anything. Calm. Moderated.
- Jones We've had evidence from Brian Henry, the barrister. In his evidence to us, on page 12 and page 15, he says he phoned you and spoke to you about the matter. Can you ever recall speaking to Brian Henry?
- Glenn I don't recall ever speaking to him or ever having met him.
- Jones I said "speaking to him". Can you not recall speaking to him on the telephone?
- Glenn I do not.
- Jones He's written us a letter, a further letter, indicating that the phone call he had with you—this is No. 16—was with you personally, and he said he recalls—have you got a copy of this at all? No. 16?
- Glenn No.
- Power Could we get a copy of that item? It's been tabled and released, so it would be easier if Mr Glenn and his barrister can see it.
- Jones I can give you a moment to read it, Mr Glenn. Mr Brian Henry, the barrister, says he had this conversation with you, and some of the contents of the conversation. Do you recall it now, at all?
- Glenn No, I don't.
- Jones Do you recall ever discussing the question of Mr Downer's statements at Pusan with Mr Henry on an absolutely voluntary basis, as Mr Henry has spelt out here?

- Glenn Well, my comment on that is that if Mr Henry will not disclose the client's name, why would we be talking about Winston Peters?
- Jones There was no doubt in your discussion with Mr Henry—as he says here, “I assured him Winston Peters would run the agreement.”—Mr Peters' name was mentioned.
- Glenn By him.
- Jones By Mr Henry.
- Glenn I don't have any recall of this, but if he's correct, why is he issuing a statement saying that he discussed this matter with me, which concerned Winston Peters, by name, and yet denies that he was acting on behalf of Winston Peters? Why would we be talking about it?
- Jones I am sorry. I don't know where he says he denies he's acting for Winston Peters.
- Glenn I'm saying he is denying he's acting for him.
- Jones Where does he say he is denying—
- Glenn Well, not in this statement, but before the committee he said that he was acting on his own initiative.
- Jones No, he made it quite clear that he—I'll give you the paragraph number.
- Power Well, we can come back to that, perhaps, in deliberation. Are there any other further questions, Mr Jones, for Mr Glenn?
- Jones But I'm just—if you could just refer to this—can you recall discussing—
- Glenn I've already said no, I don't.
- Jones OK.
- Power Anything further?
- Jones Just hold on. So you deny having any discussion with Mr Brian Henry, the barrister—
- Glenn I've already said that, yes.
- Jones OK. In your evidence, as I think Mr Dunne has pointed out, on page 4, paragraph 21(a), you say: “from the office email records it seems that Mr Peters or someone representing New Zealand First again contacted my office in late November 2005.” If I refresh your memory, based on what you said here, could that someone have been Brian Henry?
- Glenn Mr Harley?

- Jones Mr Chairman, the evidence has to be given by Mr Glenn, not by his lawyer.
- Power Well, just a second, Mr Jones. Under the Standing Orders he is entitled to consult his counsel—under Standing Order 229—and it looks to me like that’s what he’s doing.
- Jones But this is a purely evidential matter, it’s not a procedural matter, why does he have to ask his lawyer to give him an answer?
- Power Well, in actual fact, Standing Order 229(1) says: “A witness may be accompanied by counsel (of the witness’s choice) and may consult counsel in the course of a meeting at which the witness appears.”
- Jones Surely, he must know it or not.
- Fairbrother It goes to credibility.
- Jones Yes, it just goes to credibility if he has to ask his lawyer what the answer is.
- Power Well, that is a matter for the committee. Mr Glenn will answer the question when he is ready.
- Glenn I didn’t ask him what the answer was. You don’t know what I asked him.
- Jones In that case, why did you ask him anything? I just asked you—
- Glenn Well, because he’s here to assist me.
- Jones —a simple question to exercise your memory, Mr Glenn.
- Glenn Mr Chairman, it’s up to you to rule on that, I would have thought.
- Jones I’ll put the question again.
- Power Just steady. Let’s just put the question in a courteous way and we will get a courteous response.
- Glenn Thank you very much. I am quite happy to respond. I’m just asking him a question, advice.
- Power Which you are entitled to do. Go ahead, Mr Jones.
- Jones In your own affidavit, or statement, Mr Glenn, at paragraph 21(a) you say “from the office email records, it seems that Mr Peters or someone representing New Zealand First again contacted my office in late November 2005.” Do you agree with that?
- Glenn That is what I’ve said here, I agree with it, and my executive assistant reported that someone had contacted the office. I never said they had contacted me.

- Jones So if Brian Henry says he contacted you, this could quite easily be evidence of his call to your office?
- Glenn Well, that doesn't mean he contacted me personally.
- Jones That's a matter of credibility.
- Dunne Very quick point. Paragraph 21(a) related to email contacts. Mr Henry indicates in his evidence that he telephoned you. So, this paragraph 21(a) would not have covered any telephone call; you are talking purely about email contact at that point?
- Glenn We don't have any email record, do we, Laura, on that?
- Ede No.
- Jones You just said you have no email record, but here you tell us you did have email records. Which one is it?
- Ede There's only emails between you and me and—
- Glenn Yeah. This is an email record we are talking about where my executive assistant contacted me and said someone had contacted our office, and then she sent me an email to that effect.
- Jones So, it's an email record of a telephone conversation, is that right?
- Glenn Well, it doesn't say it's a telephone conversation, it just said "contacted my office".
- Jones It could have been either on the phone or walk in off the street, in answer to the question. Is that what you're saying?
- Glenn Well, he would hardly walk off the street, would he?
- Jones So, it would have to be a telephone conversation, wouldn't it—
- Glenn There's no need to be—
- Power All right, Mr Jones, we are going to go to Dr Cullen now.
- Jones Hold on, hold on, I haven't finished yet.
- Power Well, can we—
- Glenn Mr Chairman, I'm only asking for common courtesy. I'm here voluntarily, and if you guys don't like it, I'll leave.
- Power No, no, no. He's been asked to address the questions in a courteous way, Mr Glenn, and he will.

- Jones I'm just going to 21(b).
- Glenn Thank you.
- Jones In paragraph 21(b) you say you assumed Mr Peters left a message on your telephone. "There's no detail concerning what this call was about."
- Glenn I'm not in the habit of sending \$100,000 out of a whim and fancy.
- Jones Absolutely agree with you. Who would!
- Glenn No, you don't.
- Jones And let's not deny it. Everyone's very grateful—
- Glenn Is this committee under parliamentary privilege, Mr Chairman?
- Power Mr Jones, there are other members of the committee that are waiting to ask questions, so—
- Jones —and very, very grateful support, that Mr Peters has said, and I'm not aware that he's ever called you a liar.
- Glenn Are you a member of his party, are you?
- Jones Yes. And I have to say that what you might say was contradictory is, as between a gift between New Zealand First and a gift to the fund, that was the only contradiction—
- Glenn To him personally. He directed where I sent it. It wasn't a gift to Mr Henry.
- Jones Can I just say that any suggestion that you've been called a liar is not from us. OK? I just want to make that clear. Now, at the same point, at paragraph 21(c) you go on to say that you would have responded but you "cannot locate a telephone account record of this call now."
- Glenn This is correct. I mean, all these records are 3 years old. We spent days researching all this to come up with what we did. We freely admit that not all our records are attainable, as indeed Mr Peters' aren't or Mr Henry's.
- Jones But do you accept that there is a difference of opinion between yourself and Mr Henry?
- Glenn Yeah.
- ? And you.
- Jones I haven't given any evidence in this matter.
- ? You're only warming up—

- Power OK.
- Jones Well, if Dr Cullen has some questions, then I will come back later on.
- Cullen Mr Glenn, at paragraph 21(c) you state that you responded to Mr Peters' request to call him; that you can't locate that telephone account record; you are not sure whether you called him or he called you; but you are quite clear, despite that, that he raised specifically the issue of financial assistance for his legal costs.
- Glenn Correct.
- Cullen But you have no record of that call at all?
- Glenn Of the call I made to Mr Peters?
- Cullen Well, you are not clear about whether he made it or you made it, in fact. You're not saying you made it?
- Harley He's simply asking you to confirm in relation to (c) that you do not have a record of that call. Just what it says.
- Glenn I don't have a record, no, sir.
- Cullen But are you clear, given what you have just said, whether you made the call or he made the call?
- Glenn The first call, I reckon, he made and left a message, I replied to him, to his private mobile number.
- Cullen Sorry, to make it clear. So in fact you called him. You just said that he called you, but in fact you called him.
- Power He's referring to the first call.
- Dalziel It says that "It may be that he called me again".
- Power It's two calls.
- Cullen Yes, I know it is two calls. There was one when a message was left. And in the second one—we've just had contradictory statements, Mr Glenn, on the second call.
- Glenn Well, I work from my home, I work from my offices, I work from my Blackberry. I'm not hanging every second of the day on Mr Peters' calls. I mean, I have businesses to run. And this is the best of my recollection.
- Cullen So, to the best of your recollection, did he call you or did you call him?
- Glenn Well, he left a message, I called him back.

- Dalziel Well, it says “It may be that he called me again...”.
- Cullen So this evidence is not correct? You called him?
- Dalziel You’re quite clear that you called him?
- Harley That is correct.
- Glenn That is correct.
- Cullen So, the statement that you made that “It may be that he called me again...” is not correct?
- Glenn What I’m saying is it may be that he called me again or I used another office telephone, because in the records that we got other information from there was no record of this, but I didn’t have just one telephone.
- Cullen No I understand that, I’m sure that you have more than one telephone, Mr Glenn. But what I am trying to get to is that in paragraph 21(c) you are not clear in your written evidence as to whether he made the second call or whether you called him back—
- Glenn I’m saying it is to the best of my recollection.
- Cullen —you are now saying that you made the call.
- Glenn I’m not the one on trial here am I? I’m giving you the best of my recollection.
- Cullen No you’re not on trial, Mr Glenn, but there is a conflict of evidence and the details are quite important.
- Glenn I can only tell you what I thought happened and the transpiration. I do not make donations to people—lawyers that call me and say please send me \$100,000.
- Cullen Now you think what happened was that you called him? OK. Let’s come back to the further conversation 14 December. You rang—
- Harley Which paragraph, Dr Cullen?
- Cullen Paragraph 21(f). You called Mr Peters, and you’ve got the records of that: 11.26 Sydney time, ringing Mr Peters’ mobile number. Could I follow up on the question from Mr Fairbrother: can you recollect Mr Peters identifying himself on that call?
- Glenn Well, my mother didn’t identify herself when she rang me either.
- Cullen You know your mother’s voice slightly better than Mr Peters’.

- Glenn Well, I recognised his voice and the tone of his conversation and the subject matter. It definitely wasn't you, Dr Cullen.
- Cullen I'm sure it wasn't. I never had any electoral petition. When you said he used the first person, in what context?
- Glenn Oh come on, I've already explained to you, you know: "Hi Owen. Hi Winston." Not "hi Owen, this is Winston Maxwell Peters, born in—".
- Cullen You think you said "Hi Winston"?
- Glenn Oh god. Mr Chairman, that's obvious.
- Power In fairness to Dr Cullen, though, the issue at stake here is whose version of events goes to the knowledge that Mr Peters did or did not have when, if at all, that knowledge occurred following the payment of the \$100,000. So I am going to allow Dr Cullen to continue to test that difference of opinion.
- Cullen I have we have tested that enough already. If we could just move on from there. You've had a few conversations—
- Power Supplementary question, Gerry Brownlee.
- Brownlee Are you in any doubt at all that you were speaking to Winston Peters when you phoned his number on 14 December?
- Glenn I am in no doubt whatsoever.
- Brownlee And arranged with him the donation, which you say here that he indicated the sum of \$70,000 but it became clear to you that he needed more, and you offered to contributed \$100,000.
- Glenn I have no doubt.
- Brownlee You're quite clear it's him.
- Norman Just concerned this conversation is obviously pretty critical, so it is quite useful to kind of get it out so the committee can get a sense of reality of it and how it worked. How did it become clear to you that he needed a \$100,000 rather than \$70,000?
- Glenn I rounded it up, he didn't. There was some question about costs that he wasn't sure of, whether he would have to meet the legal costs or something.
- Norman He wasn't sure about the costs of what it might be and you just said "Oh, let's make it \$100,000."
- Glenn Yes.
- Cullen Can I just follow up a bit further on this conversation. You obviously have had, we know clearly, some conversation with Mr Peters. Would you

- describe Mr Peters' conversational style as very terse and pointed and not expansive in its approach?
- Glenn No, he is always a pleasant guy to talk to. Has a lot of original ideas.
- Cullen He tends to talk quite a bit when he is in conversation, doesn't he?
- Glenn Against the distinction you are trying to make for some reason, he just rang and I talked to him.
- Cullen Exactly so. Have you found him—how can I put it without being unfair to Mr Peters—always highly precise in the nature of his conversations?
- Glenn Well, on some subjects, yes. On horses, no. I always asked him for the winner of the next race and he never gave it to me.
- Cullen His style is often somewhat elliptical. You are often trying to work out exactly what the point it is.
- Glenn No. I mean, I actually like Winston. I think he is a great character and, yes, he has a lot of original thinking and he has some unique ways of fund-raising but it doesn't mean I don't like him.
- Cullen Because from your evidence here, this conversation was a relatively short one, because in a very short space of time we appear to have messages back again at 1.40 NZ time—in other words 11.40 Sydney time—in an email from Mr Henry. Clearly, that was a relatively short conversation given that then whoever it was on the other end of the phone, if it wasn't Mr Henry, was going to have to contact Mr Henry and inform him.
- Glenn He could very well have been in the same office as Mr Henry, I don't know.
- Cullen And you have never met Mr Henry?
- Power No, he has already said that.
- Glenn No.
- Cullen But in emailing back to him you said "Brian, I need the account name and bank branch. Regards, Owen."
- Glenn I don't understand, Dr Cullen. Are you speculating on that or?
- Cullen No, it is what you said. It is here. It is attachment I.
- Power Exhibit I.
- Cullen So Mr Henry sent you a rather formal email, "Regards, Brian Henry". You wrote back: "Brian, I need the account number and bank branch. Regards, Owen", and you had never talked to him before?

- Glenn Yeah.
- Cullen Can I come to 21 February of this year, the year in which your huge generosity to Auckland University was noted with the opening of the business school.
- Power Paragraph 26.
- Cullen The same day you appear to have been in email correspondence with Mr Steve Fisher, your PR adviser New Zealand, the managing director of Baldwin Boyle, in which you emailed “Are you suggesting that I should deny giving a donation to New Zealand First when I did?”
- Glenn I wasn’t differentiating between Winston Peters as a politician and his party. I have only come to learn these things in the last 6 months, Dr Cullen. I mix in different circles.
- Cullen Indeed. I actually understand that point.
- Glenn Well I’m just saying to him, you telling me not to say anything, what do you want me to do. He is my PR consultant.
- Cullen But you did say New Zealand First at that point not Mr Peters. When you had the conversation with Helen Clark, you were aware of the media stories at that point—the previous night on television and, I think, that morning in the *New Zealand Herald*—that there was an anonymous donation of some uncertain large size to New Zealand First to assist with the repayment of the \$158,000 that the Auditor-General had found had been improperly spent by New Zealand First.
- Glenn I think Mr Henry is on record saying that someone had let them down in raising money and then someone appealed to me. Mr Peters is very skilled at asking for donations.
- Cullen But the context was around a donation to assist with the funding of that money that the Auditor-General had said was owing because it had been improperly spent. It was not in the context of Mr Peters’ legal costs.
- Glenn Shouldn’t you be asking them that question.
- Cullen No, I’m simply asking you. Are you aware on that day, given the media coverage in the *Herald*, that that was the context within which donations to either Mr Peters or New Zealand First were being discussed?
- Glenn I wasn’t aware of that.
- Cullen No one brought that to your attention, even though the email on 21 February from Mr Fisher is referring to precisely that media story and what your response to that media story should be?

- Glenn But I don't see any relevance in the two facts. I was just talking about my contribution to Winston Peters. The media is full of garbage.
- Cullen But that doesn't differentiate 21 February from any other day of the week.
- Glenn Yes, but I don't recall the difference or which second of the day I became aware of anything. I wasn't recording all this because I didn't anticipate this circus.
- Cullen But you had email correspondence with Mr Fisher about precisely that matter. So how were you not aware that was the context?
- Glenn I don't know why you are trying to cross-relate these two facts.
- Cullen What I am getting at is that you've been very precise in what you say you told Helen Clark, even though there is a deal of imprecision coming through in this questioning now. You seem to go from a deal of vagueness to a high degree of precision relatively quickly.
- Glenn Probably because I've been married twice. I don't understand why you are asking this.
- Brownlee Mr Glenn, perhaps to clarify. When you spoke with Helen Clark did you assume that she would have had some knowledge of the fact that you discussed with Mr Williams the prospect of assisting Mr Peters, and therefore might have spoken more frankly with her than you might have been prepared to with the media?
- Glenn Yes, I would have thought that, but I had no reason to think that other than I didn't believe Mr Williams would have taken the initiative on his own.
- Cullen And can I be quite clear, following up on that, that Mr Williams did not suggest—
- Power Just hang on.
- Brownlee Can I ask you what you mean by that? That Mr Williams may not have taken this initiative on his own?
- Glenn Well, he took a while to answer and he didn't make an instant decision when I first asked him if Labour would object.
- Brownlee So you assumed there had been some other discussion?
- Glenn I just assumed that. If some subordinate in my organisation made certain decisions without consulting me I would have been a little upset.
- Cullen You are quite clear that Mr Williams did not suggest to you that you should make the donations?
- Glenn Not at all, he never did that.

- Cullen It was a matter you raised with him in time?
- Glenn That is correct.
- Cullen And could I also be clear that in terms of the issue of the consul-generalship in Monaco, that was entirely initiated by you, not initiated by Mr Peters or anyone else? Paragraph 27.
- Glenn I can't quite hear you, I'm sorry.
- Cullen Can I be quite clear that in paragraph 27—I just want to repeat what you said there—the proposal to represent New Zealand in Monaco was entirely initiated by you?
- Glenn That is correct.
- Cullen That was not responding to somebody else. And what do you believe was Mr Peters' response on that matter?
- Glenn He rang me the day he left for South Africa, on the Saturday. I was in Raglan, and he called and said that he was still supporting the appointment and would I write him a letter saying I was available etc. That is the letter I wrote that was published here.
- Cullen Do you feel let down by that by Mr Peters?
- Glenn Yeah, but you know, if my country doesn't want me, then I'll become an Australian.
- Cullen Was there a suggestion, however, that it was not a matter for you, it was a matter that there was no need for a consul-general in Monaco at all?
- Glenn Wiser people than I made that decision. I only wanted to help at no cost to the country.
- Roy Mr Glenn, just to clarify matters, you were absolutely certain that the person you were speaking to on the cellphone that night, that day, was Mr Winston Peters?
- Glenn Correct.
- Roy Do you follow New Zealand politics intimately?
- Glenn No.
- Roy Would you pay much attention to whether an electoral petition was happening or whether it wasn't?
- Glenn Not before he told me.

- Roy So when you were asked for money by Mr Winston Peters you were happy to give money in the expectation that that was going to help Labour's causes? So you weren't really interested in the detail, I take it then, of whether or not this money was for New Zealand First or for Winston Peters personally as long as it was going to help him fight his legal battle to aid the Labour Party in the long run?
- Glenn That's correct.
- Brownlee Just noticing Dr Cullen's concerns about that call on the day that Mr Peters was leaving for South Africa, you are equally sure on that day that it was Mr Peters that you were talking to?
- Glenn That's what I've said.
- Cullen Did he identify himself?
- Glenn I knew I was talking to Mr Peters.
- Cullen My experience is Mr Peters says "Winston here" when he talks to you.
- Glenn Well, he breathes heavily on the phone—what; I mean, the guy was Mr Peters.
- Cullen So he did identify himself on that call?
- Glenn I would presume so. I don't accept phone calls and agree to donate \$100,000 if I don't know who is on the line. This is what he wants you to believe.
- McCully Mr Glenn, can I refer to your Exhibit I, which is the email from Brian Henry, barrister, to you, which refers to "my client". I just want to ask you whether you had any other conversations with anyone else about the prospect of a donation of \$100,000 who could have been the "my client" referred to in this email, other than Mr Peters?
- Glenn I think the point is that I wouldn't just send \$100,000 because a lawyer rings me up and says he wants help with an undisclosed client, "Please send me \$100,000 to my account and I can spend it as I wish." I don't believe in the Easter bunny.
- McCully Did you have a conversation about the matter with anyone other than Mr Peters who could have been the "my client" referred to in this email?
- Glenn Yeah. It was the only time I engaged with him and agreed to pay the money to him and he instructed his lawyer to send it to me. It is helluva a coincidence, really.
- McCully So you are quite satisfied that the reference to "my client" is a reference to Mr Peters and could not be a reference to anyone else?

- Glenn Well, considering I've said I've never talked to him or met him, yes, I presume it was Mr Peters.
- McCully Mr Glenn, I want to refer you to paragraph 26 of your evidence to the committee where you refer to your conversation with the Prime Minister on the occasion of the opening of the business school building. Just to be quite clear, in that conversation you made it clear to her that the donation was going to Mr Peters and that it was for his legal costs.
- Glenn Yes
- McCully Did you discuss that matter with the Prime Minister on any other occasion that you can recall?
- Glenn No.
- McCully Mr Glenn, one other matter that I want to refer you to, and it is not something referred to by you in any of your exhibits, but there was an article in the *New Zealand Herald* which quoted from a letter by you to the Rt Hon Mr Peters on 8 May in which you informed him of your donation of \$100,000 to the Millennium Institute—an excellent organisation in my electorate, I might add—and mentioned also an interest in bloodstock, mentioned being grateful for his interest in the Glenn family foundation work. Can I ask you whether that letter, which you will no doubt have seen in the media is in fact a letter from you to Mr Peters?
- Glenn Yes, it is.
- McCully The impression one has from reading that letter is that it is part of an ongoing dialogue between you and he which shows some interest on his part in the project that you gave your support to financially. Is that the case?
- Glenn That's correct.
- McCully And, roughly, on how many occasions do you think you would have had conversation with Mr Peters about those matters referred to in the 8 May letter?
- Glenn Twice.
- McCully And when would those occasions have been, roughly?
- Glenn Well, one was at Karaka. We exchanged dialogue over email about the Fiji project that I'm involved in for the foundation. I admired his legislative efforts for the racing community. I fully supported him. There were some other emails he sent me regarding another project, which I don't think either of two are subjects are under consideration.

- McCully So you are quite satisfied in your own mind that you had sufficient discussions, sufficient interaction with Mr Peters in the past to be absolutely certain when you were dealing with Mr Peters and when you were not?
- Glenn Correct.
- Swain I just want to come back to paragraph 21(f) again. As you have already said, Mr Glenn, you are not on trial, but the difficulty we have, of course, is that we've got two conflicting statements of supposed fact. The issues that we are trying to deal with here are whether Mr Peters knew about it or not. He says he didn't; you say he did. And whether the money actually went to him, to a trust, to New Zealand First. All these things are swirling around. So I just want to clarify once again in my own mind that on that day of 14 December when you provided, helpfully, the cellphone number, it is clear you were talking to him. You've already said that. Absolutely clear that you were talking to him, and that the money was going to whom. When you say that "I agreed to contribute", can you remember what the request had been, to whom it was to go?
- Glenn It was to him personally.
- Swain To him personally?
- Glenn Correct.
- Swain OK. And the other issue related to that, it was a 6 minute 41 second phone call, by the look of the record here. I just wonder if you can tell us a little bit about what was discussed. Was it simply about that—the matter of the contribution?
- Glenn I can't recall the whole 6 minutes—I mean, we had an open discussion. I could have asked him about races, I could have asked him about the other things. But the principal reason for the call back to him was on this matter.
- Swain And you are absolutely crystal-clear that you said the words, something along the lines of "I'm happy to, I've agreed to contribute"?
- Glenn Yes. You know, why else would I have done it? I had no idea that he wasn't fulfilling necessarily, allegedly, his obligations.
- Swain The issue, of course, is that we are not party to the conversations. So the question of that phone call is quite critical, because it goes to the heart of the matter. In your view, he knew about the donation, and he argues that he didn't, he only knew about it when he made the press statement—
- Glenn Maybe you should ask him—
- Swain No, no.
- Glenn —why his lawyer would give me trust information.

- Swain No. That's compelling, through the other case. But I just want to clarify that during that conversation you are absolutely crystal-clear that you said that you were going to contribute?
- Glenn Correct.
- Dunne Mr Glenn, your evidence at paragraph 21(g) is probably the most critical evidence. Now, I just want to be absolutely clear in terms of what you've just said to Mr Swain. You said in your written evidence "... Mr Peters informed me that his lawyer would send the account details." You've just said to Mr Swain, when the inquiry was made to whom the fund should be made available, Mr Peters said to him personally—so he was using Mr Henry as the conduit. Is that as you understood it—that you would make the funds available to Mr Henry for Mr Peters' personal use? Is that what you were saying to Mr Swain?
- Glenn Yes. In my mind, yes.
- Dunne In your mind, that was what you were doing?
- Glenn Yes.
- Dunne Thank you.
- Glenn I wasn't donating the money to Mr Henry.
- Dunne Thank you. I wasn't suggesting it.
- Glenn Who knows what you guys are suggesting.
- Roy Mr Glenn, if I can just refer back to paragraph 26 of your testimony. The Prime Minister requested a meeting with you, not the other way around, is that correct?
- Glenn That is correct.
- Roy Did you raise the issue of the donation with her, or did she ask you if you had made a donation to Winston Peters?
- Glenn I raised it with her.
- Roy And was the amount discussed?
- Glenn Yes.
- Roy I would like to go back to the email that has been reported between yourself and Steve Fisher in the *New Zealand Herald*. Mr Peters, when he gave evidence to this committee, was trying to say, I think, that the email didn't exist. That email does exist, I presume, given that you have answered questions possibly about it today?

- Glenn Yes. Well, it was throughout the media here. Somebody got hold of it somehow.
- Roy Yes. The email has never been printed in its entirety, and I think—
- Glenn It's only a one-liner.
- Roy —Mr Peters was trying to ascertain that perhaps it didn't exist at all. But there was correspondence between yourself and Mr Fisher?
- Glenn Yes.
- Roy OK. Thank you. And my last question, if I can refer you to paragraph 29 of your evidence. You said "I am also aware that it has been said that I am 'confused' and 'a liar' ". You've put that very politely. Far worst things have been said about you, I think. Can I just inquire into your health. Is there any reason we should suppose that you are confused?
- Glenn Carnations at my funeral, please. Look, I don't want to be known as the Man who shot Liberty Valance, you know. I didn't come all this way to do that.
- Power I understand that.
- Glenn I'm just telling the truth. I think they are both good people—Helen and Winston. If he hasn't followed procedure, whatever—I have no idea why he acted that way. The Labour Party didn't.
- Power You will appreciate, Mr Glenn, that because of the narrow nature of the issue, some of these questions are designed to go to the heart of trying to work out exactly what—
- Glenn Yes, but when people I don't know, Mr Chairman, call me confused—which is just a shade past lying—and a liar, I object.
- Power Quite right.
- Glenn And it is my—
- Dalziel But no one's called him a liar.
- Glenn —reputation. If they want to stand outside Parliament and say it I'll meet them in court—
- Dalziel Mr Chairman.
- Power No, no. We won't go down that road, Mr Glenn.
- Cullen I'm not aware of anybody who's called Mr Glenn a liar.
- Power Mr Jones, you've got 2 minutes, and then we are ending this hearing.

- Jones What's your phone number in Sydney to which you say that the phone calls were made?
- Glenn I've had about six since. Laura, do you recall that?
- Ede It's actually on the item No.—
- Jones Is it Exhibit G?
- Ede Yes, Exhibit G. 02 for Sydney, 93276982.
- Jones At the bottom of the page, there. That would be the phone at which you would have received these calls, so we can cross-check it from New Zealand.
- Ede These are calls made from the Sydney home of Owen Glenn—outgoing calls. We do not have records for incoming calls. For some reason Telstra do not record those.
- Jones These are only outgoing?
- Ede We can only show outgoing. That is why it is a little difficult, because we cannot find the records for ingoing calls, because Telstra just do not make those available.
- Dalziel But somebody will have those records.
- Jones On the situation at Karaka, do you accept that the meeting was in 2006, and letter has been lodged to that effect?
- Glenn Well, there is the old matter of Karaka when he accused me of being there in 07, and I said 06, and we have an affidavit from an independent person saying he was party—
- Jones Mr Glenn.
- Glenn —to the conversation, Mr Chairman.
- Jones Mr Glenn. Mr Glenn, prior to that affidavit coming in, I think you will agree that was lodged with the committee saying it was 2006, but that it wasn't released because of privilege matters and such like. That was confirmed before your affidavit—
- Power Yes, but he is still allowed to have a view on it, Mr Jones.
- Jones Of course. But, speaking about Karaka, what was the set-up when you went to Karaka? Did you go into a big room—
- Glenn Pencarrow hospitality tent. I think there were six of us at the table.
- Jones Just six of you at the table? Who was at the table?

- Glenn Paul Moroney. Were you at the table?
- Ede Yes
- Glenn Laura Ede, Winston, and myself, and I think there were two other. I think they were the two owners of Pencarrow. Two brothers. I don't know what their names are.
- Jones Don't you think it is rather strange that anyone would say, in the way in which it is alleged here, that they received a substantial contribution from you, to an electoral petition, out there in the public—
- Glenn I never said he made the statement. He acknowledged. When I said to him, "Did you get the money all right?", and he said "Yes, thank you very much. It was very helpful." And Mr Moroney asked me what it was about.
- Cullen If I can just follow that through, Mr Glenn. Was that the actual question you asked, "Did you get the money all right?" Did you say what the money was?
- Glenn No, he just thanked me for my help. "Did that money arrive OK?" or something like that, I said to him. He said "Yes, thank you very much. It was very helpful."
- Jones Don't think you think that if the money had not arrived all right you would have heard from whoever it was well before 2 months after the money was supposed to have arrived?
- Glenn I can't hear it.
- Power I'm sorry, Mr Jones. We are having great difficulty hearing.
- Jones Don't you think, Mr Glenn, that if the money had not arrived, you would have been asked about it a long time before—
- Glenn So I always presume that—
- Jones in private, certainly not—
- Glenn —yes, we had the remittance details.
- Jones —in a public situation like that?
- Glenn Oh, Mr Jones. Don't hold me to moral responsibility. I'm the wrong person sitting in this chair.
- Jones I'm just asking you the question.
- Glenn No, you are accusing me—why shouldn't I follow up. I don't have to follow up.

- Jones So you don't want to answer the question.
- Glenn I gave the instructions to the bank. The bank confirmed the instructions. They arrived with the money. Full stop.
- Jones No doubt about that. But don't you think it strange that there would be any discussion about it in as public a place as that?
- Glenn Well, I had no idea it was in any way, shape, or form doing the wrong thing. I didn't know that.
- Power Thank you. We are out of time. Mr Jones, I am going to finish the hearing there. Mr Glenn, Dr Harley, and Ms Ede, thank you for your attendance here today, and thank you for answering the committee's questions. Could we clear the room, please.

conclusion of evidence

Appendix K

Corrected transcript of evidence 10 September 2008

Members

Simon Power (Chairperson)
Hon Dr Michael Cullen (Deputy Chairperson)
Gerry Brownlee
Hon Lianne Dalziel
Hon Peter Dunne
Russell Fairbrother
Te Ururoa Flavell
Dail Jones
Dr Wayne Mapp
Hon Murray McCully
Dr Russel Norman
Heather Roy
Hon Paul Swain

Staff

Mary Harris, Clerk of the House
Tim Workman, Clerk-Assistant (Legal Services)
Catherine Parkin, Clerk of the Committee

Witness

Rt Hon Winston Peters, Leader, New Zealand First
with Damian Edwards and Scott Devine

Power I will just repeat what I have repeated on the last two occasions in respect of the issues that are before the committee in order to give some scope to this evening's proceedings. I apologise for the repetition but I think it important that we understand the matters under consideration.

 The matters referred to this committee by the Speaker are very limited. The committee has two allegations of contempt before it. The first is that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a gift of \$100,000 from Mr Owen Glenn. The second is that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a debt and the discharge of part or all of that debt by Owen Glenn.

What is at issue are the matters of donations and gifts, and what seems to be in dispute is when, if at all, in terms of the time frames before the committee by way of evidence, Mr Peters became aware of that payment.

Mr Glenn indicates in his written statement to this committee dated 19 August 2008 that Mr Peters sought help from him for this purpose—that is, to assist the funding of legal costs incurred personally by Mr Peters. Mr Glenn further states in his evidence: “Mr Peters subsequently met me socially at the Karaka yearling sales, I believe in early 2006. He thanked me for my assistance.” Mr Glenn gave further evidence to this committee last night.

In contrast, Mr Peters told the committee, in a letter dated 26 August 2008: “I believe that I met Mr Glenn many years ago and on the weekend of 13 August, well before the 2005 election, in Sydney, Bledisloe Cup weekend which is the only time I met him in Australia. The ‘personal conversation’ I believe relates to his conversation with Mr Henry, ...” Mr Peters further states in his letter to the committee dated 26 August 2008: “Para 7”—that is, of Mr Glenn’s earlier dated letter—“relating to the Karaka Sales 2006 appears to be a year out.” You have since tabled further evidence in that regard with the committee on that point, Mr Peters. Further, you stated: “In my evidence to the committee and in my press statement of 18 July I did not thank him until my lawyer advised me”—of this matter—“on 18 July 2008.”

So what is in dispute then, to repeat, is when Mr Peters became aware of the payment by Mr Glenn. These are narrow and specific issues, and the only relevant matters to this committee. I just remind all members of the committee and the witness that under Standing Order 226 the chairperson is the sole determiner of the relevance of questions and the like in these proceedings.

Mr Peters, this is an opportunity for you to address the matters that have been raised in evidence, under the principles of natural justice. The floor is now yours.

Peters Thank you, Mr Chairman and colleagues. First of all, the matter which I am sure is before you but not raised by you concerns knowledge. I have to develop that, not in a vacuum but on the facts.

First of all, on the question of debt and gift, Mr Peter Williams QC, in his evidence before this committee and in his 9 September letter to you, has made it clear that (a) no debt existed; (b) no gift existed; (c) that I, as the titular head of a cause, had no pecuniary interest; and (d) Mr Henry was paid for his services. I just want to note to make sure that you have Mr Henry’s latest submission, which should be before you—I have 15 fifteen copies of that—and also 15 copies of another piece of evidence which is important for this committee.

Power Sure. Just make it available and we'll table it.

Peters I'll carry on because I don't get to it for a while, right.

Now, Mr Gary Gottlieb, formerly the President of the Auckland District Law Society and the Criminal Bar Association, supports in his letter Mr Williams' view on how he handled the account was totally proper—that is, Mr Henry. There has been alternative evidence to that, and I think that has been debunked by the level of expert witness here.

I said in my letter to the committee on 26 August 2008 that Mr Glenn's evidence "is not factual and does not coincide with my recollections." I have never spoken to Mr Glenn since this controversy broke in February. I did not want any allegations of collusion with him. Mr Henry gave evidence on 18 August before this committee that it was he who spoke by phone to Mr Glenn. In Mr Henry's later letter of 2 September, and before Mr Glenn's testimony yesterday, Mr Henry recalled the substance of his conversation with Mr Glenn: the Downer controversy of APEC of 18, 19, 20 November 2005. This means Mr Henry had a conversation with Mr Glenn some time after the APEC date. Mr Henry's letter to the committee of 7 September, for this committee's perusal and before Mr Glenn's new evidence, again makes it clear that the reference to a client, in the sense that this person was behind the reference to Mr Glenn by Brian Henry, is not Winston Peters.

This issue broke out in February this year, with claims in the media about a Glenn donation to New Zealand First, and I emphasise the words "to New Zealand First". My staff drew it to my attention when I was in Africa. They said they had already checked the New Zealand First records and advised me that it was not true. I then advised the Prime Minister of that. But when I returned to New Zealand, that donation to New Zealand First claim had become a donation to Winston Peters.

I have had one bank account since 18 years of age. I get regular bank statements. I knew that it was not correct. So it was no to both allegations then, was on a further series of claims that was made in and on 12 July also no, and is still no to both allegations.

The PM checked with me after the Glenn business school opening, and I told her that the newspaper claims were not true. She did not mention any conversation with Mr Glenn, as I recall, but the answer was "no" either to the donation to New Zealand First in February claim and later to a donation to New Zealand First or Winston Peters in the July claim. At no time was I in a position to answer any other way.

Remember, it was Mr Glenn in the PR firm February 21 email that was claiming to have given money "to New Zealand First". I found the claim bewildering, and challenged its authenticity and offered the *Herald* a complete examination of the party's accounts in July when they repeated the

claim. The *Herald* refused that offer, suffice to say. The claim is proven now by Mr Glenn's changed statements to have always been untrue—that when I said “no”, it was no.

On 19 August Mr Glenn wrote to this committee claiming the money was “to assist funding the legal costs incurred personally by Rt Hon Winston Peters MP concerning his electoral petition dispute,” and, further, that “Mr Peters sought help from me ... in a personal conversation, some time after I ... met him in Sydney.” Those claims cannot be, with respect, correct. My only conversation, on my records and my memory and Mr Glenn's records, after Sydney in August, was 14 December, and Owen Glenn spoke to me at that time about the following matters. They are important.

The following is my recollection of events on 14 December 2005. Mr Glenn obviously called me, first of all, on that date. He called me on that date. We would have discussed a number of matters, but I do not recall talking to him about money during that conversation. This is why I have always denied knowing of Mr Glenn's contribution towards my legal costs for the Tauranga electoral petition until 18 July 2008.

Second, I believe now that Mr Henry had called him—that is 5 December—to solicit the funds, and I believe Mr Glenn is aware of this, which is why no evidence has been produced, which is extraordinary because he had some evidence yesterday and for whole gaps in time no evidence. My office and cellphone records confirm I made no such call on 5 December.

Third, during the phone call on the 14th I believe he mentioned being interested in a roving ambassadorship with a focus on trade. Mr Glenn mentioned he wanted to be in a similar position to Mike Moore. I might tell you I found that a bit extraordinary, but I carry on.

Fourth, to the best of my knowledge, Mr Glenn also wanted a diplomatic passport to help get quickly through airports and facilitate his travel, of which he claimed to do a lot.

Fifth, Mr Glenn did mention, I recall, that he was interested in a consular role in Monaco, and I remember I told him we had no such office in Monaco, to the best of my update from my department.

Sixth, another point I recall was that he had a horse in the Melbourne Cup that year, so we would have talked about horse racing and the performance of his horse in the big race—that is, “How did it go?”

Seventh, it is quite possible that he asked for Brian Henry's details, and the sequence of events tends to suggest this occurred. Mr Glenn's claim on 19 August not to recall that either “I, or my assistants, had any discussion or communication with Mr Henry other than to receive remittance details.”, given Mr Henry's evidence before this committee and Mr Henry's statement to the committee on 2 September, is quite extraordinary. In a further letter

to the committee on 27 August Mr Glenn wrote “My recollection is that I was called by Mr Peters to seek financial assistance for his electoral petition challenge.” That is in the second letter he wrote you. That, by Mr Glenn’s oral and written evidence, has to be incorrect. He now claims that conversation happened on 14 December when he made the call to me, not the other way round.

Mr Glenn’s evidence yesterday makes it clear that he has been seriously coached by Mr Harley, whose record as a partner with Russell McVeagh, acting for Fay Richwhite during the wine box came into extreme criticism, the nature of which I am making today. I am happy to make available to you exactly what allegations were made about Mr Harley in the way he handled evidence, if you are interested. Apparently he is acting pro bono, and the irony in that—which I should say means for nothing, free, without expense—contrast to Mr Henry seems to have escaped everybody.

Mr Glenn confirms he never discussed party funding with me in Sydney. In his letters to the committee of 19 and 27 August, Mr Glenn confirms “that the contents of both of them are true and correct in all respects”. From the facts you have heard yesterday, that cannot be true. He refers to Mr Peters or “someone representing New Zealand First” first contacted my office in late November. His records on that are not helpful; in fact, he has no records at all. Some of the time he seems to have an enormously efficient office and then all of a sudden there is no record at all. This is a serious claim he is making, and evidence should have been brought before this committee. And I have told you on that matter about my own records. His evidence or his lack of records is not helpful.

But I want to put this to you, to all of you: why would I be reminding him of my biographical details in November. Further, he says “Mr Peters left a message on my telephone answering service on 5 December.” My records show no such call. Mr Glenn says he would have responded over the next few days. Now, he would have the records, not me. He does not, and I have no such memory. But most telling is his claim that I raised with him “his need for financial assistance”. He has no records, nor have I.

Paragraph 5, page 2: That proves that Mr Glenn knew about the legal costs at that brunch. I am happy to go through that slowly, because it is rather critical information here.

Power Mr Peters, is page 5, paragraph 2 a reference to Mr Glenn’s submission yesterday? Is that right?

Peters Yes, it is. Now, what is relevant about that? It proves that Mr Glenn knew about the legal costs at that brunch, and it did not come from me. Look at the timing.

Paragraph 3: Glenn made the phone call on 14 December, not me. Why I would state a cost—and it is very fundamental evidence here now—less

than half of my own case 27 years ago in Hunua is beyond me. It is a credibility issue. On 12 August 2008, I can tell you that I received information that Mr Glenn had advised his lawyer (1) that it was \$70,000 and (2) Brian Henry had called him. I am astonished the lawyer did not admit that yesterday. This is coached evidence.

Why would I, if Mr Glenn's 14 December memory is correct, wait a further 7 weeks to thank him at Karaka the next year? Mr Glenn was caught by his 19 August Karaka sales comment in that submission to you. That's why he had to stick with it. 2006 Karaka is the date, and I agree with that; there is no dispute about that. And I have given you the reasons why my staff and I missed it. But I dispute the setting. I know that about 14 people were present, that I sat across a wide long table from him and never mentioned money. Why would one, in that sort of setting, do that? Mr Glenn doesn't even remember the two hosts' names, and they are leading people in the racing industry and are known worldwide.

Page 6, paragraph 2: He told you yesterday that he raised the issue of Monaco on 14 December 2007—I've just told you, he raised the Monaco issue on 14 December 2005.

Paragraph 9: There is no record of me speaking with him between 5 and 14 December, which is again changed evidence. Moreover, if that were true, in the way he's put it to this committee, what on earth would I be talking to him about money and the petition for on 14 December? So he is caught with that, as well.

Page 8: I never answer the phone—and I put it to any journalist, to anybody who has ever talked to me, including every one of my colleagues here—like this: "Hello Owen, it's Winston." His secretary had already established who she was speaking to—and I will give you the evidence for that; and it is in today's media, not mine, from Stuff—that fact before giving the phone to Mr Glenn. Remember, he was calling me. So why would I be identifying myself a second time to a second person.

Page 9: Why the claim to tell the PM the donations were for legal costs? That, you see, is critical here, and I regret that the Prime Minister has been roped into this for absolutely ulterior motives. That is rebutted by his 21 February email that it was—and I quote his words again—"for New Zealand First".

Page 10: Mr Glenn's answers to Mr Jones are totally confusing, and you will see that in the middle of the page there. Of course, nowhere in the evidence did Mr Henry say, despite Mr Glenn's claim of that, that he was acting on his own initiative. Those were the words Mr Glenn used yesterday. On page 12 Mr Glenn said: "Well, that doesn't mean he contacted me personally." I'm sorry, it means just that, from Mr Henry's evidence.

Page 17: Mr Glenn on Peters: “He has some unique ways of fund-raising ...”. He forgot that yesterday. That refers to a meeting on 22 December 2007—evidence which I am happy to place before the committee—at a time when I remember him, the conversation, and that he was wearing a beige sweater. I found that curious because he is meant to be an extraordinarily wealthy man—but that’s just me. This is a signed statement from a person who was at that meeting, and it refers to the fact of where we were, that he popped by casually, and that we talked about a number of things but that it was to do with the racing industry and how we might give it a lift and what we might do with co-sponsorship and the kinds of things which you have seen of late. What is critical here is: “You challenged Owen how was he prepared to help.”—because he showed an interest—”Owen offered you \$100,000 to fund this conceptual meeting/conference you both came up with, to bring people together from around the region. Owen asked you to come back to him with a plan.” It was December, you will recall—22 December 2006. “Owen gave me his mobile number”—that is the person who wrote this—”... to contact him the following morning on another matter.” He also, and this is extraneous to this evidence, “dropped Owen off” back to his hotel that afternoon. He has the Vodafone records of his Saturday, 23 December 2006 phone call, and he says “I recall these events clearly, because I was there.” His name is Marco Marinkovich.

- Power Are you going to table that for us, Mr Peters?
- Peters Yes, I’ve got 15 copies of that. It’s on the question of memory. Yesterday there was no mention of that.
- Power Just for clarification—
- Peters I’m almost there.
- Power No, just a point of clarification; I’m not interrupting in that sense. The page numbers you are referring, they are of the transcript.
- Peters Yes.
- Swain And it was 22 December 07, not 06.
- Dalziel 07 or 06?
- Swain You’ve got 22 December 07 in your statement—
- Power We will ask the questions at the end. I’m sorry, Mr Peters.
- Peters Which page have I got that?
- Dalziel He said 06 and it says 07. It’s good to clarify it now.

Peters I apologise. That should be “refers to a meeting on 22 December 2006”. I just had a bit of a problem in the closing part of checking this out. I’ll tell you about it some other time.

Now, that’s what he said, that I have “some unique ways of fund-raising”. Well, what is curious about that is (a) he mentioned \$100,000, but I got the idea from a man called Sam Kelt in the Hawke’s Bay—that is, I studied him. He didn’t tell me about it; I made sure I knew about it.

Page 18: Reference to Brian—his first name—suggested to me that Glenn knew him. To Michael Cullen, on the same page, he says this: “I wasn’t differentiating between Mr Peters as a politician and his party.” Now, surely, in the light of the February controversy raging everywhere that cannot be credible. The last paragraph, Glenn again: “Mr Peters is very skilled at asking for donations.” No, I am not. That’s why others do it.

Page 20, paragraph 14: I was asked to call Glenn. This is the conversation which he refers to when I was leaving for Africa. He referred to a sunny day with Howard Morrison in Raglan, sharing fine New Zealand wine. That surprised me, for I thought Sir Howard was not well, and the rest of the conversation that Mr Glenn has related on to you is simply not correct. Sometimes in this business you let people down lightly, politely, but there are many reasons why the allegation that has been raised in Parliament before about this was never going to be a runner. We never had an office in Monaco. More importantly, things that I knew and found out I kept to myself, but I knew this was never going to happen.

Page 21: Somebody else, from the evidence, had already told Owen Glenn about the petition. Now that you can glean from that evidence. The Prime Minister was never told that money had gone to legal costs. I am absolutely certain of that, and I think it is terribly improper to try to rope in, in a collateral damage argument, someone who is not involved.

Page 23: You see there the words “to him personally” beg the obvious answer, but not a cent went to Winston Peters.

Page 24: To Mr Dunne, Mr Glenn now changes his evidence to something else. Look at those two pages. He has already shifted significantly.

Page 27: He said that he said to me at Karaka: “Did that money arrive OK?” It begs the answer (a) surely the bank statements prove that to Mr Glenn himself; (b) I have never seen Mr Henry’s bank statements, was not told, so, again, why would I know that. This is not the first time my memory has been challenged by a businessman. For over a month Sir Bob Jones gave the media more than seven versions of an event. Professor Malcolm Wright proved every version was wrong. It was as I said. I wasn’t, according to Malcolm Wright, in the room when the subject was raised; (2) became very angry when, back in the room, I learnt that; (3) I was not there

the next day when the cheque was made out, nor was Sir Robert. It is not the first time I have had my memory challenged by wealthy businessmen.

Mr Glenn says that Mr Williams came to Monaco uninvited. On this evening's news Mr Williams has an email inviting him. What does that tell you?

Mr Chairman, fair-minded New Zealanders know that I have never enriched myself on any battle fought on their behalf. A former implicated Russell McVeagh lawyer for Fay Richwhite prepared Mr Glenn's evidence. All the same faces with whom over two decades I have had so many battles.

Colleagues, I have spent my whole political life to preserve New Zealand for New Zealanders. This is an attempt to undo the people's will, and bring down a Government, then govern alone. My enemies and an elite media have surely proven that already. My character is being impugned here, and I will not stand by and let that happen. My record over many years speaks for itself. I have made more sacrifices than most.

Mr Chairman, you promised natural justice here. Do you really think that that promise has been kept?

I want to be judged by decent New Zealanders who understand justice and the essence of democracy, not bias, prejudice, and pre-judgment before any of the facts are even known. With committee members and party leaders making telephone books of comments during this hearing, and before it even started, that is the only enduring issue before my fellow New Zealanders tonight.

- Power Thank you, Mr Peters. Members of the committee, this is an opportunity now to ask questions on the evidence that has been put forward by Mr Peters this evening.
- Swain OK, I'll start. There is no dispute that Mr Glenn called you on 14 December?
- Peters No, no dispute at all, but he did call me, not the other way around.
- Swain No, we understand. I think that's clear, because the telephone records show that. What then are we to make of an email that comes from Brian Henry about 10 minutes after that phone call, which says: "Further to your discussion with client at 1.30 nzt"—which is the time of the phone call—"I provide my bank details as ASB a/c ...", etc. What are we to make of that email?
- Peters Well, if you refer to page 3 of my submission and you follow what I am saying there. Look at No. 7, where I say it is quite possible that he asked for Brian Henry's details, and the sequence of events tends to suggest that that occurred.

- Swain So why would he ask for Brian Henry's details?
- Peters I don't have a memory of that, but I'm saying that if you look at it, that is the only logical conclusion one can come to—that he asked for his details and that's why that's mentioned in the email.
- Swain But what it looks like from this email—"Further to your discussion with my client"—is that we are left to presume that the client is you.
- Peters I think that's fair, although the call from Mr Glenn wasn't at 1.30—
- Swain No, it was 11.20 Australia time, which was—
- Peters No, it was New Zealand time 1.26.
- Swain That's right. Yes.
- Peters It is no use trying to dispute what seems to be the case here—
- Swain Yes.
- Peters —but the real reason is because he had a conversation before this date with Brian Henry. Brian Henry is adamant about that. Also, Brian Henry mentions a conversation which had to be after APEC because of the Downer comments controversy.
- Swain My understanding is that Mr Henry said that he wasn't prepared to reveal who "my client" was but that it wasn't you.
- Peters What I have said also in this evidence today, Mr Henry in his second-to-last evidence to you and his last evidence to you point out that the person in terms of who was involved in the set up of Mr Glenn making this donation was not Winston Peters. That is the light in which you should see that email. That's the only conclusion I can come to.
- Swain So, the way I would read this would be that there's been a "discussion with my client", which is you, "at 1.30 nzt" and as a result of that "I provide my bank details...".
- Peters Look, you can do all the forensic research you like, the call wasn't at 1.30. I have looked at this over and over again, trying to make sense of it, and I think, as I say, it is quite possible that he asked for Brian Henry's details, and the sequence of events tends to suggest this occurred.
- Swain The only problem, I suppose, is that there's been lots of claim and counterclaim and people remembering things and people trying to remember 3 years ago, and the difficulty we have is that we have a phone record and the phone record links nicely into this email, and a normal reading of this would say that as a result of this conversation "I've been asked to provide my bank details, and here they are."

- Peters Sorry. Rephrase that.
- Swain We established there is a phone call at around about the time when this email has gone, which says: “Further to your discussion with my client”—which is you—”at 1.30 nzt I provide my bank details ...”. “Further to your discussion ...”
- Peters I believe, looking at this, I say it is quite possible that he asked me to call Brian and give him some details and he may have even mentioned bank details, for all my memory is, excepting I have no memory of that. It’s one of the reasons why I was so infuriated when these allegations were made, first in February and then repeated in July, because I have no memory of that all.
- Swain Mr Glenn advises that he rang to advise that he was assuring you that he was going to give you the \$100,000.
- Peters No, no, that’s not what happened in this conversation. That I can be darn certain of. I had no memory of that at all. My testimony to you is this: why, if he is so certain I spoke to him before 14 December, is he having this conversation on 14 December? It’s axiomatic. He can’t have it both ways.
- Brownlee Just to be clear, Mr Peters, you are acknowledging that Mr Glenn called you on 14 December and that in that conversation he may have asked for Brian Henry’s details?
- Peters I’ve got to say, looking at it all—and I’ve tried over and over again to look at that and make sense of it—I’m happy to say to you, look, it’s quite possible that happened, but I have no memory of it. When I was approached in early this year when I was in Africa, I wasn’t so infuriated when the PM called me and my staff called me, but when I saw the fall-out back in New Zealand. Because I had no memory of it and I’m not the best actor in town.
- Brownlee No, and in that conversation you talked about a whole range of things, including, you thought, horse racing and various other things, and now you are saying it is possible that he asked you for Brian Henry’s details. You see the difficulty we’ve got when you look at that phone call and the email a short time after, it seems difficult to imagine how you might not have asked him “What do you want those details for?”. It’s Mr Glenn’s submission that between the 5th and the 14th he was made aware of a request for assistance and that he checked that out with Mr Williams, and that he phoned on the 14th to say “I’ve thought about it and I’m going to make the donation.”, but it does seem—
- Peters Let me tell you this—
- Brownlee If I might finish. You’ve got to be fair here. I think you’ve made a good point at the concluding parts of your commentary. It’s a serious matter. So the problem is it’s hard to believe that when Mr Glenn asks you for Brian

- Henry's details we would then be asked to assume that Brian Henry had been talking to him prior to that and had, according to Mr Henry, called him and asked for the money, that even though they had this conversation, Mr Glenn never got his details, but somehow on this call to you you never asked the question "What do you want his details for?"
- Peters Well, I wouldn't. I mean, it's not what you do. Mr Henry is a professional man. The last thing you would do is to say to somebody, a businessman, a professional man, "What do you want his details for?". That's not the kind of thing you would do.
- Brownlee It is also very difficult, having heard Mr Glenn's testimony, to believe that he would not have wanted to tell you.
- Peters Yes, but hang on a second. He says he's already told me that, before the 14th.
- Brownlee No.
- Peters Yes, he has.
- Brownlee No. Not so.
- Peters That's been his evidence.
- Brownlee No, it isn't.
- Peters Well, I'm afraid that's the evidence that I read, heard.
- Brownlee Well, where is it?
- Peters Can I just say, if you read through the evidence, he is adamant, he says, that he had a conversation with me before that day and it was not with Brian Henry. It's all there in the evidence. But here's my question: well, if that's the case, Mr Glenn, why would you be discussing this with me on the 14th, because you've already had the discussion. And the second thing is I like to think I've got the normal courtesy, I never thanked him on the 14th. He says I thanked him at Karaka. Now excuse me, why would I wait 7 weeks to thank him when that gratitude should have been expressed on the 14th?
- Brownlee But you are saying that you gave him Mr Henry's details on the 14th.
- Peters No, what I'm saying is, look, it's quite possible that he asked for Mr Henry's details, and the sequence of events tends to suggest it occurred. Excepting that I'm dealing with a barrister who says to me, "No it's not you" and I'm saying to him "Sorry, these phone calls are too close together.", and they would suggest that to the committee and I'm going to say that. I'm not going to have this committee think I avoided evidence.

- Brownlee Why did the Prime Minister call you in South Africa after the meeting at the business school with Owen Glenn?
- Peters Well, there was an allegation in the paper that New Zealand First had got \$100,000 from Owen Glenn. All that was inferred from a comment one of my colleagues made, openly I might say, that he remembered something like a cheque nearer to a hundred than less. Now, that has all been accounted for in declarations to the Electoral Commission and the Serious Fraud Office and everybody else. But that's what he was talking about, and the *Herald*, in its inimitable forensic investigative style, just put two and two together without joining up the dots and that was their allegation. So she, the PM, is calling me now and I'm saying, well, the staff have already called me and say that's bunkum, they have asked the officers of the party.
- Brownlee The Prime Minister has said publicly that Mr Glenn told her about that matter, told her on that day that he had given a donation and that's why she called you. It wasn't to do with the *Herald*.
- Peters Here's the critical information here. He on that day, or around about that date—I can't remember, it's not my knowledge, but round that date—he had told the Prime Minister he had given a donation to, and the email on 21 February specifies it, “to New Zealand First”. The Prime Minister is asking that question, and she gets the answer no. Because the answer is still no, in case some people have forgotten it.
- Cullen I'm a bit confused, Mr Peters, what is the relevance of the letter from Mr Marinkovich, which relates to December 2006 not December 2005?
- Peters The relevance of that letter is Mr Glenn has an extraordinary memory for some parts of this evidence here, which I say is coached evidence, and demonstrated the difference between the letters he has written you, the second letter he wrote to you, and then the evidence he came with yesterday. His 19 August and 27 August letters—he is providing evidence here that is totally refutable on his own evidence yesterday. That's why I'm saying I have a memory of that event, Mr Marinkovich has a memory of that event, a third person has a memory of that event and the subject matter, but Mr Glenn has no memory at all.
- Second, I might tell you, when I met him in Paris at the World Cup—and before anybody rushes to judgment, I was asked to come down from Sweden to do that because after the loss in Cardiff there was a singular lack of interest on behalf of my political colleagues to be there, and the Prime Minister asked me if I would come down from Sweden to do it. I saw Owen at Paris and what is extraordinary was he didn't remember the person I was with at all. And that's what that person remembers.
- Cullen You say that you've got no record of the 5 December phone call that Mr Glenn claimed.

- Peters My office has checked every phone call that was available to me, including all those phones within my office. And remember, this is 2008, 10 September. Back then why would I have a reason to use any other phone? But they have checked every phone that I've got and none of those numbers come up, either my cellphone or my office phone, and they've checked my diary as well as to where I was.
- Cullen Are you able to produce the evidence on that?
- Peters If you want it I'll have it down to you in the morning.
- Cullen Yes, please. I think that would be very helpful.
- Power We will have that tabled when it is available. Thank you. Anything else?
- Peters You don't mind if I have just that day. I'm not going to have all my correspondence for that day.
- Power No that's OK.
- Cullen No. I would hate to appear too often on the record.
- Peters And I wouldn't mind if it's restricted to the committee.
- Cullen We wouldn't want to appear to be bullying you, Mr Peters, in that respect.
- Peters No, no. I just want the normal courtesies, that's all.
- Cullen On 21 February my recollection is very strongly that the comments that Mr Jones made were I think between \$10 and \$100,000, or close to \$110, were in relation to a supposed donation to offset the costs of the Auditor-General's \$158,000 finding against New Zealand First. It was not in the context of any other matter.
- Peters Mr Cullen, we have been subjected to any and every allegation. There are so many of late, all of which we will dispose of, I assure you of that. Even to the extent you've got three people, three official bodies looking at the same cheques. Extraordinary! My memory is, as yours is, the media was saying it was for \$158,000 and that he had given \$158,000. I've seen every darn allegation made here excepting the ones that are factual.
- Cullen So, when the Prime Minister rang you, can you remember what she indicated she was asking about? She was asking generally about a donation to New Zealand First?
- Peters Well, you know, I can't, other than to say to you my reaction. I can't remember her exact question, but I believe she asked me: "Look, it is being said here that Owen Glenn gave money to New Zealand First." I said, well, my staff have already told me that and it's not true. I've had them check with the office of the party, the accounts.

- Cullen Are you reasonably confident the Prime Minister didn't ask you about a donation to offset your legal fees arising out of the electoral petition?
- Peters Most certainly not, and my evidence for that is (a) I remember what the Prime Minister asked; (b) if she had asked me that I would have made a check somewhere else. But I don't know. If she had asked me about it as a donation to my legal costs I would have made a check somewhere else. Of course, my problem would have been, and has always been, this is a non-disclosable matter, in Mr Henry's view, because of the pattern we have followed since 1979, all the way to Wairarapa in 1987. All four cases of which I was involved in.
- Cullen You mention Mr Harley's background, you say that he is acting pro bono for Mr Glenn, which is unusual, I think, for Mr Harley's experience. Have you any evidence for that?
- Peters Have I got any evidence that a former Russell McVeagh lawyer would be acting pro bono?
- Jones He said so.
- Cullen Well, we have made history anyway in that respect in this case.
- Power Dr Cullen, have you got anything else on your list there?
- Peters It's made history, it's in his evidence.
- Cullen That's right. Finally, one thing—
- Peters It would occur to you, also, Mr Cullen, that Mr Henry was being attacked for acting pro bono. Should there not be a bill sent to me? But it is OK for Mr Harley, a Russell McVeagh, Fay Richwhite lawyer and a wealthy businessman. How does that work?
- Cullen The affidavit from Mr Moroney—who, I think, you would agree is a reasonably well-known figure in the racing industry—does specifically mention that you thanked Mr Glenn. But when Mr Glenn gave evidence yesterday, he seemed to have some kind of throwaway line about “Did you get the money?”, which was what he actually said he thought he said to you?
- Peters Yes, that's what he says here. Look, this is what he said—page 27 of your material—“Did the money arrive OK?” Now this is simply extraordinary. In all the circumstances it is not believable, but I want to explain this to you, now that I'm here. This was a big wide table. There were not four, five, or six people there. There were about 14 people there, some eminent in this business. I have had, through an intermediary, information that suggests that none of Mr Glenn's evidence on this is remotely reliable. He did not sit next to me, and you don't shout across a table, from me to Murray McCully, “Thanks for the money.” not in front of 14 people.

- Dalziel Can I have a supplementary off that?
- Peters Or he ask the question either.
- Power Yes a quick one then.
- Dalziel It's just that the affidavit from Paul Moroney actually doesn't say that he heard you thanking Mr Glenn for the money—
- Peters No.
- Dalziel What it says is that it was Mr Peters thanking Mr Glenn for his help to him. Could that have been in relation to your role as Minister for Racing?
- Peters Who was thanking whom?
- Dalziel You were thanking Mr Glenn for his help to you.
- Peters You know, I talked to Mr Glenn about racing, as I said, on the 14 December. More importantly—and I haven't got my witness evidence here but I remember now—he had a horse called Railings, it won the Caulfield Cup. And being a New Zealand-owned horse—well, he calls himself a New Zealander—I took a serious interest in the horse in the Melbourne Cup and I was disappointed when it didn't win; it only got seventh, I think. That's my memory now, I didn't remember this till today, but I am sure I talked to him about that horse, because a horse that wins the Caulfield Cup has a good chance of winning the Melbourne and I wondered what went wrong. The usual answer, of course.
- Dalziel This is at the Karaka sales. It is just that Mr Moroney goes on to say "Mr Glenn had told me before the lunch that he was meeting Mr Peters over lunch, because he had made a donation to assist Mr Peters ...". So Mr Moroney had information that was given to him by Mr Glenn. Is it possible that you thanked Mr Glenn for his help over another matter and this could have been interpreted in the light of what he had already been told?
- Peters Look, a lot of things are possible. I have got some time for Mr Moroney as a horse trainer and, to the best of my knowledge, as a person as well. But this seems to be, I mean, prompted memory and coached evidence, and I see Mr Harley all over it, with the greatest respect.
- Power Mr Dunne.
- Peters And I tell you this, there is no way that Owen Glenn knew he was having lunch with me.
- Dunne Mr Peters, I want to come back to the phone call of 14 December, which you describe in some detail on page 3 of your submission. You mention three or four points that were covered and then you say: "It is quite possible that he, Mr Glenn, asked for Brian Henry's details, and the sequence of

events tends to suggest this occurred.” The message you have been giving us this evening is that you cannot recall whether that specifically happened, but your recall of other events in that conversation, which lasted for some 6 minutes, seems to be remarkably specific.

Peters Well, because, look, when somebody asks you for something that’s unique in diplomatic circles, you don’t tend to forget it. I thought it was actually an extraordinary request. He also mentioned at the time Jim Sutton, because Jim had a sort of roving trade post, as I understood, at the time, and I thought, well, this is a bit extraordinary because how could he be on the same position, not being a member of Parliament, as him. That’s what I remember, because it was extraordinary the manner in which he said it would facilitate his travel through airports. You don’t forget those sorts of conversations.

Dunne You’ve obviously reflected on the conversation since, which, as you say, focused a lot on the Monaco appointment. Just reflecting back on it, if Mr Glenn had then, at the end of that conversation, asked for your lawyer’s contact details or account details, wouldn’t that have struck you as unusual in those circumstances, given the context of that discussion?

Peters Not if it’s not my duty to ask him why.

Dunne So you have a discussion about Mr Glenn’s possible role in the trade area culminating in a “By the way, can you give me Mr Henry’s contact details?”, which, to be fair to you, you don’t recall, although you acknowledge from the other evidence probably happened, and that didn’t strike you as unusual?

Peters Look, I think, and I would be astonished if you don’t have in your record of your service a significant number of references like that. I bet you’ve never asked them why. But I bet you’ve referred people to lawyers and usually with one qualification which is “Now that is not my advice.” That’s what I try to say to constituents, anyway. But you wouldn’t say it to Mr Glenn.

Dunne You thought it was not unusual, in the context of the discussion about a diplomatic appointment, that a question about how he could contact your lawyer and what his account number was would be raised.

Peters Putting the question the way you do I can’t answer that because I don’t have the memory of that. All I’m saying is that looking at it, that’s got to be a possible explanation. But I can’t answer your question, when you say are you saying you remembered—no, I don’t remember.

Dunne No, but, given the evidence, you’re not denying that it could have happened?

Peters Well, I don’t think you can deny that it could have happened, because that’s the only logical conclusion one can come to.

- Dunne Just one other question, which is relating to Mr Moroney's affidavit. Are you rejecting that?
- Peters No, I think Mr Moroney's—look, Mr Moroney heard something like that, he says. Now I have an idea of trying to reconcile with my memory of that place. My memory, for a lot of reasons—I mean, I remember what we had for lunch. It's not everybody who gives you half a crayfish—things like that.
- Dunne Mr Moroney said in paragraph 4 of his affidavit: "During the luncheon discussion, part of the conversation between Mr Peters and Mr Glenn involved Mr Peters thanking Mr Glenn for his help to him. Mr Glenn had told me before the lunch that he was meeting Mr Peters over the lunch, because he had made a donation to assist Mr Peters fund his legal expenses concerning the Tauranga election result." Are you denying that?
- Peters First of all, I don't believe for a moment that Mr Glenn had any idea that I would be at lunch. That's No. 1. And that's why I am concerned about that statement. It may be that he has been prompted by somebody later on to say, look, don't you remember Mr Glenn saying this. And people can have a pretty unusual memory. But it is clear to me that he doesn't know what Mr Glenn was claiming to be thanking me for—or I'm claiming to thank Mr Glenn for. But, more importantly, you would not shout across the room two questions: "Did the money arrive?" And here comes the answer back across the table in front of all these business people: "Yes, thank you very much." or words to that effect.
- Dunne So when Mr Moroney says: "Mr Glenn had told me before the lunch that he was meeting Mr Peters", you say that is not correct?
- Peters I'm saying I've seen coached evidence. Mr Glenn could not possibly know that I would be at that table. Because I didn't know it until I was asked, and I was asked just before lunch, so how would Mr Glenn know that? And how could Mr Moroney know, because Mr Glenn didn't know it. And that's why I say that evidence won't stack up. But I can see how you could plant the seed in somebody's head and he thinks, well I did know.
- Dunne So who coached the evidence?
- Peters Who coached the evidence? Look, if you read the testimony in the wine box and see how many times senior IRD staff
- Power We're not—
- Peters —and lawyers at the commission nailed Mr Harley for coached evidence—
- Power We're not going to go over the wine box.
- Peters Well, I wish you would, because actually he came before this meeting and it's got the DNA, the blood all over it.

- Mapp You've said on page 3 that from the sequence of events—the phone call and the email from your lawyer Mr Henry—he must have asked for the details. You now accept that?
- Peters Well, what I accept is that it is entirely possible but I'm trying also to tell you that is not my memory of it.
- Mapp Well, if it is possible, and given that Mr Henry had acted for you just a few days before that in the Tauranga petition, wouldn't it have occurred to you at that point to wonder why he would ask. Did it even occur to you why would he ask such a detail?
- Peters Well, it's not a few days before. The conclusion of the Tauranga case was 1 December, and I want to remind you I didn't go to the Tauranga court for any days in that hearing.
- Mapp You must have been aware it was going on, though.
- Peters Well, of course I was, it was going on, but, you know, I was Foreign Minister at the time and I had no time to be down there and I had a thousand things to deal with. With a new portfolio, one is seeking to get a grip of the material coming before you, unlike one of my Foreign Affairs colleagues recently from offshore, who told a commission of inquiry that he had never read any emails or any of the stuff that came over his desk. My staff will tell you I read everything that comes over my desk, because you cannot get a grasp of what is going on otherwise.
- Mapp My second question is when you previously gave evidence here, and Mr Henry gave evidence, it was said by Mr Henry that he would have told you the fees had been covered, the costs and the fees had been covered, that he told you that. Do you accept that that would have been the case and that you would have been informed that his fees and costs had been covered?
- Peters I don't recall Mr Henry saying that but if you're saying he did and they've got the evidence in the transcript, then I would accept that, but I don't recall him saying that. Let me just say it's a bit difficult when you're sitting behind the screen that you have the benefit of sitting in front of, some of your memory of the night would not be as good as somebody who was getting the visual look at the witness as well. But if you say it's in evidence I will accept that. But that's what he would have done over a long period of time and since 1987. I was the guy that hired him, Mr Henry, for the National Party.
- Mapp Given that you accept that he did say that to you, surely that would have meant, at the very minimum, you had to declare the fact that he received those donations and it should have been in your pecuniary interests statement.
- Peters Look, let me say to you that that is not the law as laid out by Mr Henry to me, Peter Williams QC, Gary Gottlieb, and these are people pretty eminent

in the law. They don't take the moral view of Mr Kós that somehow you've got a moral duty, for if that is what is obliged to be happening around Parliament, there are going to be some serious challenges for people in this institution, that you somehow observe a moral law that nobody else knows about. I am accepting that if you say it's in the evidence, I accept that he said that.

But, look, here's the truth of the matter here. I went to Margaret Bazley three times trying to get an opinion as to what I should do. She would not answer me and said she would talk to this committee. Now, let me go further and say this. I then, without prejudice, put in a belated return, but I don't accept that I have to because that is not the evidence of these three eminent lawyers to me. But she has also written to me to say to me, when I argued look, why can't you just give me the ruling you gave Nick Smith. She wrote to me a disturbing letter. She said "I never wrote to Nick Smith nor does my office have any memory of giving that information in any way, shape, or form at all." Here I am now relying on a precedent that this Parliament was told about when I was at an ASEAN conference and it didn't exist. Dr Smith needs to explain to you how now he's OK not making a declaration at all, and I am to be held guilty by you.

Power Heather Roy.

Roy Mr Peters.

Peters Can I just say, please don't shove passed this. Dr Smith is not in front of this committee.

Power No he's not.

Peters But he's done the same thing that I did, excepting I don't think he had to make a declaration. I still don't know whether I should make a declaration, and I'm sitting in front of this committee with the Registrar of Pecuniary Interests not being able to tell me what I should do. So please tell me this, what should I have done, if no one still knows what should have been done in this unique set of cases? It's post election, it can't be electoral expense, it's not designed to win voters over. In my view it's a vague area and I do not think it should be fixed up, otherwise you're going to deter people from finding out the legitimate member for any constituency. And maybe even the Government one day.

Roy Mr Peters, I just want to clarify one issue. Do you stand by your statement that you made to this committee on 18 August, when you said: "Until today I have been unaware of the source of all donations for legal expenses." Do you stand by that statement?

Peters On 18 August?

- Roy On 18 August this year when you submitted to this committee that until today when you heard Mr Henry's evidence that you had been unaware of the source of all donations.
- Peters Look, I'm aware of my own money in this sense over a long period of time. It's a lot of money, I am also aware of the fact that members of my family have been extraordinary in backing me. Now I'm aware of that, so in that sense, yes, I stand by it, as long as you understand the exclusions here.
- Roy OK, so you stand by that despite the fact that Mr Glenn yesterday said: "I met with Mr Peters 2006 at the Karaka sales. Mr Peters did then thank me for my assistance." and despite the fact that we have an oath from Paul Moroney stating that you sat beside Mr Glenn at lunch, that you thanked him for his help and that his understanding from a conversation prior to the lunch was that the conversation between you related to the donation.
- Jones Point of order, Mr Chairman.
- Jones Mr Moroney, as I read his evidence, said one of the guests at the table we were at was Rt Hon Winston Peters—
- Roy If you look at paragraph No.—
- Power Hang on, just let Mr Jones finish his point of order.
- Jones That's fine, thank you.
- Roy If Mr Jones looks at paragraph No. 3 he will find Mr Moroney actually said "One of the guests at the table we were at was the Rt Hon Winston Peters MP, who sat next to Mr Glenn."
- Jones I agree. I was just making sure.
- Power OK. Carry on.
- Roy So we have an oath here—
- Peters Hang on, if—
- Roy —no, Mr Peters, I'm asking the question—so we have an oath here from Paul Moroney, who actually got about four things completely wrong despite the fact that he signed this statement, and Mr Glenn in his evidence yesterday told us that you thanked him for the donation at the 2006 Karaka yearling sales?
- Peters Well, I'm glad you asked that question, if you want to press me on it. Neither do the hosts remember that, and don't forget Mr Henry—
- Roy Who were those hosts, Mr Peters?
- Power Hang on, let Mr Peters answer the question.

- Peters Mr Glenn, you recall, said he couldn't remember who the hosts were, but he said there were two brothers. Now that's extraordinary if you've got any interest in racing because they're the most well-known people in this country. And I can tell you through an intermediary that one of those hosts has no such memory. I can tell you that now.
- Roy And so who were those hosts Mr Peters?
- Peters Their names are Philip and Peter Vela. They are associated with the Pencarrow Stud. They run the Karaka sales. They're the biggest thing in horse—well, not quite the biggest because there is Sir Patrick Hogan, but they're pretty big and worldwide known. There is no way, I'm telling you this, there's no way that somebody who has got a Melbourne Cup runner and got a Caulfield Cup winner, who would not know who these people are. After all, their horse in a previous year won the Melbourne Cup.
- Roy So if you didn't thank Mr Glenn for his donation then, did you ever thank him for his donation, and if so, how and when?
- Peters I'm please you raised that as well. But just go back to this thing. If sitting next to someone who's across the room and is further away from me than probably Mr Norman is, then that's an extraordinary claim, and that is not the host's memory either. The second thing is I said in my press statement of 18 July that on learning of this from my lawyer, I publicly thanked him, and I said that in my evidence—
- Power Press statement.
- Peters —I publicly thanked him in my press release. But let me just make this very clear. When this thing broke in January, as with Bob Jones, when this other allegation broke, as with Mr Glenn, I never phoned them. I was never going to have my accusers say that I am guilty of collusion. Now maybe that's somewhat to do with my bona fides in this matter. Others would have, I never did, and neither of them have made that claim as well.
- Roy And so you've never personally thanked Mr Glenn for his donation?
- Peters Well, I'm not going to do it at the moment, I tell you now. I didn't do it until I knew and I did it in the form of a press statement. I'm not here to nail Mr Glenn. What I'm here to say is his memory is seriously failing him. That was my allegation with respect to Sir Bob Jones and I proved that was right. He had seven memories.
- Roy So you received \$100,000 from Mr Glenn, but you've never thanked him for that personally. You've only thanked him through the media.
- Peters I thanked him in a public statement. I've also said that this was unfair on him, unfair to him, and of course in the fullness of time I will write him a letter. But it is not my character—I was brought up reasonably well by my

- mother and father—to carry on like that. My staff will tell you I don't send off standard Christmas cards, I write the whole lot out myself.
- Roy That makes it even more unusual that you didn't thank him personally, Mr Peters.
- Peters No, no. It's evidence that I would never have thanked him just in word, I would have written a letter to him.
- Norman If I could just go back to the 14 December and the evidence we have around that, because the advantage of the evidence around 14 December is that it seems to be pretty hard evidence—the phone records and the emails. There are two pieces of evidence: one is the phone call from Owen Glenn to you, which goes from 1.26 in the afternoon to 1.34, according to the phone records; and then 6 minutes later there is an email from Brian Henry to Owen Glenn, which refers to a conversation with my client. You can see why this is particularly relevant information. So the question I have is, what it would suggest is obviously that, just looking at it at face value, after your conversation with Owen Glenn, you contacted Brian Henry and that Brian Henry contacted Owen Glenn. So can you tell us was there any contact between the phone call that you had with Owen Glenn and then the email going from Brian Henry to Owen Glenn? Did you have any contact with Brian Henry, did any of your staff have any contact with Brian Henry or any of his staff?
- Peters Look, that's the insinuation and inference when you read that, and I'm not going to come here and try and explain it away, but I'm saying it is quite possible. The only one codicil to that and it's Mr Henry says to me it's not I assure you it's not you. I'm not going to come here and argue something else when I cannot prove that. I just can't prove it to you so I'm not going to say it.
- Norman So just to be clear, what you are saying is you are not going to say that you didn't have contact with Mr Henry in that 6-minute break between the end of the phone call and the email coming from Brian Henry to Owen Glenn?
- Peters Look, I have a sort of memory of this thing, but I am not going to assert, because looking at it I say it is quite possible that he asked for Mr Henry's details—as I see on page 6 of my evidence, maybe page 3 of yours—and that the sequence of events tends to suggest this occurred.
- Norman So you say the sequence of events tends to suggest this occurred—that is, that during the phone conversation Owen Glenn asked you for Brian Henry's details and you provided him with a contact number or something like that. That's the suggestion, the sequence of events, except that the first email doesn't go from Owen Glenn to Brian Henry, it comes from Brian Henry to Owen Glenn and refers to the conversation with “my client”.
- Peters But that's the point here. But also I think it has words like “Brian”. Now if you have never talked to someone, when would you call them by their first

- name? It's not what professional people do. You know, you've got a paucity of evidence here, but one piece of evidence has a look about it, which I am trying to remember why that would be and I cannot; I don't have any memory of that.
- Power He's made that point.
- Fairbrother Again 14 December. Mr Glenn said—and Mr Swain started at this point but didn't have the notes of the Glenn transcript—at page 5, paragraph 3, you said in that call he offered to contribute \$100,000 towards your legal costs. Do you refute that?
- Peters 5 December?
- Fairbrother On 14 December, in that phone call that Glenn made to your cellphone—
- Power Paragraph 3, page 5.
- Fairbrother —paragraph 3, page 5—he offered to contribute \$100,000 towards your legal costs.
- Peters I refute that totally because it is also refuted by his own evidence. Why is he having the same conversation twice? Don't forget, I told you that on 12 August, this is before he made any of these statements, I had information from Mr Glenn's lawyer, that it was \$70,000 he was talking about, and (2) and here's the most critical point, he had a call from Brian Henry. I want to know why Mr Hide didn't present that to this committee. I'm sure he is going to deny that I know.
- Fairbrother The point arising from this is that Mr Glenn also said he needed Mr Henry's account details, and Mr Henry's email says: "I provide my bank details". Is it possible that there was a conversation about bank details and you've chosen not to inquire what that is about? Wilful blindness is what I'm getting to.
- Peters I don't think you can be wilfully blind. It's what you do, what you're required to do, what your experience says you do. I don't think you can sit there and say I'm wilfully blind about something.
- Fairbrother But if Mr Glenn did mention bank details, that would ring a bell in your mind wouldn't it—Mr Glenn a benefactor, a generous man, Mr Henry acting for you, not charging you. Wouldn't that ring a bell in your mind that there is a connection here I should be worried about or thinking about?
- Peters Let me just tell you something. I understood then, all this time, until 18 July, that Mr Glenn was a Labour man. Now ask yourself this, why would he be giving money to me? I'm New Zealand First. I am not in a coalition with the Government, I've got a confidence and supply agreement. That's my response to that.

- Fairbrother Given the closeness of this email to the phone call—less than 10 minutes—would you have been in Mr Henry’s presence when that phone call was received by you from Mr Glenn?
- Peters There’s a bad echo here.
- Power It is actually very difficult to hear Mr Fairbrother. Fullstop.
- Fairbrother This email was dated 13.40, 1.40. It refers to a telephone call at 1.30. Would you have been in Mr Henry’s presence when he received that phone call from Owen Glenn on 14 December?
- Peters Look, my staff know that I was in Wellington on 14th, in my office, on 14 December. They have, just to make sure—because these computer diaries are so inaccurate; things are added on and prompted in the diary, things that you don’t go to nevertheless stay in the diary—gone to the various people I met that day for their record of the meetings I had. So I most certainly was and also it was in urgency at the time. So I most certainly was in my office in Wellington. The allegation that I was in his office in Auckland is demonstratively not true.
- Fairbrother When you communicated to Mr Henry, did you say: “Owen Glenn wants your bank details?”
- Peters I had a very interesting call, because of the extraordinary request being made of me, on this roving ambassador’s passport, and said but Mr Glenn wants you to send his details to him?
- Fairbrother Bank details—would you have said that?
- Peters I don’t remember that at all. I don’t remember the conversation.
- Brownlee Mr Peters, in your submission to the committee on 18 August, page 32 of our transcript, you say “Until today I have been unaware of the source of all donations for legal expenses and I have cause to be very grateful to Mr Glenn for his very generous contribution.” The assumption is that the first you knew of Mr Glenn’s contribution was in fact that day.
- Peters 18 July 2008, 5 o’clock in the afternoon, roughly. I got information from—Brian Henry came to see me, and this is the sequence of it. I prepared a press statement so no one could be mistaken otherwise, and let it go and told the Prime Minister.
- Brownlee OK, so I can disregard the fact that you say “until today” on 18 August, a month later.
- Peters That press statement is on the 18th.
- Brownlee No it’s not in a press statement. This is what you read out to the committee on 18 August.

Roy He's quoting from the—

Power It's the transcript you're quoting from.

Brownlee No, well it doesn't read that way.

Peters Am I meant to be referring to the press statement?

Roy Which part of the transcript?

Brownlee If you go to page 32 of the transcript—I don't want to prolong proceedings—the bottom paragraph says—

Roy Which one?

Brownlee The transcript of 18 August when Mr Peters appeared at the select committee.

Peters Can I just find it?

Power Go ahead.

Roy What page?

Power 18 August transcript. What page, Gerry?

Brownlee 32.

Peters Whereabouts is that on there?

Brownlee Down the bottom, last paragraph on page 32.

Peters Are you talking about that he advised that in 2006 you personally spoke to Mr Glenn?

Dalziel This is the press statement.

Peters Which part am I meant to be referring to?

Dalziel He's quoting from the press statement, third paragraph.

Cullen The quote starts half way up the page.

Brownlee Yes, so you are quoting from the press statement?

Jones Yes.

Brownlee All right, that's OK.

Peters Look, all that there is in this press statement here, so perhaps I can go to the press statement.

- Brownlee No, I've got the press statement. My question is, in your submission today on page 5, you say under the heading, paragraph 3, "On 12 August 2008 I received information that Mr Glenn had advised his lawyer (1) that it was \$70,000, and (2) Brian Henry had called him." Can you tell us where you got that advice from and can you table that advice to the committee?
- Peters Look, the answer to that is no. You don't get a confidence like that and betray it. But I can tell you my staff were told that day what I got. So they know full well that what I said here is not made up. I showed them the note I wrote and put on it, but I am not going to betray a confidence from someone who thinks they are serving the cause of justice. I think it's terribly unfair, but you ask my senior staff now, were they shown that information and I bet they confirm it.
- Brownlee You're trying to knock over Mr Glenn's case on the basis that there's not enough evidence. Now, this is a very strong statement, and if we are to put any weight on it at all, and particularly the bit that this is coached evidence, can you not expand on this a bit?
- Peters Look, I'm not giving you coached evidence, I'm here to give you straight from the hip. No one has coached me.
- Brownlee I'm not saying you are. I'm saying that it is a strong statement to say that the evidence of Mr Glenn yesterday was coached.
- Peters Mr Brownlee, I would submit to you this, if you were in a different position—
- Brownlee I didn't finish my question.
- Power Go ahead, Mr Brownlee. Sorry, two seconds, Mr Peters, and then he will finish his question.
- Brownlee You were saying that Mr Glenn's evidence yesterday was coached, and you were saying that you know this because on 12 August 2008 you received information that Mr Glenn had advised his lawyer that it was \$70,000 and Brian Henry called him. Can you not expand on that—what that means and how it is relevant to the situation?
- Peters Well, look, I'm saying that Mr Glenn has a different memory in this committee than he had to his lawyer. His lawyer never told you that. Second thing I want to make very clear to you, that if you read the 19 August submission by Mr Glenn, his 27 August submission, his other statements on the Transport Minister for the Labour Government, his comments on the Exclusive Brethren being the reason why he activated that loan—which cannot be because it is chronologically out of sequence—or that he is going to give \$1 million to Howard Morrison to stand for Parliament, independently, the cap is \$20,000, where did the other \$80,000 go to? I mean, these are extraordinary statements. But look, but don't believe my words. Tonight he said, before I came here, on TV, that he's a lush, a

womaniser, and a genuine Kiwi bloke. Well, one out of three can't be bad, and those are the facts of it all. But I'm saying if you read all that there, and then see the clarity for little bits of this information Mr Glenn gave you yesterday, this is coached information. And I'm sure you would be the first person to allege it.

Power Mr Peters, that brings the questions to a conclusion. Could I thank you for—

Peters Can I just confirm this here. You want 5 December. Look, I made a statement about Dame Margaret Bazley's letter to me, adamantly saying neither her nor her office has any memory of giving any advice to Dr Smith. I will send that down to you first thing in the morning.

Power Mr Peters, thank you for your appearance this evening. The hearing is now over. Please clear the room.

conclusion of evidence

Appendix L

Corrected transcript of evidence 16 September 2008

Members

Simon Power (Chairperson)
 Hon Dr Michael Cullen (Deputy Chairperson)
 Gerry Brownlee
 Hon Lianne Dalziel
 Hon Peter Dunne
 Russell Fairbrother
 Te Ururoa Flavell
 Dail Jones
 Dr Wayne Mapp
 Hon Murray McCully
 Dr Russel Norman
 Heather Roy
 Hon Paul Swain

Staff

Mary Harris, Clerk of the House
 Tim Workman, Clerk-Assistant (Legal Services)
 Catherine Parkin, Clerk of the Committee

Stephen Kós QC, adviser

Witness

Brian Henry

Power Mr Henry, welcome back to the Privileges Committee. You would have received a letter from me on behalf of the committee outlining five, maybe six, questions I think from memory that we were keen to hear from you on. Before we do that, and for the sake of consistency, I am just going to quickly read a statement I have made on behalf of the committee to each witness who has appeared before the committee in recent days. So if you would bear with me for 2 or 3 minutes.

The matters referred to this committee by the Speaker are very limited, and the committee has two allegations of contempt before it: that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a gift of \$100,000 from Mr Owen Glenn, and that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a debt in the discharge of part or all of that debt by Owen Glenn. The issue is of donation, gift, and what is in dispute is when Mr Peters became aware of the payment by Mr Glenn and at what

time. Mr Glenn indicated in his written statement to this committee dated 19 August that Mr Peters sought help from him for this purpose—that is, to assist the funding of the legal costs incurred personally by Mr Peters. Mr Glenn further states in his evidence: “Mr Peters subsequently met me socially at the Karaka yearling sales, I believe in early 2006. He thanked me for my assistance.” As you will be aware, Mr Henry, Mr Glenn has since given further evidence to this committee. In contrast, Mr Peters told the committee in a letter dated 26 August that: “I believe that I met Mr Glenn many years ago and on the weekend of 13 August, well before the 2005 election, in Sydney, Bledisloe Cup weekend which is the only time I met him in Australia. The ‘personal conversation’ I believe relates to his conversation with Mr Henry.”

Mr Peters further states in his letter to the committee dated 26 August that: “Para 7”—that is, of Mr Glenn’s letter dated 19 August—“relating to the Karaka Sales 2006 appears to be a year out.” Mr Peters has now tabled further evidence before the committee on that point. He went on to state: “In my evidence to the committee and in my press statement of 18 July I did not thank him until my lawyer advised me on 18 July 2008.”

So what is in dispute, then, is when Mr Peters became aware of that payment. They are narrow and specific issues, and for these purposes the only matters relevant to this committee. This is an opportunity, Mr Henry, for the committee to hear from you on some of the matters that have been raised in evidence, under the principles of natural justice. Could I remind you that the chairperson is the sole determiner of relevancy of these matters. In particular we are interested in the six questions that we put to you in writing late last week. You are very welcome to make a relevant opening statement, and then, hopefully, address those questions. We are in your hands, thank you.

Henry Can I first deal with a personal matter, and that is the one of my mother. I just want it clearly on the record, when this committee first sat I told you immediately that I would be overseas and that is why I gave my evidence early. That should be on the record and I want that understood. Are we on common ground on that?

Power That is clearly in the record.

Henry Thank you. The second thing is after I told you that, my mother had a severe stroke, and I’ve been here this last week with her, and I ask that the media kindly keep her demise out of the press. It’s none of their business, and I ask you as chairman to suggest that to them.

Power The media would have heard what you said, Mr Henry.

Henry Thank you. At the time I gave evidence I was focused on the terms of reference, which dealt with Winston Peters’ knowledge of the Glenn payment to me on 22 December 2005 towards the Tauranga electoral

petition. I do not have a full memory of the sequence of events, but some of the events that have occurred since I gave my evidence have provided some assistance to my recollection.

The electoral petition was argued in the last week of November 2005, and I am advised that the last day of hearing was Thursday, 1 December. This petition was unusual in that the best result was a by-election. This meant all political parties or individuals in parties had a result they could benefit from. This included National Party members who did not like the elected candidate and believed that they could promote another candidate and win in a by-election. I kept these groups separate and coordinated the preparation of the hearing. One aspect of the trial was funding, the other was evidence of expenditure by Mr Clarkson. How the petition was organised was left *carte blanche* to me. Mr Peters would have been aware that I was creating relationships with other political factions and was giving them legal advice with the common objective of a by-election. I created a truce between the electoral factions for the purposes of hearing the Peters electoral petition. At the same time I created a similar team to look at the seat of Epsom, but this failed as they could not raise the \$100,000 I asked for as fees. I was only prepared to run Mr Peters' electoral petition on the basis that if there were no funds raised, I would not be charging for my time.

There are a number of potential donors for fees identified that members of the groups were to follow up. The suggestion of Owen Glenn was made by another client at this time. I was told Winston Peters' office would have his contact details. Based on that suggestion, on 22 November my records show I obtained from Winston Peters' secretary the contact details for Owen Glenn. Winston Peters did not suggest to me that I approach Owen Glenn. My memory of the call to Owen Glenn is not good. The work on the petition was hectic. The fixture came quicker than I anticipated, and I did not have the help of a legally qualified junior. After I first appeared before this committee, while overseas, I saw a report where Owen Glenn stated he supported Labour. This triggered my memory as he used those words to me. I then recalled he wanted to know if the arrangement of the Government would last the 3 years. It was my impression that the reason for his interest was not Winston Peters but the maintaining of the Clark Government. As soon as I recalled this I sent a letter to the committee advising what I had recalled, including a reference to Mr Downer. At the time of that letter, I was unaware that Owen Glenn would change his story to claim that he called Winston Peters. The sum of money I was seeking was \$100,000 New Zealand. Mr Chairman, do you have that statement?

Power The first statement that you refer to with the reference to Alexander Downer?

Henry Do you want me to read that into the record?

Power That has been tabled and released.

Henry Thank you. I operated the petition from a number of different localities between 22 November and 1 December 2005. My secretary tells me that the motel only has records from late 2006, so they cannot assist. After the petition I took a break. I am unsure where I stayed and I do not have any diary records of what I did in those days. I am aware Owen Glenn says he has a note of a call dated 5 December 2005. I am unable to confirm the accuracy of that note. I was the only person I am aware of who sought funds from Owen Glenn. I also understand Owen Glenn has at some stage acknowledged that a call was made in late November. I cannot recall where I was when I made the call. It would have been the late November/early December period of 2005. I believe it was after the Downer incident regarding Winston Peters being Minister of Foreign Affairs outside Cabinet.

The email of 14 December 2005: the email of 14 December 2005 was not on the file of Winston Peters that I checked before I gave my evidence to the committee. After my evidence, my secretary said to me I had made an error in respect to Winston Peters paying the court costs of the petition. I immediately sent a letter to the committee correcting this error on my part. The correct sequence was: the costs were paid by me, then a few days later I was reimbursed by Winston Peters. When answering a question from the committee I knew I had sent a cheque to Kiely Thompson Caisley, but I did not recall the fact that I had been reimbursed.

When the importance of the Owen Glenn contact become apparent, my secretary set out to find all documents relating to the payment. She advised me she had found an email dated 14 December 2005 to Owen Glenn. I had no recollection of this email. The wording is, to me, very unusual as it refers to a conversation that I must have been told about. Had Winston Peters asked me to send the bank details I would have said “as requested”, not the convoluted wording used. This made me think that the email, while referring to Winston Peters, was a conversation between another client and Owen Glenn. At the time I studied this email, I understood the allegation was that Winston Peters was alleged to have telephoned Owen Glenn. I also knew that Winston Peters was adamant he had not called him. Based on that knowledge I prepared another note for the committee setting out my analysis of what I believed had occurred. Have you got that note, Mr Chairman?

Power Yes, we have, Mr Henry.

Henry That is where I say I believe it was the other client. I was later advised by my office that my records showed I had called the other client at 1.40 p.m., the time I sent the email. This suggested to me that I was calling to confirm I had sent the account details. After I had prepared and forwarded the note, Owen Glenn changed what he was alleging. Now he was saying that he had called Winston Peters. This extra information, if correct, suggested to me that my earlier analysis was incorrect, and that the likely source of information would have, instead, been Winston Peters. I discussed this with Winston Peters and we agreed it was most likely that there had been a

telephone call from him to me. I understand that when checking his records in Tauranga, he has discovered, and should have now disclosed to you, a phone call he made to me on 14 December that commenced at 1.33.20, according to his telephone records. It was a telephone call of 6 minutes, 10 seconds. This leaves me time to dash out a quick email to Mr Glenn. As I said, my phone records show that I had returned to my business by 1.40, so it was just simply something that was done on the hoof, and as I said it is something I have no recollection of.

The unusual wording—i.e. the recording of a discussion with my client that I was not privy to, in noting the time of a call, is not my usual practice. If Winston Peters had called me instructing me to send the bank account details, then I would have used words such as, “as requested” or “as instructed”; I would not have recorded the time. The email has come from my desk computer. The layout is not my secretary’s professional style. Although I do not recall the same, it is logical that I must be the one who prepared it. The time sequence is short. To send the email I’d have had to obtain the chequebook from my secretary’s office, typed the email, and I am a two-finger typist. The most likely explanation is that in the phone call with Winston Peters he mentioned the fact that he had had a discussion with Owen Glenn. That would have triggered with me the memory to follow up on his promise to make a donation. The email, in my belief, is a prompt to him about a possible donation.

Power Sorry, Mr Henry, him being Mr Glenn?

Henry To Mr Glenn. If Winston Peters had told me that Owen Glenn had agreed to a donation, then there would have been a recorded comment by me to that effect in the email. There would also have been an altercation between myself and Mr Peters that I would have remembered, because that is not the way we work. I believe that in the phone call Mr Peters would have mentioned Owen Glenn’s name. That would have jogged my memory and I would have dashed off this email as a memory jog to Owen Glenn in the hope that a donation would be forthcoming. I certainly, when I look at the wording, regard it as very unusual. What I have done is I have said: “Further to your discussion with my client at 1.30 nzt”—so I am reminding him and telling him I knew about the conversation and I am sending him my bank details. I do not believe Mr Peters told me that Owen Glenn had agreed to a donation because, as I said, if he had, that would be real break from how we work. I have been called all sorts of things from unorthodox to a maverick and things like that, but I do work to a set of standards and I have always believed, acting for politicians, you have to do it in a principled way, and that includes the politician not knowing the source of funding.

I went to Australia for Christmas with my mother on 20 December 2005. My office was closed over that period and the first record showing that I knew that Owen Glenn had actually donated money was after my return from Australia. When my secretary was doing the bank statement she asked

me what the payment was, and I wrote in my handwriting on the bank statement "Fees".

I have never discussed Owen Glenn with Winston Peters, or told Winston Peters I received \$100,000 from him, until 18 July this year. The only reason I broke my silence was my concern for Owen Glenn, who was facing media comment. The time I told him coincided with the death of Winston's mother. I can recall he was upset but his immediate reaction was to call the Prime Minister, then to issue a press release acknowledging the payment. That is, I believe, the answer to your questions.

Power Mr Henry, thank you. We'll ask members of the committee if they have questions.

Brownlee Mr Henry, just to be clear, you're saying that the email that you sent at 13.40 and 10 seconds on 14 December simply stating: "Further to your discussion with my client at 1.30 nzt I provide my bank details", etc., was subsequent to your having a call from Mr Peters some time during the 3 or 4, perhaps as many as 6, minutes between the end of his call from Mr Glenn to you. He rang you presumably just to say "Hello, Brian, I have just been talking to Owen Glenn.", and then nothing more, but that caused you to think "Oh, goodness me, I must immediately send an email to Mr Glenn to prompt him about a donation that I have allegedly asked him for at some time prior to that." Is that what you are telling us?

Henry No, Mr Brownlee, what I am telling you is that I had asked Mr Glenn for a donation before that time. I am telling you that I did have a 6-minute telephone discussion with Winston Peters. It takes a lot more than 6 minutes to say hello. I have no doubt the petition would have been a big part of that discussion because he was very concerned about the result coming out. In the course of that discussion I believe he would have mentioned Owen Glenn's name. That jogged my memory. I have then sent this as a memory jog to Owen Glenn. If he had told me that Owen Glenn had agreed to fund \$100,000, he and I would have had an argument because that is not the principled way I work and that is just not what I do. I believe the format of this email, which is very curious, was done as a memory jog. I've got to say, this was something that was dashed out in a very short period of time. I have no personal memory of sending the email. The document is there, it is in my computer. All I can say to you is that is how I believe it came to exist, and the reason I say that is that I have always operated with politicians in a principled way and I don't truck people breaching the way I believe things should be run. As I said, people call me unorthodox but I know how I believe things should be done and I do them. Mr Peters and I would have had an argument, which I would have remembered, if he had said to me "Look, I've just talked to Owen Glenn, who has agreed to pay \$100,000." That is just not how I like things done.

Brownlee What Mr Peters said to the committee was that he now accepts that he was asked for your details by Mr Glenn. You have said that he called you a short

time later. So when he said to you “Owen Glenn wants your details”, you send off this account but you don’t ask him “What’s he want my details for?”. Doesn’t that all lead to, even if you are correct, a concern that there was an understanding of what this was all about?

Henry I can’t answer for Mr Peters. All I can say is that if I was told that Mr Glenn wanted my details, then I certainly would have understood what Mr Glenn was wanting from me. But I can’t answer for what Mr Peters would know, because I most certainly have never had a discussion with Mr Peters saying I was seeking funding off Owen Glenn. You have just got to go back—

Brownlee Can I—

Henry Excuse me, can I finish? You have got to go back to what Mr Peters says and look at that. I don’t know what he said, I wasn’t there. I can only answer what I know.

Brownlee I take you back to your evidence that you gave to the committee previously, where you asserted that there was no debt owed by Mr Peters, because there was no account rendered by you. You’ve just told us that when you saw the bank statement recording the deposit of \$100,000—near enough—in your bank account, you personally wrote on it “fees”. Can I ask what those fees were for, what debt was it for, and what account was it written against?

Henry There is no legal debt. What it is is a note to my secretary to tell her to create a pro forma invoice and put it into my tax accounts as income. That is an internal record to make sure I pay tax on that money.

Cullen Can I cover a number of points that arose out of your evidence today? Earlier on in your evidence you refer to there being a number of groups that you kept separate in terms of the Tauranga electoral petition. Were you implying in that that there were some National Party people who were interested in that petition being taken?

Henry Yes.

Cullen Thank you. So they were approached for funding in that regard?

Henry Yes.

Cullen Thank you.

Henry And also for evidence, which they assisted me with.

Cullen Thank you. You said that Mr Glenn was suggested by another client, and in one of your previous communications you stated, I think, quite clearly, that you thought the client referred to in the 14 December email to Mr Glenn was this other client. Do you now think, in fact, that that reference in that email was to Mr Peters, not to the other person?

- Henry Yes. I've got no memory of that statement being done. It was something dashed out in under a minute. I understood the evidence was Mr Peters had never talked to Owen Glenn. He said he hadn't called Owen Glenn on the 14th, and I understood the allegation was that Winston Peters had called Owen Glenn. Based on Mr Peters' answer I never phoned Owen Glenn. I then said: "Well if it wasn't Mr Peters, it has to be this other client. It's got to be one of the two." When it came out that Owen Glenn had changed his evidence—because I understood he was saying that Mr Peters had called him and he was saying "I've called Mr Peters.", and I might add that I've never heard of a donor calling to offer money. I've never heard of that in my life. It's always been a "We chase the donors, not the donors chase us." When I heard that I then knew the conversation was between Mr Peters and Mr Glenn. That meant Mr Peters had to have been in contact with me, and that is why I have had Mr Peters for the last few days hunting through his records, and he has now found a telephone message saying that he spoke to me.
- Cullen On 14 December the result of that petition was imminent, and presumably you were aware that they were likely to be coming out with that result quite soon?
- Henry You never can tell with judges, but Mr Peters was anxious—absolutely.
- Cullen And that would have been probably the main part of the conversation?
- Henry He's a pain in the butt client when it comes near to decisions.
- Cullen Yes, Mr Peters had a certain interest in the outcome of that petition.
- Henry He was very interested in the outcome of that, and he also had the other factor. He had been overseas throughout the petition, so he hadn't actually been there and seen and heard what happened, and that didn't help his demeanour about being anxious over what we had and hadn't done.
- Cullen Yes. You repeated today two or three times that you asked for the donation from Mr Glenn.
- Henry Yes.
- Cullen Mr Glenn, of course, asserts that Mr Peters asked for the donation. Have you been able to find any record of conversations, contact with Mr Glenn before, say, 5 December?
- Henry No, I haven't. What happened is I got his number on 22 November—I know that for a fact. The petition opened the following week, so this is a week where you're preparing the trial. I was living what you'd call a very itinerant lifestyle. I was between Tauranga and Auckland. We were all over the place. I had a series of factions I was talking to. Look, I've made hundreds of phone calls in that period. You're asking me to remember when I made one. I have no hope of remembering it, and short of finding a

record I can't. I've hunted round the records that I can get, and I can't find it. There are records that I can't get, and I've still got to remember—because I just frankly can't remember—some of the places where I stayed through that period of time to put that phone record in place. It's just one of those things that when you're busy preparing a trial—and I'm on my own doing it—it could have been any time in that period.

I do have a memory: we talked about Mr Downer, because he was very concerned that Winston would breach the agreement as happened with Jenny Shipley and National. I can remember telling him that as one of the architects of the deal, the reason we had him outside Cabinet was so that couldn't be repeated. So the 3 years was going to depend on the integrity of Helen Clark, and I'm very proud of the fact you guys have made 3 years.

Mapp Mr Henry, you've said that you phoned Mr Glenn and asked him for money—obviously \$100,000—but you can't tell us when you had that phone call?

Henry I asked him for \$100,000—that's the price. And it was the price for the Epsom petition, as well.

Mapp And you have no recollection as to when you made that phone call?

Henry No. Look, it's in that period of time—I don't know when. As I said to Dr Cullen, you've got to understand I am in the middle of preparing a trial. It was a short notice hearing. There was a lot at stake, a lot of factions to deal with, and you're dealing with politicians, which takes a lot of time. I have no memory of exactly where I was, what time, what day I made that phone call. Mr Mapp, I challenge you to remember a phone call you made 3 years ago as well, because you do a lot of phone calls every day, just like I was. It's just not something that's physically possible.

Mapp So you're saying to us you made a cold call—the first call you had with Mr Glenn—and asked him for \$100,000.

Henry Yes.

Mapp Right.

Henry I cold call for money, Mr Mapp, and that's what you do. There's no other way.

Mapp Because this was the key amount of money, I would have thought you'd—

Henry It wasn't at the time. It became the key amount of money on 22 December 2005 when I got the donation. We were seeking money off other people, as well. It only became key once I had the money. Someone can say to you: "Look, I'm going to donate some money. I'll help you." It's not something you can enforce. You can jog them, you can remind them, but until you get the cheque you can't say: "Hey, you've promised me this money. Pay up!".

- It's not a debt; this is a donation. This is kid glove stuff, and it wasn't until 22 December, when the money gets banked, that I had a donation, and I didn't know about that until after Christmas. At that stage you're just whistling.
- Mapp Do you think on the phone call that you had with Mr Peters on 14 December, in that 6 minutes, that Mr Peters gave you Mr Glenn's email address?
- Henry I'd be surprised if he did. I don't know.
- Mapp So where was the record of the email address? You made that email almost immediately after the phone call.
- Henry Look, to do it in 40 seconds it had to be in my system.
- Mapp Or you were given it.
- Henry Or I was given it. But to my mind to do it in 40 seconds it had to be bang, bang, bang—email out, done. This is an email done on the hoof. As I said, it's a memory jog, as far as I can ascertain. It is something that was done quickly.
- Cullen So Mr Henry, is it possible that when you got the contact details on 22 November, that that would have included the email address, which is pretty standard contact material these days?
- Henry Sorry, I couldn't hear that.
- Cullen Is it possible that you got from Mr Peters' office on 22 November the email address, because you said you got details from Mr Peters' office on 22 November? Could that have included the email address?
- Henry I can't say yes or no to that—I don't know.
- Mapp You say you don't have any recollection of the phone call itself; apparently neither does Mr Peters. But isn't it logical that, given that it was a 6-minute call, you instantly sent an email, more or less? There had to be some discussion about bank details, and so forth vis-à-vis Mr Glenn, Mr Peters, and yourself.
- Henry It's logical that there was the mention of Owen Glenn's name, and that would have jogged my memory to jog his memory. It is not logical to say that there was a discussion over payments, because he and I would have had a barney and I would have remembered that very clearly, because I operate as I operate.
- Mapp Isn't it also logical that when Mr Peters spoke to you, mentioning Mr Glenn's name, you would have realised that Mr Peters knew it was about money?

- Henry No, I disagree with that.
- Mapp Why not?
- Henry Well, I don't know—can I finish?
- Power Just let him answer.
- Henry I wasn't part of the discussion between Mr Peters and Mr Glenn. Mr Glenn has all sorts of business interests, and he has many reasons why he would talk to the Minister for Racing. This is not something I am a party to. You've got to ask Mr Peters about that, not me. I can't speak for him; all I can say is that if Mr Peters had told me Mr Glenn was going to make a donation, he and I would have had some issues. I don't have any recollection of that. I have dashed off an email, which is very unusual. I haven't said: "as agreed ... as instructed"; I've said "discussion at this time", and that is an unusual thing to do. That suggests to me I'm doing a memory jog to Mr Glenn, having had my memory jogged by Mr Peters mentioning him. I can't take it past that, because, as I said, I do not have a memory of the email and these phone calls. This is something done on the hoof, and, as I said, at 1.40 I'm back to business with clients again. It is just something that is done.
- Dunne I just have two questions. The first is, Mr Henry, Mr Peters told us in his evidence that the phone conversation with Owen Glenn related largely to matters concerning Monaco and whether he should be consul-general or not. He can't recall whether the issue of funding was raised during that. We now know from the evidence that you've given and he has given that subsequent to that phone call Mr Peters called you, and you say you took that as a prompt to contact Mr Glenn. My question to you is why would Mr Peters want to discuss with you the situation regarding the appointment of a consul-general in Monaco, if that was the tenor of his conversation with Mr Glenn?
- Henry He didn't discuss that with me. The first I was aware that Mr Glenn wanted to be consul-general of Monaco was through the media this year. I have never had a discussion with Mr Peters about Mr Glenn being appointed to any job or role.
- Dunne So Mr Peters has a conversation with Mr Glenn. He then suddenly decides at the conclusion of that to ring you, and not to talk about the content of that discussion, and then at the end of that second phone call you decide you need to send an email to Mr Glenn with some contact details. Is that what you're having us believe?
- Henry What I believe happened is he rang me, we had a 6-minute discussion and it wasn't on Mr Glenn, but in the course of that discussion he mentioned Mr Glenn's name. That jogged my memory, and then I sent an email to try and jog Mr Glenn's memory in the hope we'd get a donation.

- Dunne And it's just pure coincidence that the sequence of calls was over that 10-minute period?
- Henry That's just what happened.
- Dunne Pure coincidence?
- Henry That's just what happened; that's right.
- Dunne Mr Henry, I've got one other question. You're a very experienced legal counsel, and I defer to you in that respect. But what conclusions would you draw as counsel in a trial if, when confronted with the facts, a witness consistently answered "I have no recollection."?
- Henry I have not consistently answered "I've got no recollection." What I've said to you is I do not have a recollection of these phone calls and this email. The email is there, and I can see the email, and I'm quite capable of logically working through the sequence. The one thing I do know is that if Mr Peters had said to me "Owen Glenn is going to pay your fees.", he and I would have had an issue. Now that did not happen.
- Dunne OK. What would you say, though, if I was to put this to you—that the defence "I have no recollection of either the email being sent or the content of the phone call" is a convenient way if you're having to recall what was actually said there? In other words, if you do recall, you might well create some further embarrassment for Mr Peters, so the safest option is to say you don't recall. What's your reaction to that proposition?
- Henry If Mr Peters had had that discussion with me, and I recalled it, I would be telling you I had that discussion.
- Dunne Thank you.
- Swain Just a couple of quick questions. Just to cement it home, no money was mentioned—\$70,000, \$100,000—in the conversation with Mr Peters?
- Henry I have not discussed the cost of the electoral petition with Mr Peters that I can ever recollect. I may have at the very outset told him what it was going to cost, but I do not believe I have ever had a discussion with him about those costs.
- Swain In the phone call with Winston Peters that we're talking about, he never mentioned to you \$70,000 or \$100,000 that Mr Glenn was going to donate?
- Henry Well, I've certainly got no recollection of \$70,000 ever being discussed. It's always been \$100,000. Seventy thousand dollars is not a figure that I have ever talked or heard of. This evidence at the moment that you're talking about is the first time in my knowledge that someone's talked about \$70,000. I've always talked \$100,000. He wouldn't have talked \$70,000 to me.

- Swain Just to clarify again that Mr Peters, when he spoke to you, did not mention any sum of money at all in that conversation that we're talking about?
- Henry I do not believe Mr Peters mentioned anything to do with Mr Glenn making any donations whatsoever.
- Swain Very good. The second question is around "my client", because this is an important aspect. Can you categorically say that the "my client" that you referred to in your email was not Mr Peters, which is what you've said before to us, or that now you're not—
- Henry No, you're not listening to me, Mr Swain. What I said to you was that when I understood Mr Peters was supposed to have called Owen Glenn, and Mr Peters was adamant he hadn't—and, in fact, had not called Owen Glenn—the only person "my client" could be was someone other than Mr Peters. As soon as I heard that Mr Glenn called Mr Peters, I then knew "my client" was Mr Peters. So please do not try and distort what I've said to you. Listen to what I've said, because I am very clear in my mind what I have said to you, and I am saying to you today very clearly: now I know that Owen Glenn called Mr Peters, "my client" is Mr Peters. That's why I had Mr Peters try and find a phone call from him to me, because it had to exist, and he has now found it.
- Power That point is clear, Mr Henry.
- Henry Thank you. Can I just say to Dr Russel Norman my apologies for my answer over the payment of the fees, because I did get it wrong when he asked me a question last time, and as soon as my secretary told me I got it wrong I corrected it. So my apologies for that.
- Norman You say that you rushed in and ran off the email, but there's more than one email; there's two emails. You sent another one after your question for the name of the account. Do you have a—
- Henry I'm talking about the—sorry?
- Norman Do you have a recollection—there is a second email where you name the account and the branch?
- Henry No, I've been talking about the first email. You're quite correct. There is a sequence of following-up emails. The first email is a quick dash off inside a minute.
- Norman So you're assuming that, because you don't recall it; and then you're also assuming this second one is of a similar nature. Is that right?
- Henry Yes. What I'm doing is—it is clear from the records that this was an email done in a very short space of time; I think it's about 40 seconds. My understanding of the timings is that my phone call with Mr Peters ended at 1.39.30, and I sent the email at 13.40.10. So presuming those times are right,

- it's 40 seconds. That is a dashed off email, and my secretary tells me the grammar shows that.
- Norman What I'm trying to get to is that it's slightly more considered than that, because 44 minutes later you send a second email.
- Henry Yes.
- Norman So there's a little more to it.
- Henry But that's later and that is not a dashed off email—I agree with that. He's come back, I've responded.
- Norman The second question I have is, when you were raising money for the electoral petition, were there other donors to this project other than Owen Glenn?
- Henry No one. People promised but no one came up with the money.
- Norman What was promised to you? Were there other promises of large donations?
- Henry I had a promise, I believed, of \$100,000 from someone else, yes, and he never came through.
- Norman OK. My final question is, you've said a few statements like "We chase the donors, they don't chase us. We are seeking money off other people as well." Who is the "we"?
- Henry Often it's me, but there were other people involved in the petition. There were supporters of Winston's, there were supporters of other parties, and I understood they were trying to get people to donate towards the costs.
- Norman Have you seen some of the statements—naming the other client doesn't appear to be actually privileged according to the advice that we've received. It is not privileged, the name of the other client. Or there's debate around that. Are you still maintaining that position about naming the other client?
- Cullen Point of order, Mr Chairman. There is no other client. It has now been clarified there is one client and that's Mr Peters.
- Norman That is not correct?
- Cullen No, in terms of the email.
- Norman I am not talking about the email.
- Cullen Well we have no interest in the other matter.
- Norman Well we have a great deal of interest.

- Power We have made the point clearly around the email reference to “my client.”. Mr Henry’s confirmed that that person was Mr Peters. Do you have a different line of questioning?
- Norman That is right, which is around his suggestion to approach Owen Glenn, is the question.
- Henry Mr Chairman, it is a proper question and I want to answer it.
- Power OK, we will hear the question and then we will hear the answer.
- Henry I have got the question, I know what the question is. The position on legal privilege is it is a substantive right of a client, it is not my right, it is not anybody else’s right, it’s the client’s. The opinion that I have seen is based on a question asked by one of your members—I have forgotten who—and my claim to privilege. That does not give you any factual basis for a barrister to do an opinion as to whether or not it’s privileged. I have been back to the client concerned and I have raised with him directly the issue of privilege and whether he would waive it. The response is I have got a letter from a solicitor acting for him, who has reminded me that it is a substantive right and has made it very clear, and in fact has expressly instructed me in writing, that I am to maintain privilege and that is all I can do. It is not my choice.
- Roy Mr Henry I just want to clarify some issues around when you obtained Mr Owen Glenn’s contact details. We have had some discussions about phone calls and possibly an email address that you obtained on 22 November 2005. Where did that information come from? You said it was from someone’s office?
- Henry I obtained that information from Winston Peters’ secretary.
- Roy OK, thank you. You were very specific about the fact that you obtained that information on 22 November, but very vague about when a telephone call might have been made. How could you be so specific about gaining the contact details but vague about a telephone conversation?
- Henry Because I have got a record showing I obtained it on 22 November.
- Roy Are you in the habit Mr Henry of making records of when you gain contact details but not of when you might make a phone call that you might need to refer back to at some time in the future?
- Henry Yeah, you write down the contact details so you can use them because I can’t remember the phone numbers. You write down phone numbers to remember them.
- Roy But you have also noted down the dates that you gave that telephone number and might it not have been the—

- Henry I know that from my records as to when I contacted her.
- Power Mr Henry could we just let Ms Roy finish the question.
- Henry Sorry I thought I was still answering the question before.
- Roy How many times did you speak to Mr Glenn? Was it just on that one occasion?
- Henry Once is all I can remember.
- Roy So you've only contacted him once to ask for a \$100,000 donation. Did you ever email him prior to the 14 December emails that we have been talking about?
- Henry Not that has been found.
- Roy So you have no record of any of those things. The only thing that you have a clear record of is the fact that you gained the contact details on 22 November?
- Henry Yes.
- Fairbrother Mr Henry my questions relate to these emails again, and do you have copies in front of you? You have copies of the emails for 14 December in front of you?
- Henry I've got my copies, yes.
- Fairbrother The intitlements in the sign-offs seem quite different. The first email at 13:40 is from Brian Henry to Owen Glenn but you don't have a short name for Owen Glenn. You typed the whole email in, and you put a signature at the bottom. The email at 14:24 has Owen Glenn as a contact book name but no signature at the bottom. May that have been from your secretary's machine—computer?
- Henry They have all come from my computer. I have seen the difference in these emails and quite frankly I can't explain it. When I first saw this email it was a real concern to me because the two emails—the top one in my case—the one at 13:40 and the one at 2:24 are chalk and cheese. As I say I've got no memory of sending this email but all I can say is OK it's in my machine, I must have sent it. I've got to accept that.
- Dalziel It seems to me that you and Mr Peters both are accepting that a conversation must have taken place between you because the evidence tends to support that, and you say that you have found a call that you understand came from Winston Peters' Tauranga office on 14 December, is that right?

- Henry I don't know if it's from the Tauranga office but he found the records, I believe, when he was in Tauranga, but I accepted that it had been Mr Peters long before he found the call. What happened is I formed the view if Mr Peters hadn't talked to Owen Glenn at 1.30 then it had to be the other client. As soon as it came out, because Owen Glenn changed his story and said no he called Mr Peters, then it had to be Mr Peters that called me. So we discussed it and he then went to hunt through his records and my understanding is he found a record that he called me but I don't know where it was he called me from. You would have to ask him. He rang me and told me that he had found a call and those were the times, which was 1:33:20 for 6 minutes 10 seconds.
- Dalziel It sounds as if it was from his mobile but we understand that he was in Wellington that day, so that's fine.
- Henry It is just where there the record was I think is the issue, not where he was. He was in Tauranga when he found that, so that is my understanding, but I could be wrong on that.
- Dalziel No I had just noted down Tauranga and it didn't add up to what we already knew, so thank you for that.
- Henry You would have to ask him to confirm that but it was my impression he found it when he was in the Tauranga office.
- Dalziel Is it possible that Winston Peters told you that Owen Glenn had asked for your details without knowing what it was for?
- Henry That is possible. I don't think so. The way the email is done, it is to me a memory jog and a memory jog, but I have no recollection of him saying Owen Glenn wanted my details. It does happen that you get work referred to you by clients. Winston is a source of work to me.
- Dalziel Is it possible that Owen Glenn was contemplating a contribution towards the \$100,000, which might explain his reference to \$70,000?
- Henry People do funny things when you seek donations. You tell them how much you need and some think \$20 helps you and some realise that the full amount is better. Donors—yeah, look, he may have thought I'll give a part, all those things could have happened, but I have always consistently been asking for \$100,000. That is the target we had to reach. I would have taken any contribution below that towards the fees, but no one has ever suggested to me that there was a \$70,000 donation coming from Mr Glenn. I have always understood it was the full 100 or nothing.
- McCully Mr Henry, just one thing I wanted to dwell on. Looking at the facts that we have before us, we have got a record of a telephone conversation, Mr Glenn to Mr Peters at 1.26, a call from Mr Peters to yourself at 1.33, and then your email at 1.40 to Mr Glenn. I just want to read the words, which state, and I appreciate you told us you can't recall sending this email:

“Further to your discussion with my client at 1.30 nzt I provide my bank details as” and then you’ve got those listed. Looking at it in the light of the facts I have described to you, that email seems to state quite plainly words to this effect, “as a consequence of the conversation between Mr Peters and yourself, I am providing my bank account details”. I would like you to tell me if you accepted that is what those words mean, or would you have a different interpretation of those words?

Henry The standard wording I’d use if I was told by a client that something was happening would be “as requested” or “as instructed”. Why I think this is a memory jog to Mr Glenn is “Further to your discussion with my client at 1.30”. I am telling him that I know he has had a discussion with my client, and I am sending him my bank account details saying “Hey, I’m still here, are we going to get a donation?”. And I believe that had Mr Peters—there is two things—had Mr Peters said to me “Owen Glenn is going donate \$100,000”, he and I would have had an altercation. The second thing is that I would have recorded that in my email because if someone is committed, you commit them in writing and try and morally encourage them along. I haven’t done that. All this has done is said “Hey look I’m still here, here’s my bank account, am I getting a donation?”. That’s what I believe this email is and that’s why I believe it is in what, to me, a very, very unusual format.

McCully The email refers specifically to a telephone call at 1.30 New Zealand time. We know from the telephone record that the person that Mr Glenn was communicating with was Mr Peters at 1.30 and the words “Further to your discussion with my client” seem to suggest a causal link between the supplying of the bank account details and the conversation with the client. Do you not accept that on the face of it—again you have emphasised that you have told us you don’t recall this email—but do you not accept that on the face of it, the words “Further to your discussion with my client” suggest a causal link between supplying those bank account details and the discussion that took place with Mr Peters?

Henry I would hope if you have listened to my evidence you will hear that I’m saying there is a clear causal connection. What I am saying is that Mr Glenn has a phone call with Mr Peters. Mr Peters has a phone call with me. That phone call jogs my memory to follow up on Mr Glenn, and this is my following up on Mr Glenn. The reason I say it’s a memory jog to him is I haven’t used words “as requested”, “as instructed”, which is the standard thing lawyers use. What I have done is I am saying “Hey I know you have just had a call with my client, here’s my bank account, what’s happening?”—you know, I’m still here. It’s a causal link. There is no question that one has inspired the other, has inspired the other. The difference in the causal link you are trying to argue for is that Mr Peters said “Yep, Owen, a hundred grand is what I need.” Owen Glenn said “Yeah I’ll do it, get Brian Henry to send his account details through.” That to my knowledge and belief isn’t what happened. My knowledge and belief is that I had a discussion with Mr Peters, he has reminded me of Mr Glenn. I have done a memory jog to Mr Glenn, and all I am trying to do in that email is

- tell Mr Glenn, “I know you have talked to my client, I am still here.” It is just a matter of what causal link there is.
- Jones Mr Henry, first of all as regards to the Tauranga petition itself, on what date was the judgment given?
- Henry I don’t know. I can’t remember.
- Dalziel 15 December—the day after.
- Jones Was it 15 December?
- Henry I don’t know. I went to Australia on the 20th and the decision was out by then.
- Jones So as at 20 December, when you went to Australia, you had done the work for the Tauranga petition for free because you had no money, had you? It was for free?
- Henry Yes, that’s right.
- Jones As far as this figure of \$70,000 is concerned, Mr Glenn in his evidence on page 5, and his statement, raises this figure of \$70,000. Are you certain you only discussed \$100,000 with him?
- Henry I don’t try and discount the costs so I don’t believe I discounted the costs. I could have, I don’t believe I did. My only memory with Mr Glenn is the discussion about him supporting Labour and then the discussion about the stability of the Government, and I believe that was referencing Mr Downer’s comments in Australia.
- Jones Are you saying—
- Henry I have never said to anybody it’s 70. I have always said 100. But people do offer you parts, which I have taken.
- Jones Are you saying the figure of \$70,000 is something which Mr Glenn has created himself?
- Henry I don’t know.
- Jones The third issue is the emails, and looking at your email of 14:24:21 that has the details on it, and looking at Mr Glenn’s version of it, 14:24:21 said: “The account is the B P Henry - Practice a/c at the ASB Bank Remuera Branch Regards”, there is no detail of any person who sent it in Mr Glenn’s one.
- Henry Mine ends “Regards Brian”. My copy ends “Regards Brian”.
- Jones So that’s been left out of Mr Glenn’s email—that’s for the record.

- Henry I haven't seen Mr Glenn's email, but my email reads "Apologies; The account is the B P Henry - Practice a/c"—which is "a" slash "c"—"at the ASB Bank Remuera Branch Regards Brian".
- Cullen Mr Henry, if you had never met Mr Glenn before, never had a conversation with him before, would you have signed off an email as a lawyer in that informal fashion, "Regards Brian"?
- Henry I wouldn't if I hadn't talked to him, no. My memory of Mr Glenn is he is a very affable man. He was very affable to talk to.
- Jones Looking at Mr Glenn's email—Dr Cullen has taken my point—looking at Owen Glenn's email of 14 December at 14.20, he also refers to you as Brian. Isn't that the discussion, or email, from someone who thinks he has met you already?
- Henry As I said, Mr Glenn, I believe, is very affable.
- Power Mr Henry, that concludes the questions from the committee. Thank you for your attendance today.
- Henry Can I raise one last matter, and it's always the favourite one of lawyers, and I am a lawyer. In this issue there is another thing, which is the burden of proof. These are serious allegations that are made and it is accepted practice throughout the common law countries that the burden of proof, the more serious, the higher the burden has to be. I would just simply say as a lawyer, and remind the committee, that when the committee is making its deliberations, it has to take into account the rules of natural of justice that you referred to Mr Power at the outset, and the most key of those rules is that the burden of proof rests always on the prosecutor, particularly when the allegations are serious and it follows through from there.
- Power Mr Henry, I can assure you the committee is receiving substantial amounts of advice in those regards. Thank you very much for your appearance today.
- Henry Thank you.

conclusion of evidence

Appendix M

Corrected transcript of evidence 18 September 2008

Members

Simon Power (Chairperson)
Hon Dr Michael Cullen (Deputy Chairperson)
Gerry Brownlee
Hon Lianne Dalziel
Hon Peter Dunne
Russell Fairbrother
Te Ururoa Flavell
Dail Jones
Dr Wayne Mapp
Hon Murray McCully
Dr Russel Norman
Heather Roy
Hon Paul Swain

Staff

Mary Harris, Clerk of the House
Tim Workman, Clerk-Assistant (Legal Services)
Catherine Parkin, Clerk of the Committee

Stephen Kós QC, adviser

Witness

Rt Hon Winston Peters

Power The committee has given leave to receive evidence from the Serious Fraud Office in private. Under the natural justice provisions in the Standing Orders, we have made this evidence available to you and to Mr Henry, and have given you an opportunity to respond in writing and by appearance before this committee. You have asked to make that response public. Standing Order 239 provides that a response made under that Standing Order must be heard in private, if the original allegation was made in private evidence. We reminded you of this in our letter to you of 16 September.

Having received the material from the Serious Fraud Office in private, we will hear your evidence in private. The committee decided to receive the material in private to ensure both you and Mr Henry had an opportunity to put your evidence before the committee prior to the matter becoming public. The committee believes it is in the interests of natural justice to you

to follow that course of action. You have a choice now whether you wish to give us your evidence in private; if so, I will remind you that we wish to hear only of matters relevant to the inquiry. We consider that the matter raised by the Serious Fraud Office is related to the subject of the inquiry. More general issues about the Spencer Trust, or other matters under investigation, don't seem to be within scope. Do you wish to proceed to give evidence to us?

Peters Well, Mr Power, it has always been my view that these hearings should be heard in public, and I do not think that it advances the cause of justice for this to be a secret matter. That is why I wish my evidence to be heard in public, and the evidence I've got relates to the SFO, and you surely do not expect me, when my contention will be that they have acted dramatically ultra vires their powers, to do this secretly.

Power Well, Mr Peters, the committee has resolved, in accordance with the Standing Orders, to hear your evidence in private. Do you wish to proceed to give your evidence—

Peters No, no—

Dalziel Can you explain what private means?

Jones Point of order, Mr Chairman. In private, not in secret. This is in private.

Power It's in private, Mr Peters, not in secret. So that means in private—the evidence upon reporting the matter to the House would become available.

Peters Well, I want to raise with you that, because you've made a decision around my testimony, and you seek to, you say, protect me by having it in private and in secret. With respect, I never asked for such protection; I wrote to you and I asked you to hold this hearing, where I am concerned, in public. So if you seek to protect me it is not with my request, and I think it is diametrically opposed to the cause of justice in this country.

Power Well, sir, I am bound by the Standing Orders, and the Standing Orders make clear under Standing Order 239 that where the committee has received evidence in private, which it has, then any evidence brought by the person subject to that particular matter who wishes to bring evidence to the committee also has to be heard in private.

Peters With respect—and you're a lawyer; you know this—if you have improperly received evidence in private I am not caught by that Standing Order.

Power Mr Peters, you're entitled to make whatever statement you like in your submission.

Peters Well, you know the principle of not being able to pick the fruit off the forbidden tree. It's a well-established, century-old principle in law. Now

- you've got someone who's acted illegally, and you're saying that you can rely upon that action to preclude me being heard in public.
- Power No, that's not what I'm saying at all Mr Peters. I'm saying I'm relying on the Standing Orders as I have taken substantial advice this morning on, after receiving your letter. The Standing Orders make it clear that you have an opportunity to respond but that that evidence must be given—
- Peters Well, can I—
- Power —no, let me finish—that the evidence must be received in the same capacity to which the original evidence was received by this committee. Mr Peters, that evidence was received in private. Do you wish to proceed to give your evidence in private?
- Peters But you get my point, don't you? My evidence is not in breach of the law.
- Power Nobody's suggesting it is.
- Peters The SFO's is.
- Power If you wish to make that point in your testimony, you're welcome to do so, but I'm asking you now: do you wish to proceed?
- Peters Do you mind if I have my staff with me? They've worked on this. They've got the material—
- Power Yes, I understand there's no problem with that. I've taken advice on that. Your staff can come in, provided they understand the nature of the evidence being given, Mr Peters—that it is in private.
- Peters I'll make it very clear to them when they come in, and perhaps you could yourself.
- Power Thank you, Mr Peters. So you elect to proceed?
- Peters Yes, I do not, obviously, want the evidence in secret.
- Power No, it's in private.
- Peters I'd like it on the record that I requested it in public.
- Power Your letter has been tabled to the committee. Before you start I do have, under the Standing Orders, to read a couple of statements from the clerk, and I'll do that once your staff and Mr Jones return.
- McCully Point of order. I think in fairness to Mr Peters we should make it clear that the committee has had some discussion prior to the arrival of Mr Peters about the position it finds itself in, having received the information in private, because it had no option to do anything with any information it received in secret. I think it's fair to say that some of us are troubled that if

we allow events to take their natural course from here, then the material that we have supplied to you becomes public when the report of the committee is tabled in the House. I think, in fairness, Mr Peters should be asked or given the opportunity also to comment on whether he would urge the committee to follow any particular course with the information that it has received from the Serious Fraud Office.

Power I'm sure he'll do that.

Peters I am sorry? The acoustics here are so bad.

Power Yes, they're shocking. If everyone moves their mikes—because there's no media we can just talk straight without them; it makes it much easier.

McCully The procedural advice we received is that while we could not receive something in secret and then downgrade it to private after we'd received it, it is possible to follow the alternative course: to receive something in private and subsequently decide to reclassify it as secret. So that was the reason—

Power You might want to address the committee on that issue, whether you want it to be available.

McCully And some members of the committee have suggested that it would be in everyone's interests for the materials supplied not to be automatically released when the report is tabled. I just wanted to make sure that Mr Peters understood that that matter is before the committee in case he wants to comment on it.

Norman Point of order. I'd just like to add that some of us are of the view that the SFO evidence should be made public, as well as having your evidence in public. So let's be aware that it's not just—

Peters Mr Norman—

Power Hang on. Let's just hear—

Norman I think it should—

Peters I agree with you entirely, but here's my point. One of the officers of this committee communicated with the SFO. I don't know whether this committee allowed that to happen or authorised it, but the letters from Mr Liddell clearly indicate that an officer of this committee contacted Mr Liddell of the SFO. At that point—and look at the law on this matter, particularly section 39 of the Serious Fraud Office legislation—it is a serious action of the highest order.

Power Let's read the card I'm required to read, Mr Peters, and then we'll proceed with your evidence, and you're welcome to canvass those matters that you've alluded to in your pre-emptive statements.

So as chairperson of this committee, when it comes to the issue of private evidence, I am required to inform you as the witness: firstly, the evidence will become publicly available when the committee reports to the House under Standing Order 219(3). Secondly, if the evidence contains material that may seriously damage a person's reputation, and this material cannot be returned, resubmitted, or expunged, it will be made available so that that person will also have a right of reply—Standing Orders 235, 236, 237, 238, 239.

As chairperson, I am required to inform committee members and all other people present of the following: having given leave to hear this evidence in private, you—that is, everybody present in the room—may not disclose it outside this room until the item of business is reported to the House under Standing Order 219(3). Secondly, premature disclosure of private evidence could lead to a finding of contempt under Standing Order 400(p). Mr Peters, the floor is yours to give your evidence.

- Peters First of all, look, you've got the information before you where I address, first of all, Mr Glenn's letter of the 17th—his new evidence before the committee. I'm not going to go over that now, other than to say I put in my rebuttals to that. I also refer to 27 pieces of evidence where Mr Glenn is seriously conflicted, and in particular to item 10. I want to make something very clear to you: the constraints—
- Dalziel This is Mr Glenn's letter—35.
- Power Have you got a document that's referring specifically to that, Mr Peters, that we—
- Brownlee We haven't got it. What number is it?
- Jones Mr Chairman, can I help you? The staff are just circulating it.
- Dunne Mr Chairman, can I raise another point of order? The evidence that we've invited Mr Peters to give relates to the material that was circulated to him following the receipt of the material from the Serious Fraud Office.
- Power I got the distinct impression from the way Mr Peters was starting that he was making a passing reference to that issue and then was moving on to—
- Dunne I just want to be clear that this is not—
- Power No, no. I got that distinct impression from him.
- Peters Well, if I can help Dunne out here, what has happened is that the 17th of September letter from Mr Glenn has been sent to me, presumably so that I can respond to it, and I just want to pass by it quickly in that response.
- Power You're welcome to pass by it quickly.

Peters But my point in particular, if you go to No. 10, and this is what's important here, is that we've operated under enormous constraints in the sense of time. I had for my second lot of evidence exactly 7 hours after the transcript came to me to prepare in what is a very serious matter. I have never seen a court of law where you have to act with such enormous speed in an impossible circumstance where you can't logistically get the research done, and there are 11 outstanding phone numbers that we're working on with respect to Mr Henry, and we're going to go on with that, because I believe I will find that record.

The other thing I want to refer to is that on 20 December 2005 there was an email to Brian Henry, which requests: "Please confirm to me that funds are received okay". It appears to me that the committee has missed it in what it's significance is, because it's point 23 on my document. However, I just want to close, before I pass on to the SFO, by saying that the committee is asked to believe that on 14 December Owen Glenn phoned me so I could ask him for money, and I'm just saying to you that that proposition is preposterous. Mr Glenn's evidence contained 27 totally conflicting statements, which begs the question: why would any fair hearing find Mr Glenn's evidence more compelling than mine?

On the SFO, first of all—

Power The document you're referring to is the one that commences: "1. Background to SFO". Is that right?

Peters That's right.

Power Thank you.

Peters The first thing I want to say here is that in the material you sent to me the other day there was a letter between the director of the SFO and yourself. Why wasn't that letter sent to me? It was not sent to me by the clerk of this committee, and I regard that as very, very serious.

Power It was a letter to me, Mr Peters.

Peters Well, it was given to all the other committee members, I understand, so why didn't I get it? I'm a witness before this committee.

Power Proceed on with your testimony.

Peters Well, it's a request for someone in the future—

Power Noted.

Peters —that those sorts of omissions are rather dramatically serious, because there is evidence in there which I need to know.

Power Please continue.

Peters Let me say this: The New Zealand Serious Fraud Office is a department established to detect, investigate, and prosecute cases of serious and complex fraud. It is an office which depends heavily upon the discretion of the director, who is bound by the SFO Act 1990. If you look at their NZSFO website, this is what it says: “It is an important constitutional principle in New Zealand that decisions by law enforcement agencies on the investigation and prosecution of individuals should not be subject to political control or direction.”

The SFO Act provides that “in any matter relating to any decision to investigate any suspected case of serious or complex fraud, or to take proceedings relating to any such case or any offence against this Act (the SFO Act), the Director shall not be responsible to the Attorney-General, but shall act independently.” That is a quote from the Act. The SFO is an organisation designed to act within strict statutory guidelines. Its objective examination of cases is intrinsic to the fulfilment of its purpose. As an independent body it can investigate serious acts of fraud which may be of public interest and concern without the real or perceived risk of political interference or direction.

The current SFO investigation: The Serious Fraud Office announced an investigation into New Zealand First on 28/08/08. This investigation coincided with an investigation by the Parliament Privileges Committee. These two investigations were, however, completely separate matters, as was made clear by the SFO director Grant Liddell, and I quote him: “I want to make clear that matters that the Privileges Committee is considering and any possible issues of failing to report donations as required by the Electoral Act are not part of the SFO investigation.” That is Grant Liddell, the head of the SFO, *New Zealand Herald*, 29 August 2008.

Mr Liddell was correct in this statement. It is constitutionally important that these investigations are kept separate. The Privileges Committee operates under rules of the House—Standing Orders. Its members are members of Parliament, and this process is—

Brownlee Point of order. Where is all this going? We’ve spent hours on this stuff. All we want to know here, essentially, is some explanation of the wiring diagram. We’re not interested in all of this stuff; all we want to know is was there a gift to you and did you declare it or not? It’s pretty simple.

Peters With the greatest of respect, Mr Brownlee—

Brownlee If you’re challenging the evidence we’ve got in front of us, then you’re out of order.

Peters With respect, I am not going to come here as a witness and develop my evidence in a vacuum. That’s the one fundamental principle of law that everybody associated with the law should know. And you ask me to come here, ignore this process—

- Power Right, I'm going to rule now. Mr Peters, please continue.
- Peters Thank you very much. Where was I?
- Cullen Mr Liddell was correct in his statement.
- Peters Mr Liddell was correct in his statement. It is constitutionally important that these investigations are kept secret. The Privileges Committee operates under the rules of the House—Standing Orders—its members are members of Parliament and this process is transparent for issues of public interest and fairness, despite the partisan composition of the committee. The SFO's procedural integrity is ensured by its independence and statutory guidelines.

Mr Liddell has approached Simon Power in a letter 16/09/08, offering information that he has. Through its approach and supply of materials obtained in the course of its investigation to the Privileges Committee, and in contradiction of its own stated objectives in matters being investigated, the Serious Fraud Office has violated its independence and separation from the political process. The SFO has violated an important constitutional principle in New Zealand—the separation of powers. It is a breach of the rules of its own existence—the Serious Fraud Act 1990—and it is acting outside its powers, in that sense. The SFO in acting ultra vires of their powers has meant the well-established principle you cannot use the fruits of the forbidden tree—understood by every lawyer—has occurred here. Even actually, in the classical sense, illegally did that, with all the consequences that then followed.

Surrounding Facts: The proposed Serious Fraud Office (Abolition and Transitional Provisions) Bill repeals the Serious Fraud Act 1990 and disestablishes the Serious Fraud Office. The functions of the Serious Fraud Office will, if adopted, be taken over by the Organised and Financial Crime Agency of New Zealand, which will be hosted within the New Zealand Police. The bill was referred to the Law and Order Select Committee on 20 May 2008. The majority recommended that it be passed with amendments; the minority—the National Party—opposed it.

Following this decision a staff member of the SFO anonymously contacted Ron Mark MP, the chair of the Law and Order Select Committee, expressing concern over the failure of the SFO and condemning the role that New Zealand First played in the decision to abolish the office. Although this letter is unsigned, the envelope is postmarked from the SFO, and the contents reveal details of the understandable atmosphere within the SFO. Mr Mark is prepared to hand the original letter to the SFO or police for forensic examination or interviews with SFO staff members. The letter is included in this submission, but here are some extracts: "...the abolition was orchestrated from the start was plainly dishonest, with your committee lined up at the end to rubberstamp it." And a further quote: "The most clever of our corporate crooks will relish the return to the halcyon days of

the 1980's.”—extracts from those letters, but the full letter is there for you to see.

Seven days after this letter was received, an investigation was officially launched into New Zealand First regarding donations from Bob Jones and the Vela family. It should be noted that neither Mr Jones nor the Vela family reported any concern or complaint to the SFO.

The SFO investigation was clearly laid out by Mr Liddell. On August 28 he states: “... the SFO will inquire into the issue of donations made to the New Zealand First Party, in particular the allegations that funds donated to the NZ First Party by the Sir Robert Jones and Vela family interests did not reach their intended destination.” He goes further: “I have decided on the information currently available that I do not have a basis for using statutory powers to inquire into allegations that Mr Glenn’s donation was misapplied ...”. And further: “At present there is not enough material to give me a ‘reason to suspect’, in terms of the statutory threshold, on these two matters. The case of the Glenn donation, it is clear from both Mr Peters’ and Mr Glenn’s accounts that the money was donated for Mr Peters’ legal expenses.” Further, “I want to make clear that matters that the Privileges Committee is considering and any possible issues of failing to report donations as required by the Electoral Act are not part of the SFO investigation.” Further, he says: “Should the scope of the inquiry be substantially broadened, I will make a public statement.”—end of quote.

The SFO is therefore focused on the issues of donations as outlined, and will not be looking at matters to do with the Glenn donations that did not meet the statutory threshold. The SFO said it would make a public statement if it broadened its inquiry. It has not made any such statement.

The legal issue: Mr Liddell invoked his discretion under 36(2)(e) of the Serious Fraud Act 1990. They are all laid out in that legislation before you in my document. But Grant Liddell claims that the committee has proper interest—your committee, that is, has proper interest. The term “proper interest” should be defined within the context of the Act, which makes reference to the courts and judiciary. The Act does not apply and can’t apply to the Privileges Committee, which operates outside the courts and judiciary. More importantly, Mr Liddell does not address the fact that section 36(2)(e), on which he claims to be responding, is subject to sections 37 and 39.

Now, you know that section 36(3) is subject to sections 37 and 39 of this Act. Section 37, of course, is to do with Inland Revenue matters and is not an issue here. But look at 39—“Secrecy of information protected under other Acts (1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to any information which is protected under any Act”—that’s the tax matter. But then you go on: “(2) Notwithstanding subsection (1) of this section or anything in the Act that protects the information,—(a) Any member of the Serious Fraud Office may disclose

any such information to any other member of the Serious Fraud Office for the purpose of investigating or prosecuting any offence involving serious or complex fraud; and (b) The Director may disclose any such information, or authorise any other member of the Serious Fraud Office to disclose any such information.”

But here is the key point. It is set out in 1, 2, 3, 4: “(i) With the consent of the person ...”—that is number 1. Number 2: “(ii) To any Judge for the purpose of ...”. Number 3: “(iii) To any person commencing or conducting any proceedings relating to any suspected offence involving serious or complex fraud:” or “(iv) To any Court hearing any proceedings relating to any suspected offence involving serious or complex fraud.” Then it sets out the penalties.

Mr Liddell, I submit to you, has seriously misused his discretionary powers under section—there’s a mistake there, it should be “under” not “u-n-d”; there should be an “e-r” on it as well, please. Mr Liddell has seriously misused his discretionary powers under section 36(2)(e), which is subject, as I point out, to section 39, and he has no safe haven from that. This committee is not a judge. This committee is not a court. This committee is not hearing any proceedings relating to any suspected offence involving serious or complex fraud.

Now, the basis of the Privileges Committee you know—and it is set out for you and I won’t repeat that paragraph. But the Privileges Committee is operating within a narrow scope. You, yourself, have said to every witness and under Standing Order 225 on 9 September 2008: “The matters referred to this committee by the Speaker are very limited. The committee has two allegations of contempt before it: that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a gift of \$100,000 from Mr Owen Glenn; and that the Rt Hon Winston Peters failed to disclose as a pecuniary interest a debt and a discharge of part or all of \$100,000 from Mr Owen Glenn. What is at issue is the issue of a donation or gift. What is in dispute is when Mr Peters became aware of it all in the time frames under consideration of the payment.”

On page 52 of my evidence before this committee, Mr Fairbrother raises a point of order and asks a question. Mr Fairbrother said: “Point of order. First is the \$40,000 court costs ordered on the failure of the petition in Tauranga, is that part of our consideration?”, and your answer, Mr Power, as chairman of this committee, and in line with the terms of reference, was “No.” The Privileges Committee is concerned with a narrow investigation, therefore, of two counts of contempt. They have explicitly ruled out investigations into the \$40,000 court costs. That’s what we have all been told.

Now, on information supplied to the Privileges Committee. The Serious Fraud Office has supplied this committee with a payment path showing that a quantity of money went from the Spencer Trust to Brian Henry, which

seems to show payment of the legal costs for the failed Tauranga petition—and there it is on that wiring diagram. Spencer Trust, arrow to Brian Henry Beneficiary: New Zealand First (Peters). Then it goes Brian Henry, hyphen Peter Kiely, National Party Beneficiary: National (Clarkson). The money tracking diagram is misleading and does not adequately reflect the money trail.

If you look at the itemisation set out down that page of this document—if you could just find it for me, please. If you look at this wiring diagram you will see the critical facts there about quarter of the way down the page. After the Spencer Trust and before Brian Henry it should show the transfer to Thompson Wilson—5ASB batch transfer to Brian Henry ASB account. Then ledger BH payment to the National Party. I make this point: it was to the National Party, not Clarkson. What it also shows is that money from Brian Henry went to Keily Thompson Caisley to the credit of the National Party. This reveals that the National Party paid for Mr Clarkson’s court costs. This was not declared in Mr Clarkson’s pecuniary interests as either a debt or a gift in 2006 or 2007—see the copy of pecuniary interests attached to this document. This then shows that both Mr Peters and Mr Clarkson are in the same position as is the Hon Nick Smith—that should read “as is the Hon Nick Smith”. Now, the Serious Fraud Office has inadvertently, quite by accident, I’m sure not on purpose, defended Winston Peters’ position in this committee that no declaration was needed. It’s all there.

So, in summary, this inquiry is driven by media speculation.

- Power Oh, Mr Peters, we don’t need this. This bit’s not relevant. I don’t want to have a discussion about how this committee’s been driven.
- Peters No, no, with respect, it is relevant because those are the precise words that Mr Liddell used for beginning this consultation and communication and connection with this committee.
- Power OK. Well, I’m not going to allow dispersions to be cast on the individual members on the committee. So carry on, but please bear that in mind.
- Peters Well, yes, but before you rush to judgment, please—I have looked at the evidence. Mr Liddell gives as his excuse for being in contact with you that it’s media speculation he is motivated by.
- Power Well, all I’m saying is—
- Peters Do you want me to recite it for you? I’ll find it.
- Power No, no. Carry on, but just be mindful. We don’t want to get into this.
- Peters Well, as long as it’s not contested. The case is being judged by the media and by my political foes. Here’s one example of trial by media-politics. Mr Liddell put it out there. Commentator and radio personality Bill Ralston, who sparked a defamation case by me before he was sacked by TVNZ, has

daily abused me in three different media: print, radio, and television mediums. His partner, Janet Wilson, is the media trainer for the National Party's leader, John Key. You should know that. That's the environment in which I'm trying to operate. Yesterday I was forbidden by you to talk to any person about the SFO material. Don't you understand what an impossible position that puts me in? If I can't talk to anyone, how can I come here and give you the answer to the question that Mr Brownlee was so keen to put when I started here?

Power Mr Peters, I can assure you that at all times I have taken extensive advice on the Standing Orders, and it was my responsibility to make sure that not only I follow them but that the committee members do, as well.

Peters Yes, but I'm trying to get you to understand my difficulty. If I can't talk to anyone other than a lawyer whom I'm employing—and I have—then how do you expect me to be able to answer your questions?

Power All I'm saying is my job is to make sure the committee follows the Standing Orders, and I've been doing that.

Peters Well, let me go on then.

Power Please do.

Peters The Serious Fraud Office is granted absolute power in its investigations, and this is a classic case of who watches the watcher. It acted *ultra vires* and violated important constitutional principles for its own ends. I have tendered Mr Peter Williams QC's opinion of 18 September 2008 with this information. The SFO director Grant Liddell is aware that the Privileges Committee acts under Parliament's Standing Orders and not within the independent judicial system. It is, after all—and none of us seek to deny it—a partisan group of members of Parliament. But the SFO director volunteered information to the committee on the basis of media reports. Those are his own words. The committee must be aware that this is a submission of an organisation acting outside its powers and previously publicly stated parameters at the time when the survival of that organisation rests on first: its investigation into New Zealand First lasting beyond the dissolution of Parliament, meaning the SFO disestablishment bill is unable to be passed before the election; and second: the National Party forming the next Government, as it has publicly stated it was extremely concerned about the disestablishment of the SFO and described its disbandment—in your own words, Mr Power, on 26 May 2008—as a “folly”.

Staff members in the SFO felt a sense of betrayal that New Zealand First's Ron Mark did not support them during a hearing of the Law and Order Select Committee; they told him this. And here it comes: a week later the SFO announced an investigation into political donations to New Zealand First, without having received any complaint about them, without having talked to anyone in New Zealand First, and except for getting a complaint

from a political foe of this party. This inquiry, in my view, has been a travesty of natural justice driven by politics, with no attempt by some members—and I thank those who do not fit this description—to be impartial, neutral, and fair. You’ve seen the telephone books of interviews and comment made before I even got here, and during when I was here, by certain members of the committee. It has become a kangaroo court—

Power No, no, no. It has not become a kangaroo court.

Peters Well, look, Mr Power, you’re a lawyer and you were before you came here.

Power Yes, I was.

Peters Where have you ever seen in any court—and I can give you court case after court case—where a judge has made so much as three words and a comment, and has had the trial turned over by an appeal?

Power Mr Peters, I can assure you that as chairperson of this committee—and I’m sure that every member of this committee will support me—I have done my utmost to make sure the Standing Orders are followed at all times, and I resent the comment that it’s become a kangaroo court. It certainly has not.

Peters Well, let me ask you: what steps did you take to stop—

Power No, no. It’s not a question of you asking me anything.

Peters Well, I want to make this statement. No steps were taken to stop what is effectively sub judice comment being made in any and every other forum outside of here, and by members in this committee, and by the original complainant to this committee. Are you going to deny that that happened? Because I have never seen, in my long time in Parliament—and on this committee a long time—anything like it, and I don’t wish to be the victim of it.

Power Carry on.

Peters I would say this: the public of New Zealand are heartily sick of it. The SFO has joined the case after questions by Wayne Mapp MP, and I’ve been through it and dissected the previous transcripts, which provided an opening for it outside the terms of reference. Am I expected to believe this is entirely by coincidence? Not only is the SFO tracking plan deliberately false and misleading, nowhere does it highlight any fraud. I want to say this to you, colleagues: the Serious Fraud Office cannot find anything outside for their inquiry. That is why they have illegally resorted to enter this inquiry and jeopardise the standing of this committee with their ultra vires action.

I want to close by saying something about the way this inquiry is being heard today. There is a saying that justice must not only be done; it must be seen to be done. New Zealanders are being denied the opportunity of seeing that this afternoon.

- Dalziel I have a question around the money chain, because I didn't quite get how what's missing from the description or the picture. Can you just run that—
- Peters Well, if you look at that there, have you got that in front of you? Well, what they've sought to do is interpose the Spencer Trust, when they know full well, if they've got any forensic capacity whatsoever as an inquiry office, that it is Thompson Wilson that should be interposed there.
- Dalziel So that's Thompson Wilson's account—trust account?
- Peters Yes.
- Dalziel Thompson Wilson's trust account. And that's another law firm?
- Peters Thompson Wilson is a law firm, at which the Spencer Trust account was. But the ledgers will show not as the—and it's in that form here. They've got it in the description, but then they can't interpret their own information properly.
- Dalziel I see. So they've just called it Spencer Trust. But did the cheque come from the Spencer Trust?
- Peters Pardon?
- Dalziel Did the cheque come from the Spencer Trust?
- Peters Well, the Spencer Trust account was, as I understand it, in the Thompson Wilson accounts, but the transfer goes to Thompson Wilson trust account, then to Brian Henry. Why they would leave that out there, if they were being genuine, I don't know.
- Dalziel OK, but when the money went into the Thompson Wilson account, presumably they allocated it to an account. I mean, the money doesn't physically have to go into an account. Was it allocated to the Spencer Trust account?
- Peters Put it this way: it would go into an account, but there would be ledger records to account for it.
- Dalziel To the Spencer Trust?
- Peters Yes.
- Dalziel So technically it is correct to say that it was the Spencer Trust; what's missing is that it's ex the Thompson Wilson trust account?
- Peters That's right, and that's a critical step that they've left out.
- Dalziel When you say "credit of the National Party", further up that line, is that saying that the \$40,000 was paid to the credit of the National Party, and so the one thing that we're missing is to whether the National Party

- reimbursed Bob Clarkson in order to complete that chain that you've just put to us? If the National Party reimbursed Bob Clarkson, then your assertion that he left out the fact that the National Party were funding his private litigation—because, obviously, he was the defendant as you were the litigant taking the case—
- Peters But here's the point. The cheque leaves in circumstances and arrives in circumstances that are in reverse identical, and that's what they've left out, which is my point.
- Dalziel So in a way what you're saying is that you were in exactly the same position as Bob Clarkson. Yours was the New Zealand First action, but in your name because it had to be in an individual's name—it couldn't be in the party's name—and exactly the same on Bob Clarkson's side of the ledger. It was all paid for by the National Party on the basis that, really, he was defending the position on behalf of the National Party.
- Peters Precisely, but here is the point here. I just want to make this point. It cannot be in the name of any party where there's an electoral petition at an electorate level.
- Dalziel That's right.
- Peters And that's the reason why the member is a titular head of a cause, because there is no other provision for him to do it any other way.
- Dalziel Other people, individuals, could do it—I think Mr Jones pointed that out, that other individuals could do it. But it had to be an individual; it couldn't be a party.
- Peters No, because it's not recognised as being an action that can be taken by a political party unless it's for uncapped expenditure, over the limit. Those sorts of things can be taken by a party but there is no provision in law for an electorate to be contested as to the result.
- Power We are clear on that.
- Brownlee Just so I'm clear, what you want us to understand is that money from the Spencer Trust went to Thompson Wilson's account, was passed on to Brian Henry, and then passed on to Kiely Thompson Caisley to satisfy the \$40,000 court cost?
- Peters Well, there's the chart there.
- Cullen I've got confused again now. I thought the argument was the money went from you to Thompson Wilson account, Thompson Wilson to Spencer Trust, Spencer Trust to—

- Peters No. Let me tell you what I told the committee, what I told the committee when Mr Henry was here, and he said "I paid the cheque and Winston's never known that before."
- Power Have you got an amended version of the diagram in front of you? Your version of the diagram in front of you?
- Peters Well—
- Power With, you know, your own arrows and—sorry to put it so crudely, but have you got a—
- Peters Well, if you pull the diagram out I can tell you what you should write in. We could do it that way—better. In my words.
- Power So just start at the—
- Jones Mr Chairman, may I just approach you with the diagram.
- Power You want to table it?
- Jones Can I?
- Power Leave is sought to table the diagram. Is there any objection?
- Jones It's a rough thing.
- Brownlee Could he just tell us where to insert—
- Power Start us—where do we insert Thompson and Wilson?
- Peters Well, you see the Spencer Trust does not belong there in that diagram. It is Thompson Wilson that should be replacing the Spencer Trust.
- Power Where does the Spencer Trust box go, then?
- Peters It doesn't. This is account Thompson Wilson. It's in the—
- Fairbrother The narrative says Spencer Trust
- Peters The narrative says that.
- Fairbrother But it says Spencer Trust, as well.
- Peters Mr Fairbrother, I know what they put in, but they're wrong. That should read Thompson Wilson.
- Power Can I clarify, then? In the red box we've got that says Spencer Trust account, you're saying it should say Thompson Wilson trust account?
- Peters Well, exactly.

- Power Hang on, just so you can clarify. And then \$40,000 on 5 April directly to Henry, \$40,000 from Henry to Kieley Thompson Caisley for Clarkson.
- Peters Yes.
- Power And where does the—if at all—the Spencer Trust come in?
- Peters Because in this law firm you have thousands of accounts, and they just got one of them. There is no separate bank for the Spencer Trust or the bank for client A or D—this is a general solicitor's trust account. Now they'll—I don't know how many members here have been recently running law firms—but this is basically a simple internal accounting matter.
- Power But it's all ledger-based, right?
- Peters Yes.
- Dalziel So which ledger was—
- Power Yes, so which ledger was the—
- Dalziel It was sitting in the Spencer Trust.
- Power That's right.
- Peters Which ledger?
- Dalziel Yes. Whose name was it being held in the Thompson Wilson trust account? It was being held in the name of the Spencer Trust.
- Power It must have been.
- Peters Yes, because every cent you have in a law firm's trust account must have some name attached to it.
- Dalziel Correct. And we're just asking you—
- Peters So here's this trust account, which has in it thousands of items, and one of them is the Spencer Trust.
- Dalziel Yes.
- Peters As to the amount that they are entitled to be credited with.
- Dalziel That's right
- Peters But what they have left out of here
- Dalziel That's right

- Peters But what they have left out of here is the Thompson Wilson trust account, and that is inexplicable.
- Dalziel But the money was being paid into Thompson Wilson trust account to credit the Spencer Trust?
- Peters I will give you the easy answer. Did any cheque come from the Spencer Trust? No.
- Dalziel No, but we're not saying that. Listen to me, I am just doing the picture. The money came into the Thompson Wilson trust account. When it was in there, it was credited to the Spencer Trust.
- Power It must have been.
- Dalziel The money came out of the Thompson Wilson trust account and went to Brian Henry, and the Spencer Trust was debited by \$40,000.
- Peters You've got it.
- Power Right.
- Dalziel Right.
- Peters But what I am trying to point out is, if you look at the accounting time line and look at this chart, they've left Thompson Wilson out.
- Power Thanks, that's clarified it.
- Brownlee So my question is then, effectively on the diagram, between the Spencer Trust account which was debited \$40,000 by the Thompson Wilson account, we should place the Thompson Wilson account. So the effective flow of funds is Spencer Trust, Thompson Wilson, Brian Henry—
- Dalziel No, the other way around.
- Fairbrother Thompson Wilson.
- Dalziel Thompson Wilson first.
- Power That's right. Then Spencer Trust.
- Brownlee Oh well, Thompson Wilson, Spencer Trust, Brian Henry—
- Jones Excuse me—
- Cullen It's a ledger entry—
- Power Look, Mr Brownlee has the floor.

- Brownlee You don't have to tell me about how ledger entries work. There is a flow of where the money goes, all right? There's someone at the end of it who provides it, and someone pays it. So, essentially, it was provided—if you want to try and use these words—by the Spencer Trust?
- Peters That is what the chart says, but I just want to make this clear to you. You're asking me to give evidence here when I have not talked to the Spencer Trust. I am precluded from doing that, and I have never seen their accounts at any point in time, and will not be shown the accounts because I am not entitled to. Only one person is entitled to see those accounts, and that is the secretary for the party.
- Brownlee So are you uncertain about where the money came from?
- Peters No, you are asking me, who you have told cannot talk to the Spencer Trust, and I cannot either because of the law, or the rules of trust law, in this country, to be a witness here.
- Dalziel Did you pay some money to Thompson Wilson? Did you pay \$40,000 to Thompson Wilson?
- Peters Look, I don't know how much money I paid to Thompson Wilson.
- Dalziel No, but did you pay it for the purpose of reimbursing their—
- Peters No, but I thought at the time that because of the five actions I had, and the money I was paying to Brian Henry's instructing solicitor, that it would have come from there. That is what I told the committee from day one. Just as a matter of interest gentlemen, ladies, I actually paid out this week a couple of hefty sums in legal fees. There is nothing new about this.
- Brownlee I have got a pretty salient question to ask you, but I want to be clear first. Do you know where the \$40,000 came from that eventually was paid to relieve your court costs obligation to Keily Thompson and Caisley or other parties?
- Peters The answer to that is no, because I am not privy to the accounts.
- Brownlee Then why did you say in your speech on 20 August 2008—a publicly given speech—"Mr Henry said he paid the bill, so did Mr Peters. It turns out both Mr Peters and his lawyer were correct. Mr Henry paid the money to ensure the bill was paid on time and he was later reimbursed by myself."
- Peters Well, let me tell you this. Mr Henry, when he was advised by his office staff that he had misinformed the committee, or that what he had told them was only in part the truth, that he had made out a cheque all right, but what he forgot to say was he had been reimbursed. Although when he uses the words "Mr Peters", he was talking about Wayne Peters not Winston Peters. When I went public and said "Well it seems like I've paid him"—right—

- that was a mistake on my part but it was also a mistake that he didn't say which Peters he was talking about.
- Brownlee You have said in the—
- Peters It's a pretty extraordinary mistake.
- Brownlee Just before I asked you that question you said you don't know where the money came from.
- Peters That's right.
- Brownlee But in your public statement, your speech having a go at all and sundry about this case, you said that he was reimbursed by you.
- Peters And I have just told you that Mr Henry put out a press statement—
- Brownlee It's not about—
- Peters No, no, Mr Henry wrote to this committee and he said precisely that. What he didn't say was that he was talking about the wrong Peters. I took from his statement to you that I'd reimbursed him.
- Dunne This is the question I wanted to ask later but it is appropriate to ask it now. It is actually very relevant to this point.
- Brownlee What I am saying here is that it's hard to dispute the words in front of us "He was later reimbursed by myself." You said that. So where is the confusion over which Peters?
- Peters If you want to follow the evidence, Mr Henry wrote to this committee first and he said "My evidence to you on that score was not right.", because I'd contested it. I said I thought I'd paid it. If you go to the transcripts, he makes that claim and he said "Winston Peters has never been told." So when it comes to my testimony the same night, I say "Well, it's news to me.", and I think otherwise.
- Dalziel Yes, you did say that.
- Peters Because I've got family members and people helping me out here, and then Brian a few days later writes to the committee and says precisely what I've said, that he paid the cheque, he was reimbursed by Mr Peters. I took that to mean—and I am somewhere else in New Zealand at the time—that it was me.
- Dalziel Well, he thought it was you.
- Power No, no, Lianne, I am sorry. I apologise but we have a supplementary—
- Dalziel No, he needs to set that evidence—

- Peters Yeah, but he thought it was me.
- Dunne This is the question I want to ask.
- Peters Please can I tell you the circumstances. Mr Henry is overseas now—
- Dalziel Yes, he's given us a letter.
- Peters His staff say "Mr Peters reimbursed you".
- Dalziel No, he's got the letter in that explains it.
- Peters Yeah, I know, but he wrote the letter overseas.
- Dalziel Yes.
- Peters You see, he's not in his office. He's getting advice from his staff that Mr Peters did it.
- Dalziel He says: "In accordance with my evidence, which shows that I was reimbursed by Winston Peters, I was not asked for any further details on the reimbursement. My records show that I was reimbursed by a cheque from Wayne Peters' trust account. As far as I am concerned, this is a reimbursement to me by Mr Winston Peters, being his brother. Apart from this payment of \$40,000 I have never had any other dealings with the Spencer Trust."
- Peters What's the date of that? The 17th?
- Dalziel 17 September.
- Peters Yes, but look at the prior letter he wrote to you to correct his evidence. That is what I am referring to.
- Dalziel I understand that.
- Peters And that is the one that Mr Brownlee is referring to. But I accept the point.
- Dunne I have a very simple question. Does Mr Wayne Peters and Mr Currie work for Thompson Wilson? Is that the firm that employs them?
- Peters Mr Wayne Peters and Mr Currie worked for Thompson Wilson at that time, but not now.
- Dunne Not now, but at the time that we are discussing here, so that essentially Thompson Wilson/Peters-Currie/Spencer Trust were all operating out of the same stable, if you like. Is that right? We're talking about the same people?
- Peters Well, there's a third trustee, I understand. But yes.

- Dunne So part of the question as to which Mr Peters paid—
- Peters Yes, but the third trustee was not in the stable. He wasn't anywhere near the place.
- Dunne OK. Part of the difficulty over which Mr Peters paid is explained by the fact that Mr Wayne Peters is part of the law firm, or was part of the law firm, and was operating the Spencer Trust, which the law firm was representing, all in one go?
- Dalziel And that is when he says Wayne Peters' trust account. He means the Thompson Wilson trust account.
- Peters Mr Dunne, I am responding over here to Mr Henry's first correction to the committee shortly after he first appeared. Lianne Dalziel is reading me the letter of the 17th, which is his later submission. You will see the difference.
- Dalziel He has actually referred to the Wayne Peters trust account when he means the cheque was written from the Thompson Wilson trust account.
- Power OK, I think we have done a pretty good job across that.
- Peters No, no, can I just explain that. It is because Wayne Peters & Associates is a new firm in Whangarei now. It has been going for over a year, and that is where he's made that mistake.
- Power OK, we're going to finish with a final question from Dr Mapp.
- Mapp It's really following Mr Peters' question in fact by Mr Brownlee, and it is from your speech. I quote directly: "And he was later reimbursed by myself." I would have thought you'd come along here today and show how you reimbursed.
- Peters No, no. Look, you've got a letter in this evidence, and the Clerk will have it, of Mr Henry correcting the advice he had given the committee. Mr Henry was offshore when he wrote that letter, and he was offshore when he wrote a second letter on the 17th. The real point is Mr Henry's office contacted me to say Mr Henry has written to the committee and said that you have paid it, that I reimbursed Mr Henry. Now that is when I said that publicly. Mr Henry never corrected me on that because he was offshore and he has never seen any media comment to that effect. So you can see how a mistake could happen. I am asking you to go through the chronology of events, and I am sure you will see that it's fair.
- Brownlee What did you mean—
- Peters Oh, look, I'll say it one more time. Mr Henry tells the committee, and it's in his first letter, and he refers to Mr Peters having reimbursed him. I am not privy to that committee letter, but I am privy to a staff member saying "It's been corrected. Brian has put a statement out saying that you reimbursed

- him.” It’s on that basis I made those comments, because I was mistakenly misinformed by Mr Henry, who had put the thing out when he was overseas, the staff had told him the circumstances, they didn’t point out which Peters it was. Now Mr Henry changes his _____ because he’s had a chance to look at the accounts.
- Norman What is your current understanding of who paid the \$40,000 to Brian Henry, which paid the \$40,000 that was lost in the case?
- Peters My current understanding is that which has been set out here by the Serious Fraud Office, but in examining this document—this wiring diagram—and looking at their accounting, they missed it. They have misinformed the committee, and a picture is worth a thousand words. This picture is wrong.
- Norman But the Spencer Trust sits within the Thompson Wilson trust account?
- Peters Yes.
- Cullen And Mr Peters—Wayne Peters—presumably was a signatory to that account?
- Power On all of them. As you would be in a law firm that was operating—
- Cullen That’s right.
- Norman So your understanding is very close to this except that you would say the Spencer Trust sits within that Thompson Wilson trust account?
- Dalziel There isn’t a cheque from the Spencer Trust account because it doesn’t have its own cheque book.
- Peters It doesn’t have a bank account.
- Power That’s right, they don’t. It’s a straight ledger from the trust account.
- Jones Normal legal practice.
- Brownlee Did you personally pay the \$40,000 costs?
- Peters You know that the answer to that is no. But, hang on, my point is, it’s my knowledge now—it certainly wasn’t then, and it certainly wasn’t when this matter came up on the committee out of left field—I contested it then because I thought that I had. Your test here is knowingly—I am not making it up. That night I said “I don’t believe this seems right.” It is not belated evidence; it’s not evidence that’s been coached; I said so right then.
- Swain Should Mr Clarkson have declared that \$40,000?
- Peters Well, look, if I am required to declare—but mine is a question of knowledge, or not knowledge; not having it. But Mr Clarkson is not in a different boat from me, nor is Nick Smith. Can I have one question noted?

Is it going to be one law for Winston Peters and one law for everybody else?

Power We will consider the evidence in the way that you would expect us to, Mr Peters. Thank you for your appearance today. Just before you depart, could I say to everybody in the room I am reminding you all that this evidence has been heard in private and may not be disclosed until the committee reports to the House. Thank you, Mr Peters.

Peters Before I go, one question. It is to do with the procedures, because I think it is rather important. Tell me who is it, whose information here are you seeking to protect? I cannot see in those documents anyone who would want protection except the SFO.

Power Well, Mr Peters, that was the way the procedure went. Thank you for your appearance today.

Dalziel That's actually the point.

Cullen That is actually the point.

Peters I am very happy to give you an affidavit from anybody on that document now for disclosure. So I am asking again: why are you protecting the SFO?

Power The evidence was received in private so the response was heard in private. Thank you for your appearance today.

Peters Look, they are a corrupt body, they have shown you that.

Power Mr Peters, thank you for your appearance today.

conclusion of evidence

Appendix N

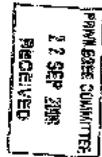
Response of Rt Hon Winston Peters

We received the following response from Mr Peters to our draft findings.



Mr Simon Power MP
Chairman
Privileges Committee
PARLIAMENT BUILDINGS

22 September 2008



RE: COMPLAINT – PETERS

A response in comprehensive form to the Committee's draft report is attached. Members are urged to read it, because it deals with serious developments which a possible majority of the Committee appear to entertain.

The matters referred to the Committee were both narrow and specific – was there a requirement for me to declare a "debt" or "gift" in the Register of Pecuniary Interests as a consequence of Mr Owen Glenn donating \$100,000 to Mr Brian Henry towards the Tauranga electoral petition?

The matter of "debt" was disposed of quickly by the advice received.

The matter of a "gift" was more nuanced and convoluted – and the Committee has seemingly settled on a "moral" obligation on myself to have enquired of Mr Henry as to any donations towards the costs of the petition.

The Committee set itself a "high standard of proof" (p 11 – para 6). Then in the next paragraph the Committee descends to a lower standard, the balance of probabilities (p 11 – para 7). This is alarming. The Committee fails the very test it first set itself. How can a "high standard of proof" be measured by "what most probably occurred"?

The Committee has six lawyers on it; how did such a change of standards occur?

There are no clear guidelines in any of the Standing Orders.

So far as precedent is concerned no reference to any past case exists.

It is evident that the Privileges Committee regards this issue as difficult and vexed which is recognised by the recommendations and proposals to set out guidelines for, and support, in the future. The point is very important. How does the Committee expect a member of Parliament to know guidelines which

now are only starting to develop and as a result of the Committee's recommendations?

It is fundamental to our law that one cannot be convicted for an offence that is not clear in the law or in this case the House rules. Further, that there cannot be in a case such as this retrospective legislation, or rules, and justice. In our system a criminal offence, or any offence, is only applicable when the law or the rules have been put into action.

A new standard is being applied to what was in 2005-08 a new requirement for all MPs.

I am being asked to accept that under this new "moral" requirement a declaration should have been made to the Registrar of Pecuniary Interests and would have been had it been functionally in place and had known of this. If there are new moral obligations it is clear that every MP should be very careful about that because for some their lives would soon become dynamic.

I have already lodged a "without prejudice" declaration following 18 July 2008 along the lines the Committee recommends.

But I totally reject any finding of contempt.

What members of the community must ask themselves is this most pertinent question. Had I requested of the Registrar of Pecuniary Interests her advice on what I should do in relation to this matter back in 2006, what would have been her advice? The fact is that there is no clarity on the matter and in all likelihood I would have been advised to seek legal advice, which would have led to the very same outcome – no declaration of a gift.

As a matter of natural justice the Committee must surely find that a new standard cannot and should not be applied retrospectively to my particular case. To single me out, while ignoring that many MPs are facing legal costs that others have to contribute to (in whole or in part) is simply not fair. Moreover as I point out in my substantive submission many worthy actions in the interests of democracy will not now occur because MPs with the courage to take them on will have been rendered by this decision impotent and powerless and open to attack.

There are many in the public who have little idea of the work involved in party political activity, or campaigns, or the enormous cost of legal campaigns however they may be generated.

If the Committee is to apply this new standard retrospectively then it must be to all MPs, not just me. To do otherwise simply violates natural justice.



THE RT HON SIMON PETERS MP
NEW ZEALAND FIRST LEADER
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I want to be fair. When I filled out the Register of Pecuniary Interests in 2006 I had no intention of "knowingly" deceiving anybody. Hence I filled it out with the help of my staff, all of whom had been through the electoral petition, to the best of my, and our, then knowledge and understanding of what was legally required. Both of my subsequent returns were filled out on a similar basis. Had the moral obligation which is now being applied to me singularly and retrospectively been in place I am not at all certain what I would have done. How exhaustive should my enquiries have been, or that of any other MP, in order to fill out the form as is now required.

I regret that this matter has come to this point.

Notwithstanding the above if the Committee's recommendation is that I amend my returns for 2007 and 2008 I will do so. But what is being asked of me is new and any fair reading of the report would conclude that. That is why I totally reject any finding of contempt.

In all the circumstances the Committee is requested to consider the fairness and natural justice in retrospectively applying a new standard to one Member of Parliament, which has implications for many others, and of singling that Member out for censure when others in the same circumstances (having had others contribute to their costs) receive no such censure.

There can be no morality or ethics in such a result.



Rt Hon Winston Peters MP
Leader
NEW ZEALAND FIRST



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Chairman

Privileges Committee

Parliament Buildings

Sydney 22nd Floor

Submission: Rt Hon Winston Peters



Re: Question of Privilege - Rt Hon Winston Peters

My position is that I did not know, therefore how could I declare, if such a declaration was in fact required?

Referral:

- 1. Matters referred failed to disclose a gift
- 2. Failed to disclose a debt and the name of the person who discharged it

Process followed by the Committee:

Report: "adequate opportunity to present their evidence to us, and to respond to the evidence of others"

Everything in these hearings occurred in a rush.

The hearings in the pre election and end of the House sitting environment did not provide an adequate opportunity to either present or respond to evidence. In some hearings I had less than 24 hours and on one occasion less than 8 hours on receiving the transcript to prepare with evidence in reply. Evidence that could have been obtained and still the subject of work, was not in the abbreviated timeframe allowed to be presented.

Report: "The members of this committee have been careful to approach this matter on the priority it merits and not to prejudge the situation before hearing all the evidence"

I wish to place on record my appreciation to those members who did not prejudge the issues and who strove to remove personality from their considerations and deliberations.

However, given the public comment made by some members of the committee, before and during the committee hearings as to the merits of my case, this did not always happen. All

member of comment by some members both in the media and on websites cannot be now discerned by them. Such comment in my judicial setting would be grounds for appeal.

There is no right of appeal.

It is fundamental to our justice system that the law must be applied equally and consistently to all people.

It must be applied without prejudice.

It should not require recitation here but in our system everyone is equal before the law and there cannot be a law applicable to one person and not to others.

If parliamentary process is to be respected then it must be transparent and open and commented on the facts and not prejudice.

Tauranga Electoral Petition

Page 7, para 3, records "in his letter to the Speaker, Mr Peters noted that electoral expenses were specifically excluded from the requirement to return, and that he believed this would cover this particular matter, as it related to an electoral petition".

With respect to the committee I most certainly did not. In the previous paragraph to the one being referred to I used the words following my earlier arguments "here the matter rests". My reference to an election return and election petition goes clearly point to a return in our laws. It cannot be electoral expenditure because it follows the vote. But it should be electoral expenditure because it is not just that people vote for an MP, or Government, but importantly that the correct MP, or Government, is returned by valid legally cast within the voting rules.

There can few more important constitutional rules that legitimate representation is established both at the electorate and national level.

Legal professional privilege

Page 9, para 6 refers to the committee receiving "advice that legal professional privilege relates to communications made for the purpose of conveying legal advice and that it does not relate to the identity of a client, particularly when the issue does not relate to the communication of legal advice" (Public v Mills [1993] 2 NZLR)

Mr. Hamy disagreed and gave his reasons.

But the real question is: What advice did the committee receive based on the facts of Mr. Henry and his obvious situation, and how then would the law then apply to those known facts? It is disturbing that a legal opinion might be given in a factual vacuum and acted upon by the committee.

Assessing the evidence

Para 11, para 4, last sentence

Conduct our proceedings in "with normal judicial principles."

"High standard of proof is required"

This statement is immediately followed by a paragraph which states "In considering the evidence we have had to draw inferences from the known facts to determine what most probably occurred. This is a higher to a lower standard – the balance of probabilities? This is a legal joke. What sort of "high standard of proof" can be measured by "what most probably occurred"? The committee, here fails the very test it set itself.

The need for a higher standard of proof is established in the report but by no means do they adhere to this requirement.

"The exemption in our reliance on circumstantial evidence." However, the committee then appears to set that evidence aside and go straight to the issue of status of payment.

4

Status of payment

"Was of a type which should have been declared", "type" is not clarified or explained in any satisfactory way.

No previous consideration by this committee

The committee states that this is the first time that such a matter has been considered and "that this report will serve to elucidate the aspects of the rules that considered below.

Payment was not to discharge a debt

This should have disposed of the Rodney Hyde complaint.

3

Payment was not a donation to cover an electoral expense

The exemption in clause 7 (1) (b) does not apply to donations made in respect to an electoral petition. As submitted heretofore, this is a vacuum or void in the law which should have been addressed in the past for all the significant reasons previously advanced.

Payment is a gift

Para 4, last sentence: Regarding the transparency of members benefits, "I should be construed in a way that would record with the reasonable expectations of constituents generally". How was the committee able to determine this?

Para 5, line 5: "benefits the member by discharging the moral (and potential legal) obligation to make payment. This is a new standard. Apparently members now have moral obligations but advice the committee received differs from this. Reference to the Law Practitioners Act makes it clear there can't be a "moral" obligation with lawyers when there are only legal obligations. A lawyer can only sue for legal obligations not moral ones.

As to the last sentence in this paragraph the benefit ascribed to an MP is misunderstood and particularly when that MP is a party leader. Both of the benefits required by the committee, "political capital" and "the higher level of funding available to an electoral MP" is a party benefit and the MP does not get a coin as a consequence. In short benefit is not thereby personally enriched in any way.

Para 6, sentence 2: "It was the member's legal expenses that was being compounded or". That is not so, or the reason that petition after petition were prepared, fought, and paid for by political parties: From *Honus* in 1978-79 to *Peters v Clarkson* in 2005-06. Committee members saw the SFO's money trail. A Law Firm's Trust Account -- Mr. Henry -- Mr. Kelly -- The National Party. Moreover Mr. Clarkson's costs were way above \$40,000 which evokes a reasonable conclusion. If Mr. Clarkson has acted properly then Winston Peters has acted properly. More than an MP, I was the titular head of the caucus, and that is "the substance and not the form" that the law should follow. Imposing taxation law, with respect, does not rectify the mistake.

Corrected return

I have lodged a corrected return for 2005, "without prejudice".

4

Knowledge of Payment

1) Para 4, last sentence: "the context in which the rules regarding returns were developed has assisted us with the development of this test"

This is retrospective and to be stannard in laws adverse to persons. That is, developing a test which an MP is expected to have acted upon, whilst not knowing what that undeveloped test was.

This is to take the view of absolute liability as with a parking offence as opposed to an offence involving proof of a mental element (ie, intention).

2) Permissible paragraph: "... a stronger moral imperative": I understood the committee to have heard enough argument against "moral obligations" and "moral imperatives" to have been dissuaded from this subjective and esoteric impossibility.

3) Last paragraph: "would have 'knowingly' failed to declare an interest if it were subsequently established definitely to be a pecuniary interest. How can an MP fail a test that is not already established, or can it ever take to a subsequently established test?"

With respect this cannot be correct and Dame Margaret Dwyer has said as much. She argues MPs should take legal advice which surely in the absence of known prescription means that such legal advice to the negative overrides requirements to disclose.

4) Page 15, Para 1: "I, in doubt, declare if" An MP cannot be in doubt if the legal advice is in the negative and in the absence of known prescription.

Application of test

1) Para 2, sentence 2: "we are aware however that the understanding of the need to make such an honest attempt has evolved over the period since those requirements were introduced.

Where is the benefit of doubt being granted to Winston Peters or for that matter the Hon. Nick Smith?

5

2) Para 3, last line: "not prove him when the money is being received in his name". Not particularly does it then prove Bob Clarkson or the Hon. Nick Smith.

3) Para 7: "extremely unlikely" money was not raised in this conversation. Many subjects which your witness has dodged were: Moreover, his prior statements, without proof, dispute his claims that the 14th December was the date. How do 27 statements of your witness on a credible witness?

Unpaid legal services (donations of kind) provided by Mr. Henry

Gift in kind begs the question: in kind of what? Everyone giving voluntarily of their time for political activity will now be caught by this gift provision.

This is a new standard against which all political parties will have offended if they have used professional accounts at the electorate and campaign level to handle their accounts, pro bono. In my time hundreds of people I have known would have been caught by this provision and is a clear deterrent against future engagement by professional volunteers is a direct attack against democracy as we know it.

Such rules have not just evolved over the past 3 years but have in a way existed for Cabinet Ministers.

Every MP who has ever had legal assistance in the last 3 years is caught by this interpretation as every Cabinet Minister since 1994, who has had assistance from the Crown Advocates to fight legal cases in which they are involved as a Cabinet Minister.

Why a new rule interpretation for one MP?

Payment of costs awarded in electoral petition

I agree with the conclusion, but not the way the committee has failed to see the Bob Clarkson parallel which suggests all of Mr. Clarkson's legal costs were met by the National Party (see SFO date payment sheet attached).

Permissible paragraph: "This is a significant development. The SFO actions taken here are without precedent and the illegality of the SFO's actions does not permit the committee, in all the circumstances, the benefit of awarding privacy and security requirements.

Finding of contempt

Para 2, line 3: "morally obliged".

6

This is both a new and subjective test. How can any one Member of Parliament know what the words "morally obliged" mean when they have not ever been defined?

Para three, line 4: "nearest attempt to do what? If an MP didn't know, how could an MP declare?"

As the law stood in 2005-6 an MP didn't have to disclose if legal advice was in the register, see Bailey comments and the Committee's own report on recommendations for review and clarification.

Why is there one rule for the Hon Nick Smith and another different rule for the Rt Hon Winston Peters?

Para 5, line 4: "Lobby". Why has this concept, earlier set aside by the Committee, now crept back into the majority report?

"payments in kind" – what are these payments if they are not specified and how does the Committee think such a concept is a gift?

"morally obliged", "honour amongst", "gift", "retroceded" and "payment in kind" are new concepts and requirements which point clearly to the prejudice and predilection some members brought to the Committee hearings.

Review of standing orders

This paragraph is agreed. This, however, was obviously not available in 2005.

Method of defining pecuniary interest

Line 5 – "an in principle approach". This also, is a new approach and not previously undertaken in 2005.

Payment in kind

This paragraph is agreed to. This obviously, again, was not available in 2005.

Why is an MP not given the benefit of doubt in the absence of clear rules, revision or clarification, all of which the Committee now intends to recommend.

Agreements with third parties

This is a most serious and adverse proposal in a democratic society. If implemented an MP legally challenging, or challenged by another, would be certain to get inside help at all in fighting

7

or defending a worthy public cause. That MP would be rendered impotent and useless even if their hounded actions were in the greater public interest.

Recommendations

A review of "pecuniary" interest is agreed.

Assistance to members

"Independent advice from an accountant or lawyer".

This circumstance would have reached the same negative advice that I acted on post 18/7/08. That is why my amended return has been submitted "without prejudice".

Developing the role of the registrar and the "support necessary", is agreed.

Obligation ultimately with the member

This is not agreed. The obligation is on Parliament, and in us Parliamentarians, to write clear unambiguous rules that allow legitimate political activity to operate and not be outlawed. Democracy can only suffer if the latter was to happen.



Rt Hon Winston Peters

Attached – Montage of Member's media comments on privileged matters.

8

Appendix O

Advice received

We resolved to append the following pieces of advice from Stephen Kós QC and David McGee QC

27 August 2008

PR/PT/14
STOUT STREET CHAMBERS

Ms Marylene Clerk of the House of Representatives
Parliament House
Wellington

RECEIVED
28 AUG 2008
PARLIAMENTS CHAMBERS

Dear Ms Clarke

PECUNIARY INTERESTS INQUIRY: FURTHER ADVICE

This is a revised version of my advice of 26 August. It sets out the issues I identified in my oral advice to the Committee this morning. The written advice is in full accord with that oral advice.

The Committee has asked for my advice on the questions:

1. **Question A:** Standing Order 166(1) and clause 3(1) of Appendix B contain general requirements to make returns of pecuniary interests. Is the required content of that return limited to those matters prescribed in clauses 4 to 7 of that Appendix, or is there some broader requirement to consider pecuniary interests generally under SO 166 and clause 3(1)? If such a broader requirement exists, please comment on whether a member has a pecuniary interest in a third party funding arrangement for the member's legal expenses.

Answer: The required content of the member's return is limited to those matters prescribed in clauses 4 to 7 of Appendix B.

2. **Comment:** This conclusion follows from the terms of S.O. 164(1). "Pecuniary interests" are not defined in Standing Orders, but in effect are those matters listed in clauses 4 and 7 of Appendix B.

3. **Question B:** Under clause 7(1)(b) could a payment by a third party to a barrister representing a member be a gift if the donor is a legal adviser in respect of the barrister's fee? Please comment on whether a barrister's fee for preparing an electoral petition under the Electoral Act 1993 can be considered "expenses in an electoral campaign".

Answer: Yes. A third party payment to a member's barrister may constitute a gift to the member.

4. **Comment:** [1] This question is focused on the payment by Mr. Stern to Mr. Henry. That payment raises four issues in terms of clause 7(1)(b):

- a. Was it a "gift"?
- b. Was it received by the member?
- c. Does the exception for electoral campaign expenses apply?
- d. Should the member have declared it?

[2] Issue (a) - "gift": Mr. Stern's payment was clearly a "gift". The real question is whether it was a gift to the member or to Mr. Henry.

Ms Marylene Clerk of the House of Representatives
Parliament House
Wellington
27 August 2008

[1] Issue (a) - "gift": The question of who has "received" a gift raises issues of (1) benefit; (2) intention of the donor; and (3) response of the recipient. I need to bear in mind that the test of Standing Orders is concerned with the transparency of the member's financial affairs, not with the donor's or the recipient's reasonable expectations of contributions to the party.

[4] **Unsubstantiated:** A barrister's work does not create a direct obligation for debt or unjust enrichment in a solicitor's bill. However, most clients acknowledge at least a moral obligation to pay the barrister. That was the case here. Mr. Henry at p. 29: "Mr. Stern knows that he owes me in the moral sense....". A third party payment to a member's barrister will benefit the member. First, by discharging the moral (and potential legal) obligation. Secondly and potentially, by enabling the barrister to provide more assistance to the member in the future.

[5] **Donor intention:** In this case the intent of the donor was not to benefit the barrister. It was the member's legal expenses that were being contributed to, not the barrister's services. See Mr. Stern's 19 August letter, para 4: "The payment was made to cover the legal costs incurred personally by Mr. Henry in connection with the Electoral Act 1993 petition dispute."

[6] **Receipt response:** On receipt of Mr. Stern's money, Mr. Henry wrote a "pro forma" invoice for GST and income tax purposes. That is not the normal response of the recipient of a gift. To have written a GST invoice, there must have been a taxable supply of services by Mr. Henry. The relevant services were received by the member or his solicitor, Mr. Clarke, on his behalf.

[7] On any sensible view of the provision Mr. Stern's payment was a "gift", but it was a gift to the member, not to Mr. Henry.

[8] **Issue (b) - electoral campaign expense exception:** The more important question is whether it is a contribution made to cover expenses in an electoral campaign - excluded from clause 7(1)(b).

[9] Under the Electoral Act 1993, which applied at the time, candidates were required to declare individual contributions over \$1,000 for use "in the campaign for his or her election" - within 70 days after polling day. That was an attempt to apply to them, once elected, candidates, outgoing members, and Appendix B is to avert the need for double disclosure. When the amended Standing Orders were adopted, it was accepted in debate by those supporting the amendments that their purpose was to improve transparency. I do not think that it is an acceptable construction that a black hole between dispositive regimes exists. Only if the payment for petition expenses was received in time, and declared under the Electoral Act provision, might it be excepted from clause 7(1)(b). I do not understand that to have occurred.

[10] For these reasons I do not consider that Mr. Stern's gift falls within this exclusion. It would therefore require to be declared in the member's return of it.

[11] **Issue (d) - declaration required?** As just noted, whether the member should have declared the gift depends on whether he knew of it.

a gift], but not (2) [who made it]. In that case, the declaration of (1) might still be made.

[37] To state the obvious, however, if neither (1) nor (2)'s known, there is nothing to declare.

3. Question C: Under clause 7(1)(b), could the provision of a barrister's services to a member without rendering an invoice be considered a donation in kind?

Answer: Yes. The provision of a barrister's services to a member without rendering an invoice may be a gift - i.e. a donation in kind.

Comment: [1] This question focuses upon the unpaid fees a solicitor provided by Mr Henry to the member. The same issues arise as under Question B:

- a. Was that a "gift"?
- b. Was it "received by the member"?
- c. Does the exception for electoral campaign expense donations apply?
- d. Should the member have declared it?

[2] Issue (a) - "gift": In my opinion, where a barrister provides legal services of value to a member on the basis that he does not render bills to the instructing solicitor (so that the client-member's obligation to pay remains merely moral, rather than legal) that will be a donation in kind.

[3] The services clearly have a "market value" (in terms of clause 7(1)(b)). Indeed Mr Henry hoped for payment, and sought the personal payment of the member's legal expenses from the partner of the firm. The barrister's services are therefore to be distinguished from donated assistance from non-volunteers.

[4] My view is confirmed by the Explanatory Notes on the Register issued by the Office of the Clerk. These state [in relation to gifts]:

This also includes services provided at no charge, such as work on 'no-win-fee' claims ...

[5] I do not agree therefore with the suggestion by Mr Henry on 18 August [p 46] that pecuniary interests "are money sums, not provision in kind. Clause 7(1)(b) claims gifts as 'including hospitality and donations in kind or kind', and the Explanatory Notes confirm that donated services are to be declared as gifts.

[6] Issue (b) - "received by the member": In light of the evidence, there can be no doubt the services were received by the member.

[7] Issue (c) - electoral campaign expense exception: As we are dealing with a gift, the issue of whether Mr Henry's services in relation to the Tauranga petition were a donation made to cover expenses in an electoral campaign is again raised. I have expressed my view on that issue already.

[8] However, whatever view is taken on that question, it will not exclude declaration of the receipt of free legal services on non-electoral matters, such as defamation proceedings.

[9] Issue (d) - declaration required? Again, whether the member should have declared the gift depends on whether he knew or not.

[10] To put this in proper perspective, however, it appears that there may be some inconsistency of approach in the declaration of voluntary services, despite the fairly clear terms of the Explanatory Notes. Members' annual returns for 2006, 2007 and

2008 show that on only one occasion has any member declared the provision of free services as a gift. In that case, the provision of website design and maintenance.

4. Question D: Under clause 7(1)(b), could a payment by a barrister to discharge a member's obligation to pay a court order for costs be a gift or a donation?

Question E: Under clause 7(1)(c), could a payment by a barrister to discharge a member's obligation to pay a court order for costs be a debt that must be declared by the member?

Answer: A payment by a barrister to discharge a member's obligation to pay a court order for costs may be the discharge of a debt requiring declaration under clause 7(1)(c).

Comment: [1] It is sensible to take Questions D and E together. They both focus on the payment by Mr Henry of a High Court costs order against the member in early 2006.

[2] Clause 7(1)(c) - discharge of members' debts - is the relevant provision. The electoral campaign exception does not apply under clause 7(1)(c). Therefore the issues arising are:

- a. Was the costs order a "debt ... owing by the member"?
- b. Was it "discharged or paid (in whole or in part) by any other person"?
- c. Should the member have declared any other cost under clause 4(1)(b)?

[3] Issue (a) - "debt"? On 9 March 2006 the High Court made a costs order of \$40,000 against the petitioner in the Tauranga electoral petition. It was against the member personally, and no one else. It was a judgment debt, owing by the member.

[4] Issue (b) - "discharged or paid"? In my view there is only something requiring to be declared under clause 7 if payment occurred without promise of reimbursement by the member.

[5] If promise of reimbursement was given, then a loan and s13(3)(a) [b] has been created by the member. It may be enforced against the member - even by the barrister who made the payment. [The usual rule does not apply, he is, because payment of client debts is not part of a barrister's professional responsibilities. Although that involves a payment of the member's debt, I could that clause 7 is concerned about a mere substitution of creditors. The creditor may have to be declared under clause 4(1)(b) (address that in [9] below.)

[6] However, if promise of repayment was not given, then there has been a discharge of indebtedness. If in excess of \$500, it requires to be certified under clause 7(1)(c). As noted earlier, the electoral expenses exclusion in clause 7(1)(b) does not apply to clause 7(1)(c).

[7] Issue (c) - discharge under clause 7(1)(b) required? Again, the member should have declared the discharge of debt depends on whether he knew it had been discharged. It appears the member was aware of the debt, and that it had been paid by Mr Henry. Mr Henry at pp 22-23.

[8] Some doubt on the exact facts has been created by Mr Henry's letter to the Committee of 20 August. This states that Mr Henry paid the court costs on 5 April 2006, and that "I was shortly thereafter reimbursed in full by Mr Peters". The primary issue remains whether the payment by Mr Henry was made with or without promise of reimbursement.

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[9] Issue (d) - *declaration under clause 4(1)(i) required?* It seems unlikely that any declaration under clause 4(1)(b) was required [i.e. of any substituted debt due to Mr Henry, in place of the judgment debt due to Mr Clarkson]. First, the amount does not exceed the \$50,000 threshold for declaration. Second, debts only need to be declared if not extinguished as at the relevant declaration date, here 31 January 2007. Declarations under clause 4 are on a "snapshot" basis; those under clause 7 are not.

5. Professional privilege: It may assist the Committee if I comment briefly on the matter of legal professional privilege.

[1] Mr Henry has asserted that professional privilege precludes him from identifying the person who suggested the prank to Mr Glenn. p 14. I'd agree, for two reasons:

[2] First, legal professional privilege relates to communications made for the purpose of conveying legal advice. It does not relate to the identity of a client, and certainly not where the issue has nothing to do with the communication of legal advice. See *Poker v Mills* [1993] 2 NZLR 592. I might add that the same conversations mean that lawyers' bills are not privileged either: *Kipe Group Ltd v Stearns Holdings Pty* [1993] 3 NZLR 239.

[3] Secondly, even if the first point were not so, it is generally considered that professional privilege may not be asserted in the "Inquiries Committee" see *Nickie Pennington v Practice of New Zealand* (3 Dec 2002), citing the decision of the Court of Appeal in *New South Wales in Egert v Chadwick* (1999) 46 NSWLR 591.

I will gladly expand on these answers if requested.

Yours sincerely



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Simon Power MP
Chairperson
Privileges Committee
Wellington

15 September 2008

Dear Mr Power

I am replying to your letter of 11 September inviting me to comment on issues arising out of the Privileges Committee's current inquiry into a question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests. I will respond to your questions in the order you set them out in your letter.

Whether a member can have a relevant pecuniary interest, but not be required to make a return, because the interest does not come within the categories of Appendix B 4 and 7

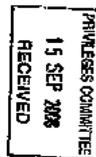
If the member has an interest that is not within the categories of interests that SO164 and Appendix B requires to be included in a return then that interest does not need to be disclosed to the Registrar.

In fact, the Standing Orders contemplate that there might be interests of a "financial" nature but not of a "pecuniary" nature and which therefore are not registered. SOs 165 to 167 relate to financial interests that members may have in parliamentary business under consideration and which therefore must be declared to the House or a committee. Such a financial interest may also be a pecuniary interest and thus included on the Register. If this is the case, it does not need to be declared again, the Registrar is in effect a standing declaration (SO 166(2)). But such an interest need not also be a pecuniary interest. If so, it would not appear on the Register. Explicit declaration in the course of debate or to the committee is then required. The Registrar is not necessarily a comprehensive statement of all interests of a financial nature that members may possess.

The nature of pecuniary interests that are required to be declared, given comment by members that all they need to declare is a pecuniary interest in a trust. For example, if a member declares a trust or other such arrangement, under Appendix B 4(1), are individual elements (debts, gifts or payments in kind) of that arrangement also required to be separately declared?

Every pecuniary interest must be declared.

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If a member is a beneficiary under a trust, that interest must be returned (clause 4(1)(d)). The member, though a beneficiary and therefore potentially liable to a disbursement or help from the trust, might in fact receive nothing from it during the year. In that case no further return is necessary.

But if during the year, the trust loans the member more than \$50,000, for example, or extinguishes a debt of more than \$500 on behalf of the member, these are distinct pecuniary interests that must be returned. The fact that a trust is involved makes no difference to the member's obligations to declare pecuniary interests.

The meaning of "expenses in an electoral campaign" in Appendix B 7(b) and whether these would cover legal expenses incurred for an electoral petition

In my view the phrase "expenses in an electoral campaign" is confined to electoral expenses that were at the relevant time required to be declared under the Electoral Act (whether or not they were actually declared under that Act). It does not include expenses incurred in respect of an electoral petition since the latter were not required to be declared under the Electoral Act. (Because this advice is in the result the same as that given to you by counsel to the Committee but for slightly different reasons, I have elaborated on my reasons for advising you in this way in the attached paper. I have discussed these with counsel who agrees with them.) Although I have not looked at the new Act in detail, the same distinction would be followed in respect of returns of candidates' election expenses under the Electoral Finance Act 2007. These do not include expenses incurred on an election petition.

The meaning of "knowingly" in SO 40(1g) and (h)

My approach to this question arises in part from the way in which the rules for a Registrar evolved.

Initially, such rules were to be stationery-based. Although the bill for this purpose proposed to confer the authority on the House to police the rules, because they would have been in legislation they would have been potentially justifiable. There was a clear prospect with the original proposal that the Courts would be asked to rule on their application. There were some (including myself) who were disquieted at this prospect.

In the event, a compromise was arrived at at the Standing Orders Committee to drop the proposal to legislate and deal with pecuniary interests in the House's own domestic rules, its Standing Orders. This did not mean that all members were happy with the decision to adopt pecuniary interest rules; some continued to believe that this was unnecessary and expressed this in the report on the bill. But inclusion in the Standing Orders (by consensus) was seen as a lesser evil than inclusion in legislation (which could have been imposed by majority vote).

The relevance of this for present purposes is that while, if legislation had been employed, toleration of a more "legalistic" approach to registering interests would have been likely and perhaps excusable, jettisoning Standing Orders and keeping the matter entirely within the confines of the House seems to me to impose a

greater "moral" imperative on members to comply with the requirements. Compliance that is within the spirit of the House's own rules should be expected. I therefore suggest that the Committee, in its interpretative and adjudicative role, approach questions before it on that basis.

"Knowingly" seems to me, in the context I have outlined above, to import an expectation that members will make an honest attempt to return all of the pecuniary interests they hold. They are obligated to turn their minds to the interests that they have. The onus is on them to identify and declare relevant interests.

If having turned their minds to whether they had an interest they do not return what is subsequently established as a pecuniary interest because they genuinely do not appreciate they have it - they would clearly be excused from liability - a contempt could not arise in these circumstances.

But if a member knows of an interest and then decides not to declare it, the member must take responsibility for that decision. In such a circumstance the member would have "knowingly" failed to declare an interest if it is subsequently established definitively to be a pecuniary interest. The approach should be - if in doubt, declare it. This latter has been the consistent approach taken in regard to financial interests under Standing Orders 155-157.

The members of the Privileges Committee should, in my opinion, endeavour to put themselves into the position of jurors, and ask whether there has been an honest attempt by the member to comply. If there has not, there may be a contempt; if there has, then there cannot be a contempt.

Yours sincerely

David McGee
Ombudsman

ANNEX

Donations made to cover expenses in an election campaign

The Committee has been advised that the donation in issue in this case will only be covered from the exemption on disclosure in clause 7(1)(b) if it was in fact declared under the provisions in force at the time under the Electoral Act 1993. This donation was not received in time and was consequently not declared. It therefore, it is said, does not fall within the exemption.

I agree that the donation does not fall within the exemption, but for a slightly different reason. In my view, donations for expenses incurred in respect of election petitions never fall within the exemption since they are not expenses in an election campaign and are never declared under the Electoral Act.

It seems clear to me that what the House was aiming to exempt in clause 7(1)(b) was those election expenses that are disclosed by law. There would be no need to bring these within the House's registration provisions because an alternative means of disclosure is already provided for. It was pointless to duplicate this process in the Standing Orders.

The Committee's attention has been drawn to provisions of the Electoral Act 1993 in force at the relevant time that required there to be included in the return of election expenses -

- (b) the name and address of each person who made a constituency candidate donation to the constituency candidate and the amount of each such donation, and
- (c) if an anonymous constituency candidate donation is made to the constituency candidate, and the amount of the donation exceeds \$1,000, the amount of each such donation.

This is section 210(1)(b) and (c) (now repealed by the Electoral Finance Act 2007).

However these paragraphs do not stand alone. They are in a section headed "Return of election expenses" and follow a paragraph (a) that requires constituency candidates to make a return setting out, "the constituency candidate's election expenses". It seems to me that paras (b) and (c) also relate to what for Electoral Act purposes, are "election expenses". They provide that in respect of election expenses, the names of donors together with the amounts donated must be identified. They impose extra declaration requirements in respect of how the expenses already declared under para (a) were funded. They are thus subsets of election expenses that have been declared under section 210(1)(a). But they do not impose an obligation to disclose donors that did not contribute to election expenses.

The term "election expenses" is defined in section 2(13) (also now repealed). It is confined to expenses incurred in respect of any "election activity". To be an "election activity" the activity must have taken place within the 3 months immediately preceding polling day.

This clearly rules out expenses incurred on an election petition being regarded as election expenses, since expenses on a petition are incurred exclusively after polling day. In sum, my view is that: first, election petition expenses are not "election expenses" and are not subject to declaration under the Electoral Act; and, secondly, clause 7(1)(b) of Appendix B applies only to what are in Electoral Act terms "election expenses". It therefore does not exempt election petition expenses. Donations for election petition expenses must be declared under clause 7(1)(c).